



---

**File #:**2018-0070

**DATE:** April 24, 2018

**SUBJECT:**

RIDA CHULA VISTA, LLC RESORT HOTEL AND CONVENTION CENTER:

- A) RESOLUTION AUTHORIZING A DISPOSITION AND DEVELOPMENT AGREEMENT (DDA) WITH RIDA CHULA VISTA, LLC AND THE CITY OF CHULA VISTA FOR A RESORT HOTEL AND CONVENTION CENTER WITHIN THE CHULA VISTA BAYFRONT
- B) RESOLUTION AUTHORIZING A REVENUE SHARING AGREEMENT WITH THE CITY OF CHULA VISTA

**EXECUTIVE SUMMARY:**

The Chula Vista Bayfront Master Plan<sup>1</sup> (CVBMP) (Attachments A and B) is the result of a decade-long joint planning effort by the San Diego Unified Port District (District), the City of Chula Vista (City), and a broad coalition of stakeholders. The CVBMP was collaboratively planned through an extensive public participation program that included over 100 community meetings and resulted in a comprehensive Environmental Impact Report (EIR) and Port Master Plan Amendment, which was approved by the Board of Port Commissioners (Board) in May 2010 and certified by the California Coastal Commission (CCC) in August 2012. The amended and restated financing agreement<sup>2</sup> (Financing Agreement) for the Chula Vista Bayfront (CVB) was approved by the Board in 2017 and set forth the framework for the financing and development of the public improvements and infrastructure within the CVB by the District and City, referred to collectively herein, as the "Public Entities".

The resort hotel and convention center (RHCC), located on approximately 36 acres of land within the CVB (Site), is the catalyst Project for the CVB with the goal to not only provide a world-class hotel and convention center to the region, but also provide a vehicle to build future parks, restore sensitive habitat, and construct public infrastructure. After over three years of collaborating with RIDA Chula Vista, LLC (RIDA) and solving the economic model for financial feasibility, the District, the City, and RIDA are in a position to enter into a Disposition and Development Agreement (DDA) for development of the resort RHCC. Attachment A includes the complete DDA. The DDA sets forth the mechanism to design, finance, and construct the RHCC and surrounding public infrastructure (the Phase 1A infrastructure). The RHCC and the Phase 1A Infrastructure are collectively referred to herein, as the "Project". The Scope of Development of the RHCC is set forth in Attachment No. 5, which is attached to the DDA. The Scope of Development covers the following:

- RHCC to be operated as a Gaylord hotel;
- Phase 1A Infrastructure including the construction of Harbor Park and portions of E, G, and H

Streets;

- Parking Improvements which will include either a garage or surface parking.

On June 20, 2017, at a joint meeting, the Board and the City Council approved a non-binding letter of intent (LOI) to memorialize the key economic terms of the RHCC Project with RIDA. Attachment E is the full staff report, including attachments that document this important interim step prior to the negotiation and execution of the DDA. Since the approval of the LOI, the Exclusive Negotiating Agreement (ENA) with RIDA was extended on February 6, 2018 by six months to allow for negotiations between the parties to continue<sup>3</sup>. Specifically, the scope of the Project changed from 1,450 rooms in the LOI to 1,600 rooms and the parties developed a financing approach to deliver the RHCC and surrounding Phase 1A Infrastructure.

The DDA sets forth the necessary steps for the parties to authorize the financing of the Project and commence construction of the Project, ultimately leading to a ground lease and required subleases for development and operations of a world-class hotel and convention center. Details of the Project financing, specifically the Public Entities contribution (Public Financing) and RIDA's private investment (Private Financing), are described below. The Public Financing is anticipated to be delivered to the Project through future bond offerings. In brief, the parties are contributing as follows:

- District/Port Convention Center: \$240 Million
- District/Port Phase 1A Infrastructure: \$63 Million
- District Parking: \$40 Million
- RIDA RHCC: \$785 Million
- **TOTAL PROJECT COST: \$1.128 Billion**

Keyser Marston Associates, Inc. (KMA) prepared a comprehensive report that analyzes the Project feasibility, proposed method of financing for the Project, and public investment. The full KMA report is included as Attachment C. The details of the DDA, including a brief overview of the agreements and previous actions taken by the Board related to the redevelopment of the CVB, Project scope and public contribution, is discussed below.

Staff recommends that the Board approve the DDA because in RIDA and the City, together with the Gaylord Hotels brand, the District has found the right partners that are ready to move forward with the implementation of the CVBMP. Moreover, the Project economics represent a good deal for the District, for the City, and for RIDA. Approving the DDA will allow the parties to memorialize their agreement on the path forward to the redevelopment of the RHCC as soon as possible. Once constructed, the CVB will become a world-class destination that reflects strong planning and design principles, economic feasibility, and community benefits.

**RECOMMENDATION:**

**RIDA Chula Vista Resort Hotel and Convention Center:**

- A) Resolution Authorizing a DDA with RIDA Chula Vista, LLC and the City of Chula Vista for a

Resort Hotel and Convention Center within the Chula Vista Bayfront  
B) Resolution Authorizing a Revenue Sharing Agreement with the City of Chula Vista

**FISCAL IMPACT:**

The requested Board action to authorize the DDA will not result in a direct fiscal impact to the District, as any contribution and commitment of revenue sources by the District to the implementation of the CVBMP will be subject to a future plan of finance (included as Attachment No. 4 to the DDA, Conceptual Outline of the Plan of Finance), which may be amended from time to time. Further, the plan of finance will be presented to the Board for the Board's consideration at a future date and will also be subject to Board approval. Based on the KMA Report, the development of the RHCC could potentially result in positive surplus revenues to the District in as early as Year 4 of hotel operations. The requested Board action to authorize the Revenue Sharing Agreement between the District and the City (Revenue Sharing Agreement) will commit the Public Entities to a commitment of existing CVB revenues starting July 1, 2018 to be used to pay financing and/or construction contingencies for the Project. The Revenue Sharing Agreement is Attachment D to this report.

**COMPASS STRATEGIC GOALS:**

This agenda item supports the following Strategic Goal(s).

- A vibrant waterfront destination where residents and visitors converge.
- A Port with a healthy and sustainable bay and its environment.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A Port that is a safe place to visit, work and play.
- A financially sustainable Port that drives job creation and regional economic vitality.

**DISCUSSION:**

After over three years of collaboration, the District, City, and RIDA believe that the DDA should be approved because the right partners are ready to move forward with the right plan for the CVB, the Project economics represent a good deal for the Public Entities and for RIDA, and time is of the essence to enter into the agreements necessary to ensure that the redevelopment of the CVB proceeds as soon as possible.

After extensive due diligence efforts, the parties wish to enter into the DDA to memorialize the terms of the Project necessary to commence and complete approvals for the financing necessary for the Project. The DDA will allow the District, RIDA and City to deliver not only the RHCC, which is a key part of the CVB vision, but also a majority of the public amenities for the CVB, including parks and public access that were envisioned through the decades-long community planning effort.

This discussion provides a detailed overview of the DDA and other attached agreements, including certain provisions being negotiated for the ground lease (Ground Lease), and a conceptual outline of the public financing (Conceptual Plan of Finance). The final form of the Ground Lease will be presented to the Board for its consideration in the next few months.

## PROJECT SCOPE

The following lists the key components of the RHCC. The Project as currently designed is under review by the District for consistency with the CVBMP, EIR, and other agreements applicable to the CVB, and may be presented with some modifications for approval at a future date.

Project Feature	Description
Resort Hotel Brand	Gaylord Hotels
Hotel Rooms	1,600
Convention & Meeting space	275,000 Net Usable Square Feet
Amenities	Associated Retail, Resort-level Amenities
Phase 1A Infrastructure	Site preparation, New Public Streets (portions of E, G and H streets), Utility services and Harbor Park
Parking	A 1,600-space garage or 1,200-space surface lot

## DISPOSITION AND DEVELOPMENT AGREEMENT

District and City staff recommend that the Board and City Council, respectively, approve the DDA attached hereto as Attachment A. A summary of the DDA is described in detail below:

- Responsibilities of the Parties;
- Conditions Precedent to the Close of Escrow; and
- Closing and Delivery of the Site.

Attachment 6 of the DDA is an implementation schedule of performance (Schedule of Performance) that requires certain actions be performed by RIDA, the City, the District, and other governmental agencies, which actions include, but are not limited, to Project approvals, coastal development permits, building permits, infrastructure plans, and actions related to the plan of financing the Project. The Schedule of Performance serves as the roadmap to perform the actions required under the DDA for the financing, development, and operations of the Project. At each milestone, the Parties can consider whether to pause, delay, or terminate the DDA. Depending on the milestone, the check-ins would be limited to a maximum number of days to either resolve or to continue discussions. In no event would the check-ins collectively exceed the term of the DDA, which has an initial term of four years, and may be extended up to three times for one year each for a total term of seven years. The check-ins would be structured as follows:

Check-In	Length	Reason
Pause	90 Days	Allows the Parties to Meet and Confer regarding a particular Schedule of Performance milestone
Delay	60 Days	Allows the Parties to Meet and Confer regarding a particular Schedule of Performance milestone

**Responsibilities of Parties**

The DDA outlines the funding and construction responsibilities of the Parties involved. The chart below describes the allocation of responsibility for the construction of the Project:

**Responsibilities of Parties**

	RIDA		Public Entities		District	
	Fund	Construct	Fund	Construct	Fund	Construct
Private Improvements	X	X				
Convention Center	X	X	X			
<b>Phase 1A Infrastructure</b>						
E Street (G Street to H Street)		X	X			
G Street Connection		X	X			
H Street (Bay Blvd to Street A)		X	X			
H Street (Marina Pkwy to E Street)		X	X			
Harbor Park (Initial)		X	X			
H-3 Utility Corridor		X	X			
E Street (Bay Blvd to F Street)			X	X		
E Street (Lagoon Drive to G Street)			X	X		
F Street (Bay Blvd to F Street)			X	X		
F Street (E Street to Gunpowder Pt Dr)			X	X		
G Street Sewer Pump Station			X	X		
Gunpowder Point Drive Relocation			X	X		
S-2 Sweetwater Signature Park			X	X		
SP-1 Sweetwater Buffer (for S-1)			X	X		
SP-1 Sweetwater Buffer (for S-2)			X	X		
SP-2 Seasonal Wetlands			X	X		
SP-4 SDG&E			X	X		
H-3 Site Prep			X	X		
Parking Improvements	X (Surface)	X			X (Garage)	

The chart below describes the allocation of responsibility for the funding of the Phase 1A Improvements for the Project:

EXHIBIT 4

CITY INFRASTRUCTURE SOURCES AND USES MATRIX

<b>Improvement Description</b>	<b>Cost Estimate<sup>11</sup></b>	<b>Developer BFDIF Credit Eligible<sup>12</sup></b>	<b>City Sewer Funding Eligible<sup>13</sup></b>	<b>Other Funding<sup>14</sup></b>
<i>Developer's Phase 1A Infrastructure Improvements</i>				
E Street (G Street to H Street )	6,680,000	4,050,000	580,000	2,050,000
G Street Connection	950,000	430,000	110,000	410,000
H Street (Bay Blvd to Street A)	430,000	270,000	-	160,000
H Street (Marina Pkwy to E Street )	5,380,000	3,350,000	-	2,030,000
Harbor Park (Initial)	19,500,000	310,000	-	19,190,000
H-3 Site Prep <sup>15</sup>	6,000,000	-	-	6,000,000
H-3 Utility Corridor <sup>16</sup>	1,530,000	-	310,000	1,220,000
<b>Subtotal</b>	<b>40,470,000</b>	<b>8,410,000</b>	<b>1,000,000</b>	<b>31,060,000</b>
<i>Remaining Phase 1A Infrastructure Improvements</i>				
E Street (Bay Blvd to F Street)	3,970,000	-	60,000	3,910,000
E Street (Lagoon Drive to G Street )	290,000	-	-	290,000
F Street (Bay Blvd to E Street )	1,530,000	-	280,000	1,250,000
F Street (E Street to Gunpowder Pt Dr)	630,000	-	50,000	580,000
Gunpowder Point Drive Relocation	1,360,000	-	-	1,360,000
S-2 Sweetwater Signature Park	7,600,000	-	-	7,600,000
SP-1 Sweetwater Buffer (for S-1)	2,570,000	-	-	2,570,000
SP-1 Sweetwater Buffer (for S-2)	1,160,000	-	-	1,160,000
SP-2 Seasonal Wetlands	950,000	-	-	950,000
SP-4 SDG&E	60,000	-	-	60,000
<b>Subtotal</b>	<b>20,120,000</b>	<b>-</b>	<b>390,000</b>	<b>19,730,000</b>
<i>City Infrastructure Improvements</i>				
G Street Sewer Pump Station	2,640,000	-	2,640,000	-
<b>Total</b>	<b>63,230,000</b>	<b>8,410,000</b>	<b>4,030,000</b>	<b>50,790,000</b>

<sup>11</sup> Cost Estimates are in 2016 dollars. Estimates include hard costs, soft costs, and contingencies.

<sup>12</sup> Developer BFDIF Credit Eligible column reflects the estimated value of planned improvements that will be eligible for credit against Developer's Bayfront Development Impact Fee ("BFDIF") obligation. Actual BFDIF credit amount may vary. Developer will be responsible for payment of BFDIF fees in excess of credits earned

<sup>13</sup> City Sewer Funding Eligible column reflects the estimated value of sewer improvements associated with each project that will be eligible for funding by the City through its sewer facility contribution. Actual sewer funds contributed may vary. See Developer's Sewer Improvements.

<sup>14</sup> Other Funding column reflects the estimated amount to be funded through the issuance of debt, the application of funds on hand, or such other funding mechanisms as may be most appropriate.

<sup>15</sup> H-3 Site Prep budget of \$6 million represents the maximum funds that will be provided by District and City for this purpose, assuming District provides at least 130,000 cubic yards of imported soil. If District does not deliver sufficient soil, funding will be increased to \$10 million. Actual costs may vary. See Section 4.8.

<sup>16</sup> H-3 Utility Corridor budget of \$1.53 million represents the maximum funds that will be provided by District and City for this purpose. Actual costs may vary.

Exhibit 4 to Attachment No. 5  
Page 1 of 1

60441.00054\30681444.6  
US-DOCS\97048325.35  
60029.00036\30958215.1

*RIDA*

RIDA Development Corporation is a full service real estate organization that has created and invested in innovative and economically successful office, residential, industrial, hospitality, and retail developments for more than 40 years.

RIDA will be responsible for an investment in the RHCC of no less than \$785 Million. This investment is expected to take the form of a combination of debt and equity. RIDA's investment will cover the design and construction of the resort hotel, the design of the Convention Center, and a portion of the cost of the Convention Center construction. The Private Financing and the Public Financing will close simultaneously at the close of escrow.

RIDA has engaged a design team for the RHCC, consisting of Nasland Engineering and HKS Architects. RIDA has communicated to staff that the design of the RHCC portion of the Project is on schedule to be completed prior to the time that the parties execute the ground lease and construction is scheduled to commence in late 2019. Staff anticipates that the Board will consider the coastal development permit (CDP) for the RHCC portion of the Project sometime in the Fall of 2018.

RIDA will construct a portion of the Phase 1A infrastructure requirements, listed in the chart above, and herein described as RIDA's Phase 1A Infrastructure Improvements. As memorialized in the DDA and described in detail in Attachment 5 of the DDA, through negotiations with the District and the City, the District will complete the design of RIDA's Phase 1A Infrastructure Improvements to 30% design drawings, as required to issue a CDP for that portion of the Project.

RIDA has agreed to prepare the Site and complete the construction of RIDA's Phase 1A Infrastructure Improvements concurrent with the construction of the RHCC. Through due diligence, staff has determined that the estimated cost to prepare the Site is \$10 Million. If the District provides less than 130,000 cubic yards of imported soil to the Project Site prior to the close of escrow, the estimated cost will be decreased equal to the difference of: (1) \$10 million minus (2) \$30.77 per cubic yard of soil delivered by the District. The District is working on opportunities for dirt to import to the Site currently. RIDA will fund the expense for the remaining Site preparation and will be reimbursed by the Public Financing bond financing proceeds.

*Public Entities*

In the process of determining the financial feasibility of the RHCC, it was determined that in order for the RHCC to be developed a public financial subsidy would be needed, herein described as the Public Financing. Per the chart above, the following is a breakdown of the Public Financing contribution:

- |  |               |
|--|---------------|
| 1. Phase 1A Infrastructure:                                    | \$63 Million  |
| 2. Public Entities Contribution for Convention Center Project: | \$240 Million |
| 3. District owned parking:                                     | \$40 Million  |

The Public Entities entered into a financing agreement (Financing Agreement, as amended), setting forth the revenue sources and financing alternatives necessary to implement the development of the Project. The District and City will approve the use of the revenue sources through a future plan of

finance substantially based on the Conceptual Plan of Finance, as shown as Attachment 4 to the DDA, which will cover the Convention Center and required Phase 1A Infrastructure of the Project. Subject to the terms of the Conceptual Plan of Finance, the Public Entities will work collaboratively to issue debt at the close of escrow to fund the contributions required for the Project. According to the Financing Agreement, subject to the final plan of finance, the Public Entities will commit sources of revenues identified in the Financing Agreement that will be used to service the anticipated debt.

If the Board approves the DDA, the District will contribute the following revenues consistent with the Financing Agreement, Conceptual Plan of Finance, and final plan of finance: (1) existing and designated future lease revenues from the CVB; and (2) ground rent from the RHCC. (The proposed ground rent structure for the RHCC ground lease is discussed below.) Additionally, it is contemplated that the District will contribute the previously received SDG&E contribution of \$1.7 million and the Pacifica contribution of \$3.0 million toward the Phase 1A Infrastructure cost. The District will also be responsible for an annual contribution (District Annual Contribution) toward bond debt service to support the Convention Center contribution not to exceed the following schedule of amounts during Lease Years 5 through 38:

Lease Years 1-4	\$0
Lease Years 5-14	\$5.0 million
Lease Years 15-19	\$6.0 million
Lease Years 20-24	\$3.0 million
Lease Years 25-38	\$3.5 million

If the conditions precedent described in the DDA are satisfied, the District will ground lease the land to RIDA with a modified rent structure that is needed to allow - but not guarantee - the RHCC Project to achieve a rate of return acceptable to RIDA. The District's contribution of the land under a modified rent structure is also an additional contribution to the Project.

If the City Council approves the DDA, the City will also contribute toward the construction of the required sewer and fire services and contribute to the Project through transient occupancy tax (TOT) for the existing and future RV Park and Project generated revenues, and revenues from the Municipal Services Agreement (MSA) through the sublease of the Convention Center. The KMA Report details the Public Entities contribution toward the Project.

*Cash Flow in Excess of Debt Service Distribution ("Waterfall")*

The proposed bond financing structure is projected to result in cash flow after debt service toward the bond issue, estimated to occur in Lease Year 19 (see KMA Report). The agreed-to terms of the District and City participation in the anticipated future cash flow in excess of debt service is as follows and detailed within the Revenue Sharing Agreement, Attachment D:

Priority	Disbursement Description
1	To District, Reimbursement of its Annual Contribution
2	To City, Reimbursement of 73.6% of Actual Bayfront Fire Services Costs
3	To District and City, Reimbursement of General Fund Contributions (Through Close of Escrow)
4	To District and City, Reimbursement of General Fund Contributions (After Close of Escrow)
5	To JPA, One Year Additional Debt Service Reserves or Reserve Fund Insurance Policy
6	To District and City, Split Remaining Revenues 50/50

Following is a more detailed discussion of each disbursement:

(1) The District's Annual Contribution is described above and is the first position to be reimbursed from any surplus revenues after debt service is paid.

(2) The second priority is the City's contribution toward fire services. It is contemplated that fire

services will be required for the RHCC and CVB as a whole with the construction of the Project. Any actual fire services contribution toward the Project by the City will be reimbursed with excess revenues after the District is reimbursed for their Annual Contribution.

(3) The third priority is reimbursement of both the District and City's general fund contributions toward the Project (Before Close of Escrow), which includes the District's existing CVB lease revenues and the City's existing transient occupancy tax (TOT) and municipal services agreement revenues.

(4) The fourth priority is reimbursement of both the District and City's general fund contributions toward the Project (After Close of Escrow), which includes the District's existing CVB lease revenues, RHCC lease revenues, and the City's TOT and municipal services agreement revenues.

(5) The fifth priority, establishing one year of additional debt reserves, is not anticipated to be required by the bondholders (as these are above and beyond those ordinarily required by the proposed debt structure, as described in more detail below); however, the District and the City believe the additional reserves would be prudent and may be covered through an insurance policy.

(6) The sixth priority would be any remaining revenues to be split evenly between the District and the City equally.

Operations and Maintenance of the Project and public infrastructure are not covered in the waterfall; however, both the District and the City anticipate using the excess revenues to fund on-going operations and maintenance of their respective facilities.

### *District Obligations*

Parking for the Project will take the form of either an approximately 1,600 space public parking garage or surface parking on the adjacent site. To fund the construction of the parking garage, on April 10, 2018, the Board resumed the collection of a previously adopted user fee to be collected by transportation vendors doing business on tidelands. Funds collected will only be used for financing and construction costs of the planned Chula Vista Bayfront Convention Center parking facilities.

### **Conditions Precedent to the Close of Escrow**

The primary conditions necessary to occur for the Close of Escrow of the DDA, ultimately leading to the execution of the Ground Lease and Convention Center Sublease, are:

1. Overview of Project Financing
2. Closing and Delivery of Site

The DDA outlines the necessary steps and schedule in order to close escrow on both the Public Financing and Private Financing for the RHCC and Phase 1A infrastructure. The conditions precedent to close of escrow, if achieved, will ultimately lead to the construction, development, and operation of the Project. Staff will return back to the Board to memorialize certain steps prior to the close of escrow, such as approving the proposed method of financing through the plan of finance,

any Project design elements, and requirements for Site delivery to RIDA. Below describes the requirements of having the financing in place and preparing the Site prior to the close of escrow.

## **OVERVIEW OF PROJECT FINANCING**

### *Overview of Feasibility of Proposed RHCC Project*

The District, the City, and RIDA have worked together to identify the key economic terms that will support the construction and operation of the RHCC Project, all while achieving favorable market returns to both the Public Entities and RIDA. During earlier discussions with Gaylord and prior to the selection of RIDA, the District and City had already anticipated that early phases of development on the CVB would require public financial contributions.

The Financing Agreement identifies sources of revenues from the City and District to develop the public improvements and infrastructure for the Project. Additionally, the LOI approved by the District and City on June 20, 2018 identifies further sources of revenue from the District and City in order to make the Project feasible. The District and City will provide evidence of the sources of revenue and financing based on a future plan of finance to be entered into the District and City in order to fund the Public Fund Contribution toward the H-3 site preparation costs, Public Improvements, and Project Public Investment in the Project. At this time, it is anticipated that the District and City will use bond financing for the Public Fund Contribution. The Public Entities will work collaboratively to enter into a Plan of Finance within the term of the DDA that will set forth the terms necessary to issue the debt for the Public Fund Contribution prior to the close of escrow of the DDA.

The District and City proposed Public Fund Contribution identified in the DDA and Conceptual Plan of Finance have been analyzed by KMA. The KMA financial feasibility analysis is presented in Attachment C. The KMA report includes a comprehensive financing gap analysis justifying the need for the District and City proposed Public Fund Contribution toward construction of the Project. The KMA report illustrates how the public contribution toward the RHCC related public infrastructure and improvements will be supported primarily through Project-generated revenues, i.e., most of the District and City committed revenues will in effect be “performance-based”. To that end, KMA has concluded that the RIDA Projected return after the proposed Public Fund Contribution and ground rent structure is not excessive. This finding indicates that the Public Entities’ contribution and District rent structure is warranted and needed in order for the Project to move forward and to be developed. KMA further concludes that RIDA will need to control development costs and/or improve operating performance in order to achieve a satisfactory long-term return.

### *Overview of Proposed Public Fund Contribution*

As set forth in the KMA report, total Project costs, including both public infrastructure and private development, are estimated to be \$1.1 billion. As determined in the KMA report, of this total, RIDA will be responsible for a minimum investment, including private debt and equity, of no less than \$785 million. Based on these findings, it is anticipated that the Public Entities will be responsible for: (a) infrastructure design costs, estimated at \$1.7 million; (b) Parcel H-3 site preparation costs, estimated at \$6.0 million; (c) \$240 million Project Public Investment toward the convention center portion of the RHCC Project; (d) public infrastructure, estimated at \$57.2 million, and (e) up to \$40 million in Parking Improvements. These cost estimates, and respective responsibilities, are summarized in the KMA report and set forth in the chart below from the KMA report.

<b>Proposed Sources and Uses of Funds</b>			
	<b>Developer Private Investment</b>	<b>District/City Public Investment</b>	<b>Total</b>
A. Infrastructure Design Costs	----	\$1.7 M	\$1.7 M
B. Parcel H-3 Site Preparation Costs (1)	----	\$6.0 M	\$6.0 M
C. Hotel/Convention Center	\$785.0 M	\$240.0 M	\$1,025.0 M
D. Infrastructure	----	\$57.2 M	\$57.2 M
E. Parking Improvements	----	\$40.0 M	\$40.0 M
<b>F. Total</b>	<b>\$785.0 M</b>	<b>\$344.9 M</b>	<b>\$1,129.9 M</b>
(1) Maximum contribution not to exceed \$10.0 M. KMA assumes Parcel H-3 site preparation costs of \$6.0 M, reflecting 130,000 cubic yards of soils imported to the Project Site prior to the close of escrow. If less than 130,000 cubic yards are imported, the cost will be prorated.			

*Proposed Method of Financing the Public Fund Contribution*

Attachment 4 of the DDA presents the Conceptual Outline of JEPA Plan of Finance (Conceptual Plan of Finance). The Plan of Finance includes bond underwriting assumptions and projections prepared

by JP Morgan Securities, LLC (JP Morgan) on behalf of the City. JP Morgan prepared bond underwriting projections based on the revenue streams to be committed by the District and City toward bond debt service. The ability to finance the Public Fund Contribution as contemplated is dependent on the realization of a number of assumptions relating to any such financing. The assumptions for the financing and the anticipated outcome based on those assumptions are described in the Conceptual Plan of Finance, but the outcome is limited as described in Section 2 of the Conceptual Plan of Finance. The debt service included in the Plan of Finance for the purpose of determining the feasibility of the proposed method of financing the Public Fund Contribution is based on the information contained in the Plan of Finance and reference is made to the entire Plan of Finance for detailed assumptions and further information relating to the financing.

The District engaged the financial advisory firm, Hutchinson Shockey Erley & Co. (HSE), to review the JP Morgan projections and the Plan of Finance. The HSE review identified factors and opportunities for District consideration with respect to the Plan of Finance. HSE also prepared preliminary bond sizing and cash flows based on the financing criteria presented in the Plan of Finance. In addition, a report on the projected revenues for the Project by CBRE Hotels is included as Attachment E.

## **CLOSING AND DELIVERY OF SITE**

### *Relocation of Existing RV Park*

A portion of a recreational vehicle park (Existing RV Park) is currently existing on a portion of the Site pursuant to a certain lease between Chula Vista Marina/RV Park, Ltd. and the District (District Clerk No. 14243), will terminate on March 4, 2019 (as amended from time to time, the Existing RV Park Lease). The District is required to enter into a new lease (the New S-1 RV Park Lease for development of a new RV Park (New S-1 RV Park) on a 19-acre site commonly known as Parcel S-1 located within the Chula Vista Bayfront (New S-1 RV Park Site) pursuant to a California Coastal Commission (CCC) requirement when the Environmental Impact Report (EIR) for the CVB was certified. The CCC requirement was to replace the 237 stalls that would be removed for the RHCC in a new location within the CVB. Request for Proposals 16-36RH (Destination RV Park Development Opportunity) for the New S-1 RV Park was issued on October 24, 2016, and the BPC selected the team of Sun Communities, Inc. and Northgate Resorts LLC on April 11, 2017 pursuant to Resolution No. 2017-055.

### *Utility Mapping*

District staff has been working with Rick Engineering on master planning the utilities for the Site. Through the District's design of the Phase 1A Improvements up to 30%, utility locations will be identified to serve the RHCC. The location or relocation of any utilities will need to occur prior to the close of escrow as the expectation is that the Site will be ready to start construction after execution of the ground lease.



### *Parking*

A major Ground Lease term that has been negotiated with RIDA gives the District the election to fund a 1,600 space parking structure. The parking terms memorialized in the Ground Lease are outlined below:

If there is a parking structure:

- District to pay for design and construction costs in an amount not to exceed \$40 million;
- RIDA to pay for design and construction costs in excess of \$40 million (up to \$44 million);
- RIDA to operate and maintain and pay for all costs of operations and maintenance;
- RIDA to pay 12.5% of gross parking revenues during lease years 1-38;
- RIDA to pay 15% of gross parking revenues during lease years 39-66;
- If there is a sale or assignment of the lease during lease years 1-38, the gross parking revenues paid to the District would increase from 12.5% to 15%;
- If there is a sale or assignment of the lease during lease years 39-66, the gross parking revenues paid to the District would increase from 15% to 20%.

If there is surface parking:

- RIDA to pay for design and construction costs;
- RIDA to operate and maintain and pay for all costs of operations and maintenance
- RIDA to pay 3% of gross parking revenues to the District for surface parking.

### *Management Agreement*

RIDA is negotiating with Marriott to operate a Gaylord hotel for the proposed RHCC. A requirement of the Ground Lease is that the RHCC will be a Gaylord Hotels brand for the first ten years of the Ground Lease (Lease Year 1 to 10) and on and after the 11<sup>th</sup> year of the Lease, the Gaylord Hotels brand or any other hotel brand comparable or superior in quality to the Gaylord Hotels brand that has achieved AAA Four Diamond rating standards in a reasonable number of its hotels or its equivalent as determined by the District in its sole and absolute discretion.

### **NEXT STEPS**

If the Board and the City Council approve the DDA, RIDA will expend additional funds to advance the Project, specifically with regard to Project design. It is anticipated that the design process will take approximately 18 months to complete. The CDP for the Project is expected to be presented to the Board as soon as Fall 2018.

The Public Entities will need to approve of the financing mechanism needed to fund the Phase 1A Infrastructure, Convention Center Project and Parking Improvements. After the public agencies take all required actions for approval of the public financing, it is anticipated that these approvals will go through a validation action, which is expected to occur in Spring 2019. The final financing approvals and issuance of the debt will be required prior to the close of escrow and then for construction to commence.

## **RECOMMENDATION**

After three years of negotiations with RIDA, District and City staffs believe that the DDA should be approved by the Board and City Council for the financing, development and operations of the RHCC, the catalyst Project for development of the CVB. The District has found the right partners that are ready to move forward with the implementation of the CVB and construct the RHCC. The Project economics represent a good deal for the District, for the City, and for RIDA; and time is of the essence to memorialize the economics to ensure that the redevelopment of the CVB proceeds as soon as possible. Once implemented, the CVBMP will create a world-class destination that reflects strong planning and design principles, economic feasibility and community benefits.

### **General Counsel's Comments:**

The General Counsel's Office has reviewed this agenda sheet as presented to it and approves this agenda sheet as to form and legality.

### **Environmental Review:**

The proposed Board actions for authorizing a Disposition and Development Agreement, related agreements and a conceptual plan of finance with RIDA Chula Vista, LLC and the City of Chula Vista for a resort hotel and convention center was adequately covered in the Chula Vista Bayfront Master Plan Final EIR (State Clearinghouse No. 2005081077), prepared and adopted/certified by the District on May 2010. The proposed project is not a separate "project" for CEQA purposes but is a subsequent discretionary approval related to a previously approved project. (CEQA Guidelines § 15378(c); *Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist.* (2012) 206 Cal.App.4th 1036.) Additionally, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the Final EIR, the District finds and recommends that the approval of the Disposition and Development Agreement does not require further environmental review as: 1) no substantial changes are proposed to the project and no substantial changes have occurred that require major revisions to the FEIR due to the involvement of new significant environmental effects or an increase in severity of previously identified significant effects; and 2) no new information of substantial importance has come to light that (a) shows the Project will have one or more significant effects not discussed in the FEIR, (b) identifies significant impacts would not be more severe than those analyzed in the FEIR, (c) shows that mitigation measures or alternatives are now feasible that were identified as infeasible and those mitigation measures or alternatives would reduce significant impacts, and (d) no changes to mitigation measures or alternatives have been identified or are required. Because none of these factors have been triggered and the adoption of the Disposition and Development Agreement does, the District has the discretion to require no further analysis or environmental documentation (CEQA Guidelines

§15162(b)). Pursuant to CEQA Guidelines §15162(b), the District finds and recommends that no further analysis or environmental documentation is necessary. Accordingly, the proposed Board action is merely a step in furtherance of the original project for which environmental review was performed and no supplemental or subsequent CEQA has been triggered, and no further environmental review is required.

In addition, the proposed Board action allows for the District to implement its obligation under Section 87(a)(2) of the Port Act because it authorizes a Disposition and Development Agreement for a resort hotel and convention center in the Chula Vista Bayfront Master Plan area. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board direction or action does not allow for “development,” as defined in Section 30106 of the California Coastal Act, or “new development,” pursuant to Section 1.a. of the District’s Coastal Development Permit (CDP) Regulations because they will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, development within the District requires processing under the District’s CDP Regulations. Future development, as defined in Section 30106 of the Coastal Act, will remain subject to its own independent review pursuant to the District’s certified CDP Regulations, PMP, and Chapters 3 and 8 of the Coastal Act. The Board’s direction or action in no way limits the exercise of the District’s discretion under the District’s CDP Regulations. Therefore, issuance of a CDP or exclusion is not required at this time.

**Equal Opportunity Program:**

Not applicable.

**PREPARED BY:**

Adam Meyer,  
Department Manager, Real Estate

Stephanie Shook  
Program Manager, Real Estate

Sean Jones  
Asset Manager, Real Estate

**Attachment(s):**

- Attachment A: Disposition and Development Agreement
- Attachment B: June 20, 2017 Letter of Intent Agenda Sheet
- Attachment C: KMA Feasibility Report
- Attachment D: Revenue Sharing Agreement
- Attachment E: CBRE Hotels Report

<sup>1</sup>. SDUPD Clerk’s Office Document No. 59406 filed October 5, 2012, Port Master Plan Amendment

---

**File #:2018-0070**

---

- <sup>2</sup>. SDUPD Clerk's Office Document No. 59001 filed May 30, 2012, Chula Vista Bayfront Master Plan Financing Agreement between City of Chula Vista and San Diego Unified Port District
- <sup>3</sup>. SDUPD Clerk's Office Document No. 62899 filed February 11, 2015, Exclusive Negotiating Agreement; SDUPD Clerk's Office Document No. 65707 filed October 13, 2016 (Amendment No. 1); SDUPD Clerk's Office Document No. 66141 filed February 14, 2017 (Amendment No. 2)

**DISPOSITION AND DEVELOPMENT AGREEMENT**

**by and among**

**SAN DIEGO UNIFIED PORT DISTRICT  
 (“District”),**

**CITY OF CHULA VISTA  
 (“City”)**

**and**

**RIDA CHULA VISTA, LLC  
 a Delaware limited liability company  
 (“Developer”)**

**RESORT HOTEL AND CONVENTION CENTER PROJECT  
 (Chula Vista Bayfront Master Plan Parcel H-3)**

## TABLE OF CONTENTS

	<b>Page</b>
<b>I. GENERAL PROVISIONS</b> .....	5
1.1 Purpose of this Agreement .....	5
1.2 Project Site .....	5
1.3 Project Approvals.....	6
1.4 Implementing Actions by City, District and Government Agencies .....	7
1.5 CEQA Compliance.....	9
1.6 Deposit .....	9
<b>II. IDENTITY OF PARTIES</b> .....	9
2.1 Developer .....	9
2.2 District.....	13
2.3 City.....	13
2.4 Notices.....	13
<b>III. TERM</b> .....	16
3.1 Term.....	16
<b>IV. DESIGN AND DEVELOPMENT OF PROJECT</b> .....	17
4.1 Design and Development of the Project.....	17
4.2 City Infrastructure Improvements .....	18
4.3 Design of Surface Parking and Parking Improvements .....	18
4.4 Submission and Approval of Schematic Plans and Building Permit Application Drawings .....	18
4.5 Agreement on Total Project Costs .....	22
4.6 No Developer's Obligation to Construct the Developer's Improvements Surface Parking or Parking Improvements .....	23
4.7 District and City Financial Contribution .....	23
4.8 Expenditures Prior to the Close of Escrow .....	24
4.9 Inspection of Records .....	25
4.10 Insurance .....	25
4.11 Liability Insurance Policy Limits .....	26
4.12 Builder's "All Risk" Insurance .....	27
4.13 Required Policy Provisions .....	27
4.14 Payment Bonds and Performance Bonds .....	27
4.15 Completion Guaranty .....	28
4.16 Prevailing Wages .....	28
4.17 Developer's Indemnity Obligations .....	30
4.18 Liens and Claims .....	31
4.19 Validation Action .....	31
4.20 City Procurement Process .....	32
4.21 Compliance with Law; Enforceability by District, City and JEPA.....	32
4.22 Energy Requirements .....	33

V.	REQUIREMENTS OF PARTIES; CONDITIONS PRECEDENT TO CLOSE OF ESCROW.....	34
5.1	Periodic Review; Meet and Confer .....	34
5.2	Conditions Precedent to Close of Escrow Benefiting the District and the City.....	35
5.3	Conditions Precedent to Close of Escrow Benefiting Developer .....	39
5.4	Approvals; Cooperation Between Parties .....	41
5.5	Consideration of Changes to the Ground Lease or Convention Center Subleases.....	42
5.6	Waiver of Certain Conditions .....	42
5.7	Physical Condition of the Project Site .....	42
5.8	Due Diligence Investigations, Early Entry by Developer, Due Diligence Period Work.....	42
5.9	Exclusive Negotiations.....	43
VI.	LEASE OF PROJECT SITE; CLOSE OF ESCROW .....	44
6.1	Lease of Project Site.....	44
6.2	Opening of Escrow; Updated Preliminary Title Reports .....	44
6.3	Execution and Delivery of Documents .....	46
6.4	Close of Escrow; Title Policies .....	46
6.5	Costs of Escrow; Title Insurance .....	48
VII.	DEFAULTS; REMEDIES .....	48
7.1	General Developer Default .....	48
7.2	Default by District or City.....	49
7.3	Remedies Exclusive .....	49
7.4	Dispute Resolution .....	49
VIII.	EVENTS OF TERMINATION; RIGHTS AND OBLIGATIONS OF PARTIES.....	49
8.1	Events of Termination.....	49
8.2	Disposition of Deposit.....	50
8.3	Effect of Termination.....	51
IX.	MISCELLANEOUS PROVISIONS .....	52
9.1	Real Estate Commissions.....	52
9.2	Time of Essence .....	52
9.3	Consent.....	52
9.4	Entire Agreement .....	52
9.5	Interpretation .....	53
9.6	Governing Law.....	53
9.7	Captions.....	53
9.8	No Third Party Rights .....	53
9.9	Modification or Amendment of Agreement; Operating Memoranda .....	53
9.10	Waiver.....	53
9.11	Severability .....	54
9.12	Certificates .....	54
9.13	Counterparts .....	54
9.14	No Joint and Several Liability.....	54

**APPENDICES AND ATTACHMENTS**

Appendix No. 1	Definitions
Attachment No. 1	Map of Project Site
Attachment No. 2	Legal Description of Project Site
Attachment No. 3	Map Showing General Location of Elements of the Project (Site Plan)
Attachment No. 4	Conceptual Outline of JEPA Plan of Finance
Attachment No. 5	Scope of Development
Attachment No. 6	Schedule of Performance
Attachment No. 7	Form of Developer's Private Improvements and Convention Center Budget
Attachment No. 8	Quality of Imported Soil
Attachment No. 9	Draft of the Ground Lease

## DISPOSITION AND DEVELOPMENT AGREEMENT

### Resort Hotel and Convention Center Project [Chula Vista Bayfront Master Plan Parcel H-3]

This Disposition and Development Agreement (this "Agreement") is entered into as \_\_\_\_\_, 20\_\_ (the "Execution Date"), by and among the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (the "District"), the CITY OF CHULA VISTA, a chartered municipal corporation (the "City"), and RIDA CHULA VISTA, LLC, a Delaware limited liability company (the "Developer"). The District, City and Developer are the sole parties (each, a "Party" and, collectively, the "Parties") to this Agreement. The "Effective Date" shall be May 7, 2018.

### RECITALS

This Agreement is based upon the following recitals, facts and understandings of the Parties:

A. In 2002, the District, the City and the Redevelopment Agency of the City of Chula Vista, a redevelopment agency formed pursuant to California Health and Safety Code Section 33000 *et seq.* (the "Redevelopment Agency") began work to create a master plan, known as the Chula Vista Bayfront Master Plan (District Clerk No. 59406) (the "Master Plan") for development of the approximately 535-acre Chula Vista Bayfront (the "Chula Vista Bayfront") located on the southeastern edge of San Diego Bay in the City of Chula Vista. The purpose of the Master Plan was to reconfigure the approximately 497 acres of land and 59 acres of water which comprise the Chula Vista Bayfront by connecting the land and water acres in a way that will promote public access to, and engagement with, the water while enhancing the quality and protection of key habitat areas, with the ultimate goal of creating a world-class bayfront through strong planning and design, economic feasibility and community outreach.

B. On May 18, 2010, the District, as Lead Agency (as such term is defined in California Public Resources Code Section 21067), certified a Final Environmental Impact Report for the Chula Vista Bayfront Master Plan and Port Master Plan Amendment (UPD No. 83356-EIR-658; SCH No. 2005081077) (District Clerk No. 56562) ("Original FEIR"). The City is a Responsible Agency (as such term is defined in California Public Resources Code Section 21069). The Master Plan is the project described in the FEIR (as defined in Section 1.3(b)), and the area encompassed by the Master Plan is referred to herein as the "Master Plan Project Area".

C. On May 18, 2010, the City, as a Responsible Agency (as such term is defined in California Public Resources Code Section 21069) after having considered and relying on the Final Environmental Impact Report (No. 83356-EIR-658; SCH No. 2005081077) for the Master Plan and Master Plan Amendment, pursuant to the California Environmental Quality Act (Public Resources Code Section 21000, *et seq.*) ("CEQA"), made certain Findings of Fact; adopted a Statement of Overriding Considerations and adopted a Mitigation Monitoring and Reporting Program for the Master Plan Project Area.

D. On August 9, 2012, the California Coastal Commission conducted a public hearing and approved a request by the City to amend the certified Local Coastal Plan (LCP Amendment No. 1-11), Land Use Plan and Implementation Plan to revise the Local Coastal Plan boundaries and

provide alternate land uses and development standards for the Master Plan in conjunction with the District. On August 9, 2012, the California Coastal Commission conducted a public hearing and approved a request by the District to amend the Master Plan (PMP Amendment No. 41) to revise the Master Plan boundaries, provide alternate land uses and development standards for the Master Plan in conjunction with the City.

E. On May 6, 2014, the District Board of Port Commissioners (“BPC”) adopted a resolution authorizing the issuance of a Request for Qualifications (“RFQ”) for the development of the Project in the Master Plan Project Area. After considerable local, regional, national and international marketing efforts by District staff and City staff, RFQ 14-24 (District Clerk No. 62033) was issued on June 30, 2014. The responses to the RFQ were due on September 8, 2014. A response was received from RIDA Development Corporation (“RIDA”). On October 14, 2014, the BPC adopted Resolution No. 2014-200 selecting RIDA as the successful respondent to the RFQ and Resolution No. 2014-201 authorizing District staff to negotiate an Exclusive Negotiating Agreement with RIDA. RIDA formed the Developer for the Project and the District entered into an Exclusive Negotiating Agreement with the Developer, dated February 10, 2015 (District Clerk No. 62899) (“Original ENA”), as modified by Agreement for Amendment of Exclusive Negotiating Agreement Amendment No. 1, dated August 9, 2016 (District Clerk No. 65707) (“First Amendment”), Agreement for Amendment of Exclusive Negotiating Agreement Amendment No. 2, dated January 25, 2017 (District Clerk No. 66141) (“Second Amendment”), and Agreement for Amendment of Exclusive Negotiating Agreement Amendment No. 3, dated February 16, 2018 (District Clerk No. 67906) (“Third Amendment”) (the Original ENA, the First Amendment, the Second Amendment, and Third Amendment are collectively referred to herein as, the “ENA”). This Agreement is the “Definitive Agreement” contemplated in the ENA as the culmination of the negotiations between the District and the Developer.

F. Through the implementation of the Master Plan, the Developer, the District and the City have determined to cause the redevelopment of a portion of the Master Plan Project Area referred to as Parcel H-3 (exclusive of the District Retained Property) (the “Project Site”), as shown on the Map of the Project Site attached hereto as Attachment No. 1 and incorporated herein by reference, and as more particularly described in the Description of the Project Site attached hereto as Attachment No. 2 and incorporated herein by reference, with the development of a resort hotel and convention center in accordance with the terms herein, and, as further defined in the Scope of Development attached hereto as Attachment No. 5 and incorporated herein by reference (“Scope of Development”), to serve as the anchor project of the Master Plan (the “Project”). The Parties anticipate that the Project will generate substantial benefits to the local and regional community in the form of increased tax and lease revenues, permanent and temporary jobs, and the provision of significant public amenities and public infrastructure and will be the development catalyst for the Master Plan Project Area. As such, the District and City have found and determined that the development of the Project Site pursuant to the terms of this Agreement are in the vital and best interests of the people of the State of California, County of San Diego, and the City, and in accord with the public purposes and provisions set forth in California Harbors and Navigation Code Appendix 1, and the City Charter.

G. Development of the Master Plan Project Area, which area is currently largely vacant land, will require the construction of substantial public improvements during the development and construction process (“Phase 1A”) of the Project. Such public improvements are contemplated in the Amended and Restated Chula Vista Bayfront Master Plan Financing Agreement, dated June 20, 2017, between the City and District (District Clerk No. 67068) (“Financing Agreement”) and the

Scope of Development. Developer shall construct a portion of the Phase 1A Infrastructure Improvements (“Developer’s Phase 1A Infrastructure Improvements”) and District (or City, if applicable) shall construct, or cause to be constructed on their behalf, the remaining Phase 1A Infrastructure Improvements (“Remaining Phase 1A Infrastructure Improvements” and, together with Developer’s Phase 1A Infrastructure Improvements, the “Phase 1A Infrastructure Improvements”), as more fully described in the Scope of Development. The Financing Agreement may be amended from time to time during the predevelopment and approval process (the “Predevelopment Phase”) set out in this Agreement. The Financing Agreement anticipates the development of a binding agreement between the District and the City that sets forth, amongst other things, certain criteria and objectives related to the financing by the District and the City of the Phase 1A Infrastructure Improvements required under Phase 1A (“Plan of Finance”) as such Phase 1A Infrastructure Improvements are set forth in Exhibits 1 and 2 attached to the Scope of Development. The Financing Agreement further contemplates the financing of such Phase 1A Infrastructure Improvements by the District and the City, collectively, through the contribution of various sources of revenue to be further defined in the approved Plan of Finance. The total Development Costs of the Phase 1A Infrastructure Improvements (the “Phase 1A Infrastructure Costs”), which are currently estimated to be SIXTY MILLION FIVE HUNDRED NINETY THOUSAND DOLLARS (\$60,590,000), shall be the sole obligation of the District and the City. The City and District expect to issue bonds through the JEPAs to finance up to FIFTY-SIX MILLION DOLLARS (\$56,000,000) of the Phase 1A Infrastructure Costs and to use other sources of funds to fund the remaining Phase 1A Infrastructure Costs. Pursuant to one or more agreements to be negotiated by the Parties prior to the Close of Escrow and to be executed by the Parties at the Close of Escrow, a portion of the proceeds of such financing shall be used to pay or credit the Developer for the Development Costs of the Developer’s Phase 1A Infrastructure Improvements that are incurred before or after the Close of Escrow (the “Developer’s Phase 1A Infrastructure Improvements Costs”), which are currently estimated to be FOURTY MILLION FOUR HUNDRED SEVENTY THOUSAND DOLLARS \$40,470,000, a portion of which is anticipated to be offset by Bayfront Development Impact Fees due from Developer to City in accordance with the Scope of Development. Developer shall not perform any work at the Project Site prior to the Close of Escrow, except for due diligence investigations which shall be covered through a separate agreement between the District and the Developer. The ultimate Plan of Finance will be based on the Conceptual Outline of JEPAs Plan of Finance set forth in Attachment No. 4 attached hereto and incorporated herein by reference, which may be amended from time to time during the Predevelopment Phase.

H. In furtherance of the Project, the District, City and Developer entered into a Non-Binding Letter of Intent (“LOI”) dated June 14, 2017, which outlines some of the basic economic terms and conditions upon which this Agreement was prepared.

I. In addition to the Phase 1A Infrastructure Costs, the District and the City will together contribute an amount not to exceed the Project Public Investment Amount (the “Project Public Investment”) to be used to pay the Developer for the Development Costs of the convention center component of the Project, as described in the Scope of Development (“Convention Center”), as may be determined by the District and City in the Plan of Finance. The payment of the Project Public Investment is anticipated to be made through an existing Joint Exercise of Powers Authority created by the District and City commonly known as the Chula Vista Bayfront Facilities Financing Authority (“Existing JEPAs”), or a new Joint Powers Authority to be formed by the District and City (the Existing JEPAs or any new Joint Powers Authority formed by the City and District pursuant to this Agreement, shall be referred to herein as, the “JEPAs”), as described in the Financing Agreement. The “Project Public Investment Amount” equals TWO HUNDRED FORTY MILLION DOLLARS

(\$240,000,000). Any Development Costs of the Convention Center in excess of the Project Public Investment Amount shall be the sole obligation of Developer (the "Developer's Convention Center Costs"). The Developer's Convention Center Costs are currently estimated to be ONE HUNDRED THIRTEEN MILLION DOLLARS (\$113,000,000) and the Developer expects to use other sources of funds to fund the Developer's Convention Center Costs. The Project Public Investment Amount is based on the assumption that the Hotel will be constructed and operated in accordance with the Scope of Development and the Ground Lease, including that the Hotel will have at least 1,570 Rooms and not more than 1,600 Rooms (where "Room" shall mean a separately keyed lodging unit of the Hotel) and will, initially, be branded as a Gaylord Hotel.

J. The Parties agree that a portion of Parcel H-3 will be reserved by the District should the District elect to fund the construction of a parking structure (the "Parking Improvements"), which, if so elected by the District, will be designed and constructed by Developer and will be financed by the District in an amount not to exceed FORTY MILLION DOLLARS (\$40,000,000) (the "Parking Improvements Costs").

K. The City will pay for and cause the construction of the sewer and fire service improvements required for the Project (collectively, the "City Infrastructure Improvements"). A portion of the City Infrastructure Improvements may be constructed by the Developer as a part of the Developer's Phase 1A Infrastructure Improvements, the Development Costs of which are to be financed by the City as set forth in the Plan of Finance ("City Infrastructure Improvements Costs").

L. The Developer's Phase 1A Infrastructure Improvements and the Convention Center are collectively referred to herein as the "Developer's Public Improvements", as further defined in the Scope of Development.

M. The Developer will design a resort hotel component of the Project, which shall consist of no less than 1,570 Rooms and no more than 1,600 Rooms in accordance with the terms herein, and, as further defined in the Scope of Development (the "Hotel") and related resort-level amenities as more fully described in the Scope of Development (collectively, the "Developer's Private Improvements" and, together with the Developer's Public Improvements, the "Developer's Improvements"). The estimated Development Costs of the Developer's Private Improvements are SIX HUNDRED SEVENTY ONE MILLION FOUR HUNDRED FORTY ONE THOUSAND TWO HUNDRED SEVENTY SIX DOLLARS (\$671,441,276) and will be financed by the Developer and will be the sole obligation of Developer (the "Developer's Private Improvements Costs").

N. The Remaining Phase 1A Infrastructure Improvements and the City Infrastructure Improvements are collectively referred to herein as the "Public Improvements". The Public Improvements and the Developer's Improvements are collectively referred to herein as the "Project".

O. The Parties now desire to set forth the terms and conditions upon which the District may lease the Project Site to the Developer for the development, operation and maintenance of the Project and the District and City may finance the Phase 1A Infrastructure Costs, the Project Public Investment and the City Infrastructure Improvements Costs (collectively, the "Public Improvements Costs") and the Developer may finance the Developer's Convention Center Costs and the Developer's Private Improvements Costs.

## AGREEMENTS

For valuable consideration, receipt of which is hereby acknowledged, and the mutual obligations of and benefits to the Parties set forth herein, the District, the City and Developer agree as follows:

### **I. GENERAL PROVISIONS.**

1.1 **Purpose of this Agreement.** The intent and purpose of this Agreement is to set forth the obligations of the Parties and conditions precedent to the leasing, development and construction of the various elements of the Project, as applicable, and the financing and disbursement by the District and the City of the Public Improvements Costs and the financing by the Developer of the Developer's Convention Center Costs and the Developer's Private Improvements Costs. Accordingly, this Agreement is intended to provide for the completion of all actions necessary to plan and design the Project, and obtain all approvals necessary for the lease of the Project Site to the Developer and for commencement of development and construction of the Project, including, but not limited to, the preparation of all construction plans, specifications and cost estimates (to the extent required under this Agreement as a condition to the Close of Escrow) and related documents for the Project, the securing of private and public financing for the various elements of the Project and the negotiation and execution of the Ground Lease and Convention Center Subleases. This Agreement shall expire and be of no further force or effect as of the Closing Date except for those provisions that expressly survive the expiration or earlier termination of this Agreement, which are set forth in Article X.

#### **1.2 Project Site.**

(a) The Project Site, as shown on Attachment No. 1 and more particularly described in Attachment No. 2, consists of approximately thirty-six (36) acres. The "Project Site" shall include the Hotel Site and the Convention Center Site, each as defined below, which shall be identified in accordance with Section 6.1(a). If the District elects to fund the construction of the Parking Improvements, the District intends to use land directly adjacent to the Project Site for the Parking Improvements (the "District Retained Property"), and the location and boundaries of such District Retained Property shall be further defined and revised by the Developer for mutual agreement by Developer and the District consistent with the Project Site Plan attached hereto as Attachment No. 2 and incorporated herein by reference. The portion of the Project Site where the Hotel is located (the "Hotel Site") shall be leased to the Developer pursuant to a ground lease with the District (the "Ground Lease"), as described in more detail in Section 6.1, for development of the Hotel as part of the Project. The portion of the Project Site where the Convention Center is located (the "Convention Center Site") shall be leased to the Developer by the District pursuant to the Ground Lease, as described in more detail in Section 6.1, for development of the Convention Center as part of the Project. The Developer shall cause a legal description of the Hotel Site, the Convention Center Site and the District Retained Property to be prepared by a surveyor licensed in the State of California, which legal description shall be approved by the District, in its reasonable discretion, and attached to the Ground Lease and the Convention Center Subleases (defined in Section 6.1), as applicable, prior to the Close of Escrow and prior to the execution of such documents.

(b) A portion of a recreational vehicle park (the "Existing RV Park") is currently existing on a portion of the Project Site pursuant to a certain lease between Chula Vista Marina/RV Park, Ltd. ("Existing RV Park Lessee") and the District (District Clerk No. 14243), which is set to

terminate on March 4, 2019 (as amended from time to time, the “Existing RV Park Lease”). On or prior to the Target Date set forth in the Schedule of Performance attached hereto as Attachment No. 6 and incorporated herein by reference (“Schedule of Performance”), the District shall enter into a new lease (the “New S-1 RV Park Lease”) for development of a new RV Park (the “New S-1 RV Park”) on a 19-acre site commonly known as Parcel S-1 located within the Chula Vista Bayfront (the “New S-1 RV Park Site”). Request for Proposals 16-36RH (Destination RV Park Development Opportunity) for the New S-1 RV Park was issued on October 24, 2016, and the BPC selected the team of Sun Communities, Inc. and Northgate Resorts LLC on April 11, 2017 pursuant to Resolution No. 2017-055. On March 2, 2018, the District delivered notice of termination of the Existing RV Park Lease to the Existing RV Park Lessee. The District shall use commercially reasonable efforts to cause the Existing RV Park Lessee and each of the tenants, occupants or guests on the land encumbered by the Existing RV Park Lease to vacate such land on or before the Target Date set forth in the Schedule of Performance and, if the District is unable to do so by such Target Date, then the District shall use commercially reasonable efforts to do so as soon as is reasonably practicable thereafter.

**1.3 Project Approvals.** The Parties agree that, as of the Execution Date, the following documents in furtherance of the Master Plan have been approved and may be amended from time to time by the City or the District (the “Existing Approvals”):

(a) The Master Plan, including all amendments thereto, as described in the Recitals;

(b) The Original FEIR and findings and determinations by the District and City related thereto, including adoption of Findings of Fact and a Statement of Overriding Considerations, mitigation measures and a Mitigation Monitoring and Reporting Program (District Clerk No. 56555), as made by District Resolution No. 2010-78 adopted on May 18, 2010, and the Addendum to the Original FEIR (District Clerk No. 60864) adopted by District Resolution No. 2013-138, on August 13, 2013 (collectively, the “FEIR”);

(c) Chula Vista Bayfront Master Plan Settlement Agreement, dated May 4, 2010, among the Bayfront Coalition Member Organizations identified therein, the District, the City and the Redevelopment Agency of the City of Chula Vista (District Clerk No. 56523) (“Settlement Agreement”);

(d) Chula Vista Bayfront Development Policies;

(e) Chula Vista Bayfront Master Plan Natural Resources Management Plan (District Clerk No. 65065), approved by the BPC on May 10, 2016, by Resolution No. 2016-79, and the City Council of the City of Chula Vista (the “City Council”) on June 14, 2016, by Resolution No. 2016-119;

(f) Chula Vista Bayfront Master Plan Public Access Program;

(g) City’s Local Coastal Plan, as amended, as described in Recital D;

(h) Chula Vista Bayfront Design Guidelines adopted on February 7, 2018;

(i) The Financing Agreement; and

(j) City Council compliance with Government Code Section 53083 (AB 562), by City Resolution No. 2018-062, adopted on or about April 24, 2018.

**1.4 Implementing Actions by City, District and Government Agencies.** The implementation of this Agreement requires certain actions by the City, District, and other governmental agencies with an interest in the Project Site, which actions include, but are not limited to, the following, which have been or shall be completed on or prior to the applicable target date set forth in the Schedule of Performance (as such date may be extended pursuant to the terms of this Agreement, the "Target Date") for such respective items:

(a) Preliminary project approval for the Project by the District ("Preliminary Project Approval");

(b) Review of Tenant Project Plan Application (as described in Section 4.4(a)) by the District and City;

(c) All discretionary approvals and actions required to be taken by the County of San Diego ("County"), District and/or City for construction of the Phase 1A Infrastructure Improvements, including the Developer's Phase 1A Infrastructure Improvements;

(d) All discretionary approvals and actions required to be taken by the County, JEPa, District and/or City for the financing and disbursement of the Phase 1A Infrastructure Costs as provided for under the Plan of Finance;

(e) All discretionary approvals and actions required to be taken by the County, District, City, or affiliated entities, as required for the formation of a community facilities district ("CFD") and enhanced infrastructure financing district ("EIFD"), if applicable;

(f) All discretionary approvals and actions to be taken by the District and/or City for construction of the Hotel;

(g) All discretionary approvals and actions to be taken by the District and/or City for construction of the Convention Center;

(h) All discretionary approvals and actions required to be taken by the District for the approval of the Parking Improvements;

(i) All discretionary approvals and actions required to be taken by the City for the approval of the City Infrastructure Improvements;

(j) All discretionary approvals and actions to be taken by JEPa, the District and/or City for financing and disbursement of the Project Public Investment as provided for under the Plan of Finance;

(k) All discretionary approvals and actions to be taken by the District for financing and disbursement of the Parking Improvements Costs, as provided for under the Plan of Finance;

- (l) All discretionary approvals and actions to be taken by the City for financing and disbursement of the City Infrastructure Improvements Costs as provided for under the Plan of Finance;
- (m) All discretionary approvals and actions to be taken by the District to issue a Coastal Development Permit for the Project;
- (n) Issuance by the City of grading and building permits for the construction of the Project;
- (o) BPC approval of, and authorization for the District's Executive Director or her designee, on behalf of the District, to execute the Ground Lease or any amendments thereto, as applicable;
- (p) BPC approval of, and authorization for the District's Executive Director or her designee, on behalf of the District, to execute the Convention Center Subleases (as applicable);
- (q) BPC approval of, and authorization for the District's Executive Director or her designee, on behalf of the District as a member of the JEPA, to execute the Convention Center Subleases (as applicable);
- (r) City Council approval of, and authorization for the City Manager, on behalf of the City, to execute the applicable Convention Center Subleases;
- (s) City Council approval of, and authorization for the City Manager, on behalf of the City, as a member of the JEPA, to execute the applicable Convention Center Subleases;
- (t) Approval of the location, design and cost of the public art as part of the final plans submitted to the District for approval, as provided for in Section 4.1(c);
- (u) All approvals and actions required to be taken by the District to authorize the District's Executive Director or her designee, on behalf of the District, to execute the New S-1 RV Park Lease and authorize construction of the New S-1 RV Park;
- (v) All discretionary approvals and actions required to be taken by the State of California, acting by and through the California State Lands Commission ("State Lands Commission") for the New S-1 RV Park Lease and construction of the New S-1 RV Park;
- (w) City Council approval of, and authorization for the City Manager, on behalf of the City and on behalf of the City as a member of the JEPA, to execute all other documents and do all acts necessary or convenient, to carry out the provisions of this Agreement and, subject to the provisions of this Agreement and the Plan of Finance, the Convention Center Subleases (as applicable), without the necessity for any further approval, authorization or action by the City Council, except as provided under this Agreement;
- (x) One or more approvals by BPC providing authorization for the District's Executive Director or designee, on behalf of the District and on behalf of the District as a member of the JEPA, to execute all documents and do all acts necessary or convenient to carry out the provisions of this Agreement, the Ground Lease, the Convention Center Subleases, and other requirements pertaining to the full implementation of the Project;

(y) The District and Developer shall execute within 60 days of the Effective Date an exclusive negotiating agreement with a term of one year from the Execution Date, concerning a definitive agreement for the lease of up to 10 acres of Parcel H-23 that are closest to the Project Site, for the development of up to 550 additional Rooms.

**1.5 CEQA Compliance.** The District prepared and certified, pursuant to CEQA and the Guidelines for Implementation of the California Environmental Quality Act (California Code of Regulations, Title 14, Section 15000, *et seq.*), the FEIR for the Project, which satisfies CEQA for purposes of this Agreement and the Existing Approvals.

While no new or supplemental environmental approvals are contemplated, the Parties shall cooperate with respect to any supplemental environmental documentation or approvals that may be required for the Project.

The Developer understands and agrees that the District or City may require subsequent or supplemental environmental review or other environmental analysis to implement the Project as required by CEQA, the California Coastal Act and/or by changes in applicable local, state, federal laws, including, without limitation, the applicable codes, ordinances, regulations and policies of the City and the District (collectively, the "Laws").

**1.6 Deposit.**

(a) As security for the performance of the obligations of the Developer hereunder, the Developer shall deliver to the District on or before the Target Date set forth in the Schedule of Performance a deposit in the sum of ONE MILLION DOLLARS (\$1,000,000) ("Deposit") which shall be in the form of either cash or an irrevocable standby letter of credit in a form, and from a financial institution, acceptable to the District.

(b) The Deposit shall be retained by the District until such time as (i) the Ground Lease has been executed, in which event the Deposit shall be made part of the deposit required under the Ground Lease, and shall thereafter be governed by the terms of the Ground Lease, or (ii) this Agreement is earlier terminated, at which time the remaining Deposit shall be returned to the Developer in whole or in part, retained in whole or in part by the District and the City, or otherwise applied in accordance with the provisions of Section 8.2.

**II. IDENTITY OF PARTIES.**

**2.1 Developer.**

(a) The Developer is RIDA CHULA VISTA, LLC, a Delaware limited liability company. The Developer's only member and manager is Ira M. Mitzner. It is on the basis of the qualifications and experience of the Developer and Ira M. Mitzner that the District and the City are entering into this Agreement. Accordingly, the provisions of this Section 2.1 are deemed necessary by the District and the City and are agreed to be reasonable by the Developer to assure the District and the City that the purposes of this Agreement will be achieved.

(b) Subject to Section 2.1(c), during the Term:

(i) Except for any Permitted Transfers, the Developer shall not voluntarily or involuntarily assign any interest in this Agreement or sell, convey or transfer, or permit

any of its members, to sell, convey or transfer any of such member's direct or indirect membership interests in the Developer (each, a "Transfer") without the prior written consent of the District and the City. The City and the District shall not unreasonably withhold, condition or delay their consent to a Transfer proposed by Developer that requires their consent if all of the following conditions are satisfied:

(A) Ira M. Mitzner will continue to Control (as defined below) the Developer and will continue to hold, directly or indirectly, not less than ten percent (10%) of the membership interests in the Developer.

(B) Developer shall have disclosed to the City and District in writing, each Person who will be a member of the Developer and each Person that will hold, directly or indirectly, at least ten percent (10%) of the membership interests in the Developer as of the effective date of such proposed Transfer.

(C) Developer shall provide documentation reasonably acceptable to the City and the District that following the proposed Transfer, Developer shall have sufficient financial resources for the Developer to perform its obligations under this Agreement and to achieve the Close of Escrow, and to obtain financing in an amount sufficient to pay the Developer's Debt Contribution.

(D) Developer shall provide documentation reasonably acceptable to the City and the District that following the proposed Transfer, the Developer will continue to have the commercial and real estate experience needed to perform the Developer's obligations under this Agreement and the Ground Lease (including, without limitation, the ability to secure and maintain the required Hotel brand and Operator and extensive experience financing and developing resort hotel and convention center projects of a similar size and quality to the Resort Hotel and Convention Center Project).

(E) The District and the City shall have reasonably determined that each Unaffiliated Third Party (as defined below) that acquires ten percent (10%) or more of the membership interests in the Developer 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 history of, or reputation for, either discriminatory employment practices which violate any Laws or non-compliance with applicable Environmental Laws.

(F) Neither the transferee nor any Person with any direct or indirect membership interest in the Developer shall be a Prohibited Person.

(G) Developer shall have provided to the District and the City an outline of any change in the proposed corporate structure of the Developer, in writing, in a detailed narrative and a visual organizational flow chart.

(ii) The Developer shall not permit or suffer to exist any Change of Control (as hereinafter defined) without the prior written consent of the District and the City, which may be given or withheld in the sole and absolute discretion of each of the District and the City.

(iii) Except for any Permitted Transfers, the Developer shall prohibit each of its members from voluntarily or involuntarily selling, conveying, or transferring any of such member's direct or indirect membership interest in the Developer to any Person without the prior written consent of the District and the City (which consent shall be given or withheld in the sole and absolute discretion of the District and the City unless such Transfer satisfies the criteria of Section 2.1(b) in which case the City and the District's consent shall not be unreasonably withheld, conditioned or delayed), and in no event to any Prohibited Person (as hereinafter defined).

Any purported Transfer in violation of this Section 2.1(b) shall be null and void, undone by Developer at Developer's sole cost and expense, and not binding on the District or City.

(c) Upon written request by the Developer to the District and the City for consent to a Transfer as required under Section 2.1(b), the District and the City shall mutually determine, each in its reasonable discretion, within thirty (30) days following delivery of the Developer's request and all information reasonably required by District and City to review the request, whether the proposed Transfer as of the effective date of the proposed Transfer, meets the qualifications set forth in Section 2.1(b).

(d) The Developer shall deliver to the District and the City all agreements and all certified documents evidencing the formation, existence, and good standing of the Developer (with all information regarding distributions, including any definitions primarily related thereto, redacted), for review by the District and the City for consistency with the provisions of this Agreement. Each of the District and the City may request updates to such documents and/or agreements from time to time during the Term and Developer shall deliver such updates within thirty (30) days of District's or City's notice to Developer.

(e) The Developer represents and warrants to the District and the City that it has disclosed to the District and the City each of its members, each Person that holds, directly or indirectly, at least ten percent (10%) of the membership interests in the Developer, and each Person that Controls the Developer.

(f) For purposes of this Section 2.1, the following definitions shall apply:

(i) "Change of Control" means a merger, consolidation, recapitalization or reorganization of the Developer or other transaction or an amendment to any governing document of the Developer that results in any Unaffiliated Third Party having the ability to Control the Developer.

(ii) "Unaffiliated Third Party" means any Person that is not Ira M. Mitzner or is not Controlled by Ira M. Mitzner.

(iii) "Person" means a natural person, whether acting for himself or herself, or in a representative capacity, a partnership, a corporation, a limited liability company, a governmental authority, a trust, an unincorporated organization or any other legal entity of any kind.

(iv) "Control" means with respect to any Person (the "Controlling Person") the power to both (A) direct or cause the direction of the management or policies of another Person (the "Controlled Person"), whether through the ownership of voting equity, by contract or otherwise; and (B) maintain active and direct control and supervision of the operations of Developer,

including without limitation, the day to day operations of the Project; provided, however, that a contractual or other requirement that a Controlling Person obtain the consent or approval of one or more other Persons as a condition to undertaking a Major Decision shall not affect whether such Controlling Person Controls such Controlled Person. “Controls”, “Controlled” and “Controlling” shall have correlative meanings to “Control”.

(v) “Major Decisions” means, with respect to any Person, any decision that is of the type that requires the consent or approval of such Person’s non-managing members, limited partners or minority shareholders, which may include by way of example, any decision to (A) enter into any financing or incur, assume or guarantee any indebtedness that has not been previously approved in an approved budget or operating plan; (B) enter into or terminate or amend any material agreement; (C) merge, liquidate, sell, restructure, consolidate, recapitalize, reorganize, wind up, or dissolve the Person; (D) authorize or declare voluntary bankruptcy, assignment for benefit of creditors, acceleration of third-party obligations, confession of judgment, reorganization or any other similar insolvency action involving the Person or make any filing in connection therewith; (E) make any material changes to the Project; (F) terminate or amend this Agreement; (G) purchase insurance except as required by this Agreement or the Ground Lease; (H) sell or transfer any asset of the Person; (I) approve any budget or operating plan; (J) amend any of the organizational documents of the Person; (K) issue, redeem, repurchase or cancel equity or other ownership interests in the Person (or any rights, warrants or options to acquire the foregoing); (L) make changes to the governing body of the Person; (M) declare or pay any distributions; (N) engage in new lines of business; (O) make capital expenditures or similar expenditures except as required in an approved capital budget; (P) make or change tax elections or accounting methodologies; or (Q) undertake an initial public offering of securities.

(vi) “Permitted Transfer” means the following Transfers, provided that there is no Change of Control as a result of such transfer: (A) any Transfer of not more than five percent (5%) of direct or indirect membership interests in the Developer to any Affiliated Transferee (as defined below) that is not a Prohibited Person; (B) if by a natural person, any Transfer upon the death of such person by will or other instrument taking effect upon such death or by applicable laws of descent and distribution to such person’s estate and executors and then to such person’s heirs; or (C) if by a natural person, any Transfer made in connection with the dissolution of the transferee’s marriage or the legal separation of the transferee and his or her spouse on the account of any settlement of any community property or other marital property rights such spouse may have in any membership interests in the Developer.

(vii) “Prohibited Person” means any Person (A) named as a “Specifically Designated National and Blocked Person” (“SDN”) on the most current list published by the U.S. Department of the Treasury Office of Foreign Assets Control at its official website or any replacement website or other replacement official publication of such list or (B) that is Controlled by an SDN.

(viii) “Affiliated Transferee” means, with respect to any Transfer, any of the following: (A) each sibling of the transferor, the spouse of the transferor, and each parent, child, grandchild or great-grandchild of the transferor (including relatives by marriage); (B) any trust for the benefit of the transferor or any of the foregoing members of his or her family; (C) where the transferor is a trust, any beneficiary of the trust or 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 is under common Control of, the transferor or any of the foregoing Persons.

In addition, for purposes of this Section 2.1, the quantum of a Person's indirect ownership in any other Person is calculated as the percentage of the proportional ownership interest at each level. As an example, if Person A owns a 50% interest in Person B and Person B owns a 50% interest in Person C, then Person A would be deemed to have a 25% indirect ownership interest in Person C.

**2.2 District.** The District is the San Diego Unified Port District, a public corporation created by the legislature in 1962 pursuant to California Harbors and Navigation Code APPENDIX 1, Section 1 *et seq.*

**2.3 City.** The City is the City of Chula Vista, a charter city and municipal corporation.

**2.4 Notices.**

(a) **To Developer.** Notices to the Developer shall be given or served by (a) recognized national overnight delivery service, or (b) facsimile with a confirmed receipt of such transmittal, provided a copy of such facsimile notice is also sent by mail, as provided below, or (c) first-class mail or certified mail, return receipt requested, addressed as follows, or to such other address(es) as the Developer may from time to time designate by notice to the other Parties:

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: Legal Department

and

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

(b) **To District.** Notices to the District shall be given or served by (a) recognized national overnight delivery service, or (b) facsimile with a confirmed receipt of such transmittal, provided a copy of such facsimile notice is also sent by mail, as provided below, or (c) first-class mail or certified mail, return receipt requested, to the following address, or to such other address(es) as the District may from time to time designate by notice to the other Parties:

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:

Assistant Vice President, 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)

(c) **To City.** Notices to the City shall be given or served by (a) recognized national overnight delivery service, or (b) facsimile with a confirmed receipt of such transmittal, provided a copy of such facsimile notice is also sent by mail, as provided below, or (c) first-class mail or certified mail, return receipt requested, at the following address, or to such other address(es) as the City may from time to time designate by notice to the other Parties:

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

(d) **To JEP A.** Notices to the JEP A shall be given or served by (a) recognized national overnight delivery service, or (b) facsimile with a confirmed receipt of such transmittal, provided a copy of such facsimile notice is also sent by mail, as provided below, or (c) first-class mail or certified mail, return receipt requested, at the following address, or to such other address(es) as the JEP A may from time to time designate by notice to the other Parties:

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 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:

Assistant Vice President, 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)

(e) **Forms of Delivery.** Facsimile notice shall be deemed given on the date set forth in the sender's confirmation notice; overnight delivery notice shall be deemed given the next business day from when sent; and mailed notice shall be deemed to have been given or served, if mailed by first class mail, on the third business day from when mailed, and, if by certified mail, on the date set forth in the return receipt.

### III. TERM.

3.1 **Term.** The term of this Agreement shall commence on the Execution Date and shall expire on the earlier of the Closing Date and the Early Expiration Date (the “Term”). The “Early Expiration Date” will occur on the fourth anniversary of this Agreement (subject to extensions as provided below). Upon written request from the Developer, the District and City may administratively extend the Early Expiration Date up to three (3) times (each, an “Extension”), for a period of one (1) year for each such Extension (“Extension Period”), for a total possible term of seven (7) years, in accordance with the following terms:

(a) Developer delivers notice to the District and City no later than sixty (60) days prior to the Early Expiration Date or no later than forty-five (45) days prior to the expiration of an Extension Period, as applicable, of its request to extend the Early Expiration Date, together with written evidence that the following conditions precedent have been satisfied or requesting that some or all of the conditions precedent be waived or the time for satisfying such condition(s) precedent be extended by the District and City:

(i) The Developer shall have obtained approval of Schematic Plans and Building Permit Application Drawings as required by this Agreement and shall have obtained, or be diligently working to obtain, approvals of Building Permits in accordance with this Agreement; and

(ii) The Developer shall have completed its Due Diligence Investigations of the Project Site and delivered to the District its notice that Developer accepts the conditions of the Project Site as set forth in Section 5.8 or shall have made substantial effort towards completing its Due Diligence Investigations and shall report to the District and City steps taken to complete its Due Diligence Investigations; and

(iii) The Developer shall have submitted to the District and City for their review and approval a current design and construction schedule for the Developer’s Improvements.

(b) Administrative staff-level approval of any Extension by the District and City shall be conditioned upon, and shall be granted if (i) the Parties have completed a Periodic Review, after the Extension request, as provided in Section 5.1, and District staff and City staff have determined that the Project continues to be feasible and practicable (taking into consideration the written evidence that the Developer has provided pursuant to Section 3.1(a) and the proposed Extension), (ii) District staff and City staff have determined that no Developer Event of Default has occurred and is continuing, (iii) District staff and City staff have determined that each of the Parties is diligently proceeding in good faith to complete their respective obligations under this Agreement for development of the Project, and (iv) District staff and City staff have determined that any such Extension will be beneficial to the Parties.

(c) Upon receipt of notice of Extension in accordance with Section 3.1(a) which requests the waiver of, or an extension of time to satisfy, any of the conditions precedent set forth in Section 3.1(a) to achieve such Extension, the Parties shall meet and confer in good faith to determine (i) if such waiver or extension would still make it feasible or practicable to proceed with the Project; and (ii) how much additional time is required to satisfy the applicable conditions precedent for such Extension. If it is determined by the Parties that it is feasible and practicable to proceed with the Project and if the conditions precedent set forth in Section 3.1(b) have been satisfied, then the District and the City shall extend the time period to satisfy the applicable condition(s) precedent. If it

is determined by any Party that it is not feasible or practicable to proceed with the Project, then any Party may terminate this Agreement in accordance with Section 5.1 and Article VIII. Notwithstanding any such waivers or Extensions granted pursuant to this Section 3.1, this Agreement shall terminate upon an Event of Termination as provided in Section 8.1.

#### **IV. DESIGN AND DEVELOPMENT OF PROJECT.**

##### **4.1 Design and Development of the Project.**

(a) The Project, other than the Phase 1A Infrastructure Improvements (to the extent designed by the District pursuant to Section 4.4(b)), the Remaining Phase 1A Infrastructure Improvements and the City Infrastructure Improvements, shall be designed by the Developer in accordance with the Scope of Development, the Preliminary Project Approval and this Agreement.

(b) The final designs and plans for the Developer's Private Improvements and the Convention Center shall be attached to the Ground Lease.

(c) The Developer shall comply with all Laws applicable to the Project, including, without limitation, BPC Policy Nos. 357 ("Approval of Tenant Project Plans") and 608 (the "Public Arts Policy"). The Building Permit Application Drawings submitted to the District for approval shall include the location, type and cost of the public art required pursuant to the Public Arts Policy; provided that the Developer's contribution to the total costs of the public art shall be equal to one percent (1%) of the estimated Hard Construction Costs of the Developer's Private Improvements.

(d) The Developer shall comply with all Laws applicable to the development and construction of the Developer's Private Improvements.

(e) The Developer shall comply with all Laws applicable to the development and construction of the Developer's Public Improvements and, if applicable, the Parking Improvements.

(f) The Developer shall pay when due all fees pertaining to the review and approval of the Developer's Improvements and, if applicable, the Parking Improvements, that are lawfully required by any government agency, including, without limitation, the District and the City, and by any public utility. The Developer shall endeavor to obtain, prior to the commencement of construction of the Developer's Improvements and, if applicable, the Parking Improvements, any and all governmental approvals and permits that are required for commencement of such construction and any and all discretionary governmental approvals and permits that are required for completion of the Developer's Improvements and, if applicable, the Parking Improvements.

(g) Subject to Sections 4.8(c) and 4.8(d), the Developer, the District and the City, as applicable, shall cooperate to identify, design and obtain approvals and permits, as necessary, for the relocation and/or abandonment of any easements or rights of way and their related termination and related modification of record from title to the Project Site, as may be necessary for the construction of any of the Developer's Public Improvements and, if applicable, the Parking Improvements.

(h) The design and development of the Project by the Developer pursuant to this Agreement shall provide for continuous vehicular access and utility service to surrounding

properties, including, but not limited to, the leaseholds of Marine Group Boat Works LLC, Chula Vista Marina/RV Park, Ltd., Rohr, Inc., a United Technologies Aerospace Systems Company (“Rohr”) and California Yacht Marina-Chula Vista, LLC., to the satisfaction of the District and City. Vehicular and pedestrian access and utility service to all or portions of Bayside Park shall be maintained to the extent practicable.

#### 4.2 City Infrastructure Improvements.

(a) The City shall prepare, or cause the preparation of, preliminary and final construction plans and documents for the City Infrastructure Improvements as set forth in the Scope of Development on or before the Target Date set forth in the Schedule of Performance.

(b) The District and the City shall cause the Remaining Phase 1A Infrastructure Improvements to be completed in a manner that will not result in a delay to the Developer obtaining a temporary certificate of occupancy for, or the opening for business of, the Developer’s Improvements. The City shall cause a sewage substation, that is compatible with a hotel with 1,600 rooms and meeting space comparable to the meeting space at the Convention Center and other uses contemplated at the Project, as applicable, to be completed not later than twelve (12) months after the Closing Date.

4.3 **Design of Surface Parking and Parking Improvements.** Developer shall prepare, or cause the preparation of, the design of the surface parking improvements to be located on Parcel H-23 (“Surface Parking”) in accordance with Section 4.4. If and to the extent that the District elects to fund the construction of the Parking Improvements and notifies the Developer thereof, each subject to Section 4.7(e), then the Developer shall prepare, or cause the preparation of, the design of the Parking Improvements in accordance with Section 4.4. If the District does not elect to fund the Parking Improvements and notifies the Developer thereof, each in accordance with Section 4.7(e), then the Developer shall prepare, or cause preparation of, the Schematic Plans for the Parking Improvements in accordance with Section 4.4(a)(i) and shall have the right to elect to prepare, or cause the preparation of, the Building Permit Application Drawings of the Parking Improvements at its sole and absolute discretion.

#### 4.4 Submission and Approval of Schematic Plans and Building Permit Application Drawings.

(a) On or before the Target Date set forth in the Schedule of Performance, the Developer shall have submitted or shall submit for approval to the District a tenant project plan application pursuant to BPC Policy No. 357 (“Tenant Project Plan Application”) for the Developer’s Improvements, the Surface Parking and the Parking Improvements. Subsequently, the Developer shall submit (x) to the District, Schematic Plans for the Developer’s Improvements, the Surface Parking and the Parking Improvements and Building Permit Application Drawings for the Developer’s Improvements in accordance with clauses (i) and (ii) below, respectively, and (y) to the City, Building Permit Application Drawings for the Developer’s Improvements in accordance with clause (iii) below.

(i) **Schematic Plans:** On or before the Target Date set forth in the Schedule of Performance, Developer shall submit to the District, for approval as part of a Tenant Project Plan Application, three (3) hardcopies and an electronic version (pdf) of “Schematic Plans” for development of the Developer’s Improvements, the Surface Parking and the Parking

Improvements (each, “Schematic Plans Set” and, collectively, “Schematic Plans Sets”) demonstrating conformance with applicable mitigation measures in the FEIR, Port Master Plan, Chula Vista Bayfront Development Policies and Public Access Program, the Settlement Agreement and the California Coastal Act. Each Schematic Plans Set shall be prepared by an architect or an engineer licensed in the State of California and shall include, as applicable, the following:

- (1) A detailed dimensional site plan drawn to scale showing all of the Developer’s Improvements or the Parking Improvements planned to be constructed on the Project Site, including buildings, vehicle and pedestrian circulation, surface parking areas, outdoor improvements including hardscape and furniture, public access and amenities, and existing and proposed utilities. Such site plan shall include the location of all existing and proposed easements and how they will be accommodated, location of all existing and proposed utilities, site drainage and stormwater plans, site grading plan, grade elevations of all structures, proposed site work, and site horizontal (coordinate) and vertical control drawings with a benchmark reference.
- (2) Floor and roof plans, elevations, and sections of all structures, and mechanical design measures to ensure adequate indoor air quality.
- (3) Exterior lighting plan (building and site) indicating required shielding.
- (4) Exterior public wayfinding signage necessary to obtain a CDP.
- (5) Landscape and fencing development plans with plant material list and estimated mature heights.
- (6) Preliminary sustainable materials and energy conservation systems.
- (7) Complete outline specifications to cover all phases of the work.
- (8) A detailed description of improvements and methods of operation.
- (9) A general outline specification indicating materials and methods of construction.
- (10) Civil plans including grading plan, drainage study and soil study reports.
- (11) Stormwater Quality Management Plan.
- (12) Exterior color schemes and materials.

Each Schematic Plans Set will include a soils and/or foundation report of a scope commensurate with the Developer’s Improvements or the Parking Improvements, as applicable, planned for the Project Site prepared by a licensed soils consultant.

District staff shall comment on each Schematic Plans Set and deliver a copy of such comments to the Developer within twenty (20) business days following submittal of such Schematic Plans Set by the Developer. The District, the City and the Developer shall reasonably cooperate to obtain comments on required portions of each Schematic Plans Set from the Wildlife Advisory

Group, Bayfront Cultural and Design Committee, and the District's Accessible Advisory Committee. At the District's sole discretion, each Schematic Plans Set or any portion thereof may be presented to the BPC for "Preliminary Project Review". If the BPC reviews a Schematic Plan Set or any portion thereof, and directs District staff to further review or revise such Schematic Plan Set, then the District shall comment on such Schematic Plans Set based on the BPC's direction and deliver a copy of such comments to the Developer within sixty (60) days following submittal of such Schematic Plans Set by the Developer. Within thirty (30) business days after the District delivers a copy of its comments on such Schematic Plans Set, Developer shall correct factual errors in such Schematic Plans Set and consider modifications to such Schematic Plans Set proposed by the District, and the Developer shall resubmit such Schematic Plans Set to the District for review and approval. Inspection, review, approval or comment by the District with respect to any of the Schematic Plans shall not in any way affect or reduce the Developer's obligations under this Agreement or be deemed to be a warranty or acceptance by the District with respect to such Schematic Plans; it being understood that the District is relying upon the Developer for designing and engineering the Developer's Improvements (except for the Schematic Plans for the development of Phase 1A Infrastructure Improvements that the District shall submit to the Developer in accordance with Section 4.4(b)), the Surface Parking and the Parking Improvements in accordance with this Agreement. Within ten (10) business days after the Developer receives a "Tenant Construction Project Number" or "District Project Engineering Work Order Number", whichever is the latest, from the District, the Developer shall submit an application for approval of a Coastal Development Permit ("CDP") to the District with all required supplemental information pursuant to the District's certified CDP regulations.

(ii) **Building Permit Application Drawings**: On or before the Target Date set forth in the Schedule of Performance, Developer shall submit to District for approval by the District, six (6) hardcopies and electronic version (pdf) of "Building Permit Application Drawings" for development of the Developer's Improvements. Building Permit Application Drawings shall be prepared by an architect or engineer, as appropriate, licensed to do business in the State of California, and shall consist of the following:

- (1) Complete architectural, civil, structural, mechanical, electrical, plumbing, utility layout, landscaping and irrigation, fencing, public access and amenities, lighting, stormwater and site horizontal (coordinate) and vertical control plans included in the civil drawings.
- (2) Complete specifications, materials, and color list, and engineering calculations for all improvements.
- (3) Draft construction contract form.
- (4) Draft construction schedule.
- (5) A detailed final construction cost estimate of all of the Developer's Improvements, with indirect costs, furniture, fixtures and equipment separately identified.

The Building Permit Application Drawings are also known as the Tenant Project Plans. The District shall review the Building Permit Application Drawings only to confirm that they are in substantial conformance to the Schematic Plans approved by the District and the CDP. The District shall approve or comment on the Building Permit Application Drawings within twenty (20) business

days following submittal thereof. Within twenty (20) business days after the District comments on the Building Permit Application Drawings, Developer shall correct factual errors in the Building Permit Application Drawings and consider modifications to the Building Permit Application Drawings proposed by the District, and the Developer shall resubmit the Building Permit Application Drawings to the District for review and approval. Inspection, review, approval or comment by the District with respect to any of the Building Permit Application Drawings shall not in any way affect or reduce the Developer's obligations under this Agreement or be deemed to be a warranty or acceptance by the District with respect to such Building Permit Application Drawings; it being understood that the District is relying upon the Developer for designing and engineering the Developer's Improvements (except for the Schematic Plans for the development of Phase 1A Infrastructure Improvements that the District shall submit to the Developer in accordance with Section 4.4(b)) in accordance with this Agreement. The Parties understand that the Developer may submit the Building Permit Application Drawings in multiple phases.

(iii) **Building Permits:** After the District has approved the Building Permit Application Drawings, the Developer shall submit such Building Permit Application Drawings to the City for the City's review and approval and the City's issuance of final and complete building permits that are required to commence the construction of the Developer's Improvements ("**Building Permits**"). All standard City fees with respect to the issuance of the Building Permits will apply and shall be paid by the Developer. After the City's approval of the Building Permit Application Drawings, the Developer shall submit the final signed Building Permit Application Drawings for the Phase 1A Infrastructure Improvements to the District for the BPC's adoption of such Building Permit Application Drawings.

(b) Subject to Sections 4.8(c) and 4.8(d), on or before the Target Date set forth in the Schedule of Performance, the District shall submit to the Developer three (3) hardcopies, native digital files in computer-aided design (CAD) and electronic version (pdf) of "Schematic Plans" for development of the Phase 1A Infrastructure Improvements (other than Schematic Plans for development of Harbor Park which the District shall submit to the Developer on or before the corresponding Target Date set forth in the Schedule of Performance). Such Schematic Plans shall be completed by, or on behalf of, the District to the extent sufficient to achieve approval of the CDP. The Developer shall complete such Schematic Plans to fifty percent (50%) completion and shall submit such 50% completed plans, together with Development Cost estimates for the Phase 1A Infrastructure Improvements as set forth in Section 4.4(c), to the District, for the District's approval, in accordance with Section 4.4(a)(i). The Developer shall submit to the District, for the District's approval, Building Permit Application Drawings for the Phase 1A Infrastructure Improvements in accordance with Section 4.4(a)(ii).

(c) With each submission of Schematic Plans and the Building Permit Application Drawings pursuant to this Section 4.4, the Developer shall submit to the District Development Cost estimates for such portion of the Developer's Improvements and, if applicable, the Parking Improvements, prepared by Developer, Developer's general contractor or a qualified cost estimator in such detail as warranted by the extent of detail and completeness of the Schematic Plans and Building Permit Application Drawings submitted to the District. Such Development Cost estimates shall be prepared in good faith and shall reflect the reasonable judgment of the Developer regarding such estimates. The Parties acknowledge that such estimates are estimates only and that final Development Costs may differ from the previously provided estimates. Whenever this Agreement requires the Developer to submit Development Cost estimates for such portion of Developer's Improvements and, if applicable, the Parking Improvements, a separate Development

Cost estimate shall be prepared for each major category of such portion of the Developer's Improvements, including the Developer's Private Improvements, the Convention Center and the Developer's Phase 1A Infrastructure Improvements (each, a "Major Component of Developer's Improvements") and, if applicable, the Parking Improvements.

(d) Common costs shall be reasonably and equitably allocated between the Developer's Private Improvements and the Convention Center, generally consistently with the allocation of such common costs set forth in the Form of Developer's Private Improvements and Convention Center Budget attached hereto as Attachment No. 7, and such allocations shall be subject to review and approval by the District and City. All such common costs of the Developer's Private Improvements and the Convention Center shall be tracked and allocated so as to properly distinguish common cost allocations between the Developer's Private Improvements and the Convention Center for purposes of complying with public finance requirements.

#### 4.5 Agreement on Total Project Costs.

(a) "Hard Construction Costs" shall mean, with respect to any component of the Project, all costs that the Developer is required to pay to the respective construction contractor for the construction of such component of the Project under the construction agreement for such component of the Project.

(b) Not later than thirty (30) days following Developer submission of the Tenant Project Plans, the Developer shall submit final estimates of the total Development Costs of the Developer's Improvements, including the items set forth in Section 4.5(d).

(c) Following receipt of the Developer's final estimates of the Development Costs of the Developer's Improvements pursuant to Section 4.5(b), the District and City shall promptly review such Development Cost estimates and may elect to have their own construction cost estimator separately estimate the Development Costs of the Developer's Improvements and allocated items thereof to the Developer's Private Improvements and the Developer's Public Improvements, taking into consideration the prices received from contractors by the Developer. The final estimates of the Development Costs for the Developer's Improvements which are either (i) reviewed and consented to by the District and City as submitted by the Developer in accordance with Section 4.5(b) or (ii) agreed by the District, the City and the Developer, are herein referred to as the "Total Project Costs".

(d) As to each Major Component of Developer's Improvements, such estimates shall include an estimate for all Development Costs in connection with such Major Component of Developer's Improvements. "Development Costs" shall mean, with respect to any component of the Project, (i) the costs of the entire design, architectural work, engineering work, development work and construction work and (ii) contingency which shall, except with respect to the Hotel, be in an amount equal to ten percent (10%) of the sum of the costs set forth in clause (i). Development Costs shall include, without limitation, costs of site preparation, soils testing, foundations, excavation costs, landscaping, sprinklers, utilities (vaulting or relocation as deemed necessary by the District and City, installation and connection), elevators, stairways, equipment, furnishings, fixtures and equipment, striping and signs, compliance with special conditions, construction supervision, and that portion of payments reasonably attributable to each element of the Developer's Improvements for architectural, engineering, design consulting, construction liability and other insurance, including insurance required under Article IV and each of the applicable Closing Documents, labor and materials and

performance bonds, title insurance services, City development and Building Permit fees, other project permitting costs, contingency, and all other related costs required under this Agreement.

(e) In the event that at any time the estimated amounts of the Total Project Costs allocated to the Developer's Public Improvements exceed the amount estimated in the Conceptual Outline of JEP A Plan of Finance or the Plan of Finance, the Parties shall meet and confer in accordance with Section 5.1.

(f) The Developer, City and District shall determine the Total Project Costs pursuant to this Section 4.5 at the earliest possible time and, in any event, within sixty (60) days following the Developer's submission of the final estimates of the Development Costs of the Developer's Improvements pursuant to Section 4.5(b).

(g) The Developer shall submit executed guaranteed maximum price construction contracts or fixed price construction contracts, as applicable, with respect to the Developer's Improvements, based on signed bids from Developer's contractors and subcontractors (if applicable), other than bids with respect to the Convention Center, for the construction of the Developer's Improvements (all of which shall be provided to the District and City) on or before the Target Date set forth in the Schedule of Performance. Each such contract will name the District and the City, as applicable, as an intended third-party beneficiary. The Developer shall provide drafts of such contracts to the District and the City, as applicable, for the District's and the City's review and comment before execution, in which case the District and the City, as applicable, shall promptly provide to the Developer any comments thereto.

**4.6 No Developer's Obligation to Construct the Developer's Improvements Surface Parking or Parking Improvements.** The Developer shall have no responsibility for the construction of any of the Developer's Improvements, Surface Parking or the Parking Improvements unless and until the Close of Escrow occurs.

#### **4.7 District and City Financial Contribution.**

(a) The District and the City shall use good faith, commercially reasonable efforts to provide certain financial contributions to the design, development and construction of the Project and other activities, including the Public Improvements Costs, as provided in and subject to the Plan of Finance, the Financing Agreement, and the Scope of Development ("Public Fund Contribution"). The scope of, and limitations on, the District and City's obligations to provide the Public Fund Contribution shall be set forth in the Plan and Finance. The Parties acknowledge that a condition precedent to the issuance of bonds to fund any portion of the Public Fund Contribution ("Bond Financing") shall be the completion, on or prior to the applicable Target Date set forth in the Schedule of Performance, of "Review of Underwriter's Updated Projections" and the receipt by JEP A, City and District of a final, non-appealable judgment in the Validation Action finding in favor of the JEP A, City and District on all points, among other conditions precedent to such Bond Financing. If the District or the City determines in its good faith, reasonable discretion that it will not be able to secure such Bond Financing before or at Close of Escrow, then it shall meet and confer with the other Parties to attempt to identify mutually acceptable alternative forms of financing for the Public Fund Contribution pursuant to Section 5.1.

(b) The Public Fund Contribution and Equity Investor Contribution shall be disbursed *pari passu* for the benefit of the Project.

(c) The District and the City shall reimburse the Developer in cash for any and all funds expended prior to the Close of Escrow by the Developer in connection with design, architectural work, and engineering work for the Developer's Phase 1A Infrastructure Improvements and the Parking Improvements as set forth in the Scope of Development, other than the amounts that have been paid to Developer pursuant to Section 4.8(e), from the first disbursement of the Public Fund Contribution pursuant to the Construction Loan Account Instructions.

(d) The Developer acknowledges that the City and District have made no representation that the terms and provisions of this Agreement and form of Ground Lease are consistent with or sufficient to enable the City, District or JEPA to finance the Public Fund Contribution.

(e) The District shall have the right to elect to fund the construction of the Parking Improvements, which, if so elected by the District, would be designed and constructed by Developer and financed by the District in an amount not to exceed the Parking Improvements Costs.

#### **4.8 Expenditures Prior to the Close of Escrow.**

(a) The District and City shall be solely responsible for all of the costs of completing the Schematic Plans for development of the Phase 1A Infrastructure Improvements to the extent sufficient to achieve approval of the CDP ("Pre-Close Responsibility Costs").

(b) The District may elect in its sole and absolute discretion to perform some of the Project Site preparation work, as set forth in Exhibit 1 to the Scope of Development, prior to the Close of Escrow, but only as it relates to the import of soil to the Project Site ("Preliminary Site Preparation"). If the District elects to import soil to the Project Site as part of the Preliminary Site Preparation, then the District shall import soil that is of quality not worse than the quality of soil set forth on Attachment No. 8 attached hereto and incorporated herein by reference. The Ground Lease will provide that the District will pay TEN MILLION DOLLARS (\$10,000,000) (the "Preliminary Site Preparation Amount") to the Developer for certain costs in connection with the Preliminary Site Preparation; provided, however, that (i) if the District imports 130,000 cubic yards of soil to the Project Site in accordance with this Section 4.8(b) prior to the Close of Escrow, then the Preliminary Site Preparation Amount will be reduced to SIX MILLION DOLLARS (\$6,000,000) or (ii) if the District imports soil to the Project Site in accordance with this Section 4.8(b) in an amount less than 130,000 cubic yards, then the Preliminary Site Preparation Amount will be reduced to equal to the difference of (1) \$10,000,000 *minus* (2) \$30.77 per cubic yard of soil that the District delivers to the Project Site in accordance with this Section 4.8(b).

(c) It shall be the sole responsibility of the District and City, at the sole expense of the District and City, to investigate and determine access and utilities, identify approvals, as necessary, for the relocation and/or abandonment of any easements or rights of way, and their related termination and related modification of record from title to the Project Site, as may be necessary for the construction of the Developer's Improvements and the Parking Improvements, and to specify by when the District and the City will complete the relocation and/or abandonment of each such easement and right of way and their related termination and related modification of record, as applicable, for the construction of the Developer's Improvements and the Parking Improvements (collectively, "Easement Findings"), in each case on or before the Target Date set forth in the Schedule of Performance and, to the extent necessary, to include such Easement Findings with

respect thereto in the Schematic Plans for development of the Phase 1A Infrastructure Improvements submitted to the Developer in accordance with Section 4.4(b).

(d) The Developer shall have sixty (60) days after receipt of the Easement Findings to provide written comments thereto to District and City. If the District or the City disagrees with any of the comments to the Easement Findings provided by the Developer, then the Parties shall meet and confer in accordance with Section 5.1. If the District and the City agree with all of the comments to the Easement Findings provided by the Developer or if the Parties reach an agreement on the Easement Findings pursuant to Section 5.1, then it shall be the sole responsibility of the District and the City, at the sole expense of the District and the City, to relocate and/or abandon, terminate and remove of record from title to the Project Site each of the easements and rights of way identified in such Easement Findings by the corresponding date set forth in such Easement Findings (as modified to reflect such comments or agreement).

(e) The District and the City shall reimburse the Developer in cash for any and all funds expended prior to the Close of Escrow by the Developer in connection with design, architectural work, and engineering work for the Developer's Phase 1A Infrastructure Improvements as set forth in Scope of Development, prior to the Close of Escrow in accordance with, to the extent applicable, Chula Vista Municipal Code 2.56.160.H, including the reimbursement procedure set forth therein, and any applicable agreements implementing Chula Vista Municipal Code 2.56.160.H.

**4.9 Inspection of Records.** In addition to requirements imposed elsewhere in this Agreement, requirements of the financing of the Public Improvements Costs, and other applicable Laws, including the PWL, the Developer shall use commercially reasonable efforts to keep and use commercially reasonable efforts to maintain, and shall require the Developer's general contractor (the "General Contractor"), subcontractors and materialmen to keep and maintain, for a period of seven (7) years after the date such record was created (or such longer period that the Developer may decide in its sole discretion), all records, books, correspondence, receipts, vouchers and similar items relating to the construction of the Developer's Improvements, together with the originals of all contracts and purchase orders and any related warranties or guarantees relating to such construction. The District, City and their agents and representatives shall have the right to access all such records, books, correspondence, receipts, vouchers and similar items during regular business hours on business days or at other reasonable times within the boundaries of San Diego County; provided that the District or City, as applicable, shall have given the Developer at least three (3) business days' prior notice thereof. Developer shall use commercially reasonable efforts to keep and use commercially reasonable efforts to maintain the records described in this Section 4.9 in a safe condition. At the expiration of the seven- (7-) year period, Developer shall deliver the records to the District or to such other location as may be requested by District in writing.

**4.10 Insurance.** The Developer shall, and shall require its architects, engineers, contractors and subcontractors to purchase and maintain such insurance as will protect the City, the District, the Developer, the architects, engineers and contractors from claims which may result from the undertakings of the Developer, its architects, engineers and contractors under this Agreement, which include without limitation:

- (a) Claims under workers' compensation benefit Laws;
- (b) Claims for damages due to bodily injury, occupational sickness or disease, or death of employees;

(c) Claims for damages because of bodily injury, sickness or disease, or death of any person other than employees;

(d) Claims for damages insured by usual personal injury liability coverage which are sustained (i) by any person as a result of an offense directly or indirectly related to the employment of such person by the Developer, architect, engineer, contractors, subcontractors or (ii) by any other person;

(e) Claims for damages, other than to the physical improvements which constitute the Developer's Public Improvements themselves, as a result of injury to or destruction of tangible property, including loss of use resulting therefrom;

(f) Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and

(g) Claims for the usual damages insured by Professional Errors and Omissions insurance against any Professionals (Developer, architect, engineer, contractors or any other Persons).

**4.11 Liability Insurance Policy Limits.** The insurance required by this Agreement shall be written for not less than the following limits of liability; provided that all such limits may, at the Developer's option, be satisfied by limits set forth in primary policies and excess policies:

(a) Workers' Compensation in the State: Statutory limits as set forth in Article 1 (commencing with Section 3700) of Chapter 4 of Article 1 of Division 4 of the California Labor Code. Employer's Liability: Not less than \$2,000,000, which limit of insurance may be satisfied through primary and excess liability policies.

(b) Commercial General Liability, Occurrence Form, Coverages A, B, and C: Dedicated Project Policy limit not less than \$2,000,000 per occurrence limit and \$5,000,000 aggregate limit. Required limits of insurance may be satisfied through primary and excess liability policies.

(c) Comprehensive Automobile Liability for any vehicle used for or in connection with the Work (owned, hired or leased): Not less than \$1,000,000.

(d) Pollution Legal Liability for any new or exacerbated conditions caused by any contractor or subcontractor in the amount of \$1,000,000 per claim and \$2,000,000 in the aggregate, dedicated project limits.

(e) Professional Liability for Professional acts, errors and omissions covering (i) any engineer, contractor or any other Person for Developer's Improvements (other than the Developer's Private Improvements and the Convention Center) in the amount of \$1,000,000 per claim and \$2,000,000 in the aggregate and (ii) any architect for the Developer's Private Improvements and the Convention Center in the amount of \$5,000,000 per claim and \$10,000,000 in the aggregate, it being understood that such insurance may be obtained by such architect, engineer, contractor or subcontractor (each, a "Professional"), instead of the Developer, if such Professional provides such insurance to the City and District in accordance with Section 4.13.

**4.12 Builder's "All Risk" Insurance.** If there is any construction of any of the Developer's Improvements and/or the Parking Improvements during the Term by the Developer, which, for the avoidance of doubt, is not required or permitted pursuant to Section 4.6, Developer shall obtain and maintain, or require its General Contractor and its subcontractors and all other contractors, subcontractors and consultants to obtain and maintain, at all times during the course of construction of the Developer's Improvements and/or the Parking Improvements by the Developer, all insurance as required herein, the construction contracts for the Developer's Improvements or the Parking Improvements, if applicable, the Ground Lease and the Convention Center Subleases, as applicable, with respect to the applicable portion of the Developer's Improvements and/or the Parking Improvements, as applicable, constructed by the Developer. Developer, District and City shall be named, as applicable, for their interests in the Project.

**4.13 Required Policy Provisions.** The insurance policies required under this Agreement shall include the following provisions:

(a) The City and the District shall be named as additional insureds on all insurance policies, with an endorsement identifying the same, except the workers' compensation and Professional Liability policies, with waivers of subrogation in form acceptable to the District and City.

(b) Each policy of insurance required under this Agreement shall be obtained from a provider licensed to do business in California and having not less than a Best's Insurance Guide current rating of A-: X or better and shall bear an endorsement precluding cancellation or termination of the policy or reduction in coverage unless the City and District have been given written notice of such intended action at least thirty (30) days prior to its effective date.

(c) The Developer shall provide to the City and the District, or, if applicable, in the case of Section 4.11(e) cause its architects, engineers, contractors, subcontractors and consultants to provide to the City and the District, certificates of said insurance on or prior to the Execution Date, and shall provide to the District copies of all of the policies of said insurance within fifteen (15) days from the Developer's receipt of written request therefor from the District.

(d) If the Developer fails to obtain and maintain, or cause its architects, engineers, contractors, subcontractors and consultants, to obtain and maintain, any insurance required by this Agreement and if the Developer does not cure such failure within ten (10) days from the date when the Developer receives notice thereof from the District and the City, then the District and City shall have the right to purchase the insurance on behalf of Developer, its architects, engineers, contractors, subcontractors and consultants (as applicable) and the Developer shall promptly reimburse the District or City, as applicable, the full cost of such insurance.

**4.14 Payment Bonds and Performance Bonds.**

(a) Prior to the Developer commencing the construction of the Developer's Improvements and, if applicable, the Parking Improvements, the Developer shall furnish the District and the City with the following separate corporate surety bonds from each contractor that is responsible for the construction of a Major Component of Developer's Improvements, if applicable, the Parking Improvements or, in each case, a portion thereof:

(i) A corporate surety performance bond ("Performance Bond") issued by a surety company licensed and admitted to transact business as such in the State of California, in an amount not less than one hundred percent (100%) of the estimated Hard Construction Costs of the applicable Major Component of Developer's Improvements, the Parking Improvements or a portion thereof, as applicable. The Performance Bond shall name Developer as principal obligee and the District, the City, each of the Private Construction Lenders and each of the public lenders as co-obligees. The Performance Bond shall assure full completion of the construction by such contractor of such Major Component of Developer's Improvement, the Parking Improvements or such portion thereof, as applicable; and

(ii) A corporate surety payment bond ("Payment Bond") issued by a surety company licensed and admitted to transact business as such in the State of California, in an amount equal to one hundred percent (100%) of the estimated Hard Construction Costs of the applicable Major Component of Developer's Improvements, the Parking Improvements or a portion thereof, as applicable, guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the performance of the construction by such contractor of such Major Component of Developer's Improvements, the Parking Improvements or such portion thereof and for labor done thereon and protecting the District and the City from any and all liability, loss or damages arising out of or in connection with any failure to make any such payments. The Payment Bond shall name Developer as principal obligee and the District, the City, each of the Private Construction Lenders and each of the public lenders as co-obligees.

(b) The Payment Bonds and Performance Bonds shall be in form and content reasonably satisfactory to the District and the City.

**4.15 Completion Guaranty.** "Completion Guaranty" shall mean a guaranty, or guaranties, from a Person or multiple Persons (collectively, the "Guarantor"), each of which is not a Prohibited Person, and which, in the aggregate, have a net worth, which shall mean total assets less the amount of total liabilities, determined in accordance with generally accepted accounting principles of at least TWO HUNDRED MILLION DOLLARS (\$200,000,000) and which are approved by each of the District and the City, in its reasonable discretion, guaranteeing to the District, the City and the JEPAs the completion by the Developer of the Developer's Improvements in accordance with the Ground Lease. The Parties shall negotiate the form of the Completion Guaranty on or before the Target Date set forth in the Schedule of Performance. The Parties shall execute and deliver the Completion Guaranty at the Close of Escrow.

**4.16 Prevailing Wages.** The Developer acknowledges and agrees that:

(a) Any construction, alteration, demolition, installation or repair work that the Developer performs, or causes to be performed, or that the Developer is required to perform, under this Agreement ("Developer Construction Work"), constitutes "public work" under California Prevailing Wage Law, including Labor Code Sections 1720 through 1861, *et seq.* (as such statutes may be amended from time to time, "PWL"), and PWL obligates the Developer to cause such Developer Construction 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) The Developer shall cause all Persons performing Developer Construction Work to comply with all applicable provisions of the PWL and other applicable wage Laws.

(c) The District hereby notifies the Developer and the Developer hereby acknowledges that the PWL includes, without limitation, Labor Code Section 1771.1(b) that provides that the following requirements described in Labor Code Section 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 Section 4104 of the Public Contract Code, or engage in the performance of any contract for “public work”, unless it is currently registered and qualified to perform “public work” pursuant to Section 1725.5. It is not a violation of Section 1771.1 for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code if the contractor is registered to perform “public work” pursuant to Section 1725.5 at the time the contract is awarded.

(d) The Developer acknowledges that its obligations under the PWL include, without limitation, ensuring that:

(i) pursuant to Labor Code Section 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 Section 1725.5;

(ii) pursuant to Labor Code Section 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 Section 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 Section 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 Section 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 Section 1725.5 of the contractor, the name and registration number issued by the DIR pursuant to Section 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 the Developer shall determine and use whatever form the DIR requires.

(e) The District and the City shall not be responsible for the Developer’s failure to comply with any applicable provisions of the PWL.

(f) The Developer’s violations of the PWL shall constitute a breach of this Agreement.

(g) The Developer shall not be responsible for the District’s or the City’s failure to comply with any applicable provisions of the PWL with respect to any work performed by, or on behalf of, District or City (other than by the Developer or any of the Developer’s contractors, subcontractors or consultants).

**4.17 Developer's Indemnity Obligations.** Without limitation of the Developer's other obligations under this Agreement, the Developer agrees, at its sole cost and expense, and with counsel approved by District and City, each in its reasonable discretion, to indemnify, defend and hold harmless the District and City, and their officers, directors, employees, partners, affiliates, agents, contractors, successors and assigns ("District and City Parties") from any claims, demands, actions, causes of action, suits (collectively, "Claims") and 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 such costs (collectively, the "Related Costs") and amounts paid in settlement of any claims or actions related to the subject matter of the Related Costs (as determined by the Developer, District and City), arising out of:

(a) the obligations undertaken by the Developer and their officers, directors, employees, partners, affiliates, agents, contractors, successors and assigns in connection with this Agreement;

(b) the possession, use, occupancy, operation or development of the Project Site by the Developer or the Developer's representatives, partners, directors, officers, agents, employees, consultants, contractors, invitees, subtenants, successors, assigns or similar users/affiliates (collectively, "Developer Affiliate");

(c) the approval of this Agreement or the approval of permits or approvals granted to the Developer or a Developer Affiliate related to the Project or the Project Site, including, but not limited to, approvals or permits for the development of any structures, buildings, installations, and improvements on the Project Site, or use of the Project Site (collectively, "Related Approvals");

(d) any third party challenges to the approval of the Project and the Related Approvals;

(e) the granting or failure to grant any approvals set forth in this Agreement (collectively, "Discretionary Approvals");

(f) environmental documents, mitigation and/or monitoring plans, or determinations conducted and adopted pursuant to CEQA or the National Environmental Policy Act for this Agreement, Related Approvals or Discretionary Approvals of the Developer; and

(g) the Developer's obligation to comply with the PWL with respect to the Work to be performed by or under contract with the Developer.

The foregoing indemnity, defense and hold harmless obligations of the Developer shall not include any Claims and Related Costs and amounts paid in settlement of any Claims or actions related to the subject matter of the Related Costs (as determined by the Developer), arising out of District's or the City's failure to comply with the applicable provisions of the PWL with respect to any work performed by, or on behalf of, District or City (other than by the Developer or any of the Developer's contractors, subcontractors or consultants).

If any of the District and City Parties tender to the Developer any Claim arising out of the Project or the Project Site, the District and/or the City, then the Developer shall have the right to terminate this Agreement in accordance with Article VIII and, if the Developer elects to exercise

such right to terminate this Agreement, then the Developer shall have the right not to participate in the defense of any such Claim and the Developer shall have no indemnity, defense or hold harmless obligations to any District and City Party or any third party.

The District and the City may, in their sole and absolute discretion, participate in the defense of any Claims, but the Developer shall have no obligation to reimburse the District and the City for any costs of defense incurred by the District and/or the City, including, without limitation, reimbursement for attorneys' fees, experts' fees and other costs. The District's and the City's participation shall not relieve the Developer of any of its obligations under this Section 4.17. If the District and City tender the defense of any Claim to Developer pursuant to this Section 4.17 and Developer does not elect to terminate this Agreement in accordance with Article VIII, then the Parties contemplate that they will execute a binding agreement providing for the Parties' obligations with respect to the defense of such Claim, including Developer's obligation to pay costs relating to such Claim. The foregoing indemnity obligations of the Developer are in addition to, and not in limitation of, any other indemnity obligations of the Developer contained in this Agreement. This indemnity shall survive expiration or earlier termination of this Agreement, but solely with respect to any event or condition that has occurred prior to, or exists at the time of, such expiration or termination.

#### **4.18 Liens and Claims.**

(a) The Developer agrees that, if any Professional or materialman performing the Work, or furnishing materials in connection therewith, or if anyone claiming directly or indirectly under or through the Developer or any Developer Affiliate, Professional or materialman shall file or cause to be filed any mechanics lien or other lien or security interest against the Project Site, the Developer's Improvements, the Parking Improvements or any portion thereof, or against any assets of or funds appropriated to or by the District or the City, then, within thirty (30) days after the Developer receives notice of filing thereof, the Developer shall cause such lien or security interest to be discharged of record by payment, deposit, bond, order of court of competent jurisdiction or otherwise. If the Developer shall fail to cause such lien or security interest to be discharged of record within the period aforesaid, then, in addition to any other right or remedy, the District or the City may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due from retentions or any progress payment next due to the Developer or by procuring the discharge of record of such lien or security interest. Any amount so paid by the District or the City, including all reasonable costs and expenses incurred by the District or the City in connection therewith, shall be payable by the Developer to the District or the City, as applicable, on demand. Each of the City and District will endeavor to notify Developer of any lien notices that it receives; provided, however, that the failure by City or District to so notify the Developer shall not affect Developer's obligations hereunder.

(b) Notwithstanding Section 4.18(a), the Developer shall not be required to discharge of record any such lien or security interest if the Developer is in good faith, and consistent with applicable Law, at its own expense, currently and diligently contesting the same; provided that the Developer first records a surety bond sufficient to release such lien or such security interest, as applicable.

**4.19 Validation Action.** Subject to the remaining provisions of this Section 4.19, the District and City, as the sole members of the JEPA, shall file and reasonably pursue on behalf of the JEPA a validation action under California Code of Civil Procedure §860, petition for writ of mandate

pursuant to California Code of Civil Procedure section 1085 and/or 1094.5 and a complaint for declaratory relief (collectively, "Validation Action") to (a) validate selected contracts relating to the financing of the Public Improvements Costs for the Convention Center and the Phase 1A Infrastructure Improvements, including the scope and extent of legal obligations arising therefrom (collectively, the "Public Financing Contracts") and (b) obtain a judicial determination that none of the Public Financing Contracts, the Qualified Private Contracts or the Project violates any Laws. Prior to filing the Validation Action, District and City shall meet and confer with Developer to discuss the potential for including within the Validation Action private contracts reasonably designated by Developer that are consistent with Project Financing Contracts, and are themselves integral to the development of the Project (collectively, the "Qualified Private Contracts"). If City and District reasonably determine, each in its reasonable discretion, that the addition of the Qualified Private Contracts to the Validation Action is lawful and feasible, and will not materially delay or compromise the effective prosecution of the Validation Action with respect to the Public Financing Contracts, City and District agree to include the Qualified Private Contracts in the Validation Action. The JEPA shall be responsible for the payment of all costs and expenses incurred in connection with such Validation Action; provided, however, that (i) Developer shall be responsible for payment of any and all incremental legal and other costs arising from the inclusion of the Qualified Private Contracts; and (ii) if there is a third-party challenge to the Validation Action, whether or not it includes the Qualified Private Contracts, such challenge shall trigger Developer's obligation to defend the Project and Related Approvals pursuant to Section 4.17(d) (subject to the Developer's right to terminate this Agreement pursuant to the last paragraph of Section 4.17). The Developer acknowledges that (1) a final unappealable judgment finding in favor of the JEPA, District and City on all points is a condition precedent to the issuance of the financing for the Public Improvements Costs, and (2) the City, the District and/or the JEPA may request the Developer's cooperation with respect to participation in such Validation Action, or request the Developer to provide documentation or information in support of such Validation Action, and (3) in the absence of such cooperation or participation by the Developer, the Validation Action may not succeed. Notwithstanding the foregoing, in the event that the District and City, as the sole members of the JEPA, determine, each in its reasonable discretion, that filing or pursuing a Validation Action is not likely to succeed, or will be overly burdensome, the District and City, as the sole members of the JEPA, shall, each in its sole and absolute discretion, have the right to decline to commence a Validation Action or to terminate such Validation Action and in the event the District or City makes such a determination, the Parties shall meet and confer pursuant to Section 5.1 (provided that if the Developer has exercised its right to terminate this Agreement as a result of challenges to the Validation Action, the City and District shall have no obligation to meet and confer with Developer before terminating such Validation Action). Developer acknowledges and agrees that the City and District shall have sole and absolute discretion with respect to the prosecution of the Validation Action, including without limitation decisions relating to procedural, tactical and substantive matters. The JEPA and the District and City shall keep the Developer informed of the progress made on such Validation Action.

**4.20 City Procurement Process.** Developer acknowledges and agrees that, in addition to any and all other requirements set forth in this Agreement, the process for procurement and implementation of Developer's Public Improvements shall be governed by Chula Vista Municipal Code Section 2.56.160.H.

**4.21 Compliance with Law; Enforceability by District, City and JEPA.** Each of the District, the City and the JEPA shall provide to the Developer copies of its findings, policies and resolutions which authorize (a) the District, the City or the JEPA, as applicable, to enter into each and every of the Closing Documents to which it is a party and (b) the Person or Persons executing

each of such Closing Documents on behalf of the District, the City or the JEPA, as applicable, to do so (collectively, "Compliance Documents"), when they are made available to the public. The Developer shall provide its written comments to the Compliance Documents within a commercially reasonable period of time of the receipt thereof. If the District, the City or the JEPA disagree with any of the comments provided by the Developer, then the Parties shall meet and confer in accordance with Section 5.1. If disagreements between the Developer, the District, the City and the JEPA are not resolved pursuant to Section 5.1, then the Developer may terminate this Agreement in accordance with Article VIII.

**4.22 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 shall cause the design of Developer's Private Improvements, the Convention Center, and the Parking Improvements so 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. District and City shall coordinate with Developer and its design teams(s) throughout the design process to identify additional energy savings measures or credits which Developer shall consider implementing, in good faith, in the design of the Developer's Private Improvements, to achieve or exceed the Minimum Energy Efficiency Design Standard.

(b) The Developer agrees to include in the form of Ground Lease the following two requirements, which will exist throughout the term of the Ground Lease:

(i) Developer shall develop, implement, and maintain a measurement and verification plan for energy efficiency for the Developer's Private Improvements, the Convention Center, and the Parking Improvements ("M&V Plan"); and

(ii) Developer shall cause the performance of, and deliver to the District and City, an energy consumption audit for each of the Developer's Private Improvements, the Convention Center, and the Parking Improvements no less frequently than every three (3) years after the issuance of the temporary certificate of occupancy of the Developer's Private Improvements, the Convention Center or the Parking Improvements, as applicable, as more particularly set forth in Section 15.2.2.4 of the Settlement Agreement (the "Required Energy Audits").

(c) City and District will review and evaluate Developer's designs for the Developer's Private Improvements, the Convention Center, and the Parking Improvements to determine Developer's compliance with the Minimum Energy Efficiency Design Standard and the 50% Energy Standard. In such evaluation, City and District will (i) assume the 5% energy consumption credit that would be achieved with Developer's commitment to perform the Required Energy Audits and develop, implement, and maintain the M&V Plan for the term of the Ground

Lease; and (ii) work with Developer to identify and apply the most advantageous of the two “paths” identified in Section 15.2.2 of the Settlement Agreement, the “Title 24 Path” or the “LEED Path,” to measure overall energy savings. If City and District ultimately determine that Developer’s actions and commitments under Sections 4.22(a) and 4.22(b) do not achieve the 50% Energy Standard as applied to the Project, City and District shall work with Developer 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, in the aggregate, up to the 50% Energy Standard. If, despite Developer’s efforts, Developer cannot reduce the energy use standard at the Project 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 District do not result in the 50% Energy Standard, the City and District agree to identify additional energy savings measures or credits that the City and District could implement (at a cost to be shared equally by the City and District) or cause third parties to implement (without a public subsidy or rent reduction), throughout the Proposed Project area, to achieve the 50% Energy Standard for the Project. For purposes of this Section 4.22(c) “commercially reasonable” Additional Energy Savings Measures are the Additional Energy Savings Measures that the Developer reasonably determines can be implemented practicably and cost-effectively at the Project.

(d) For purposes of this Agreement, Developer’s obligations to comply with Section 15 of the Settlement Agreement are limited to the requirements set forth herein. So long as the Developer has complied with its obligations under this Section 4.22, Developer will not be in default and will not be in breach under this Agreement based upon any alleged failure to comply with the terms of Section 15 of the Settlement Agreement in the design of the Project.

## **V. REQUIREMENTS OF PARTIES; CONDITIONS PRECEDENT TO CLOSE OF ESCROW.**

### **5.1 Periodic Review; Meet and Confer.**

(a) The District and City shall have the option, not more frequently than every three (3) months during the Term, to conduct a review (the “Periodic Review”) to evaluate, among other things, the extent to which the Developer is complying with its obligations under this Agreement, and the Parties’ determinations of whether it is feasible to continue with the development of the Project pursuant to this Agreement (collectively, “Periodic Review Matters”).

(b) Meet and Confer. (i) Within thirty (30) days following submittal by the Developer of the information and materials reasonably requested by the District and/or the City in accordance with Section 5.1(a) or (ii) within five (5) days following notice of any Event of Default, District staff, City staff and the Developer shall meet and confer to seek mutual resolution of areas of concern covered in the Periodic Review or such Event of Default, as applicable, and to come to a mutual agreement whether to take one of the following actions:

(i) Pause. To the extent feasible, pause any actions and activities of the Parties pursuant to this Agreement (except, to the extent applicable, insurance, maintenance and

indemnification obligations) for a period up to ninety (90) days to enable the Parties to schedule one or more additional meet and confer events to gather additional information and continue discussions of the Periodic Review Matters or such Event of Default, as applicable; or

(ii) Delay. To the extent feasible, delay for a period up to sixty (60) days any further actions or activities of the Parties under this Agreement to enable the Parties to further investigate their respective positions and whether it is feasible to proceed with the development of the Project as provided for hereunder. If disagreements between the Parties are not resolved pursuant to Section 5.1(b)(i) or (ii), then the Parties shall attempt to resolve such disagreements through mediation in accordance with Section 7.4. If such disagreements are not resolved through mediation within one hundred twenty (120) days after the commencement of mediation, then either Party may terminate this Agreement pursuant to Article VIII.

(c) If disagreements between the Parties are resolved pursuant to Section 5.1(b), then, if applicable, the Parties shall revise the Schedule of Performance to incorporate the changes agreed to by the Parties pursuant to Section 5.1(b) and such revisions to the Schedule of Performance shall be made without the need for an amendment to this Agreement in accordance with Section 9.9.

(d) Notwithstanding any other provision in this Agreement, in the event Schedule of Performance extensions pursuant to Sections 5.1(b)(i) and 5.1(b)(ii) above exceed three hundred sixty five (365) days cumulatively, any Party may elect to terminate this Agreement in accordance with Article VIII.

**5.2 Conditions Precedent to Close of Escrow Benefiting the District and the City.** The District's and the City's obligations in connection with the Close of Escrow are expressly conditioned upon the satisfaction by the District, City, and/or Developer (or waiver by both the District and the City in writing) of each of the following conditions:

(a) the District shall have received from the Developer and shall have approved in accordance with this Agreement: (i) the Schematic Plans for the Developer's Improvements, the Surface Parking and the Parking Improvements as required under this Agreement; (ii) the Building Permit Application Drawings for the Developer's Improvements as required under this Agreement; and (iii) final Development Cost estimates for the Developer's Improvements as required under Section 4.5(d);

(b) the District and the City shall have approved in accordance with this Agreement the identity of each Person, other than the Managing Person, that is a member in Developer (each, an "Equity Investor" and, collectively, "the Equity Investors");

(c) the District and the City shall have received from the Developer and reasonably accepted the terms of (i) the executable versions of the agreements with the Equity Investor(s) evidencing the commitments of such Equity Investors to make contributions for the Developer's Private Improvements Costs (the "Equity Investor Contribution"), and (ii) the disbursement instructions or contribution terms for the portion of the Equity Investor Contribution attributable to the Developer's Private Improvements that require that the Equity Investor Contribution and the Public Fund Contribution be disbursed or contributed, as applicable, *pari passu* for the benefit of the Project;

(d) the District and the City shall have caused the portion of the Public Fund Contribution attributable to the Developer's Public Improvements to be deposited at the Close of Escrow, and thereafter held and disbursed in accordance with a disbursement agreement which shall be negotiated by relevant parties prior to the Close of Escrow and shall be executed by the relevant parties at the Close of Escrow (the "Construction Loan Account Instructions");

(e) the District and the City shall have received from the Developer and shall have approved an encumbrance package in accordance with BPC Policy No. 355, including the Appraisal, audited financial statements of the Developer for not less than the past two (2) years (or such shorter period of time as the Developer has existed) and a term sheet or loan commitment from a lender (the "Private Construction Lender") in an amount not in excess of the Developer's Debt Contribution; provided that, as a condition subsequent to the effectiveness of such approval, the Developer shall provide to the District and the City, prior to the recordation of such encumbrance, an affidavit by an authorized representative of Developer with authority to bind Developer stating that the final loan documents for the approved encumbrance ("Loan Documents") conform substantially to the terms of the encumbrance package, without material changes, and the Loan Documents or the Developer, as applicable, satisfy the criteria of any conditions set forth in the resolution of the BPC approving such encumbrance; and provided, further, that in no event shall the principal amount of the indebtedness that is secured by an encumbrance on the Developer's leasehold interest created by the Ground Lease exceed seventy-five percent (75%) of the expected value upon completion of all of the following: the Developer's Private Improvements, the Developer's leasehold interest in the Convention Center pursuant to the Convention Center Subleases, the Developer's leasehold interest in the Project Site and the Developer's interest in the Surface Parking (for the avoidance of doubt and for purposes of such 75% calculation, any indebtedness that is unsecured or secured only by an encumbrance on other assets, including any equity in the Developer, shall be excluded from the indebtedness), as determined by an appraisal that is (i) prepared by an appraiser that is reasonably approved by the District and the City and (ii) in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) as modified from time to time and for so long as it is a generally accepted standard for commercial real estate appraisals ("Appraisal"); where:

(i) "Developer's Debt Contribution" shall mean the Developer's Contribution (as hereinafter defined) *less* the amount of the Equity Investor Contribution; and

(ii) "Developer's Contribution" shall mean the budgeted amount for the Development Costs of the Developer's Private Improvements and the Convention Center to the standard required by the Ground Lease and the Convention Center Subleases (which is currently estimated to be ONE BILLION TWENTY FIVE MILLION DOLLARS (\$1,025,000,000), including all furnishings, fixtures and equipment) *less* the Project Public Investment Amount;

(f) the District and the City shall have received from the Developer, and BPC and City Council shall have consented to that certain management agreement (the "Management Agreement") between the Developer and Marriott Hotel Services, Inc. as operator ("Operator"), pursuant to which the Operator will operate the Hotel and the Convention Center upon the opening and initially as set forth in the Ground Lease under the Gaylord Hotel brand; provided that the Developer may deliver to the District and the City a copy of the Management Agreement with all proprietary information contained therein redacted (provided that the Developer makes a copy of an unredacted version of the Management Agreement available to the District and the City for review

(but not copying) at the main offices of the District or City); and provided, further, that Developer accepts as a condition to approval, the delivery of an affidavit by an authorized representative of Developer that the fully executed Management Agreement is the same as the unredacted version of the Management Agreement reviewed by the District and the City;

(g) the District and the City shall have received from the Developer notice that the Developer has completed its Due Diligence Investigations and has accepted the Project Site in its then “as-is” condition in accordance with Section 5.8;

(h) the District and the City shall have received from the Developer copies of the Required Building Permits and all other permits that are required for the commencement of construction of Developer’s Improvements; “Required Building Permits” means (i) the Building Permits or (ii) certification by the City, to the reasonable satisfaction of the District, that final building permits that are required for the commencement of construction of Developer’s Improvements will be issued subject only to payment of applicable fees, immediately following the Close of Escrow as set forth in Article VI (which certifications the City shall provide if such certifications would be factually correct);

(i) the District and the City shall have reviewed and accepted (such acceptance not to be unreasonably withheld, conditioned or delayed) the terms of the Developer construction contracts with any contractor for the Developer’s Improvements, including guaranteed maximum price construction contracts or fixed price construction contracts for all Major Components of Developer’s Improvements;

(j) the District and the City shall have approved the form of Completion Guaranty required under Section 4.15 and the identity of the Guarantor in accordance with this Agreement and the Guarantor shall be committed to delivering such Completion Guaranty at the Close of Escrow;

(k) the District shall have received from the Developer evidence reasonably satisfactory to the District that all discretionary permits and approvals that are required to complete construction of the Developer’s Improvements have been obtained from any and all governmental agencies having jurisdiction over the Project Site;

(l) the District and the City shall have received from the Developer certificates of insurance for each of the policies of insurance required under the Ground Lease and Convention Center Subleases evidencing that such policies meet the respective insurance requirements set forth in the Ground Lease and Convention Center Subleases and will be effective as of the Close of Escrow;

(m) the District and the City shall have received from the Developer reasonably satisfactory evidence that the Payment Bonds and the Performance Bonds have been issued in accordance with Section 4.14;

(n) the District and the City shall have received evidence that the Title Company is irrevocably committed to issue to the JEPA and the City, simultaneously with the Close of Escrow, leasehold policies of title insurance policy in such form and amounts and with such special endorsements as may be reasonably required by the District, City, JEPA and any public lender, as applicable, subject only to the Approved Title Exceptions;

(o) the following actions set forth in the Schedule of Performance shall have been completed: (i) Approval of New S-1 RV Park Lease, and (ii) the final Review of Underwriter's Updated Projections for the Public Improvements Costs;

(p) JEPA, District and City shall have received a final, non-appealable judgment in the Validation Action in favor of JEPA, District and City on all points;

(q) no Developer Event of Default shall have occurred and be continuing;

(r) the Developer shall have executed the Ground Lease and each of the Convention Center Subleases to which it is a party, and in each case delivered the Ground Lease and Convention Center Subleases to the escrow for this transaction, with the effectiveness thereof subject only to the consummation of the Close of Escrow;

(s) District, City and JEPA shall have considered and approved items set forth in Section 1.4;

(t) the District, City, and JEPA shall have determined that moneys are available, through Bond Financing, in an amount no less than the Project Public Investment Amount, in accordance with the Plan of Finance;

(u) the District shall have received required approvals from any and all third parties, including without limitation, the State Lands Commission, for lease of the New S-1 RV Park Site and construction of Sweetwater Park and any related construction;

(v) the District and City shall have completed, or shall have caused to be completed, relocation, and/or abandonment, termination and related modification of record from title to the Project Site of each of the easements and rights of way that the District and City are required to relocate, remove and/or abandon prior to the Close Escrow in accordance with the Easement Findings;

(w) District and City shall have obtained commitments for all financing that is necessary to satisfy their respective obligations under the Plan of Finance, with such financing to close concurrently with the Close of Escrow;

(x) the District shall have secured the fee interest in the "Triangle Parcel"; and

(y) The District and the City shall have received and accepted (such acceptance not to be unreasonably withheld, conditioned or delayed) the final, executed versions of the Loan Documents that evidence the commitments for the Developer's Debt Contribution and the disbursement conditions therefor; provided, however, the Developer may provide redacted versions of such Loan Documents to the District and the City so long as such redacted versions of the Loan Documents include all of the material terms sufficient to enable the City, District and JEPA to disclose to investors in the Bond Financing the amount of the financing to be provided under such Loan Documents, the conditions for disbursement of such financing, the default and remedies provisions contained therein and any additional matters reasonably determined to be necessary by disclosure counsel to the City, District and/or JEPA or the underwriters of the Bond Financing.

**5.3 Conditions Precedent to Close of Escrow Benefiting Developer.**

The Developer's obligations in connection with the Close of Escrow are expressly conditioned upon the Developer, District and/or the City, as applicable, satisfying, or causing the satisfaction, of each of the following conditions (or waiver by the Developer in writing of any of the following conditions):

(a) the Title Company shall be irrevocably committed to issue to the Developer, simultaneously with the Close of Escrow, a leasehold policy or policies of title insurance in such form and amounts and with such special endorsements as may be reasonably required by the Developer and the Private Construction Lender, subject only to the Approved Title Exceptions;

(b) the Developer shall have received notice from the District and the City that the District and the City have approved or disapproved, the Developer's submittals required under this Agreement;

(c) the Developer shall have received notice from the District and the City that the District and the City have determined that the Public Improvements Costs may be funded in accordance with the Plan of Finance;

(d) the District and the City shall have executed the Construction Loan Account Instructions, the effectiveness thereof subject only to the consummation of the Close of Escrow;

(e) the District and the City shall have completed, or shall have caused to be completed, relocation and/or abandonment, termination and related modification of record from title to the Project Site of each of the easements and rights of way that the District and City are required to relocate, remove and/or abandon prior to the Close Escrow in accordance with the Easement Findings;

(f) the Developer shall have approved each of the Compliance Documents in accordance with Section 4.21 or the Developer, the District, the City and the JEP A shall have reached an agreement regarding each of the Compliance Documents pursuant to Section 4.21;

(g) the Developer shall have received notice from the District and the City that the District, the City and JEP A have executed the Plan of Finance substantially based on the Conceptual Outline of JEP A Plan of Finance;

(h) the District, the City and the JEP A shall have deposited moneys, or shall have provided instructions for the deposit of proceeds of Bond Financing at the Close of Escrow, in amounts sufficient to satisfy the Public Improvements Costs, subject only to the Close of Escrow and the Construction Loan Account Instructions;

(i) the Developer shall have entered into an agreement with the District on terms mutually acceptable to the Developer and the District, the effectiveness of which shall only be conditioned on the consummation of the Close of Escrow, to provide up to 15 acres of land (or such smaller amount of land as is acceptable to the Developer) adjacent to the Project Site on Parcel H-23 or another mutually-acceptable site in a location and configuration mutually acceptable to the District and Developer for Developer to locate construction trailers, construction material, equipment staging and parking during the construction of the Project at no cost to the Developer;

(j) the Developer shall have received from the District and the City evidence that the District and the City have obtained commitments for all financing that is necessary to satisfy their respective obligations under the Plan of Finance, with such financing to close concurrently with the Close of Escrow;

(k) the Developer shall have received the Required Building Permits and all other permits that are required for the commencement of construction of Developer's Improvements;

(l) the Developer shall have completed its Due Diligence Investigations and shall have accepted the Project Site in its then "as is" condition in accordance with Section 5.8;

(m) the Management Agreement shall have been agreed to and executed by all of the parties thereto, with the effectiveness thereof subject only to the consummation of the Close of Escrow;

(n) the Developer shall have received all discretionary permits and approvals that are required to complete the construction of the Developer's Improvements from any and all governmental agencies having jurisdiction over the Project Site and all such discretionary permits and approvals are final beyond any applicable appealable periods;

(o) no Public Entities Event of Default has occurred and is continuing;

(p) the Loan Documents shall have been executed, with the effectiveness thereof subject only to the consummation of the Close of Escrow, in an amount sufficient to pay the Developer's Debt Contribution;

(q) the District shall have executed the Ground Lease and each of the District, the City and the JEPA shall have executed each of the Convention Center Subleases to which it is a party, with the effectiveness thereof subject only to the consummation of the Close of Escrow;

(r) District and City shall have considered and approved items set forth in Section 1.4;

(s) the Developer shall have received evidence that the District and City have determined that moneys are available, through Bond Financing, in an amount sufficient to fund the Project Public Investment, in accordance with the Plan of Finance;

(t) the Developer shall have received evidence that the District has received required approvals from any and all third parties, including without limitation, the State Lands Commission, for lease of the New S-1 RV Park Site and construction of Sweetwater Park and any related construction;

(u) a final, non-appealable order shall have been granted in the Validation Action in accordance with Section 4.19 finding in favor of the Project on all points; and

(v) the City Council shall have passed and adopted an ordinance that amends, among other things, the Chula Vista Municipal Code Section 2.56.160.H.

Notwithstanding anything to the contrary set forth in this Agreement, the obligations of JEPA, the City and the District shall be subject to all limitations set forth in the Financing Agreement and the Plan of Finance.

#### 5.4 Approvals; Cooperation Between Parties.

(a) All approvals required by the District, City and Developer under this Agreement shall not be unreasonably withheld or denied (except where such actions are specifically said to be in the sole and absolute discretion of a Party) and, where specifically referenced in this Agreement or in the Schedule of Performance, shall be given within the times set forth in this Agreement or in the Schedule of Performance.

(b) The Developer recognizes and agrees that implementation of a Plan of Finance will require certain Developer actions, consents or approvals and the provision by the Developer of all such actions, consents or approvals required for implementation of the Plan of Finance, whether with respect to the Bond Financing, CFD, EIFD or otherwise, as determined in the sole and absolute discretion of the City and the District, shall be a condition precedent to the obligations of the District and the City hereunder.

(c) The District, City and Developer shall, to the extent reasonably necessary, cooperate with each other to enable each Party to perform its obligations under this Agreement (including with respect to the financing of each Party's financial contributions to the Project, each Party's due diligence investigations, each Party's design and site preparation obligations, and otherwise); provided, however, that in the event that any Party is asked to provide cooperation, assurance, assistance, documentation, or investigation and such Party determines that complying with such request will be unlawful, unreasonably burdensome, unreasonably expensive, or unreasonably time consuming, such Party may refuse to cooperate, without liability to that Party, by providing notice to the Party requesting the cooperation. Notwithstanding this provision, this Section 5.4(c) does not limit District's or City's discretionary actions and the District and City reserve the right to exercise discretionary actions, each in its sole authority and in its sole and absolute discretion.

(d) From and after the second (2<sup>nd</sup>) anniversary of the Execution Date, the District shall not use the Project Site for any uses other than legally permitted uses that would not reasonably be expected to materially and adversely affect the development or use of the Project. For the first twenty-four (24) months after the Execution Date, the District shall not permit any portion of the Project Site to be used for any uses other than (i) the uses of such portion of the Project Site as of the Execution Date (or if such portion of the Project Site is subject to a lease, license, right of entry, or other form of occupancy agreement as of the Execution Date, that are permitted under the applicable lease, license, right of entry, or other form of occupancy agreement) and (ii) other uses to which the Developer consents; provided, however, that nothing in this Section 5.4(d) shall require the District to terminate any existing agreements for the Project Site or remove any existing easements on the Project Site, except as otherwise expressly set forth in this Agreement. Notwithstanding the foregoing, Developer consents to one or more rights of entry between the District and Rohr or any affiliate of Rohr to construct subsurface infrastructure or improvements, including without limitation, monitoring wells, that are permanent on the Project Site, pursuant to any order from the San Diego Regional Water Quality Control Board; provided that Rohr coordinates with Developer in determining the location or re-location, as applicable, of the monitoring wells and provided, further,

that the District, the City and Rohr cooperate with the Developer to minimize the impact of such construction on the Project.

**5.5 Consideration of Changes to the Ground Lease or Convention Center Subleases.**

Except for subordination of the District's ownership in the Project Site, which shall not be allowed, the District, City and Developer shall consider, each in its sole discretion, modifications to the Ground Lease and/or Convention Center Subleases, which may be requested by lenders or financial or legal advisors to the District, City or Developer and which do not substantially increase the obligations of the affected Parties under this Agreement or the Ground Lease and/or Convention Center Subleases (as determined, in each case, by the affected Parties acting in good faith), and which are consistent with the requirements of the financing to be issued or provided by the City, District and/or JEPA, as set forth in the Plan of Finance.

**5.6 Waiver of Certain Conditions.** Any Party, at its sole election, may in writing waive satisfaction of any of the conditions by another Party set forth in Section 5.2 or Section 5.3 that is to the benefit of such waiving Party only, or if it is to the benefit of two of the Parties, then upon the agreement between such Parties. Any such condition waived by a Party or two Parties, as applicable, shall be deemed to be "satisfied" for purposes of Section 5.2 or Section 5.3, as applicable. Any such waiver shall be set out in an Operating Memorandum in accordance with Section 9.9.

**5.7 Physical Condition of the Project Site.** Subject to the Developer's right to terminate this Agreement under Section 5.8, the Developer agrees to unconditionally accept the Project Site SUBJECT TO ALL FAULTS AND CONDITION, "AS-IS", "WHERE IS", WITHOUT ANY WARRANTY AS TO QUALITY, CHARACTER, PERFORMANCE OR CONDITION and with full knowledge of the physical condition of the Project Site, all Laws applicable to the Project Site, the Approved Title Exceptions and of any and all conditions, restrictions, encumbrances and all matters of record relating to the Project Site. The Developer's delivery of its written notice of acceptance of the Project Site provided for in Section 5.8 hereof shall constitute the Developer's representation and warranty to the District and City that the Developer is relying solely on its own investigation of the Project Site and has received assurances acceptable to the Developer by means independent of the District or any employee, official, consultant or agent of the District of the truth of all facts material to the Developer's leasing of the Project Site pursuant to this Agreement, the Ground Lease and the Convention Center Subleases, and that the Project Site are being leased and subleased, respectively, by the Developer as a result of its own knowledge, inspection and investigation of the Project Site and not as a result of any representation(s) made by the District or City, or any employee, official, consultant or agent of the District or City relating to the condition of the Project Site. The District and City hereby expressly and specifically disclaim any express or implied warranties regarding the Hotel Site and the Convention Center Site, except as expressly set forth in this Agreement.

**5.8 Due Diligence Investigations, Early Entry by Developer, Due Diligence Period Work.**

(a) It shall be the sole responsibility of the Developer, at the Developer's sole expense, to investigate and determine the conditions of the Project Site and the suitability of such conditions for the Developer's Improvements to be constructed by the Developer ("Due Diligence Investigations"). If, following the completion of the Due Diligence Investigations, the conditions of the Project Site are not, in the Developer's opinion, in all respects entirely suitable for development of the Project Site and the Developer elects to proceed with the Close of Escrow, then it is the sole

responsibility and obligation of the Developer to take such action as may be necessary to place the conditions of the Project Site in a condition suitable for development of the Project Site.

(b) The Developer shall conduct all of its Due Diligence Investigations at its sole cost and expense in accordance with that certain Right of Entry Agreement, dated as of March 16, 2018 (the “Initial Right of Entry Agreement”), and other right of entry agreements, as required, by and between the Developer and the District (collectively, the “Right of Entry Agreement”). The Parties agree that the District and the Developer hereby extend the term of the Initial Right of Entry Agreement to the Effective Date. Any Due Diligence Investigations shall not unreasonably disrupt any then-existing use or occupancy of the Project Site or the operations of the District on the Project Site other than as expressly set forth in the Right of Entry Agreement.

(c) Upon completion of the Due Diligence Investigations, the Developer shall deliver to the District a written notice that the Developer accepts or rejects the condition of the Project Site. If the Developer does not unconditionally accept the condition of the Project Site on or before the Target Date set forth in the Schedule of Performance, the Developer shall be deemed to have not accepted the condition of the Project Site. If the Developer accepts the condition of the Project Site, the District shall notify the Developer of each change to the condition of the Project Site that could adversely affect the development or use of the Project as soon as reasonably practicable after learning thereof and the Developer shall promptly investigate such change. After the Developer’s investigation of any change in the condition of the Project Site, the Developer shall have the right to reject the condition of the Project Site based on such change, irrespective of its prior acceptance of the condition of the Project Site. If the condition of the Project Site is rejected by the Developer (including after the Developer’s initial acceptance of the condition of the Project Site as set forth in the preceding sentence), then the Developer or the District shall have the right to terminate this Agreement, each in its sole and absolute discretion. Any termination of this Agreement pursuant to this Section 5.8 shall be without liability to the other Party, except as provided in the Right of Entry Agreement, and shall be accomplished by delivery of a written notice of termination to the other Party, in which case the Parties shall proceed pursuant to Article VIII.

#### **5.9 Exclusive Negotiations.**

(a) The District hereby agrees that, during the Term, it shall negotiate exclusively with the Developer regarding the development of any project at the Project Site; provided, however, that the District shall not be precluded from negotiating with other parties for other developments on other District properties, including, but not limited to, those in the Chula Vista Bayfront; provided, further, that nothing herein shall prohibit the District from using the Project Site before the Closing Date in accordance with Section 5.4(d).

(b) The City hereby agrees that it shall, during the Term, negotiate exclusively with the Developer regarding the development of any project at the Project Site; provided, however, that the City shall not be precluded from negotiating with other parties for other developments on other City properties, including, but not limited to, those in the Chula Vista Bayfront.

(c) The Developer hereby agrees that it shall, during the Term, negotiate exclusively with the District and the City regarding the development of any project that is to be branded as a Gaylord Hotel and located in any of the following counties: the County of Santa Barbara, the County of Ventura, the County of Los Angeles, the County of San Bernardino, the County of Orange, the County of Riverside, the County of San Diego and Imperial County.

## **VI. LEASE OF PROJECT SITE; CLOSE OF ESCROW.**

### **6.1 Lease of Project Site.**

(a) The Hotel Site shall be leased to the Developer pursuant to the Ground Lease. On or before the Target Date set forth in the Schedule of Performance, the District and the Developer shall negotiate and agree on the form of Ground Lease. Attachment No. 9 attached hereto and incorporated herein by reference is a draft of the Ground Lease prepared by the District and is subject to review by the Developer in all respects and shall not be considered final or binding on the Developer or the District in any respect. Developer shall commission an ALTA survey, at its sole cost and expense, to determine the boundaries of the Project Site ("Site Survey"). Developer shall deliver the legal descriptions of the Project Site, Hotel Site and Convention Center Site as determined in the Site Survey to the District for review and approval. Upon written approval of the legal description of the Project Site, Hotel Site and Convention Center Site by the District, the legal description of each shall be attached to the Ground Lease and Convention Center Subleases, as applicable.

(b) The Parties anticipate that the Convention Center Site will be leased by the District to the Developer pursuant to the Ground Lease, then immediately thereafter subleased by the Developer to the JEPA, by the JEPA to the City and by the City to the Developer pursuant to various sublease agreements (collectively referred to as the "Convention Center Subleases"), for development of the Convention Center and for the purpose of supporting the City's contribution to the Project Public Investment. Pursuant to the Convention Center Subleases, the Developer shall be responsible for the development, construction, operation and maintenance of the Convention Center, excluding the obligation of the City to pay rent under the Convention Center Sublease made by the JEPA to the City, which rent payments shall secure and be used to pay debt service on the Bond Financing pursuant to the Plan of Finance, and the proceeds of such Bond Financing shall be used to pay the Project Public Investment Amount. The Convention Center Subleases shall be negotiated on or before the Target Date set forth in the Schedule of Performance and shall be executed by the Developer, JEPA and City, as applicable, at the Close of Escrow. Upon approval of the legal description of the Convention Center Site by the District pursuant to Section 6.1(a), the legal description of the Convention Center Site shall be attached to each of the Convention Center Subleases.

**6.2 Opening of Escrow; Updated Preliminary Title Reports.** The Parties shall open an escrow with Chicago Title Insurance Company, or such other escrow company as the Parties may mutually select (the "Escrow Agent") to consummate the Close of Escrow as herein provided. Within sixty (60) days of the Execution Date ("Delivery Date"), the Developer shall deliver to the District and City a preliminary title report ("Preliminary Title Report") for the Project Site prepared by Chicago Title Insurance Company (the "Title Company").

Developer shall have ninety (90) days after the Delivery Date to provide written notice to District of any exceptions to title that are disapproved by Developer ("Developer's Disapproval Notice"). Developer's failure to deliver Developer's Disapproval Notice to District within said ninety- (90-) day period shall be deemed Developer's approval of all exceptions to title identified in the Preliminary Title Report. District shall have ninety (90) days following receipt of Developer's Disapproval Notice to provide written notice to Developer ("District's Response Notice") if District elects to remove any such exceptions disapproved by Developer. If District agrees to remove all of the disapproved exceptions identified by Developer, then District shall cause such disapproved

exceptions to be removed from title to the Project Site prior to Close of Escrow. If District elects not to remove one or more of the disapproved exceptions, Developer may elect to either (a) terminate this Agreement in accordance with Article VIII, or (b) waive the disapproved exceptions that the District elected not to remove by providing written notice to District, Escrow Agent and Title Company, in which case the District shall cause the disapproved exceptions that the District agreed to remove (if any) to be removed from title to the Project Site prior to Close of Escrow. Any exceptions in the Preliminary Title Report that are approved or deemed approved by the Developer shall be considered approved and shall be referred to collectively as the “Approved Title Exceptions”.

Not later than sixty (60) days after the Developer delivers a copy of the then-current Preliminary Title Report to the Private Construction Lenders, the Developer shall deliver to the District a copy of such Private Construction Lenders’ notice of any exceptions to title that are disapproved by such Private Construction Lenders (“Private Construction Lenders’ Disapproval Notice”); provided that the Private Construction Lenders’ Disapproval Notice may not disapprove any of the Approved Title Exceptions that are the result of a discretionary governmental approval of a government authority, including the City and District, or that are otherwise agreed to by the District, City and Developer in writing. Developer’s failure to deliver Private Construction Lenders’ Disapproval Notice to District within said sixty- (60-) day period shall be deemed the Private Construction Lenders’ approval of all such exceptions to title. District shall have twenty (20) days following receipt of Private Construction Lenders’ Disapproval Notice to provide written notice to Developer (“District’s Response Notice”) if District elects to remove any such exceptions disapproved by the Private Construction Lenders. If District agrees to remove all of the disapproved exceptions identified by the Private Construction Lenders, then the District shall cause such disapproved exceptions to be removed from title to the Project Site prior to Close of Escrow. If District elects not to remove one or more of the disapproved exceptions, Developer may elect to either (a) terminate this Agreement in accordance with Article VIII, or (b) waive the disapproved exceptions that the District elected not to remove by providing written notice to District, Escrow Agent and Title Company, in which case the District shall cause the disapproved exceptions that the District agreed to remove (if any) to be removed from title to the Project Site prior to Close of Escrow. Any exceptions in the Preliminary Title Report that are approved or deemed approved by the Private Construction Lenders shall be considered approved and shall form part of the Approved Title Exceptions.

The Title Company may provide an update to the Preliminary Title Report from time to time. The Developer shall have twenty (20) days after receipt of such update to provide written notice to District of any new or modified exceptions to title that may materially affect the development or use of the Project Site and that are disapproved by Developer (“Developer’s Disapproval Notice”); provided that the Developer’s Disapproval Notice shall not contain any new or modified exceptions which were created by Developer or Developer’s employees, agents, contractors, or subcontractors, or that were consented to or requested by Developer. Developer’s failure to deliver Developer’s Disapproval Notice to District within said twenty- (20-) day period shall be deemed Developer’s approval of all such exceptions to title and such new or modified exceptions shall be considered Approved Title Exceptions. If the Developer provides Developer’s Disapproval Notice before a final, non-appealable judgment in the Validation Action has been granted, then the District shall provide written notice to Developer (“District’s Response Notice”) if District elects to remove any such exceptions disapproved by Developer, at the time that is the earlier of (a) ninety (90) days following receipt of Developer’s Disapproval Notice before a final, non-appealable judgment in the Validation Action and (b) ten (10) days after a final, non-appealable judgment in the Validation

Action is granted. If the Developer provides Developer's Disapproval Notice after a final, non-appealable judgment in the Validation Action has been granted, then the District shall have ten (10) days following receipt of Developer's Disapproval Notice to provide written notice to Developer ("District's Response Notice") if District elects to remove any such exceptions disapproved by Developer. If District agrees to remove all of the disapproved exceptions identified by Developer, then the District shall cause such disapproved exceptions to be removed from title to the Project Site prior to Close of Escrow. If District elects not to remove one or more of the disapproved exceptions, Developer may elect to either (i) terminate this Agreement in accordance with Article VIII, or (ii) waive the disapproved exceptions that the District elected not to remove by providing written notice to District, Escrow Agent and Title Company, in which case the District shall cause the disapproved exceptions that the District agreed to remove (if any) to be removed from title to the Project Site prior to Close of Escrow. Any new or modified exceptions in the Preliminary Title Report that are approved or deemed approved by the Developer shall be considered approved and shall form part of the Approved Title Exceptions. The Developer shall not request an update to the Preliminary Title Report from the Title Company other than (1) once after the Existing RV Park Lessee and each of the tenants, occupants or guests on the land encumbered by the Existing RV Park Lease have vacated such land, (2) once after a final, non-appealable judgment in the Validation Action has been granted, and (3) two more times during the Term, in each case, as the Developer determines in its sole and absolute discretion.

The Parties acknowledge that JEPa, District and the City will require confirmation of satisfactory title to the Convention Center Site pursuant to a title policy in form and substance acceptable to support the financing of the Project Public Investment pursuant to the Plan of Finance, as further described in Section 5.2(n).

**6.3 Execution and Delivery of Documents.** The applicable Parties shall complete, execute and deliver the Closing Documents as set forth in Section 6.4(a).

**6.4 Close of Escrow; Title Policies.** Provided that each of the conditions in Sections 5.2 and 5.3 has been satisfied, or waived in writing by the Party or the Parties, as applicable, to whose benefit such condition exists, the Parties shall close the transaction contemplated by this Agreement ("Close of Escrow") on or before the Target Date set forth in the Schedule of Performance (the "Closing Date"), but in no event earlier than the following conditions have been satisfied:

(a) Escrow Agent and Title Company shall have received fully executed originals of all of the following documents (the "Closing Documents"), all of which Closing Documents shall be delivered not later than one (1) business day prior to the Closing Date:

(i) Two (2) originals of the Ground Lease, executed by the District and Developer;

(ii) One (1) notarized original of the Memorandum of Ground Lease, executed by the District and Developer, in recordable form;

(iii) Four (4) originals of each of the Convention Center Subleases, executed by the Developer, the District, the City, and the JEPa, as applicable;

(iv) One (1) notarized original of the Memorandum of Convention Center Sublease for each of the Convention Center Subleases, executed by the District, Developer, City and JEPA, as applicable;

(v) One (1) original Closing Statement, executed by the District;

(vi) One (1) original Closing Statement, executed by the City;

(vii) One (1) original Closing Statement, executed by the JEPA;

(viii) One (1) original Closing Statement, executed by the Developer;

(ix) As to each of the lenders involved in the Close of Escrow, one (1) original executed Closing Statement; and

(x) Such other customary and reasonable title and escrow documents reasonably required by the Title Company and Escrow Company for the Close of Escrow in a form and with terms reasonably acceptable to the Parties executing such documents and supplemental escrow instructions as may be reasonably required for the Close of Escrow.

(b) The Title Company is irrevocably committed to issue to the Developer a leasehold policy or policies of title insurance related to the Project Site in such form and amounts and with such special endorsements as may be reasonably required by the Developer and the Private Construction Lender, subject only to the Approved Title Exceptions;

(c) The Title Company is irrevocably committed to issue to the JEPA and City leasehold policies of title insurance related to the Convention Center Site in such form and amounts and with such special endorsements as may be reasonably required by the JEPA and City, as applicable, subject only to the Approved Title Exceptions;

(d) Escrow Agent shall have received from the Developer evidence that the Title Company is irrevocably committed to issue to the Private Construction Lender a lender's policy of title insurance in the amount of the first lien leasehold mortgage, subject only to the Approved Title Exceptions, and with special endorsements as may be required by the Private Construction Lender;

(e) Escrow Agent shall have received from the District and/or City evidence that the Title Company is irrevocably committed to issue to any public lender a lender's policy of title insurance in the amount of the financing, subject only to the Approved Title Exceptions, and with special endorsements as may be required by the public lenders;

(f) The Developer and the Escrow Agent shall have received from the District and the City certification in writing that all conditions to Close of Escrow set forth in Section 5.2 have either been satisfied or waived; and

(g) The District, the City and the Escrow Agent shall have received from the Developer certification in writing that all conditions to Close of Escrow set forth in Section 5.3 have either been satisfied or waived.

**6.5 Costs of Escrow; Title Insurance.**

(a) The Developer shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified the Developer of the amount of such fees, charges and costs, but not earlier than ten (10) days prior to the Closing Date:

- (i) The escrow fee;
- (ii) All premiums for title insurance policies and special endorsements issued by the Title Company to the Developer and the Private Construction Lenders pursuant to Sections 6.4(b) and 6.4(d);
- (iii) Ad valorem taxes and assessments, including possessory interest taxes, upon the Project Site accruing on and after the Closing Date;
- (iv) Any transfer taxes required to be paid at the Close of Escrow;
- (v) Any fees payable for the recordation of any of the Closing Documents in the Official Records of the County of San Diego; and
- (vi) One-half (1/2) of all other fees, charges and costs of escrow.

(b) The District, the City or the JEPAs, as applicable, shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified the District of the amount of such fees, charges and costs, and District has approved the same, but not earlier than ten (10) days prior to the Closing Date:

- (i) All premiums for title insurance policies and special endorsements issued by the Title Company to the District, the City, the JEPAs and the any public lender pursuant to Sections 6.4(c) and 6.4(e);
- (ii) The cost of any endorsements that are required to remove any Title Exception that the District has agreed to remove; and
- (iii) One-half (1/2) of all other fees, charges and costs of escrow.

Except as otherwise set forth in this Agreement, each of the Parties shall be responsible for the costs of its own due diligence investigations or activities, including, without limitation, the costs of its own consultants and legal counsel.

**VII. DEFAULTS; REMEDIES.**

**7.1 General Developer Default.** If, prior to the Close of Escrow and delivery of the Project Site to Developer, the Developer shall fail to perform or fulfill any obligation required of it under this Agreement and/or under the Right of Entry Agreement and shall not have cured or commenced to cure such failure within thirty (30) days following written notice thereof from the District and/or the City (or has commenced to cure such failure, but is not diligently proceeding to cure such failure), then the Developer shall be in default under this Agreement (each such event or occurrence, a “Developer Event of Default”).

In the event of a Developer Event of Default, the District and the City may, each in its sole discretion, (a) extend the time for the Developer to perform the applicable obligation(s) hereunder for a period of time acceptable to the District and City beyond the cure period set forth in this Section 7.1, or (b) terminate this Agreement by giving written notice (as required under Section 2.4) of such termination to the other Parties. Upon termination, the rights and obligations of the Parties shall be as set forth in Section 7.3 and Article VIII.

**7.2 Default by District or City.** If, prior to the Close of Escrow, the District or the City shall fail to perform or fulfill any obligation required of such Party under this Agreement and/or under the Right of Entry Agreement and shall not have cured or commenced to cure such failure within thirty (30) days following written notice thereof from the Developer (or has commenced to cure such failure, but is not diligently proceeding to cure such failure), then the District or the City, as applicable, shall be in default under this Agreement (each such event or occurrence, a "Public Entities Event of Default") and, together with a Developer Event of Default, any "Event of Default").

In the event of a Public Entities Event of Default, the Developer may, in its sole discretion, (a) extend the time for the District or the City, as applicable, to perform the applicable obligation(s) hereunder for a period of time acceptable to the Developer beyond the cure period set forth in this Section 7.2, or (b) terminate this Agreement by giving written notice (as required under Section 2.4) of such termination to the other Parties. Upon termination, the rights and obligations of the Parties shall be as set forth in Section 7.3 and Article VIII.

**7.3 Remedies Exclusive.**

(a) Because of the nature of this Agreement, the Parties agree that remedies expressly set forth in this Agreement are the only remedies available to the Parties.

(b) The Developer shall not have any remedy for money damages against the City, District or JEPA, except for return of the Deposit in accordance with Article VIII.

(c) Neither the District nor the City shall have any remedy for money damages against the Developer, except for retention of the Deposit in accordance with Article VIII.

(d) The District, the City or the Developer, as applicable, shall be entitled to compel specific performance of the other Party's(ies') obligation to meet and confer in accordance with Section 5.1.

(e) Except as set forth in Section 7.3(d), the Parties shall not have any remedy for specific performance against any other Party.

**7.4 Dispute Resolution.** The Parties shall, before the commencement of any lawsuit or court action against any other Party relating to this Agreement or the Project, attempt in good faith to settle their dispute by third-party mediation.

**VIII. EVENTS OF TERMINATION; RIGHTS AND OBLIGATIONS OF PARTIES.**

**8.1 Events of Termination.** This Agreement shall automatically terminate if any of the following events (an "Event of Termination") occur prior to Close of Escrow:

- (a) the Early Expiration Date or expiration of any Extension Period without an approved Extension or expiration of the final Extension Period;
- (b) termination of this Agreement by any Party pursuant to Section 3.1(c);
- (c) termination of this Agreement by the Developer pursuant to Section 4.17;
- (d) termination of this Agreement by the Developer pursuant to Section 4.21;
- (e) termination of this Agreement by any Party pursuant to Section 5.1(c);
- (f) termination of this Agreement by any Party pursuant to Section 5.1(e);
- (g) termination of this Agreement by the Developer or the District pursuant to Section 5.8(c);
- (h) termination of this Agreement by the Developer by reason of a Public Entities Event of Default or by the District or the City by reason of a Developer Event of Default, in each case, pursuant to Article VII; and
- (i) the failure to otherwise satisfy, by the Closing Date, the conditions set forth in Sections 5.2, 5.3 and 6.5, unless said failure is waived by the Party or Parties which the condition benefits.

**8.2 Disposition of Deposit.**

(a) IF THIS AGREEMENT IS TERMINATED BY THE DISTRICT OR THE CITY PURSUANT TO SECTION 8.1(h), THE DEVELOPER ACKNOWLEDGES AND AGREES THAT THE DEPOSIT MAY BE RETAINED BY THE DISTRICT (50% OF THE DEPOSIT AMOUNT) AND CITY (50% OF THE DEPOSIT AMOUNT) AS LIQUIDATED DAMAGES AND AS THEIR PROPERTY WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT WHATSOEVER BY THE DEVELOPER. IF THE DEVELOPER SHOULD DEFAULT UPON ITS OBLIGATIONS HEREUNDER, ANY SUCH TERMINATION OF THIS AGREEMENT WOULD RESULT IN IMMEASURABLE DAMAGE AND LOSS TO THE DISTRICT AND THE CITY. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO THE DISTRICT AND THE CITY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD APPROXIMATELY EQUAL THE AMOUNT OF THE DEPOSIT, AND THE AMOUNT OF SUCH DEPOSIT SHALL BE PAID TO THE DISTRICT AND THE CITY UPON ANY SUCH OCCURRENCE AS THE TOTAL OF ALL LIQUIDATED DAMAGES FOR ANY AND ALL SUCH DEVELOPER EVENTS OF DEFAULT AND NOT AS A PENALTY.

**THE DEVELOPER, THE CITY AND THE DISTRICT SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR SIGNATURES HERE:**

**DISTRICT:**

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

**CITY:**

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

**DEVELOPER:**

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

(b) If this Agreement is terminated by reason other than of a Developer Event of Default, then the District shall promptly return or release the Deposit then held by the District to the Developer as the Developer's sole remedy hereunder.

**8.3 Effect of Termination.**

(a) Following the Close of Escrow, the provisions of this Agreement shall be governed by Article VIII, and the rights and obligations of the parties under the Ground Lease and the Convention Center Subleases shall be governed by those documents.

(b) If this Agreement is terminated or expires, then the District and City shall have the absolute right to enter into agreements relating to the Project, Developer's Improvements and the Project Site with any developer or operator and brand of its choosing, including, without limitation, the Operator and the Gaylord Hotel brand.

(c) Effect of Termination of this Agreement on Plans and Specifications and Products.

(i) If either the District or the City terminates this Agreement by reason of a Developer Event of Default, then the Developer shall transfer and assign to the District all of the Developer's interest in (A) any and all Plans and Specifications with respect to the Phase 1A Infrastructure Improvements and the Parking Improvements ("Partial Plans and Specifications") and any and all documents relating to the Partial Plans and Specifications and (B) any and all surveys, soils and hazardous materials investigations, tests and reports, engineering reports and geotechnical reports (collectively, "Products") with respect to the Phase 1A Infrastructure Improvements and the Parking Improvements, other than due diligence materials, material correspondence and work product documents (collectively, "Partial Products"), in each case, with the right of the District to use such Partial Plans and Specifications and related documents and Partial Products for any purpose without compensation to the Developer or any other Person; provided that each such Partial Plan and Specification, related document or Partial Product shall be reviewed by an engineer retained by the District and/or the City and stamped by such engineer before being used by the District or the City for any purpose; or

(ii) If the District, or the City or the Developer terminates this Agreement for any reason other than a Developer Event of Default, then the Developer shall not be obligated to transfer or assign to the District except those Developer paid for under Section 4.7(c) any of the Developer's interest in (A) any Plans and Specifications or any documents relating to such Plans and Specifications or (B) any Product, except for any Plans and Specifications and Products which the City or District has reimbursed the Developer for on or prior to the termination of this Agreement.

(iii) With respect to clause (i) and (ii) above, neither the Developer nor any architect, engineer or other Person that prepared or contributed to such Plans and Specifications and related documents and Products makes, and shall not be deemed to have made, any warranty or representation as to the quality of such Plans and Specifications (including that such Plans and Specifications were prepared in accordance with any standard of care) or Products or as to the suitability of such Plans and Specifications and related documents and Products for any purposes of the District.

(d) Except as otherwise expressly provided in this Article VIII and in subsection (e) below, upon an Event of Termination none of the Parties shall have any further rights, obligations or remedies to or against any other Party pursuant to this Agreement.

(e) Notwithstanding termination of this Agreement, the Parties agree that the following provisions shall survive such termination to the extent and for such period as necessary to give them full force and effect under the circumstances giving rise to termination of this Agreement:

- (i) Sections 4.1(f), 4.7(c), 4.7(d) and 4.17;
- (ii) Section 8.2; and
- (iii) this Section 8.3.

## **IX. MISCELLANEOUS PROVISIONS.**

**9.1 Real Estate Commissions.** Neither Party shall be liable for any real estate commission or brokerage fees which may arise from this Agreement. Each Party represents that it has engaged no broker, agent or finder in connection with this Agreement, and each Party agrees to hold the other Party or Parties harmless from any claim by any broker, agent or finder retained by such Party.

**9.2 Time of Essence.** Time is of the essence in the performance of the respective obligations of the Parties under this Agreement.

**9.3 Consent.** The District and the City shall reasonably cooperate with the Developer in the preparation and submittal of any governmental applications the Developer must submit in the furtherance of this Agreement. The District and the City further agree to reasonably cooperate with the Developer in the timely processing of any such applications.

**9.4 Entire Agreement.** This Agreement consists of 55 pages together with Attachment Nos. 1 through 7, inclusive, which are attached hereto and incorporated herein by this reference, which constitute the entire agreement between the Parties.

**9.5 Interpretation.** This Agreement has been negotiated at arm's length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it, is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of this Agreement.

**9.6 Governing Law.** This Agreement shall be governed by the laws of the State of California.

**9.7 Captions.** The captions used herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or the intent of any Section hereof.

**9.8 No Third Party Rights.** Nothing in this Agreement shall create or shall give to third parties any claim or right of action against the District, the City or the Developer beyond such as may legally exist, irrespective of this Agreement.

**9.9 Modification or Amendment of Agreement; Operating Memoranda.**

(a) No change in, modification to, termination or discharge of this Agreement in any form whatsoever shall be valid or enforceable unless it is in writing and signed by the Party to be charged therewith or its duly authorized representative;

(b) The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation, and that new information and future events may make appropriate changes with respect to the details of performance of the Parties under this Agreement. If, as a result of a Periodic Review provided for in Section 5.1, or otherwise from time to time prior to the Early Expiration Date or during any Extension Period, the Parties find that non-substantive refinements or adjustments that do not require any public review or approval and that concern details of performance of the Parties hereunder, are necessary or appropriate, they may effectuate such refinements or adjustments through a memorandum (individually, "Operating Memorandum", and collectively, "Operating Memoranda") approved by the Parties which, after execution, shall be attached to this Agreement as addenda and become a part hereof. Operating Memoranda must be executed on the District's behalf by its Executive Director or designee, on behalf of the City by its City Manager or designee, and on behalf of the Developer by its authorized representative. Operating Memoranda shall not require prior notice or approval by the BPC nor the City Council, and shall not constitute an amendment to this Agreement.

(c) Any substantive or significant modifications to the terms and conditions set forth in this Agreement, such as an increase of the Project Public Investment Amount, reduction in insurance or indemnity requirements, or waiver of any discretionary approval requirement, shall be processed as an amendment of this Agreement, and must be approved by the Developer, BPC, and City Council.

**9.10 Waiver.** No waiver or any breach of any of the terms, covenants, agreements, restrictions or conditions of this Agreement shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions and conditions hereof.

**9.11 Severability.** If any term, covenant or condition of this Agreement or the application thereof to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by Law.

**9.12 Certificates.**

(a) On or before the Target Date set forth in the Schedule of Performance, the Developer shall provide to the District and the City an incumbency certificate, in form and substance reasonably satisfactory to the District and the City and signed by a duly authorized officer of the Developer, certifying that Ira M. Mitzner is duly authorized to execute this Agreement on behalf of the Developer, and attaching a copy of the Amended and Restated Limited Liability Company Agreement of RIDA Chula Vista, LLC and any applicable resolutions.

(b) On or before the Target Date set forth in the Schedule of Performance, the District shall provide to the Developer a copy of the resolution duly adopted by the BPC, evidencing that the Executive Director is authorized to execute this Agreement on behalf of the District.

(c) On or before the Target Date set forth in the Schedule of Performance, the City shall provide to the Developer a copy of the ordinance duly passed and adopted by the City Council, evidencing that the Mayor of the City is duly authorized to execute this Agreement on behalf of the City.

**9.13 Counterparts.** This Agreement may be executed in counterparts which taken together shall constitute one agreement.

**9.14 No Joint and Several Liability.** There shall be no joint and several liability between or among the JEPA, District and City.

*[Signatures on Following Pages]*

DISPOSITION AND DEVELOPMENT AGREEMENT  
Resort Hotel and Convention Center Project  
[Chula Vista Bayfront Master Plan Parcel H-3]  
*Signatory Page*

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

**DISTRICT:**

SAN DIEGO UNIFIED PORT DISTRICT, a public corporation

By: \_\_\_\_\_  
Randa Coniglio, Executive Director

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

By: \_\_\_\_\_  
Assistant/Deputy

DISPOSITION AND DEVELOPMENT AGREEMENT  
Resort Hotel and Convention Center Project  
[Chula Vista Bayfront Master Plan Parcel H-3]  
*Signatory Page*

**CITY:**

CITY OF CHULA VISTA, a charter city and  
municipal corporation

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

Mary Casillas Salas, Mayor

ATTEST:

\_\_\_\_\_  
Kerry K. Bigelow, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Glen R. Googins, City Attorney

**DISPOSITION AND DEVELOPMENT AGREEMENT**  
**Resort Hotel and Convention Center Project**  
**[Chula Vista Bayfront Master Plan Parcel H-3]**  
*Signatory Page*

**DEVELOPER:**

RIDA CHULA VISTA, LLC, a Delaware  
limited liability company

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

**APPENDIX NO. 1  
DEFINITIONS**

50% Energy Standard	As defined in Section 4.22.
2010 Title 24	As defined in Section 4.22.
Additional Energy Savings Measures	As defined in Section 4.22(c).
Affiliated Transferee	As defined in Section 2.1(f)(vii).
Agreement	As defined in the Preamble.
Appraisal	As defined in Section 5.2(e).
Approval of Tenant Project Plans	As defined in Section 4.1(c).
Approved Title Exceptions	As defined in Section 6.2.
Bond Financing	As defined in Section 4.7(a).
BPC	As defined in Recital E.
Building Permit Application Drawings	As defined in Section 4.4(a)(ii).
Building Permits	As defined in Section 4.4(a)(iii).
CDP	As defined in Section 4.4(a)(i).
CEQA	As defined in Recital C.
CFD	As defined in Section 1.4(e).
Change of Control	As defined in Section 2.1(f)(i).
Chula Vista Bayfront	As defined in Recital A.
City	As defined in the Preamble.
City Council	As defined in Section 1.3(e).
City Infrastructure Improvements	As defined in Recital K.
City Infrastructure Improvements Costs	As defined in Recital K.

Claims	As defined in Section 4.17.
Close of Escrow	As defined in Section 6.4.
Closing Date	As defined in Section 6.4.
Closing Documents	As defined in Section 6.4(a).
Completion Guaranty	As defined in Section 4.15.
Compliance Documents	As defined in Section 4.21.
Construction Loan Account Instructions	As defined in Section 5.2(d).
Control (Controls, Controlled, Controlling)	As defined in Section 2.1(f)(iv).
Controlled Person	As defined in Section 2.1(f)(iv).
Controlling Person	As defined in Section 2.1(f)(iv).
Convention Center	As defined in Recital I.
Convention Center Site	As defined in Section 1.2(a).
Convention Center Subleases	As defined in Section 6.1(b).
County	As defined in Section 1.4(c).
Delivery Date	As defined in Section 6.2.
Deposit	As defined in Section 1.6(a).
Developer	As defined in the Preamble.
Developer Affiliate	As defined in Section 4.17(b).
Developer Construction Work	As defined in Section 4.16(a).
Developer Event of Default	As defined in Section 7.1.
Developer's Contribution	As defined in Section 5.2(e)(ii).
Developer's Convention Center Costs	As defined in Recital I.
Developer's Debt Contribution	As defined in Section 5.2(e)(i).
Developer's Disapproval Notice	As defined in Section 6.2.

Developer's Improvements	As defined in Recital M.
Developer's Phase 1A Infrastructure Improvements	As defined in Recital G.
Developer's Phase 1A Infrastructure Improvements Costs	As defined in Recital G.
Developer's Private Improvements	As defined in Recital M.
Developer's Private Improvements Costs	As defined in Recital M.
Developer's Public Improvements	As defined in Recital L.
Developer's Public Improvements Costs	As defined in Section 4.5(e).
Development Costs	As defined in Section 4.5(d).
DIR	As defined in Section 4.16(d)(ii).
Discretionary Approvals	As defined in Section 4.17(e).
District and City Parties	As defined in Section 4.17.
District Retained Property	As defined in Section 1.2(a).
District's Response Notice	As defined in Section 6.2.
Due Diligence Investigations	As defined in Section 5.8(a).
Early Expiration Date	As defined in Section 3.1.
Easement Findings	As defined in Section 4.8(c).
EIFD	As defined in Section 1.4(e).
ENA	As defined in Recital E.
Equity Investor	As defined in Section 5.2(b).
Equity Investor Contribution	As defined in Section 5.2(c).
Escrow Agent	As defined in Section 6.2.
Event of Termination	As defined in Section 8.1.
Execution Date	As defined in the Preamble.
Existing Approvals	As defined in Section 1.3.

Existing JEPA	As defined in Recital I.
Existing RV Park	As defined in Section 1.2(b).
Existing RV Park Lease	As defined in Section 1.2(b).
Existing RV Park Lessee	As defined in Section 1.2(b).
Extension	As defined in Section 3.1.
Extension Period	As defined in Section 3.1.
FEIR	As defined in Section 1.3(b).
Financing Agreement	As defined in Recital G.
First Amendment	As defined in Recital E.
General Contractor	As defined in Section 4.9.
Ground Lease	As defined in Section 1.2(a).
Guarantor	As defined in Section 4.15.
Hard Construction Costs	As defined in Section 4.5(a).
Hotel	As defined in Recital M.
Hotel Site	As defined in Section 1.2(a).
Initial Right of Entry Agreement	As defined in Section 5.8(b).
JEPA	As defined in Recital I.
Laws	As defined in Section 1.5.
Loan Documents	As defined in Section 5.2(e).
LOI	As defined in Recital H.
Major Component of Developer's Improvements	As defined in Section 4.4(c).
Major Decisions	As defined in Section 2.1(f)(v).
Management Agreement	As defined in Section 5.2(f).
Managing Person	Ira M. Mitzner.
Master Plan	As defined in Recital A.

Master Plan Project Area	As defined in Recital B.
Minimum Energy Efficiency Design Standard	As defined in Section 4.22(a).
M&V Plan	As defined in Section 4.22(b)(i).
New S-1 RV Park	As defined in Section 1.2(b).
New S-1 RV Park Lease	As defined in Section 1.2(b).
New S-1 RV Park Site	As defined in Section 1.2(b).
Operating Memorandum	As defined in Section 9.9(b).
Operator	As defined in Section 5.2(f).
Original ENA	As defined in Recital E.
Original FEIR	As defined in Recital B.
Outstanding Issues	As defined in Section 4.8(c).
Parking Improvements	As defined in Recital J.
Parking Improvements Costs	As defined in Recital J.
Partial Products	As defined in Section 8.3(c)(i).
Partial Plans and Specifications	As defined in Section 8.3(c)(i).
Party	As defined in the Preamble.
Payment Bond	As defined in Section 4.14(a)(ii).
Performance Bond	As defined in Section 4.14(a)(i).
Periodic Review	As defined in Section 5.1(a).
Periodic Review Matters	As defined in Section 5.1(a).
Permitted Transfer	As defined in Section 2.1(f)(vi).
Person	As defined in Section 2.1(f)(iii).
Phase 1A	As defined in Recital G.
Phase 1A Infrastructure Costs	As defined in Recital G.
Phase 1A Infrastructure Improvements	As defined in Recital G.

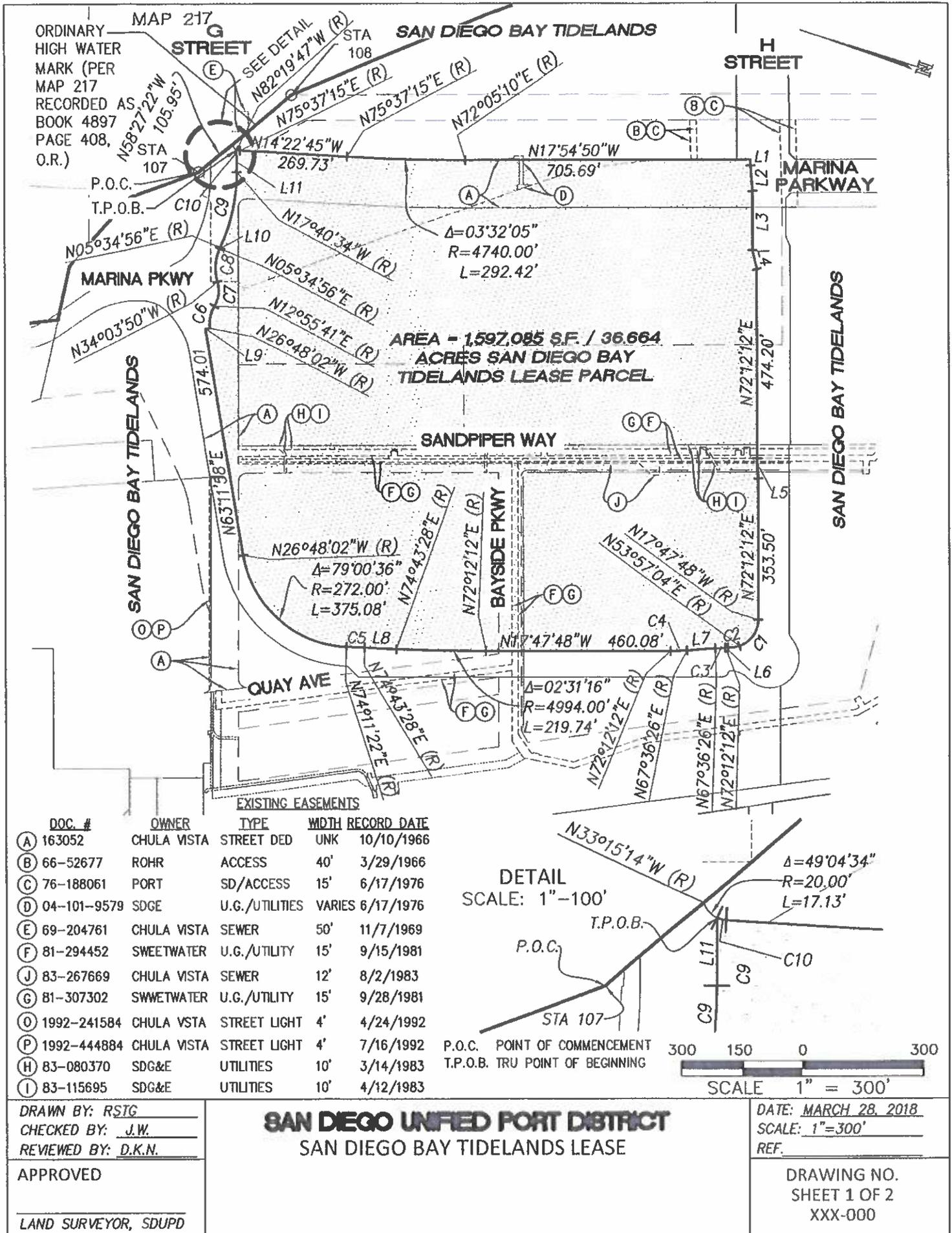
Plan of Finance	As defined in Recital G.
Plans and Specifications	As defined in Attachment No. 5.
Pre-Close Responsibility Costs	As defined in Section 4.8(a).
Pre-Existing Hazardous Material	As defined in Section 4.17(g).
Predevelopment Phase	As defined in Recital G.
Preliminary Project Approval	As defined in Section 1.4(a).
Preliminary Site Preparation	As defined in Section 4.8(b).
Preliminary Site Preparation Amount	As defined in Section 4.8(b).
Preliminary Title Report	As defined in Section 6.2.
Private Construction Lender	As defined in Section 5.2(e).
Private Construction Lenders' Disapproval Notice	As defined in Section 6.2.
Products	As defined in Section 8.3(c)(i).
Professional	As defined in Section 4.10(e).
Prohibited Person	As defined in Section 2.1(f)(vii).
Project	As defined in Recital F.
Project Public Investment	As defined in Recital I.
Project Public Investment Amount	As defined in Recital I.
Project Site	As defined in Recital F and Section 1.2(a).
Public Arts Policy	As defined in Section 4.1(c).
Public Entities Event of Default	As defined in Section 7.2.
Public Financing Contracts	As defined in Section 4.19.
Public Fund Contribution	As defined in Section 4.7(a).
Public Improvements	As defined in Recital N.
Public Improvements Costs	As defined in Recital O.
PWL	As defined in Section 4.16(a).

Qualified Private Contracts	As defined in Section 4.19.
Redevelopment Agency	As defined in Recital A.
Related Approvals	As defined in Section 4.17(c).
Related Costs	As defined in Section 4.17.
Remaining Phase 1A Infrastructure Improvements	As defined in Recital G.
Required Building Permits	As defined in Section 5.2(h).
Required Energy Audits	As defined in Section 4.22(b)(ii).
RFQ	As defined in Recital E.
RIDA	As defined in Recital E.
Right of Entry Agreement	As defined in Section 5.8(b).
Rohr	As defined in Section 4.1(h).
Room	As defined in Recital I.
Schedule of Performance	As defined in Section 1.2(b).
Schematic Plans Set	As defined in Section 4.4(a)(i).
Scope of Development	As defined in Recital F.
SDN	As defined in Section 2.1(f)(vii).
Second Amendment	As defined in Recital E.
Settlement Agreement	As defined in Section 1.3(c).
Site Survey	As defined in Section 6.1(a).
State Lands Commission	As defined in Section 1.4(v).
Surface Parking	As defined in Section 4.3.
Target Date	As defined in Section 1.4.
Tenant Construction Project Number	As defined in Section 4.4(a)(i).
Tenant Project Plan Application	As defined in Section 4.4(a)(ii).
Tenant Project Plans	As defined in Section 4.5(a).

Term	As defined in Section 3.1.
Title Company	As defined in Section 6.2.
Total Project Costs	As defined in Section 4.5(c).
Transfer	As defined in Section 2.1(b)(i).
Unaffiliated Third Party	As defined in Section 2.1(f)(ii).
Validation Action	As defined in Section 4.19.
Work	As defined in Section 4.13(c).

**ATTACHMENT NO. 1**  
**MAP OF PROJECT SITE**

**Attachment 1**



CURVE DATA TABLE			
NO.	DELTA	RADIUS	LENGTH
C1	71°44'52"	69.00'	86.40'
C2	18°15'08"	94.00'	29.94'
C3	04°35'46"	306.00'	24.55'
C4	04°35'46"	494.00'	39.63'
C5	00°32'06"	5006.00'	46.74'
C6	39°43'43"	83.00'	57.55'
C7	46°59'31"	77.00'	63.15'
C8	39°38'46"	123.00'	85.11'
C9	23°15'30"	481.00'	195.25'
C10	22°02'58"	20.00'	7.70'

LINE DATA TABLE		
NO.	BEARING	LENGTH
L1	N 72°12'12" E	14.67'
L2	N 67°45'00" E	64.39'
L3	N 72°12'12" E	148.94'
L4	N 59°03'25" E	48.36'
L5	N 68°48'31" E	50.66'
L6	N 17°47'48" W	5.46'
L7	N 22°23'34" W	67.73'
L8	N 15°16'32" W	79.40'
L9	N 26°48'02" W	11.00'
L10	N 84°25'04" W	2.80'
L11	S 72°19'26" W	56.32'



DRAWN BY: <u>RSTG</u> CHECKED BY: <u>J.W.</u> REVIEWED BY: <u>D.K.N.</u>	<b>SAN DIEGO UNIFIED PORT DISTRICT</b> <b>SAN DIEGO BAY TIDELANDS LEASE</b>	DATE: <u>MARCH 28, 2018</u> SCALE: <u>N/A</u> REF. _____
APPROVED  _____ LAND SURVEYOR, SDUPD		DRAWING NO. SHEET 2 OF 2 XXX-000

**ATTACHMENT NO. 2**  
**DESCRIPTION OF PROJECT SITE**

## Attachment 2

COMMENCING AT STATION No. 107 ON THE ORDINARY HIGH WATER MARK OF SAN DIEGO BAY AS SHOWN ON MISCELLANEOUS MAP NO. 217, FILED IN THE IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER, CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ON SEPTEMBER 25, 1950.

THENCE ALONG THE LINE BETWEEN SAID STATION No. 107 AS THE POINT OF COMMENCEMENT AND STATION No. 108 OF SAID MISCELLANEOUS MAP No. 217, SOUTH 58° 27' 22" EAST A DISTANCE 105.95 FEET (SOUTH 58° 28' 01" EAST RECORD) TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF TIDELANDS AVENUE AS SAID TIDELANDS AVENUE WAS DEDICATED AS AND FOR A PUBLIC STREET BY THE CITY COUNCIL OF THE CITY OF CHULA VISTA BY RESOLUTION No. 4205. SAID POINT ALSO BEING THE INTERSECTION OF SAID LINE BETWEEN STATIONS No. 107 AND No. 108 WITH A NON TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 20 FEET, A RADIAL LINE TO SAID CURVE BEARS NORTH 33° 15' 14" WEST;

THENCE SOUTHERLY ALONG SAID EASTERLY RIGHT OF WAY OF TIDELANDS AVENUE ON SAID 20 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 49° 04' 34" A DISTANCE OF 17.13 FEET TO THE **TRUE POINT OF BEGINNING**.

THENCE CONTINUING SOUTHERLY ALONG SAID CURVE AND RIGHT OF WAY OF TIDELANDS AVENUE THROUGH A CENTRAL ANGLE OF 22° 02' 58" A DISTANCE OF 7.70 FEET TO A POINT OF TANGENCY;

THENCE ALONG SAID EASTERLY RIGHT OF WAY SOUTH 14° 22' 45" EAST, 269.73 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 4,740.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE AND RIGHT OF WAY THROUGH A CENTRAL ANGLE OF 03° 32' 05" A DISTANCE OF 292.42 FEET;

THENCE ALONG SAID RIGHT OF WAY SOUTH 17° 54' 50" EAST, 705.69 FEET;

THENCE LEAVING SAID RIGHT OF WAY SOUTH 72° 12' 12" WEST, 14.67 FEET;

THENCE SOUTH 67° 45' 00" WEST, 64.39 FEET;

THENCE SOUTH 72° 12' 12" WEST, 148.94 FEET;

THENCE SOUTH 59° 03' 25" WEST, 48.36 FEET;

THENCE SOUTH 72° 12' 12" WEST, 474.20 FEET;

THENCE SOUTH 68° 48' 31" WEST, 50.66 FEET;

THENCE SOUTH 72° 12' 12" WEST, 353.50 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 69.00 FEET;

THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $71^{\circ} 44' 52''$  A DISTANCE OF 86.40 FEET TO THE BEGINNING OF A TANGENT COMPOUND CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 94.00 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $18^{\circ} 15' 08''$  A DISTANCE OF 29.94 FEET;

THENCE NORTH  $17^{\circ} 47' 48''$  WEST, 5.46 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 306.00 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $04^{\circ} 35' 46''$  A DISTANCE OF 24.55 FEET;

THENCE NORTH  $22^{\circ} 23' 34''$  WEST, 67.73 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 494.00 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $04^{\circ} 35' 46''$  A DISTANCE OF 39.63 FEET;

THENCE NORTH  $17^{\circ} 47' 48''$  WEST, 460.08 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 4,994.00 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $02^{\circ} 31' 16''$  A DISTANCE OF 219.74 FEET;

THENCE NORTH  $15^{\circ} 16' 32''$  WEST, 79.40 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 5,006.00 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $00^{\circ} 32' 06''$  A DISTANCE OF 46.74 FEET TO THE BEGINNING OF A TANGENT REVERSE CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 272.00 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $79^{\circ} 00' 36''$  A DISTANCE OF 375.08 FEET;

THENCE NORTH  $63^{\circ} 11' 58''$  EAST, 574.01 FEET;

THENCE SOUTH  $26^{\circ} 48' 02''$  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 POINT BEARS NORTH  $26^{\circ} 48' 02''$  WEST;

THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $39^{\circ} 43' 43''$  A DISTANCE OF 57.55 FEET TO THE BEGINNING OF A TANGENT REVERSE CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 77.00 FEET;

THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 46° 59' 31" A DISTANCE OF 63.15 FEET TO THE BEGINNING OF A TANGENT REVERSE CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 123.00 FEET;

THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 39° 38' 46" A DISTANCE OF 85.11 FEET;

THENCE SOUTH 84° 25' 04" EAST 2.80 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 481.00 FEET;

THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 23° 15' 30" A DISTANCE OF 195.25 FEET;

THENCE NORTH 72° 19' 26" EAST 56.32 FEET TO THE **TRUE POINT OF BEGINNING**.

AREA = 1,597,085 SF / 36.664 ACRES, MORE OR LESS.



4-16-2018

---

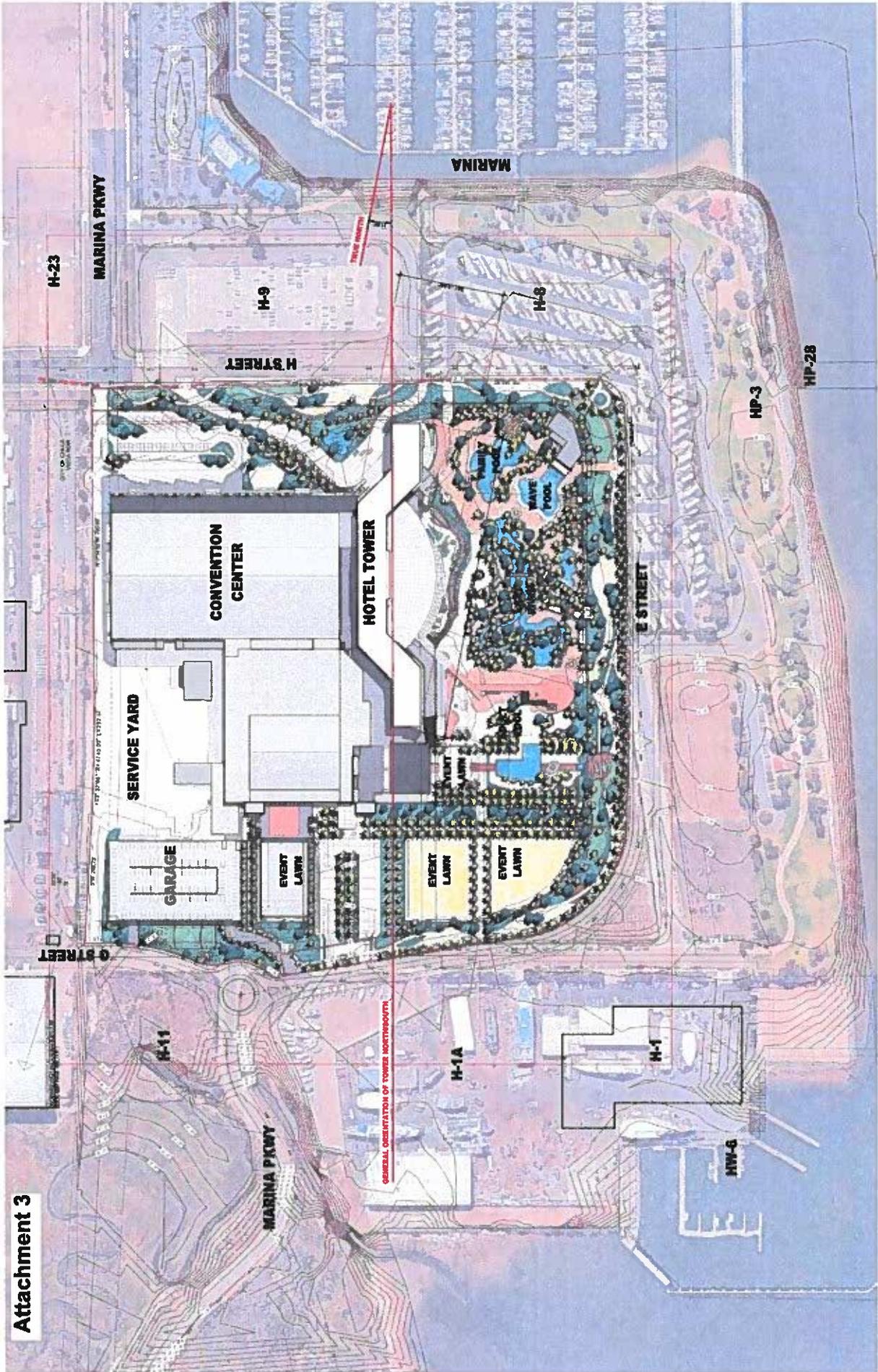
D.K. NASLAND    LS 5562

DATE

**ATTACHMENT NO. 3**  
**MAP SHOWING GENERAL LOCATION OF ELEMENTS OF THE**  
**PROJECT**

This Site Plan is for general layout purposes only, may be materially modified, and is subject to change.

**Attachment 3**



**ATTACHMENT NO. 4**

**CONCEPTUAL OUTLINE OF THE  
JOINT EXERCISE OF POWERS AGREEMENT PLAN OF FINANCE**

***CONCEPTUAL OUTLINE OF JOINT EXERCISE  
POWERS AUTHORITY (JEPA) PLAN OF FINANCE***

**Table of Contents**

Section 1. Purpose.....	Page 1
Section 2. Limitations.....	Page 1
Section 3. Financing Objectives.....	Page 1
Section 4. Sources of Revenue.....	Page 2
Section 5. Other Obligations To Be Funded By The District And City And Other Available Funding.....	Page 3
Section 6. JEPA Bonds Financing Structure.....	Page 4
Section 7. District Commitment.....	Page 6
Section 8. City Commitment.....	Page 7
Section 9. Pledged Revenues – CFD.....	Page 8
Section 10. Pledged Revenues – EIFD.....	Page 8
Section 11. Projected Flow of Funds.....	Page 9
Section 12. Projected Sources and Uses.....	Page 10
Section 13. Projected Revenue by Source.....	Page 11
Section 14. Projected Cash Flows – JEPA Bonds.....	Page 12

## ***CONCEPTUAL OUTLINE OF JOINT EXERCISE OF POWERS AUTHORITY (JEPA) PLAN OF FINANCE***

### **SECTION 1. PURPOSE**

The purpose of the Conceptual JEPA Plan of Finance (“Plan”) is to document the expected method of financing the “Phase 1A Infrastructure Costs” and the “Project Public Investment,” as those terms are defined in the Disposition and Development Agreement by and among the San Diego Unified Port District (“District”), the City of Chula Vista (“City”) and RIDA Chula Vista, LLC (“Developer”).

### **SECTION 2. LIMITATIONS**

The funding analysis described herein is for illustration purposes only, and outlines the anticipated sources of funds, the flow of funds from the City and the District to the Joint Exercise of Powers Authority (“JEPA”), the uses of funds, the debt service coverage and the cash flow relating to a financing through the issuance of bonds by the JEPA (“JEPA Bonds”). No assurance can be given that any transaction described herein could in fact be executed, or that the coverage ratios shown in Section 6 will be sufficient to achieve the credit rating upon which the estimated bond proceeds are based. Interest rates are subject to change and will likely increase prior to the completion of the financing. Any such increase in rates or increase in coverage requirements will have an adverse impact on the JEPA bond proceeds available to fund the Resort Hotel and Convention Center (“RHCC”) project.

### **SECTION 3. FINANCING OBJECTIVES**

Public Entity Contributions:

- Finance, through the issuance of debt, Phase 1A Infrastructure Costs in the not-to-exceed amount of \$56,000,000
- Finance Project Public Investment in the not-to-exceed amount of \$240,000,000 to be used to construct the Convention Center.
- Provide for funding of the eligible sewer improvements with the City’s Sewer Facility funds (“Sewer Facility Contribution”).
- Provide for funding of parking improvements (“Parking Improvements”) by the District, if applicable.
- Provide for funding and operation of a future fire station and fire services to serve the Bayfront and the RHCC Project (“Fire Services”).
- Funding based on the construction and operation of between 1,570 and 1,600 rooms at the RHCC.

**SECTION 4. SOURCES OF REVENUE**

**District Revenue Commitment:**

- Bayfront Lease Revenues – an annual amount measured by net revenues received by the District from the existing Bayfront ground leases set forth in the Financing Agreement between the City and the District, together with an annual amount measured by the net revenues received by the District under the new RV park ground lease less any rent credits used to pay for the prior RV park lease buyout, starting July 1, 2018 and thereafter until maturity of the JEPA Bonds.
- Support Payments – an annual amount equal to \$5,000,000 for Lease Years 5-14 (i.e. first 10 operating years), \$6,000,000 for Lease Years 15-19 (i.e. next 5 operating years), \$3,000,000 for Lease Years 20-24 (i.e. next 5 operating years), and \$3,500,000 thereafter until maturity of the JEPA Bonds.
- RIDA Ground Lease Payments – to the extent received by the District, an annual amount equal to \$3,000,000 beginning in Lease Years 20-24 (i.e. 16<sup>th</sup> operating year through the 20<sup>th</sup> operating year), and \$3,500,000 thereafter until maturity of the JEPA Bonds.

**City Revenue Commitment:**

- RV Park TOT – an annual amount measured by Transient Occupancy Tax (“TOT”) revenues from the existing RV Park and new RV Park, starting July 1, 2018 and thereafter, until maturity of the JEPA Bonds.
- PMSA Revenue – an amount measured by annual revenues paid to the City under the existing Police, Fire and Medical Services Agreement (MSA) between the District and the City, starting July 1, 2018 at \$1,059,364 and increasing annually at the rate of 3% per annum as included in the MSA agreement until maturity of the JEPA Bonds.
- RHCC TOT – an annual amount measured by new TOT revenue generated by the Resort Hotel and Convention Center (“RHCC”) and received by the City until maturity of the JEPA Bonds.
- RHCC Sales Tax – an annual amount measured by new sales tax revenue generated by the RHCC and received by the City until maturity of the JEPA Bonds.

**Community Facilities District Funding:**

- Special Tax – New Special Tax Revenues levied in the H-3 Community Facilities District (“CFD”), shall be equal to 5% room revenue on the RHCC and may include non-room revenue taxes.

Enhanced Infrastructure Financing District Funding:

- EIFD Revenues – The City and the County of San Diego (“County”) tax revenues generated in the CVBMP Enhanced Infrastructure Financing District (“EIFD”) together with the VLF component authorized to be included in EIFD funding until maturity of the JEPAs.
- Property Tax Revenue - In the event that the EIFD is not formed, an amount equal to incremental property tax and VLF revenue (“City Tax Increment”) generated by RHCC and received by the City will be included in “City Commitment” in Section 8 until maturity of the JEPAs.

**SECTION 5. OTHER OBLIGATIONS TO BE FUNDED BY THE DISTRICT AND CITY AND OTHER AVAILABLE FUNDING**

Other Obligations to be funded by the District and the City:

- City Sewer Facility Contribution – an amount of the Sewer Facility Contribution authorized to be used for specific sewer improvements included in the City Infrastructure Improvement Costs.
- The District will provide some or all of the funding for the Parking Improvements, if applicable.
- The City will provide funding for fire services and a fire station to serve the RHCC and surrounding development.
- The District will contribute SDG&E relocation fees of \$1,653,750, Pacifica Funds of \$3,000,000 and CIP funds of \$1,000,000.
- The District has received preliminary approval for a park grant in the amount of \$4,800,000 to be applied to park improvements and bike pathways within the Bayfront Project area. Due to the provisions of the grant, the District will be required to spend its own funds on the improvements and be reimbursed from the grant.

**SECTION 6. JEPAs FINANCING STRUCTURE**

The District and the City have created the Chula Vista Bayfront Facilities Financing Authority (“Authority” or “JEPAs”) (amended as necessary). The JEPAs will issue revenue bonds to be sold to the investing public, secured by the District Revenues Commitment, the City Revenues Commitment, the CFD Pledged Funding and the EIFD Pledged Funding (collectively, the “Revenues”).

The JEPAs Bonds are expected to be issued in two series, a taxable series to pay for the Project Public Investment (“Taxable Bonds”), and a tax-exempt series to pay for the Phase 1A

Infrastructure Costs (“Tax-Exempt Bonds”) and, together with the Taxable Bonds, the JEPA Bonds.

The Taxable Bonds and the Tax-Exempt Bonds will be secured and payable on parity from the Revenues (that is, it is not contemplated at this time that there will be series of bonds payable with a first lien on the Revenues and a series of bonds payable secured by a subordinate lien on the Revenues).

**Leases and Subleases.** Close of Escrow for the Project will be dependent on, among other things, execution of the ground lease for the Site, the issuance of the JEPA Bonds and the Developer financing. JEPA Bond proceeds will be structured to pay for the convention center and related infrastructure and the Convention Center shall be subleased back to Developer for \$1 per year.

**Debt Policy.** The JEPA is required to adopt a Debt Policy in compliance with Government Code Section 8855(i) prior to the sale of any JEPA Bonds.

**Limitations on Financing.** The District and the City are not obligated to spend any of their own funds to pay debt service on the Bonds except as described herein. To the extent that interest rates increase to a level that reduces available net proceeds to fund the Public Project Investment and Phase 1A Infrastructure Costs, the parties shall not be required to issue the JEPA Bonds. To the extent that debt service coverage levels described herein cannot be achieved without a reduction in available net proceeds to fund the Public Project Investment and Phase 1A Infrastructure Costs the parties shall not be required to issue the JEPA Bonds subject to the terms of the Disposition and Development Agreement section 5.1.

To the extent that revenues shown in the Feasibility Study (described in the following paragraph) are lower than the estimates used herein and are at a level that reduces available net proceeds to fund the Public Project Investment and Phase 1A Infrastructure Costs, the parties shall not be required to issue the JEPA Bonds. If the EIFD cannot be formed to include the County share of property tax, and as a result, there is a reduction in net proceeds to fund the Phase 1A Infrastructure Costs and therefore a corresponding reduction in the net proceeds to fund the Public Project Investment, the parties shall not be required to issue the JEPA Bonds. Factors that may contribute to a limitation on the net proceeds available from the issuance of the JEPA Bonds include, but are not limited to, the following:

- Debt Service Coverage Ratio to be determined
- No District or City General Fund exposure except as otherwise provided for herein
- Interest Rate to be determined
- Guaranteed maximum price contract requirement of the bond financing
- Assurance in the form of bonds or sureties of timely completion and opening of the RHCC Project within the times required by the funded sources.

**Feasibility Study.** The JEPA Bonds to be issued will be supported by a Feasibility Study prepared by a firm acceptable to the City, the District and the Underwriter. The revenues projected in the Feasibility Study may or may not be the same as the revenues shown in Section

13, which were prepared by Keyser Marston Associates, Inc. (KMA) for planning purposes. To the extent that Feasibility Study revenues are lower than those herein, funding will be adversely affected.

**Construction Period.** The construction period is expected to total 48<sup>1</sup> months for the Developer's Phase 1A Infrastructure and the RHCC. Interest on the Phase 1A Infrastructure Construction Fund during the construction period will accrue to the Construction Fund. The Project Public Investment Construction Fund will be drawn down pursuant to instructions to be agreed upon by the City, the District and RIDA. Interest on the Project Public Investment Construction Fund during the draw down period will accrue to the Construction Fund. The Project Public Investment Construction Fund will generally be utilized *pari passu* with Developer's equity contribution (currently estimated at \$200,000,000) and before any mezzanine or mortgage debt of the Developer.

**Debt Service Coverage Ratio.** For the purposes of illustration, the Revenues are leveraged using a coverage ratio of 1.75 times combined revenue to debt service. This is the anticipated minimum coverage ratio required to obtain an investment grade rating for the entire financing. The coverage ratio and the rating were used to estimate interest rates used in the funding analysis but are preliminary and subject to change. See "Section 2 – Limitations" regarding coverage ratios and interest rates that might change the analysis.

**Capitalized Interest.** Capitalized interest on the Tax-Exempt Bonds will be funded from Tax-Exempt Bond proceeds for 3 years from the date of issuance. An additional 4<sup>th</sup> year of capitalized interest on the Tax-Exempt Bonds will be funded from Taxable Bond proceeds.

It is expected that 100% of the interest on the Taxable Bonds will be capitalized for 4 years. Following the end of construction, a portion of interest on the Taxable Bonds will be capitalized for a significant number of subsequent years, in the amount needed each year to provide 1.75x<sup>2</sup> coverage of revenue compared to net debt service, net of capitalized interest on both series of bonds. However, additional capitalized interest may be added based on investor or rating agency feedback

As described under "Remaining Revenue" below, pre-opening Bayfront Lease Revenues, RV Park TOT and PMSA Revenues may be used to fund a portion of capitalized interest, or may be accumulated to pay for any contingencies that arise during the construction period.

**Debt Service Reserve Fund.** A reserve fund will be funded from bond proceeds of each series, in the maximum amount equal to the lesser of 10% par amount, maximum annual debt service or 125% average annual debt service.

**Remaining Revenue.** During the period when interest on the Bonds is fully capitalized, Revenues will not be needed for current debt service and will be accumulated in the Revenue

---

<sup>1</sup> Preliminary and subject to change.

<sup>2</sup> Preliminary and subject to change.

Fund or other agreed upon Fund to be applied to avoidance of capitalized interest, future debt service, financing gap or construction contingencies. Beginning in Year 5<sup>3</sup>, all Revenues will be deposited in a Revenue Fund established for the Bonds and used to pay current debt service on the Bonds. Once the debt service on the Bonds has been paid each year, the remaining amount will be determined annually. The remaining balance in the Revenue Fund will be disbursed in accordance with a Revenue Contribution and Sharing Agreement to be entered into by the City and Port.

### **SECTION 7. DISTRICT COMMITMENT**

The District expects to enter into a Support Agreement to pay an annual amount to the JEPAs, to be deposited in the Revenue Fund. The annual payment will equal the Support Payment (fixed), the Bayfront Lease Revenue (in amounts received) and the RIDA Ground Lease (in amounts received).

The District has certain outstanding bonds that have a prior lien on such revenue, and those bonds would have to be paid before deposit of such revenues with the JEPAs.

Payments to the JEPAs under the Support Agreement will be made as follows:

- Bayfront Lease Revenues: Quarterly in arrears within 30 days of the end of a quarter, in an amount equal to  $\frac{1}{4}$  of the annual projected revenue shown in Section 13, with the final payment for such year to be adjusted for actual revenue, to the extent received by the District.
- Support Payments: Quarterly in arrears within 30 days of the end of a quarter, in an amount equal to  $\frac{1}{4}$  of the annual revenue shown in Section 13.
- RIDA Ground Lease: Quarterly in arrears within 30 days of the end of a quarter, in an amount equal to  $\frac{1}{4}$  of the annual revenue shown in Section 13, to the extent received by the District.

Other than as described herein, the District has not committed additional revenues from its General Fund to pay debt service on the JEPAs Bonds. There may be an obligation of the District to fund some or all of the parking improvements referred to in Section 5 and to use other funds for pre-development and other costs during construction as described in Section 5.

### **SECTION 8. CITY COMMITMENT**

The City expects to enter into a Lease Agreement to pay lease payments to the JEPAs for use of the Convention Center, such lease payments to be deposited in the Revenue Fund. The annual payment will be made from the RV Park TOT, the PMSA Revenue, RHCC Sales Tax and RHCC TOT in amounts received.

---

<sup>3</sup> Preliminary and subject to change.

The City will collect and deposit the following revenues into an account held by the City or JEPA under the lease agreement for the Convention Center and used to make lease payments to the JEPA:

- RV Park TOT: Monthly in arrears within 30<sup>4</sup> days of the end of a month, in an amount equal to actual revenue to the extent received by the City.
- PMSA Revenue: Quarterly in arrears within 30 days of the end of a quarter, in an amount equal to  $\frac{1}{4}$  of the annual projected revenue shown in Section 13, with the final payment for such year to be adjusted for actual revenue.
- RHCC TOT – Monthly in arrears within 30<sup>5</sup> days of the end of a month, in an amount equal to actual revenue received by the City.
- RHCC Sales Tax – Quarterly in arrears within 30 days of the end of a quarter, in an amount equal to actual revenue received by the City.

In the event that the EIFD is not established, a payment equal to the City's share of the property tax and VLF generated from the RHCC will be collected and deposited in an account held by the City or JEPA under the Lease Agreement and used to make lease payments to the JEPA. The payment will be made twice annually, with the first half paid by January 31, in an amount equal to  $\frac{1}{2}$  of the projected amount shown in Section 13 and the second half paid by June 30, in an amount equal to the actual revenue received by the City over the entire year less the amount of January 31 payment.

Other than as described herein, the City has not committed additional revenues to pay Lease Payments from its General Fund. There is an obligation of the City to provide for funding and operation of a future fire station and fire services to serve the Bayfront and the RHCC Project as described in Section 5 and to use other funds for pre-development and other costs during construction as described in Section 5.

## **SECTION 9. PLEDGED REVENUES – CFD**

The CFD will issue Special Tax Bonds with an annual special tax levy equal to projected Special Taxes to be levied based on 5% of RHCC room revenue. The JEPA would acquire the Special Tax Bonds with proceeds of the Tax-Exempt Bonds and the debt service paid by the CFD to the JEPA would be deposited in the Revenue Fund. The proceeds of the sale of the Special Tax Bonds will be applied to Phase 1A Infrastructure Costs.

The annual tax levy will initially be equal to the amount projected in Section 13. The debt service/special tax levy each year will be adjusted to reflect 5% of the actual room revenue. The special taxes will be paid by the Developer monthly to the CFD to be remitted to the JEPA.

---

<sup>4</sup> Preliminary and subject to change.

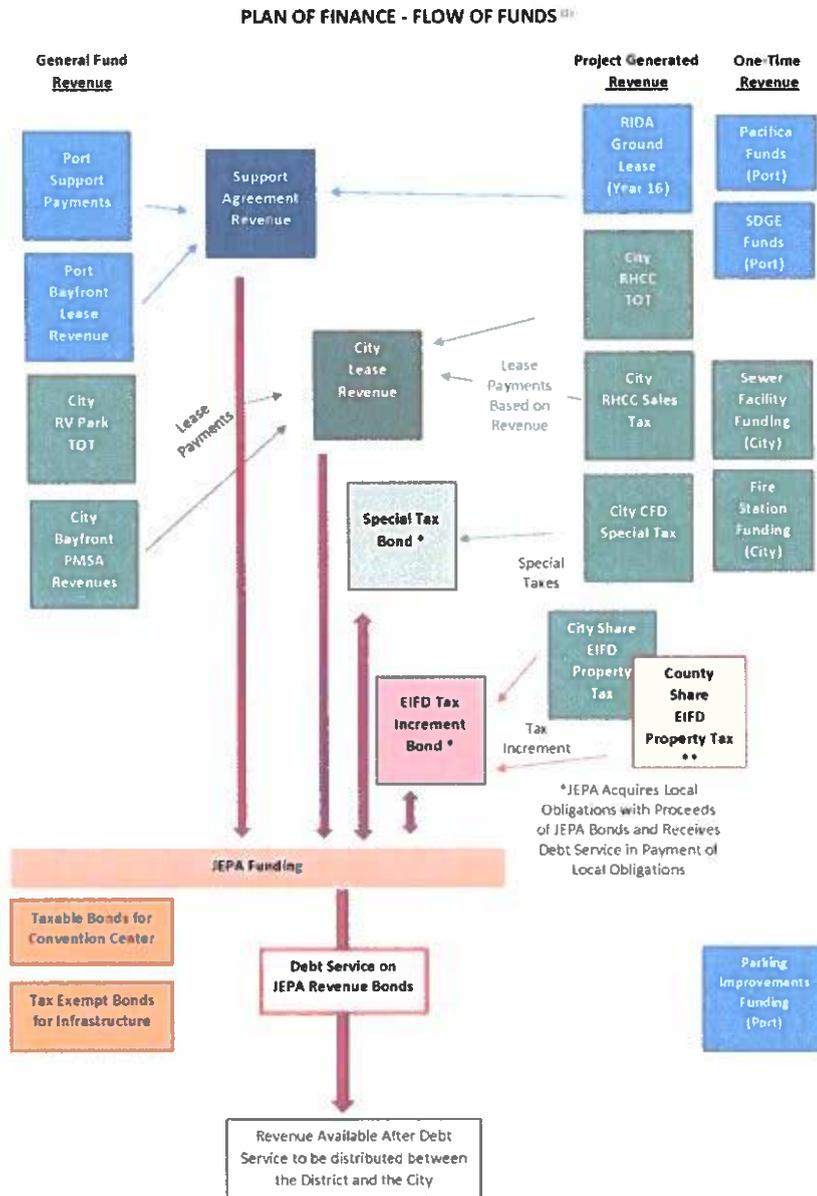
<sup>5</sup> Preliminary and subject to change.

**SECTION 10. PLEDGED REVENUES – EIFD**

If formed, the EIFD will issue Tax Increment Bonds with annual payments equal to projected taxes to be allocated to the EIFD. The JEPAs would acquire the Tax Increment Bonds with proceeds of the JEPAs Bonds and the debt service paid by the EIFD to the JEPAs would be deposited in the Revenue Fund. The debt service on the Tax Increment Bonds each year will be adjusted to reflect actual tax increment received.

The debt service payments will be made twice a year, with the first half paid by January 31, in an amount equal to ½ of the projected amount shown in Section 13 and the second half paid by June 30, in an amount equal to the actual revenue received by the EIFD over the entire year less the amount of January 31 payment.

**SECTION 11. PROJECTED FLOW OF FUNDS**



\*\* Negotiations are underway with the County to contribute the County Share of EIFD Property Tax

<sup>(1)</sup> Subject to Change and Market Conditions for Financing

**SECTION 12. PROJECTED SOURCES AND USES<sup>6</sup>**

	<b>Tax-Exempt Series Phase 1A Infrastructure</b>	<b>Taxable Series Project Pubic Investment</b>	<b>Total</b>
Par Amount	\$ 63,825,000	\$ 324,715,000	\$388,540,000
Original Issue Premium (Discount)	7,072,567	-	7,072,567
Pre-Opening Cash flow	-	15,067,521	15,067,521
<b>Net Proceeds</b>	<b>\$ 70,897,567</b>	<b>\$ 339,782,521</b>	<b>\$410,680,088</b>
Project Fund	\$ 55,324,185	\$ 239,610,455	\$294,934,639 <sup>7</sup>
Capitalized Interest	8,510,000	74,493,830	83,003,830
Debt Service Reserve Fund	5,462,254	28,911,729	34,373,983
Issuance Expenses	1,601,129	8,121,236	9,722,365
<b>Total Use of Proceeds</b>	<b>\$ 70,897,567</b>	<b>\$ 351,137,249</b>	<b>\$422,034,816</b>
<b>Net Funding Shortfall</b>	<b>\$ 0</b>	<b>\$ 11,354,728</b>	<b>\$ 11,354,728</b>
<b>Less Projected Offsets</b>			
SDG&E and Pacifica Funds <sup>8</sup>		\$4,653,750	\$4,653,750
Cash Contingencies <sup>9</sup>		\$3,354,971	\$3,354,971
Reduction in Infrastructure Costs <sup>10</sup>		\$3,346,007	\$3,346,007
<b>Total Proj. Offsets to Shortfall</b>		<b>\$11,354,728</b>	<b>\$11,354,728</b>
<b>Projected Funding Gap</b>		<b>\$0</b>	<b>\$0</b>

The financing structure as presented herein is highly dependent on achieving investment grade ratings and a public offering solution. Achieving an investment grade rating is not just limited to coverage ratios but is also dependent on certain commercial terms negotiated between the JEPA and the developer. These terms may impact the rating agencies' view of the credit, which could significantly impact credit, coverage, reserves and, ultimately, deliverable proceeds.

<sup>6</sup> Preliminary and subject to change.

<sup>7</sup> Project funds are net of interest earnings earned during the construction period which will be available for the project.

<sup>8</sup> SDG&E and Pacifica funds as discussed on page 3 of the Plan of Finance.

<sup>9</sup> Existing revenues generated by the City and District from July 1, 2018 to close of escrow.

<sup>10</sup> Projected reduction in infrastructure projects costs to be financed from \$56 million to \$50.8 million as described in the Economic Development Subsidy Report. These projections also continue to assume the County of San Diego's participation through an EIFD over the term of the debt.



**SECTION 14. PROJECTED DEBT SERVICE – JEP A BONDS**

FY	Tax-Exempt		Tax-Exempt		Tax-Exempt Net		Taxable		Taxable		TOTAL		Available		Debt Coverage
	Revenue	Gross Debt Svc	Cap Int	Debt Svc*	Gross Debt Svc	Cap Int	Gross Debt Svc	Cap Int	Net Debt Svc	Net Debt Svc	Net Debt Svc	Pre-Opening Revenue	Revenue		
6/30/2020	3,490,051	2,127,500	2,127,500	-	11,438,611	11,438,611	-	-	-	-	-	3,490,051	-	-	
6/30/2021	3,674,542	3,191,250	3,191,250	-	17,157,916	17,157,916	-	-	-	-	-	3,674,542	-	-	
6/30/2022	3,857,359	3,191,250	3,191,250	-	17,157,916	17,157,916	-	-	-	-	-	3,857,359	-	-	
6/30/2023	4,045,569	3,191,250	3,191,250	-	17,157,916	17,157,916	-	-	-	-	-	4,045,569	-	-	
6/30/2024	28,380,700	3,191,250	-	3,191,250	17,157,916	4,152,216	17,157,916	4,152,216	13,005,700	16,196,950	16,196,950	-	175x		
6/30/2025	31,095,611	3,191,250	-	3,191,250	17,157,916	2,608,003	17,157,916	2,608,003	14,549,913	17,741,163	17,741,163	-	175x		
6/30/2026	33,171,372	3,191,250	-	3,191,250	17,157,916	1,406,949	17,157,916	1,406,949	15,750,967	18,942,217	18,942,217	-	175x		
6/30/2027	35,304,975	3,206,250	-	3,206,250	17,157,916	223,053	17,157,916	223,053	16,934,863	20,141,113	20,141,113	-	175x		
6/30/2028	36,732,863	3,335,500	-	3,335,500	17,617,916	-	17,617,916	-	17,617,916	20,953,416	20,953,416	-	175x		
6/30/2029	37,440,209	3,403,250	-	3,403,250	17,951,788	-	17,951,788	-	17,951,788	21,355,038	21,355,038	-	175x		
6/30/2030	38,147,106	3,467,250	-	3,467,250	18,293,540	-	18,293,540	-	18,293,540	21,760,790	21,760,790	-	175x		
6/30/2031	38,870,005	3,532,500	-	3,532,500	18,636,264	-	18,636,264	-	18,636,264	22,168,764	22,168,764	-	175x		
6/30/2032	39,609,112	3,598,750	-	3,598,750	18,983,221	-	18,983,221	-	18,983,221	22,591,971	22,591,971	-	175x		
6/30/2033	40,364,779	3,665,750	-	3,665,750	19,357,878	-	19,357,878	-	19,357,878	23,023,628	23,023,628	-	175x		
6/30/2034	42,379,544	3,853,250	-	3,853,250	20,318,302	-	20,318,302	-	20,318,302	24,171,552	24,171,552	-	175x		
6/30/2035	43,423,829	3,945,000	-	3,945,000	20,822,763	-	20,822,763	-	20,822,763	24,767,763	24,767,763	-	175x		
6/30/2036	44,498,500	4,045,250	-	4,045,250	21,338,073	-	21,338,073	-	21,338,073	25,383,323	25,383,323	-	175x		
6/30/2037	45,604,450	4,143,250	-	4,143,250	21,870,523	-	21,870,523	-	21,870,523	26,013,773	26,013,773	-	175x		
6/30/2038	46,742,598	4,248,750	-	4,248,750	22,412,280	-	22,412,280	-	22,412,280	26,661,030	26,661,030	-	175x		
6/30/2039	47,913,892	4,351,000	-	4,351,000	22,980,769	-	22,980,769	-	22,980,769	27,331,769	27,331,769	-	175x		
6/30/2040	49,119,304	4,464,750	-	4,464,750	23,552,383	-	23,552,383	-	23,552,383	28,017,133	28,017,133	-	175x		
6/30/2041	50,359,839	4,574,000	-	4,574,000	24,149,548	-	24,149,548	-	24,149,548	28,723,548	28,723,548	-	175x		
6/30/2042	51,636,529	4,693,500	-	4,693,500	24,758,400	-	24,758,400	-	24,758,400	29,451,900	29,451,900	-	175x		
6/30/2043	52,950,437	4,812,250	-	4,812,250	25,390,592	-	25,390,592	-	25,390,592	30,202,842	30,202,842	-	175x		
6/30/2044	55,302,659	5,024,750	-	5,024,750	26,517,001	-	26,517,001	-	26,517,001	31,541,751	31,541,751	-	175x		
6/30/2045	56,694,322	5,150,750	-	5,150,750	27,189,040	-	27,189,040	-	27,189,040	32,339,790	32,339,790	-	175x		
6/30/2046	58,126,586	5,278,750	-	5,278,750	27,875,671	-	27,875,671	-	27,875,671	33,154,421	33,154,421	-	175x		
6/30/2047	59,600,647	5,413,000	-	5,413,000	28,582,840	-	28,582,840	-	28,582,840	33,995,840	33,995,840	-	175x		
6/30/2048	61,117,735	5,552,500	-	5,552,500	29,310,195	-	29,310,195	-	29,310,195	34,862,695	34,862,695	-	175x		
6/30/2049	62,679,117	5,696,250	-	5,696,250	30,057,118	-	30,057,118	-	30,057,118	35,753,368	35,753,368	-	175x		
6/30/2050	64,286,097	5,843,250	-	5,843,250	30,822,723	-	30,822,723	-	30,822,723	36,665,973	36,665,973	-	175x		
6/30/2051	65,940,019	5,992,500	-	5,992,500	31,620,857	-	31,620,857	-	31,620,857	37,613,357	37,613,357	-	175x		
6/30/2052	67,642,266	6,148,000	-	6,148,000	32,434,295	-	32,434,295	-	32,434,295	38,582,295	38,582,295	-	175x		
6/30/2053	69,394,261	6,303,500	-	6,303,500	33,276,349	-	33,276,349	-	33,276,349	39,579,849	39,579,849	-	175x		
6/30/2054	71,197,470	6,468,000	-	6,468,000	34,144,259	-	34,144,259	-	34,144,259	40,612,259	40,612,259	-	175x		
<b>Total</b>	<b>\$ 1,540,794,351</b>	<b>\$ 151,486,500</b>	<b>\$ 11,701,250</b>	<b>\$ 139,785,250</b>	<b>\$ 801,818,609</b>	<b>\$ 71,302,580</b>	<b>\$ 730,516,030</b>	<b>\$ 870,301,280</b>	<b>\$ 870,301,280</b>	<b>\$ 15,067,521</b>					

See J.P. Morgan General Disclaimer and Municipal Advisor Rules Disclaimer on following pages.

### **Harrell & Company Advisors Disclaimer**

This information was prepared exclusively for the benefit and use of the City of Chula Vista in order to assist the City in evaluating, on a preliminary basis, the feasibility of alternative financing scenarios for the RHCC project. The materials have been provided to the City for informational purposes only and are not an evaluation of the merits of pursuing transactions described herein. Information has been obtained from sources believed to be reliable but neither J.P. Morgan nor Harrell & Company Advisors warrants its completeness or accuracy. Opinions and estimates constitute our judgment as of the date of this material and are subject to change without notice. Past performance is not indicative of future results. This information does not constitute a commitment by any underwriter to underwrite, subscribe for or place any securities or to extend or arrange credit or to provide any other services.

Harrell & Company Advisors has been engaged by the City and does not act as an advisor to the District. The City may have interests that are different from the District. Harrell & Company Advisors does not owe a fiduciary duty to the District and the District should consult its own advisors and experts that it deems appropriate before acting on this information.

### **J.P. Morgan's General Disclaimer**

This plan was prepared exclusively for the benefit and internal use of the City of Chula Vista to whom it is directly addressed and delivered (including such client's affiliates, the "City") in order to assist the City in evaluating, on a preliminary basis, the feasibility of possible transactions referenced herein. The materials have been provided to the City for informational purposes only and may not be relied upon by the City in evaluating the merits of pursuing transactions described herein. No assurance can be given that any transaction mentioned herein could in fact be executed.

Information has been obtained from sources believed to be reliable but J.P. Morgan does not warrant its completeness or accuracy. Opinions and estimates constitute our judgment as of the date of this material and are subject to change without notice. Past performance is not indicative of future results. Any financial products discussed may fluctuate in price or value. This plan does not constitute a commitment by any J.P. Morgan entity to underwrite, subscribe for or place any securities or to extend or arrange credit or to provide any other services.

J.P. Morgan's plan is delivered to the City for the purpose of being engaged as an underwriter, not as an advisor, (including, without limitation, a Municipal Advisor (as such term is defined in Section 975(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act)) . The role of an underwriter and its relationship to an issuer of debt is not equivalent to the role of an independent financial advisor. The primary role of an underwriter is to purchase, or arrange for the purchase of, securities in an arm's-length commercial transaction between the issuer and the underwriter. An underwriter has financial and other interests that differ from those of the issuer. If selected as the City's underwriter, J.P. Morgan will be acting as a principal and not as the City's agent or fiduciary with respect to the offering of the securities or the process leading to issuance (whether or not J.P. Morgan or any affiliate has advised or is currently advising the Client on other matters). Any portion of this plan which provides information on municipal financial products or the issuance of municipal securities is given in response to the City's questions or to demonstrate our experience in the municipal markets and does not constitute "advice" within the meaning of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. We encourage the City to consult with its own legal and financial advisors to the extent the City deems appropriate in connection with the offering of the securities. If the City has any questions concerning our intended role and relationship with the City, we would be happy to discuss this with the City further.

This communication shall not constitute an offer to sell or the solicitation of an offer to buy, nor shall

there be any sale of the securities in any state or jurisdiction in which such an offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

This material is not a product of the Research Departments of J.P. Morgan Securities LLC ("JPMS") and is not a research report. Unless otherwise specifically stated, any views or opinions expressed herein are solely those of the authors listed, and may differ from the views and opinions expressed by JPMS's Research Departments or other departments or divisions of JPMS and its affiliates. Research reports and notes produced by the Research Departments of JPMS are available from the City's Registered Representative or at <http://www.jpmm.com> JPMS's policies prohibit employees from offering, directly or indirectly, a favorable research rating or specific price target, or offering to change a rating or price target, to a subject Client as consideration or inducement for the receipt of business or for compensation. JPMS also prohibits its research analysts from being compensated for involvement in investment banking transactions except to the extent that such participation is intended to benefit investors.

J.P. Morgan makes no representations as to the legal, tax, credit, or accounting treatment of any transactions mentioned herein, or any other effects such transactions may have on the City and the City's affiliates or any other parties to such transactions and their respective affiliates. The City should consult with its own advisors as to such matters.

JPMorgan Chase & Co. and its affiliates do not provide tax, legal or accounting advice. This material has been prepared for informational purposes only, and is not intended to provide, and should not be relied on as the basis for making an investment decision nor as tax, legal or accounting advice. The City should consult its own advisors in respect of any tax, legal or accounting matter.

This plan does not carry any right of publication or disclosure, in whole or in part, to any other party, without the prior consent of J.P. Morgan. Additional information is available upon request.

J.P. Morgan is the marketing name for the investment banking activities of JPMorgan Chase Bank, N.A., J.P. Morgan Securities LLC (member, NYSE), J.P. Morgan Securities plc (authorized by the FSA and member, LSE) and their investment banking affiliates.

#### **J.P. Morgan's Municipal Advisor Rules Disclaimer**

(a) This material is provided to the City in reliance on the Independent Registered Municipal Advisor exemption pursuant to Section 15B of the Securities Exchange Act of 1934, as amended; (b) J.P. Morgan is not acting as an advisor to the City and does not owe a fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934, as amended, to the City with respect to the information and material contained in this communication; (c) J.P. Morgan is acting for its own interests; (d) The City should discuss any information and material contained in this communication with any and all internal or external advisors and experts that the City deems appropriate before acting on this information or material; and (e) J.P. Morgan seeks to serve as an underwriter on a future transaction and not as a financial advisor or municipal advisor. The information provided is for discussion purposes only in anticipation of being engaged to serve or in relation to our engagement as an underwriter. The primary role of an underwriter is to purchase securities with a view to distribute in an arm's-length commercial transaction. The underwriter has financial and other interests that differ from the City.

**ATTACHMENT NO. 5**  
**SCOPE OF DEVELOPMENT**

**I. General**

The Project and all related public improvements shall be designed and constructed substantially in accordance with the provisions of this Agreement, including without limitation the Laws, and all specifications, drawings, plans, data, reports, maps, permit applications, land use applications, zoning applications, environmental review and disclosure documents and design review documents (collectively, "Plans and Specifications") and related documents to be approved by the District and City pursuant hereto. The District staff, the City staff, the District's engineers, the City's engineers, the Developer and the Developer's architects, engineers, General Contractor and subcontractors shall coordinate with respect to the overall design, architecture and nature of the improvements on the Project Site.

In the event of any conflict between the contents of this Scope of Development and the Agreement, the provisions of the Agreement shall prevail.

**II. Developer's Improvements**

Subject to the terms and conditions of this Agreement, including all attachments hereto, the Developer shall be responsible for the design and construction of all of the following improvements (collectively, the "Developer's Improvements"):

A. **Developer's Private Improvements.** The Developer shall construct the Hotel portion of the Project on the Hotel Site, which shall consist of the following improvements (collectively, the "Developer's Private Improvements"):

1. Single-branded resort hotel with at least 1,570 Rooms but not more than 1,600 Rooms, which must initially be branded as a Gaylord Hotel (the "Hotel");
2. Associated retail and resort amenities, subject to required discretionary review by regulatory entities.

B. **Developer's Public Improvements.** The Developer shall construct the Convention Center portion of the Project on the Convention Center Site and other public improvements, which shall consist of the following (collectively, the "Developer's Public Improvements"):

1. The Project of approximately 275,000 net usable square feet of meeting space in the Convention Center ("Meeting Space"), including all ancillary uses (including pre-function), together with other related public improvements in accordance with this Agreement. A portion of the cost of constructing the Convention Center will be financed by the JEPA in an amount not to exceed the Project Public Investment Amount, as set out in the Plan of Finance.

2. That portion of the Phase 1A Infrastructure Improvements identified in Exhibit 1 attached hereto (collectively, the "Developer's Phase 1A Infrastructure Improvements"), to be constructed by the Developer in lieu of remitting Bayfront Development Impact Fees to the City, pursuant to

Chapter 3.55 of the Chula Vista Municipal Code. A portion of the Developer's Phase 1A Infrastructure Improvements shall be financed by the District and City (the "Developer's Phase 1A Infrastructure Improvements Costs"), and the remaining portion of the Developer's Phase 1A Infrastructure Improvements (the "Developer's Sewer Improvements") shall be financed by the City, each as set out in the Plan of Finance and in the Sources and Uses Matrix (Exhibit 4).

### **III. Architecture and Design**

The Developer's Improvements shall be of high architectural quality and shall be sufficiently landscaped. The Schematic Plans and the Building Permit Application Drawings shall describe the architectural character intended for the Developer's Improvements and the Parking Improvements, as applicable. The Developer shall also comply with the District's Public Arts Policy in the development of the Project on the Project Site, as provided in Section 4.1(c) of this Agreement.

### **IV. Other Project Public Improvements**

The District and City shall be responsible for the construction of, or causing the construction of, the remaining portion of the public improvements, as identified below, to be financed by the District and City in accordance with the Plan of Finance and the Sources and Uses Matrix (Exhibit 4), including:

1. That portion of the Phase 1A Infrastructure Improvements identified in Exhibit 2 attached hereto ("Remaining Phase 1A Infrastructure Improvements"). The Remaining Phase 1A Infrastructure Improvements will be completed based on a schedule to be agreed to by the District, City and Developer; provided, however, the District and City shall have the right to prioritize the construction of certain Remaining Phase 1A Infrastructure Improvements required to meet any existing contractual obligations of the District and City, including without limitation, any contractual obligations under the Settlement Agreement and any other agreements applicable to the Project Site and, provided, further, that the District and the City shall cause the Remaining Phase 1A Infrastructure Improvements to be completed in a manner that will not result in a delay to the Developer obtaining a temporary certificate of occupancy for, or the opening for business of, the Developer's Improvements. The Remaining Phase 1A Infrastructure Improvements identified in Exhibit 2 will be financed by the District and City, in the amount of up to TWENTY MILLION ONE HUNDRED TWENTY THOUSAND DOLLARS (\$20,120,000), which together with the Developer's Phase 1A Infrastructure Improvements Cost to be financed by District and City shall not exceed a maximum combined total of FIFTY SIX MILLION DOLLARS (\$56,000,000), as set out in the Plan of Finance and the Sources and Uses Matrix (Exhibit 4).

2. Required service improvements identified in Exhibit 3, consisting solely of the G Street Sewer Pump Station (the "City Infrastructure Improvements"), to be constructed by or on behalf of the City, and financed by the City, which financing may be through any financing mechanism in City's sole and absolute discretion; provided that the City shall cause the City Infrastructure Improvements, that are compatible with a hotel with 1,600 rooms and meeting space comparable to the Meeting Space and other uses contemplated at the Project, as applicable, to be completed not later than twelve (12) months after the Closing Date.

3. If elected by the District, the Parking Improvements to be constructed on the District Retained Property and financed by the District up to the amount of FORTY MILLION DOLLARS (\$40,000,000).
4. Removal of Existing RV Park and Site Preparation for H-3 Parcel.

EXHIBIT 1

DEVELOPER'S PHASE 1A INFRASTRUCTURE IMPROVEMENTS

The following Phase 1A Infrastructure Improvements shall be constructed by the Developer relating to the Project:

1. E Street (G Street to H Street): Project consists of the construction of a two-lane Class III Collector street with turn lane, drainage, water, sewer, dry utilities, and connection/transition to existing Lagoon Drive. Streetscape improvements include landscape, sidewalks, biofiltration, lighting, furnishings, etc. The project includes on-street diagonal parking on the west side of the north-south portion.
2. G Street Connection: Project consists of the construction of a two-lane collector street to Rohr's Gate 66 with drainage, water, sewer, and dry utilities. Streetscape improvements include landscape, sidewalk, biofiltration, lighting, etc.
3. H Street (Bay Boulevard to Street A): Project consists of improvements along an existing roadway. Streetscape improvements will include landscape, Class I bike path and gateway sign at Bay Boulevard.
4. H Street (Marina Parkway to E Street): Project consists of the construction of a Class II Collector street with turn lane, drainage, water, and dry utilities. Streetscape improvements include landscape, sidewalk, biofiltration, lighting, furnishings, etc. The project includes a Class I bike path along Parcel H-9, on-street diagonal parking on the south side, traffic signals at Marina Parkway, and dry utilities extended to Bay Boulevard.
5. Harbor Park (Initial): Project consists of the expansion of the existing Bayside Park to include amenities, such as open lawn, plaza, lighting, restrooms, bicycle racks, playground, picnic areas, benches, interpretive signage and public art. Project includes a Pedestrian Promenade and Class I bike path, parking, drainage and biofiltration. Harbor Park will be constructed in multiple phases. Developer is responsible for initial phase only, to be identified based on available funding.
6. H-3 Site Prep: Project consists of clearing the site, demolition of existing improvements on H-3 and vicinity, rough grading, and temporary drainage and erosion control. Includes maintaining access and utility service to surrounding businesses.
7. H-3 Utility Corridor: Project includes installation of new storm drain, sewer, water, and dry utilities

EXHIBIT 2

REMAINING PHASE 1A INFRASTRUCTURE IMPROVEMENTS

The following Remaining Phase 1A Infrastructure Improvements shall be constructed, or caused to be constructed, by the District (and City, if applicable) relating to the Project:

1. E Street (Bay Boulevard to F Street): Project consists of the construction of a collector street and roundabout with drainage, water and dry utilities. Streetscape improvements include landscape, sidewalks, bioretention, lighting, furnishings, etc. The project includes a Class I Bike Path, gateway signage, pedestrian crossings, and traffic signal modifications at Bay Boulevard.
2. E Street (Lagoon Drive to G Street): Project consists of pavement repair and restriping.
3. F Street (Bay Boulevard to E Street): Project consists of the construction of earthwork, drainage, sewer, and dry utilities.
4. F Street (E Street to Gunpowder Point Drive): Project consists of the construction of a collector street with drainage, water, sewer, and dry utilities. Streetscape improvements include landscape, sidewalks, lighting, etc.
5. Gunpowder Point Drive Relocation (Private Road): Project consists of the construction of a two-lane roadway with water and dry utilities.
6. S-2 Sweetwater Signature Park: Project consists of construction of an 18-acre park. The Signature Park will be a passive-use, meadow-type park. The project includes a Pedestrian Promenade and Class I bike path connecting to Harbor Park, with a bridge over the channel to the F & G Street Marsh.
7. SP-1 Sweetwater Buffer: Project consists of the restoration of a 400-foot-wide ecological buffer with pedestrian trails.
8. SP-2 Seasonal Wetlands: Project consists of a bioretention basin. Restoration may be provided as mitigation for projects.
9. SP-4 SDG&E: Project includes a decomposed granite trail for pedestrians and bicycles.

EXHIBIT 3

CITY INFRASTRUCTURE IMPROVEMENTS

The following City Infrastructure Improvements shall be constructed, or caused to be constructed, by the City relating to the Resort Hotel and Convention Center Project:

1. G Street Sewer Pump Station: Project consists of an upgrade to an existing sewer pump station to provide sufficient emergency storage for planned development, as well as miscellaneous upgrades to the pump station equipment, concrete wet well, odor control systems, and other related appurtenances on site and in the immediate vicinity of the pump station.

**EXHIBIT 4**  
**CITY INFRASTRUCTURE SOURCES AND USES MATRIX**

<b>Improvement Description</b>	<b>Cost Estimate<sup>1</sup></b>	<b>Developer BFDIF Credit Eligible<sup>2</sup></b>	<b>City Sewer Funding Eligible<sup>3</sup></b>	<b>Other Funding<sup>4</sup></b>
<i>Developer's Phase IA Infrastructure Improvements</i>				
E Street (G Street to H Street )	6,680,000	4,050,000	580,000	2,050,000
G Street Connection	950,000	430,000	110,000	410,000
H Street (Bay Blvd to Street A)	430,000	270,000	-	160,000
H Street (Marina Pkwy to E Street )	5,380,000	3,350,000	-	2,030,000
Harbor Park (Initial)	19,500,000	310,000	-	19,190,000
H-3 Site Prep <sup>5</sup>	6,000,000	-	-	6,000,000
H-3 Utility Corridor <sup>6</sup>	1,530,000	-	310,000	1,220,000
<i>Subtotal</i>	<i>40,470,000</i>	<i>8,410,000</i>	<i>1,000,000</i>	<i>31,060,000</i>
<i>Remaining Phase IA Infrastructure Improvements</i>				
E Street (Bay Blvd to F Street)	3,970,000	-	60,000	3,910,000
E Street (Lagoon Drive to G Street )	290,000	-	-	290,000
F Street (Bay Blvd to E Street )	1,530,000	-	280,000	1,250,000
F Street (E Street to Gunpowder Pt Dr)	630,000	-	50,000	580,000
Gunpowder Point Drive Relocation	1,360,000	-	-	1,360,000
S-2 Sweetwater Signature Park	7,600,000	-	-	7,600,000
SP-1 Sweetwater Buffer (for S-1)	2,570,000	-	-	2,570,000
SP-1 Sweetwater Buffer (for S-2)	1,160,000	-	-	1,160,000
SP-2 Seasonal Wetlands	950,000	-	-	950,000
SP-4 SDG&E	60,000	-	-	60,000
<i>Subtotal</i>	<i>20,120,000</i>	<i>-</i>	<i>390,000</i>	<i>19,730,000</i>
<i>City Infrastructure Improvements</i>				
G Street Sewer Pump Station	2,640,000	-	2,640,000	-
<b>Total</b>	<b>63,230,000</b>	<b>8,410,000</b>	<b>4,030,000</b>	<b>50,790,000</b>

<sup>1</sup> Cost Estimates are in 2016 dollars. Estimates include hard costs, soft costs, and contingencies.

<sup>2</sup> Developer BFDIF Credit Eligible column reflects the estimated value of planned improvements that will be eligible for credit against Developer's Bayfront Development Impact Fee ("BFDIF") obligation. Actual BFDIF credit amount may vary. Developer will be responsible for payment of BFDIF fees in excess of credits earned

<sup>3</sup> City Sewer Funding Eligible column reflects the estimated value of sewer improvements associated with each project that will be eligible for funding by the City through its sewer facility contribution. Actual sewer funds contributed may vary. See Developer's Sewer Improvements.

<sup>4</sup> Other Funding column reflects the estimated amount to be funded through the issuance of debt, the application of funds on hand, or such other funding mechanisms as may be most appropriate.

<sup>5</sup> H-3 Site Prep budget of \$6 million represents the maximum funds that will be provided by District and City for this purpose, assuming District provides at least 130,000 cubic yards of imported soil. If District does not deliver sufficient soil, funding will be increased to \$10 million. Actual costs may vary. See Section 4.8.

<sup>6</sup> H-3 Utility Corridor budget of \$1.53 million represents the maximum funds that will be provided by District and City for this purpose. Actual costs may vary.

**ATTACHMENT NO. 6**  
**SCHEDULE OF PERFORMANCE**

In the event of any conflict between the contents of the Schedule of Performance and the Agreement, the provisions of the Agreement shall prevail.

<b>ACTION</b>	<b>TARGET DATE</b>
1. <u>Execution of Agreement by District, City.</u> District and City to hold public hearings to consider and approve or disapprove Agreement. If approved, District and City to execute Agreement.	10 Days from Approval of the Agreement
2. <u>Deposit.</u> Developer to deliver the Deposit to the District. (§1.6(a))	5 Days from Full Execution of the Agreement
3. <u>Approval – Form of Ground Lease.</u> BPC to approve and authorize form of Ground Lease, and other related documents. (§6.1(a))	60 Days from Full Execution of the Agreement
4. <u>District Submits Draft Plans for Phase 1A Infrastructure Improvements and District and City Submit Easement Findings.</u> District to submit to Developer draft plans for Phase 1A Infrastructure Improvements to the extent sufficient to achieve approval of CDP, and District and City to submit to Developer Easement Findings (§4.4(b)); (§4.8(c))	60 Days from Full Execution of the Agreement
5. <u>Developer Comments on Easement Findings.</u> Developer to provide comments on Easement Findings to District and City. (§4.8(d))	60 Days after No. 4 (District Submits Plans for Phase 1A Infrastructure Improvements and District and City Submit Easement Findings)
6. <u>District and City to Review Comments on Easement Findings.</u> (§4.8(d))	30 days after No. 5 (Developer Comments on Easement Findings)

**ACTION**

**TARGET DATE**

- |  |  |
|--|--|
| <p>7. <u>Submission of Tenant Project Plan Application and Development Cost Estimates – Developer’s Improvements, Surface Parking and Parking Improvements (includes Schematic Plans)</u>. Developer to submit to the District Tenant Project Plan Application and Development Cost estimates for the Developer’s Improvements, Surface Parking and Parking Improvements which includes Schematic Plans. (§4.4(a))</p> | <p>60 Days from Full Execution of the Agreement</p>  |
| <p>8. <u>District Staff Comments on Schematic Plans</u>. The District Staff to provide comments on Schematic Plans. (§4.4(a)(i))</p>   | <p>20 Business Days after No. 7 (Submission of Tenant Project Plan Application and Development Cost Estimates and Development Cost Estimates – Developer’s Improvements, Surface Parking and Parking Improvements (includes Schematic Plans)) (each submittal);<br/>or<br/><br/>If BPC reviews, 60 Days after No. 7 (Submission of Tenant Project Plan Application and Cost Estimates)</p> |
| <p>9. <u>Developer Corrections to Schematic Plans</u>. Developer to make corrections to Schematic Plans in response to District Staff comments. (§4.4(a)(i))</p>   | <p>30 Business Days after No. 8 (District Staff Comments on Schematic Plans)</p>   |
| <p>10. <u>Developer Submits CDP Application to District</u>. Developer to submit an application for a CDP to the District. (§4.4(a)(i))</p>  | <p>10 Business Days after the Developer receives a “Tenant Construction Project Number” or “District Project Engineering Work Order Number”, whichever is the latest</p>   |
| <p>11. <u>Developer Submits Building Permit Application Drawings to the District</u>. Developer to submit Building Permit Application Drawings for Developer’s Improvements to the District. (§4.4(a)(ii))</p>   | <p>May, 2019</p>   |
| <p>12. <u>District Staff Reviews Building Permit Application Drawings</u>. District Staff to review Building Permit Application Drawings for substantial conformance with Schematic Plans. (§4.4(a)(ii))</p>   | <p>20 Business Days after No. 11 (Developer Submits Building Permit Application Drawings to the District) (each submittal)</p>   |

**ACTION**

**TARGET DATE**

- |   |   |
|---|---|
| <p>13. <u>Developer Corrections to Building Permit Application Drawings.</u> Developer to make corrections to Building Permit Application Drawings based on District Staff comments. (§4.4(a)(ii))</p>                                  | <p>20 Business Days after No. 12 (District Staff Reviews Building Permit Application Drawings)</p>  |
| <p>14. <u>District Approves Building Permit Application Drawings.</u> (§4.4(a)(ii))</p>   | <p>20 Business Days after No. 13 (Developer Corrections to Building Permit Application Drawings) (each submittal)</p>   |
| <p>15. <u>Developer Submits Total Project Costs.</u> Developer to submit to District and City Total Project Costs. (§4.5(a))</p>  | <p>30 Days after the Districts approval of the Tenant Project Plan Application (includes both Schematic Plans and Building Permit Application Drawings)</p>   |
| <p>16. <u>Developer, City, and District Determine Total Project Costs.</u> The Developer, City, and District to determine the Total Project Costs of the Developer’s Public Improvements. (§4.5(f))</p>                                 | <p>Earliest Possible Time Within 60 Days of No. 15 (Developer Submits Tenant Project Plans)</p>   |
| <p>17. <u>Approval of New S-1 RV Park Lease and Funding.</u> BPC to approve and authorize District to enter into a New S-1 RV Park Lease, and approve funding for Sweetwater District Infrastructure and New S-1 RV Park. (§1.2(b))</p> | <p>150 Days from Full Execution of the Agreement</p>  |
| <p>18. <u>Approval of Tenant Project Plans.</u> The Developer to take all actions as necessary to obtain Approval of Tenant Project Plans in compliance with BPC Policy No. 357. (§4.5)]</p>  | <p>180 Days from No. 7 (Submission of Tenant Project Plan Application and Development Cost Estimates – Developer’s Improvements <u>Surface Parking and Parking Improvements (includes Schematic Plans)</u>)</p> |
| <p>19. <u>Coastal Development Permit.</u> District to complete all documents and actions necessary to consider Coastal Development Permit for development of the Developer’s Improvements. (§1.4)</p>                                   | <p>180 Days from No. 10 (Developer Submits CDP Application to District)</p>   |
| <p>20. <u>Developer Submits Building Permit Application Drawings to City.</u> Developer to submit Building Permit Application Drawings to City for review and approval and issuance of Building Permits. (§4.4(a)(iii))</p>             | <p>Promptly After No. 19 (Coastal Development Permit)</p>   |

ACTION	TARGET DATE
<p>21. <u>Design of City Infrastructure Improvements</u>. The City to prepare, or cause the preparation of, preliminary and final construction plans and documents for the City Infrastructure Improvements. (§4.2(a))</p>	12 Months after Close of Escrow
<p>22. <u>Wildlife Advisory Group and Bayfront Cultural and Design Committee Review</u>. The District, City and Developer to cooperate to take such actions to obtain comments on required portions of the Schematic Plans from the Wildlife Advisory Group, Bayfront Cultural and Design Committee. (§4.4(a)(i))</p>	90 Days from Full Execution of the Agreement
<p>23. <u>Formation of CFD</u>. The City to complete all documents and actions necessary to commence formation of CFD. (§1.4)</p>	120 Days from Full Execution of the Agreement
<p>24. <u>City Property Tax Contribution</u>. The City to decide on EIFD and if appropriate commence all documents and actions necessary to commence formation of EIFD, or identify other mechanism to contribute City property tax increment. (§1.4)</p>	January, 2019
<p>25. <u>Open Escrow Account; Preliminary Title Report</u>. The District, City and Developer to open an escrow with the Escrow Agent and Developer to deliver Preliminary Title Report to District and City. (§6.2)</p>	60 Days from Full Execution of the Agreement
<p>26. <u>Developer Title Review</u>. The Developer to complete its title review and deliver Developer's Disapproval Notice to District. (§6.2)</p>	90 Days from delivery of Preliminary Title Report
<p>27. <u>District Response to Title Review</u>. The District to complete its title review and to deliver District's Response Notice to Developer. (§6.2)</p>	90 Days from No. 26 (Developer Title Review)

**ACTION**

**TARGET DATE**

- |   |  |
|---|--|
| <p>28. <u>Developer Due Diligence Investigations.</u><br/>The Developer to complete its Due Diligence Investigations and provide notice to District that it accepts or rejects the conditions of the Project Site. (§5.8(c))</p>  | <p>45 Days after completion of soil import to Project Site by District. If no soil import to Project Site, then no later than 90 Days after termination of the Existing RV Park Lease (March 2019)</p> |
| <p>29. <u>Submission of Completed Building Permit Application and Final Cost Estimates - Developer's Improvements.</u> Developer to submit to the District/City completed Building Permit Application, final cost estimates and documents for the Developer's Improvements. (§4.5(b))</p> | <p>15 Months from Full Execution of the Agreement</p>  |
| <p>30. <u>Developer to Obtain Building Permit Processing Agreement.</u></p>   | <p>90 Days after Full Execution of the Agreement.</p>  |
| <p>31. <u>Staff Approval and Acceptance – Completed Final Cost Estimates.</u> The District Staff and City Design Review Staff to approve or disapprove the completed documents, and accept the final cost estimates, for the Developer's Improvements. (§4.5)</p>                         | <p>20 Days after No. 29 (Submission of Final Cost Estimates – Developer's Improvements)</p>  |
| <p>32. <u>Execution of New S-1 RV Park Lease and Construction of New S-1 RV Park.</u> District to execute the New S-1 RV Park Lease, and cause commencement of construction of New S-1 RV Park and related improvements. (§1.2(b); §1.4)</p>  | <p>150 Days from Full Execution of the Agreement</p>   |
| <p>33. <u>Submission of Encumbrance Package and Proposed Completion Guaranty.</u> Developer to submit to District encumbrance package per BPC Policy No. 355 and proposed Completion Guaranty language</p>  | <p>Month 15 from Full Execution of the Agreement</p>   |
| <p>34. <u>Acceptance or Rejection of Encumbrance Package and Completion Guaranty.</u> BPC to accept encumbrance package per BPC Policy No. 355 for construction financing and Completion Guaranty language. (§5.2(e))</p>   | <p>60 days after No. 33 (Submission of Encumbrance Package and Proposed Completion Guaranty)</p>   |

**ACTION**

**TARGET DATE**

- |  |  |
|--|--|
| <p>35. <u>Submission of Management Agreement.</u> Developer to submit to District and City the Management Agreement. (§5.2(f))</p>   | <p>Month 15 from Full Execution of the Agreement</p>                                   |
| <p>36. <u>Consent – Management Agreement.</u> BPC and City Council to consent to the Management Agreement. (§5.2(f))</p>   | <p>60 Days after No. 35 (Submission of Management Agreement)</p>                       |
| <p>37. <u>Vacation of the Existing RV Park.</u> District to cause the Existing RV Park Lessee and each of the tenants, occupants or guests on the land encumbered by the Existing RV Park Lease to vacate such land.</p>           | <p>Not later than September 4, 2019</p>  |
| <p>38. <u>Review of Underwriter’s Updated Projections.</u> The District and City to review and evaluate the underwriter’s updated financial projections. (§5.2(o))</p>   | <p>20 Days from completion of No. 19 (CDP Approval by District)</p>                    |
| <p>39. <u>Final Plan of Finance.</u> BPC and City Council to prepare the Final Plan of Finance, estimated financing schedule and all ongoing and one-time funding sources for public financing.</p>                                | <p>10 Days from completion of No. 38 (Review of Underwriter’s Updated Projections)</p> |
| <p>40. <u>Commence Drafting of Bond Documents.</u> The District Staff and City Staff to commence drafting all documents to present to the BPC and the City Council for approval of issue of Bonds for public financing. (§1.4)</p> | <p>10 Days from completion of No. 39 (Final Plan of Finance)</p>                       |
| <p>41. <u>Preparation of JEP A Bond Documents.</u> The JEP A to commence all documents to present to the JEP A Board, BPC and the City Council for approval of issue of Bonds for public financing. (§1.4)</p>                     | <p>10 Days from completion of No. 39 (Final Plan of Finance)</p>                       |
| <p>42. <u>Approval – Convention Center Subleases.</u> JEP A Board, BPC and City Council to approve and authorize execution of Convention Center Subleases, and other related documents.</p>  | <p>30 Days from completion of all tasks commenced as referenced in Nos. 38-41</p>      |

**ACTION**

**TARGET DATE**

- |   |   |
|---|---|
| <p>43. <u>Authorization for City Manager</u>. The City Council to authorize the City Manager to execute all documents and do all acts necessary to carry out the provisions of this Agreement, the Convention Center Subleases, and other requirements pertaining to the full implementation of the Project, including the Plan of Finance. (§1.4)</p>  | <p>30 Days from completion of all tasks commenced as referenced in Nos. 38-41</p> |
| <p>44. <u>Authorization for District’s Executive Director</u>. BPC to authorize the District’s Executive Director to execute all documents and do all acts necessary to carry out the provisions of this Agreement, the Ground Lease, the Convention Center Subleases, and other requirements pertaining to the full implementation of the Project, including the Plan of Finance. (§1.4)</p> | <p>30 Days from completion of all tasks commenced as referenced in Nos. 38-41</p> |
| <p>45. <u>Approval of JEP A Bonds</u>. The JEP A Board to conditionally approve and authorize execution of JEP A Bond documents and issue of JEP A Bonds. (§1.4)</p>  | <p>30 Days from completion of all tasks commenced as referenced in Nos. 38-41</p> |
| <p>46. <u>CFD Financing</u>. The City to conditionally approve and authorize levy of special tax. (§1.4)</p>  | <p>30 Days from completion of all tasks commenced as referenced in Nos. 38-41</p> |
| <p>47. <u>EIFD Bonds</u>. The City to conditionally approve and authorize execution of EIFD Bond documents and issue of EIFD Bonds. (§1.4)</p>  | <p>30 Days from completion of all tasks commenced as referenced in Nos. 38-41</p> |
| <p>48. <u>Validation Action – Bonds</u>. The JEP A and consultants to file an action for validation of the bonds. (§4.19)</p>   | <p>30 Days from completion of all tasks commenced as referenced in Nos. 42-47</p> |

**CLOSE OF ESCROW:**

**ACTION**

**TARGET DATE**

- |  |  |
|--|--|
| <p>49. <u>Submission of Construction Contracts.</u> Developer to submit to the District and the City executed guaranteed maximum price construction contracts or fixed price construction contracts, as applicable for the Developer's Improvements. (§4.5(g))</p>   | <p>30 Days Prior to Close of Escrow.</p>   |
| <p>50. <u>Grading Permits and all Discretionary Actions.</u> Final and complete grading permits ready to be issued by the City for the Developer's Improvements and approval of all Discretionary Actions by City, District and any third-parties required for the completion of Developer's Improvements (§5.2)</p>   | <p>30 Days Prior to Close of Escrow.</p>   |
| <p>51. <u>Project Public Investment.</u> District and City to submit to the Developer evidence that the Project Public Investment and Developer's Phase 1A Infrastructure Improvements Costs will be available at the Close of Escrow. (§5.3)</p>  | <p>Prior to Close of Escrow.</p>   |
| <p>52. <u>Execution and Delivery of Ground Lease, etc.</u> The District and Developer to complete, execute and deliver into escrow the Ground Lease (including memorandum relating thereto), together with all documents and supplemental escrow instructions required to close escrow. (§6.3, 6.4(a)(i))</p>  | <p>Concurrently with Close of Escrow on Convention Center Subleases and Issuance of Bonds.</p> |
| <p>53. <u>Execution and Delivery of Convention Center Subleases, etc.</u> The District, City, JEPA and Developer to complete, execute and deliver into escrow the Convention Center Subleases (including recordable memoranda relating thereto), together with all documents and supplemental escrow instructions required to close escrow. (§6.4(a)(iii))</p> | <p>Concurrently with Close of Escrow on Ground Lease and Issuance of Bonds.</p>                |
| <p>54. <u>Escrow Fees, Charges.</u> The District, City, JEPA and Developer to pay their respective fees, charges and other costs into escrow. (§6.5)</p>   | <p>Prior to Close of Escrow.</p>   |

**ACTION**

**TARGET DATE**

- |  |                                      |
|--|--------------------------------------|
| 55. <u>Issue of Bonds</u> . The JEPA to prepare and close on sale of JEPA Bonds for public financing. (§1.4)   | Concurrently with Close of Escrow.   |
| 56. <u>Developer's Financing</u> . Developer shall complete all actions necessary to close on Equity Investors contributions and financing from the Private Construction Lender for the Developer's costs for construction of the Developer's Private Improvements. (§5.2) | Concurrently with Close of Escrow.   |
| 57. <u>Certificates</u> . City, District and Developer to provide required incumbency certificates, resolutions or ordinances, as applicable. (§9.12)  | 30 Days Prior to the Close of Escrow |
| 58. <u>Close of Escrow</u> . The District, City, Developer and JEPA to cause Close of Escrow and recordation of memoranda of Ground Lease and Convention Center Subleases. (§6.4)  | October 30, 2019                     |
| 59.  |                                      |

**ATTACHMENT NO. 7**  
**FORM OF DEVELOPER'S PRIVATE IMPROVEMENTS AND CONVENTION CENTER**  
**BUDGET**



4/11/2018

**GAYLORD Chula Vista - 1,600 Keys**

**PRELIMINARY DEVELOPMENT BUDGET**

	Budget	Conference Center	Hotel
Acres	36	36	36
	100.00%	100.00%	100.00%
	1,737,391	620363	1117028
	100%	35.71%	64.29%
	\$ 700,000,001	37.3%	62.7%
	\$ 700,000,000.00	\$ 260,912,623	\$ 439,087,378
	\$ 21,000,000.00	\$ 7,498,383	\$ 13,501,617
	\$ 85,000,000.00	\$ 20,400,000	\$ 64,600,000
	\$ 24,000,000.00	\$ 8,569,580	\$ 15,430,420
	\$ 7,000,000.00	\$ 2,609,126	\$ 4,390,874
	\$ 30,750,000.00	\$ 11,461,519	\$ 19,288,481
	\$ 4,000,000.00	\$ 1,428,263	\$ 2,571,737
	\$ 1,000,000.00	\$ 372,732	\$ 627,268
	\$ 12,000,000.00	\$ 4,472,788	\$ 7,527,212
	\$ 22,000,000.00	\$ 7,855,449	\$ 14,144,551
	\$ 12,250,000.00	\$ 4,374,057	\$ 7,875,943
	\$ 6,000,000.00	\$ 2,142,395	\$ 3,857,605
	\$ 10,000,000.00	\$ 3,570,659	\$ 6,429,341
	\$ 48,000,000.00	\$ 17,891,151	\$ 30,108,849
	\$ 30,000,000.00	\$ -	\$ 30,000,000
	\$ 8,000,000.00	\$ -	\$ 8,000,000
	\$ 4,000,000.00	\$ -	\$ 4,000,000
	\$ 1,025,000,000.00	\$ 353,558,725	\$ 671,441,276
		34.49%	65.51%

Square Footage

A	Hard Construction Costs		
B	Architecture, Engineering and Testing Fees		
C	FF&E/OS&E/Related Expenses		
D	Pre-Opening Expenses/Opening Cash		
E	General Administration and Supervision		
F	Development Fee		
G	Legal & Professional Fees		
H	Title Insurance, Recording Fees & Other Costs		
I	Insurance		
J	Impact Fees/Connection Fees		
K	Leases, Taxes and other Site Costs		
L	Misc. Permits/Fees/Costs		
M	General/Soft Cost Contingency		
N	Hard Cost Contingency		
O	Interest Reserve for Senior and Mezz Loans		
P	Loan and Brokerage Fees and Miscellaneous Costs. Hedging, Finance, Guaranty and Other.		
Q	Developer's Parking Structure Contingency		
	<b>TOTAL</b>		

**ATTACHMENT NO. 8**  
**QUALITY OF IMPORTED SOIL**



April 19, 2017 (revised April 19, 2018)  
Project No. 108244001

Ms. Linda Scott  
Capital Project Manager  
San Diego Unified Port District  
3165 Pacific Highway  
San Diego, California 92101

Subject: Geotechnical Recommendations for Import of Fill Soils  
Chula Vista Bayfront  
Chula Vista, California

Dear Ms. Scott:

In accordance with your authorization, we have prepared this geotechnical specification report for the proposed import of fill to the San Diego Unified Port District's Chula Vista Bayfront project. The intent of this geotechnical specification report is to:

- Stipulate that the earth materials that are imported to the Bayfront project site are suitable for use as fill from a geotechnical engineering standpoint;
- Reduce costs associated with remedial earthwork for future developments within the project site;
- Provide guidance so that the import materials are placed and compacted as engineered fill in general accordance with the current California Building Code and local building/grading ordinances; and
- Provide consistent geotechnical conditions across the Bayfront project site once import and placement of the import fill materials has concluded.

It should be understood that this geotechnical specification report is not intended to serve as a substitute for site-specific geotechnical evaluations for future developments. Developers of individual parcels within the site should retain a geotechnical consultant to perform such evaluations, based on their individual project needs.

Chula Vista Bayfront  
Chula Vista, California

April 19, 2017 (revised April 19, 2018)  
Project No. 108244001

---

### **IMPORT MATERIALS**

Import materials to be placed at the Chula Vista Bayfront site should be comprised of granular soil. The import material should be free of deleterious materials and conform to the following criteria:

- Particle sizes of less than 6 inches, with less than 30 percent (by weight) retained on a ¾-inch sieve;
- Less than 35 percent (by weight) finer than a U.S. Standard No. 200 sieve;
- Expansion Index of less than 50 (based on ASTM International [ASTM] D 4829);
- Plasticity Index of less than 15 (based on ASTM D 4318);
- Organic material of less than 1 percent (by weight);
- Classified as non-corrosive in accordance with Caltrans Corrosion Guidelines (2015), where the soil possesses an electrical resistivity of more than 1,000 ohm-centimeters, a pH of more than 5.5, a chloride content of less than 500 parts per million (ppm), and a sulfate content of less than 2,000 ppm.

The contractor should be responsible for the uniformity of import material brought to the site. We recommend that materials proposed for use as select fill be evaluated from a contractor's stockpile or large cuts, rather than in-place materials. Once an evaluation of an import source is requested, three days should be anticipated for results of the material evaluation.

To reduce the potential for importing contaminated materials onto the Chula Vista Bayfront site, proposed import soils should conform to appropriate environmental criteria established by the San Diego Unified Port District, prior to their import to the site.

Chula Vista Bayfront  
Chula Vista, California

April 19, 2017 (revised April 19, 2018)  
Project No. 108244001

---

### **SITE PREPARATION**

Site preparation should begin with the removal of existing buildings, foundations, other structures and improvements, vegetation, utility lines, asphalt, concrete, and other deleterious debris from areas to be graded. Tree stumps and roots should be removed to such a depth that organic material is generally not present. Clearing and grubbing should extend to the outside of the proposed excavation and fill areas. The debris and unsuitable material generated during clearing and grubbing should be removed from areas to be graded and disposed of at a legal dumpsite away from the project area.

In areas to receive import fill, the upper 12 inches of existing soil should be overexcavated. The bottom of the overexcavated area should be observed by the geotechnical consultant to evaluate its suitability to receive fill. Following observation of the bottom of the overexcavation, the exposed soils should then be scarified 12 inches, moisture conditioned to a near-optimum moisture content, and recompacted to 90 percent of the modified Proctor density (based on ASTM D 1557).

If, after overexcavating the upper soils, the exposed soils are found to be suitable to receive fill, a written request to waive the scarification and recompaction of the soils exposed in the bottom of the excavation shall be submitted to the San Diego Unified Port District (District). The District may elect to waive the overexcavation and recompaction requirement at its sole discretion.

### **PLACEMENT AND COMPACTION OF IMPORT MATERIALS**

Prior to placement of compacted fill, the exposed surface to receive the fill should be prepared as described above in the "Site Preparation" section of this report. The evaluation of compaction by the geotechnical consultant should not be considered to preclude any requirements for observation or approval by governing agencies. It is the contractor's responsibility to notify this office and the appropriate governing agency when project areas are ready for observation, and to provide reasonable time for that review.

Chula Vista Bayfront  
Chula Vista, California

April 19, 2017 (revised April 19, 2018)  
Project No. 108244001

---

Compacted fill should be placed in horizontal lifts of approximately 8 inches in loose thickness. Prior to compaction, each lift should be watered or dried as needed to achieve a moisture content generally above the laboratory optimum, mixed, and then compacted by mechanical methods, to a relative compaction of 90 percent as evaluated by ASTM D 1557. Successive lifts should be treated in a like manner until the desired finished grades are achieved.

Where fill is to be placed on ground sloping more than 5:1 (horizontal to vertical), benches should be excavated in the ground surface (in accordance with the California building code). This will help provide a relatively level surface upon which the fill can be placed.

If the importing of fill materials is not a continuous operation, temporary fills or stockpiles of the fill materials can be utilized so that the subsequent placement of the import materials can be performed in a more continuous manner. In addition, if the import operations or placement of fill is stopped for a period of time, the exposed upper surface of the in-place fill should be evaluated for adequate moisture content and/or potential disturbance prior to the resumption of fill placement. Based on this evaluation, it may be necessary to scarify, moisture condition and recompact the upper 12 inches of the in-place fill materials prior to the placement of additional fill.

#### **GEOTECHNICAL DOCUMENTATION OF IMPORT PLACEMENT AND COMPACTION**

Upon completion of the placement and compaction of the import materials at the site, a geotechnical report that documents the earthwork shall be prepared by a geotechnical engineer that is registered in the State of California. The report shall be appropriately illustrated and should include the following:

- Discussion of the earthwork performed, including site preparation;
- Lateral limits of grading;
- Elevation/depth of the bottom of the overexcavation or processed native soils prior to fill placement;
- Description of the materials utilized as fill and an opinion on their suitability;
- Finish grade elevations;

Chula Vista Bayfront  
Chula Vista, California

April 19, 2017 (revised April 19, 2018)  
Project No. 108244001

- Field density test locations and elevations/depths;
- Results of field density testing and laboratory testing; and
- An opinion regarding the suitability of the site's intended use from a geotechnical engineering standpoint.

### LIMITATIONS

This geotechnical specification report has been prepared in accordance with current engineering practice and the standard of care exercised by reputable geotechnical consultants performing similar tasks in this area. No warranty, implied or expressed, is made regarding the conclusions, recommendations, and professional opinions expressed in this report.

We appreciate the opportunity to be of service on this project.

Sincerely,  
NINYO & MOORE



William Morrison, PE, GE  
Senior Engineer



Ronald S. Halbert, PE  
Principal Engineer



WRM/RSH/gg

Attachment: References

Distribution: (1) Addresscc

Chula Vista Bayfront  
Chula Vista, California

April 19, 2017 (revised April 19, 2018)  
Project No. 108244001

---

## REFERENCES

California Building Standards Commission (CBSC), 2016, California Building Code (CBC), Title 24, Part 2, Volumes 1 and 2.

California Department of Transportation (Caltrans), 2015a, Corrosion Guidelines (Version 2.1), Division of Engineering and Testing Services, Corrosion Technology Branch; dated January.

California Department of Transportation (Caltrans), 2015b, Standard Specifications.

California Environmental Protection Agency (EPA) Department of Toxic Substances Control, 2001, Information Advisory, Clean Imported Fill Material dated: October.

Public Works Standards, Inc., 2012, "Greenbook," Standard Specifications for Public Works Construction.

**ATTACHMENT NO. 9**  
**DRAFT OF THE GROUND LEASE**

**SAN DIEGO UNIFIED PORT DISTRICT**

**LEASE TO**

**RIDA CHULA VISTA, LLC**

**OF PROPERTY LOCATED AT**

---

**CHULA VISTA, CALIFORNIA**

## TABLE OF CONTENTS

1.	BASIC LEASE PROVISIONS .....	3
2.	GENERAL DEFINITIONS .....	6
3.	TERM .....	7
4.	USE .....	7
5.	RENT .....	13
6.	CONSTRUCTION AND ALTERATION OF INITIAL PROJECT IMPROVEMENTS .....	24
7.	TITLE TO AND DEMOLITION OF ALTERATIONS AND IMPROVEMENTS.....	32
8.	ENTITLEMENTS.....	35
9.	LIENS.....	37
10.	LEASE ENCUMBRANCE .....	38
11.	SUBLEASE; ASSIGNMENT .....	48
12.	EVENTS OF DEFAULT AND REMEDIES .....	55
13.	BANKRUPTCY.....	58
14.	EMINENT DOMAIN.....	59
15.	MAINTENANCE AND REPAIR .....	62
16.	TAXES AND PROPERTY EXPENSES.....	68
17.	EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION AND OFAC.....	69
18.	INSURANCE .....	70
19.	INDEMNITY .....	74
20.	DAMAGE OR DESTRUCTION .....	74
21.	HAZARDOUS MATERIALS .....	76
22.	"AS-IS" LEASE AND WAIVERS.....	83
23.	QUITCLAIM OF TENANT'S INTEREST UPON TERMINATION .....	85
24.	PEACEABLE SURRENDER .....	85
25.	WAIVER .....	86
26.	HOLDOVER .....	86
27.	NOTICES .....	86
28.	SECURITY DEPOSIT .....	87
29.	GENERAL PROVISIONS.....	88

## DEFINITIONS ADDENDUM

### SCHEDULES

#### SCHEDULE 1

#### EXHIBITS

- EXHIBIT A LEGAL DESCRIPTION OF PREMISES
- EXHIBIT B DEPICTION OF PREMISES
- EXHIBIT B-1 DEPICTION OF PARKING IMPROVEMENTS
- EXHIBIT B-2 DEPICTION OF NEIGHBORING IMPROVEMENTS
- EXHIBIT C PROJECT IMPROVEMENT PLANS
- EXHIBIT D CONSTRUCTION REQUIREMENTS
- EXHIBIT D-1 CONDITIONS OF PROJECT APPROVAL
- EXHIBIT E FORM OF COMPLETION GUARANTY
- EXHIBIT F FORM OF MEMORANDUM OF LEASE
- EXHIBIT G SUBLEASE INFORMATION
- EXHIBIT H FORM OF ESTOPPEL STATEMENT
- EXHIBIT I DEVELOPMENT PERMITS AND APPROVALS
- EXHIBIT J FORM OF LETTER OF CREDIT
- EXHIBIT K LETTER OF CREDIT ISSUERS
- EXHIBIT L DESIGN INTENT OF EXTERIOR APPEARANCE
- EXHIBIT M PRIOR AGREEMENTS
- EXHIBIT N PRE-APPROVED SIGNS
- EXHIBIT O PROPERTY TAX EXPENSES
- EXHIBIT P FORMS OF SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT
- EXHIBIT Q SUBLEASE QUESTIONNAIRE
- EXHIBIT R-1 PARKING IMPROVEMENTS
- EXHIBIT R-2 PARKING IMPROVEMENTS
- EXHIBIT S  
LANDLORD TRANSFER DOCUMENTS
- EXHIBIT T PARKING EASEMENT
- EXHIBIT U PARKING STRUCTURE LAND

## LEASE

THIS LEASE ("**Lease**") is entered into as of \_\_\_\_\_, 20\_\_\_\_ by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation ("**Landlord**") and RIDA CHULA VISTA, LLC, a Delaware limited liability company ("**Tenant**").

For good and valuable consideration, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Term and upon the terms and conditions hereinafter set forth, the Premises described in Section 1.2 below, and subject to the terms of Article 23 of this Lease, Landlord conveys to Tenant, and Tenant accepts from Landlord, all of Landlord's right, title and interest in and to the Existing Improvements, and Landlord and Tenant hereby agree as follows:

### 1. BASIC LEASE PROVISIONS

The following basic lease terms are referred to in other provisions of this Lease and constitute a part of this Lease and are to be read together with and constitute a part of the terms of this Lease.

#### 1.1 **Term (See Article 3):**

Sixty (66) years as follows (the "**Term**"): \_\_\_\_\_

1.1.1 "**Commencement Date**":                     [ENTER DATE.]                    

1.1.2 "**Expiration Date**":                     [ENTER DATE.]                    

#### 1.2 **Premises:**

The "Premises" consist of the real property more particularly described in Exhibit "A" attached hereto and depicted in Exhibit "B" attached hereto, consisting of approximately thirty-six (36) acres of land area located at [H-3] in the City of Chula Vista, California, together with any Existing Improvements.

#### 1.3 **Permitted Use (See Article 4):**

The Premises and the Improvements shall only be used as follows and for no other purpose (the "**Permitted Use**"): (i) a single-branded resort hotel with at least 1,570 Rooms but not more than 1,600 Rooms on the Premises, with an Acceptable Brand (the "**Resort Hotel**"); (ii) approximately 275,000 net usable square feet of associated meeting space in the Convention Center (the "**Convention Center**" and, together with the Resort Hotel, the "**Primary Use**"); (iii) any use which is ancillary or incidental to the Primary Use as described in Article 4; and (iv) any other use of the Premises and the Improvements that is approved by the Landlord in its sole and absolute discretion in writing; provided that any such use is not restricted or prohibited by the CDP or any Laws.

"**Acceptable Brand**" shall mean the "Gaylord Hotels" brand or any other hotel brand that has achieved "AAA Four Diamond" rating standards in a reasonable number of its hotels or the equivalent as determined by Landlord in its reasonable discretion; provided that Tenant shall not terminate the Hotel Management Agreement that is in effect as of the Commencement Date before the date that is the third (3<sup>rd</sup>) anniversary of the later of the date that the Initial Project Improvements are Complete and the date that Landlord receives a copy of the final certificate of

occupancy. Tenant shall not name the Resort Hotel or Convention Center with any name that includes "San Diego".

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

Except as expressly provided herein, Tenant shall not use or permit the Premises and the Improvements to be used for any other uses or purposes whatsoever. This restriction on use of the Premises and the Improvements absolutely prohibits a change in use.

**1.4 Rent Commencement Date and Rental Periods (See Section 5.1.1):**

The "Rent Commencement Date" shall be the Commencement Date.

The "Rental Periods" under the Lease shall be as follows:

First (1 <sup>st</sup> ) Lease Period:	Lease Years 1 – 18
Second (2 <sup>nd</sup> ) Lease Period:	Lease Years 19 – 23
Third (3 <sup>rd</sup> ) Lease Period:	Lease Years 24 – 37
Fourth (4 <sup>th</sup> ) Lease Period:	Lease Years 38 – 66

**1.5 Minimum Annual Rent (See Article 5):**

The "Minimum Annual Rent" shall be as follows:

First (1 <sup>st</sup> ) Lease Period:	Zero Dollars (\$0) per Lease Year,
Second (2 <sup>nd</sup> ) Lease Period:	Three Million and No/100 Dollars (\$3,000,000) per Lease Year,
Third (3 <sup>rd</sup> ) Lease Period:	Three Million Five Hundred Thousand and No/100 Dollars (\$3,500,000) per Lease Year

Commencing on the first day of the Fourth (4<sup>th</sup>) Lease Period, Minimum Annual Rent shall be as provided in Section 5.3 of this Lease.

Each period of twelve (12) consecutive months commencing on the Rent Commencement Date and each successive twelve (12) month period thereafter during the Term shall be referred to herein as a "Lease Year"; provided, however, that, if the first day of the first Lease Year of the First (1<sup>st</sup>) Lease Period is not the first date of a month, such initial partial month shall be added to the first Lease Year of the First (1<sup>st</sup>) Lease Period so that such Lease Year will end on the last day of the month in which the first anniversary of the Rent Commencement Date occurs; and provided, further, that each subsequent Lease Year shall commence on the day after the end of the immediately preceding Lease Year and shall end on the anniversary of the end of the immediately preceding Lease Year, except that the last Lease Year shall expire on the Expiration Date.

**1.5.1 "Minimum Rent Look Back Adjustment Dates"** (See Section 5.3.1): the first day of each of the 37th, 42nd, 49th, 56th and 63rd Lease Year.

**1.6 Percentage Rent Rates (See Article 5):**

The Percentage Rent Rates are set forth in Section 5.4.1.

**1.7 Parking Improvement Rent (See Section 4.3 and 5.1.2):**

Tenant shall pay the Parking Improvement Rent in accordance with Section 4.3 and Section 5.1.2.

**1.8 Construction of Project (See Article 6):**

(a) **"Outside Construction Commencement Date"**: Ten (10) days after the Commencement Date.

(b) **"Outside Construction Completion Date"**: Forty-Eight (48) months after the Outside Construction Commencement Date (as such date may be extended for a Construction Force Majeure Event).

(c) **"Estimated Total Development Costs"**: [\_\_\_\_\_] Dollars (\$[\_\_\_\_\_]).

(d) **"JEPA Development Cost Contribution"**: \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

(e) **"Premises Preparation Cap"**: Subject to Section 6.2, up to Ten Million Dollars (\$10,000,000).

(f) **"Estimated Tenant Development Cost Contribution"**: \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

(g) **"Tenant Art Investment"**: [\_\_\_\_\_].

**1.9 Insurance (See Article 18):**

**1.9.1 Commercial General Liability:**

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 Tenant's option, be satisfied by limits set forth in primary policies and excess policies.

**1.9.2 Liquor Liability:**

Not less than Five Million Dollars (\$5,000,000).

**1.10 Security Deposit (See Section 12.2.4 and Article 28):**

One Million Dollars (\$1,000,000).

**1.11 Notice Addresses (See Article 27):**

To Tenant:

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: Legal Department

and

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

To Landlord:

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

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

**1.12 Completion Guaranty:**

Tenant's obligation to Complete all of the Initial Project Improvements and obtain the final certificate of occupancy with respect to the Initial Project Improvements shall be guaranteed by Ira Mitzner and, if Tenant's so elects, certain other Persons which are approved by Landlord, in Landlord's reasonable discretion, subject to the guarantor replacement provisions as and to the extent set forth on Exhibit "E" attached hereto (each, a "**Completion Guarantor**" and, collectively, "**Completion Guarantors**"). Tenant shall cause each Completion Guarantor to execute and deliver to Landlord, concurrently with Tenant's execution and delivery of this Lease, a Completion Guaranty in the form and substance of Exhibit "E" attached hereto (the "**Completion Guaranty**"). The Completion Guaranty shall terminate upon the Completion of the Initial Project Improvements and receipt by Landlord of a copy of the final certificate of occupancy received by Tenant for the Initial Project Improvements.

**2. GENERAL DEFINITIONS**

Capitalized terms used in this Lease are more particularly defined or are cross-referenced in the "Definitions Addendum" attached hereto. The definitions set forth in the "Definitions Addendum" are incorporated herein by this reference.

### 3. TERM

#### 3.1 Term.

The "Term" of this Lease shall be the period commencing on the Commencement Date and ending on the Expiration Date as described in Section 1.1, unless sooner terminated or extended as provided in this Lease.

#### 3.2 Prior Agreements.

Except for the documents set forth on Exhibit "M" attached hereto, any and all existing entry agreements, permits, licenses, leases, or rental agreements between Landlord and Tenant relating to the Premises which have not already expired or terminated, are hereby terminated as of the Commencement Date. Notwithstanding the foregoing, any obligations of Landlord or Tenant under such agreements which by their terms survive such termination, shall remain enforceable by Tenant or Landlord, as applicable.

### 4. USE.

#### 4.1 Permitted Use.

Tenant agrees that the Premises and the Improvements shall be used only and exclusively for the Permitted Use described in Section 1.3 and for no other purpose whatsoever. This restriction on use of the Premises and the Improvements absolutely prohibits a change in use. Tenant acknowledges and agrees that the only parking it has a right to utilize in connection with the Permitted Use is as set forth in Section 4.3. Tenant acknowledges and agrees that with respect to any public parking (other than the Tenant Use Parking Improvements) located adjacent to or proximate to the Premises, including without limitation the remaining portions of the Parking Improvements, Tenant has only the rights of a member of the public notwithstanding any regular use of such parking by Tenant and/or its employees, Subtenants, independent contractors, visitors and patrons, and invitees.

#### 4.2 Resort Hotel Use.

Tenant agrees that the Premises and the Improvements shall be used only and exclusively for the Permitted Use, including the following uses that are ancillary or incidental to the Primary Use and that are designed primarily for Hotel Resort and Convention Center guests and visitors:

- (a) Rental of Rooms;
- (b) Rental of Meeting Space;
- (c) Full-service restaurant and/or limited service restaurant, including cocktail lounge and any standalone bar or cocktail lounge;
- (d) Snack bar, delicatessen and/or coffee shop(s);
- (e) Retail shop(s);
- (f) Barber and beauty shop;
- (g) Spa services;
- (h) Health, recreational, and tennis facilities, including recreational lessons;
- (i) Bicycle rentals;
- (j) Rental of automobiles;

- (k) Motorcycle rentals;
- (l) Boat rentals, beach equipment rentals and beach-related services;
- (m) [Special temporary exhibition(s), including production shows (including any and all uses in connection with the production of ICE! (including the use of the ICE! tent as temporary additional meeting space when such ICE! tent is not used for purposes of the ICE! production)) and outdoor entertainment (including ice skating and carnivals)];
- (n) Vending machines, including telephones;
- (o) Office and counter areas for Resort Hotel management and other ancillary services that are consistent with services provided by a convention center hotel comparable with the Resort Hotel;
- (p) Installation of telecommunications equipment;
- (q) Each other use that (i) is ancillary or incidental to the Primary Use, (ii) is customary for a convention center hotel operating in the United States of America and that is comparable with the Resort Hotel and (iii) is not prohibited by the CDP or any Laws.

#### **4.3 Parking Improvements.**

[The following Section 4.3.1 is to be included in this Lease if, prior to the Commencement Date, Landlord has, in accordance with the DDA, notified Tenant that Landlord will not pay for the Parking Improvements Development Costs up to the amount of \$40,000,000:]

##### **4.3.1 Tenant Use Parking Improvements.**

Subject to the terms of the Offsite Parking Land Lease, Tenant shall have the right to use the Offsite Parking Land to surface park at least 1,200 parking spaces (“Surface Parking Improvements”). Tenant shall pay the Landlord rent for the Surface Parking Improvements in accordance with the Offsite Parking Land Lease. Tenant shall also have the exclusive right to use any surface parking Tenant may develop on the Premises (“Premises Surface Parking”).

[The following Section 4.3.2 is to be included as Section 4.3.1 in this Lease if, prior to the Commencement Date, (a) Landlord has, in accordance with the DDA, notified Tenant that Landlord will pay the Parking Improvements Development Costs up to the amount of \$40,000,000 and (b) either (i) the Estimated Parking Improvements Development Costs, as of the Commencement Date, do not exceed \$44,000,000 or (ii) the Estimated Parking Improvements Development Costs, as of the Commencement Date, exceed \$44,000,000 and Tenant has agreed, in its sole and absolute discretion, to construct the Parking Improvements:]

##### **4.3.2 Tenant Use Parking Improvements.**

- (a) Tenant shall have the non-exclusive right to use at least 1,600 parking spaces within a parking structure (“**Parking Improvements**”) and (ii) the exclusive right to use any surface parking Tenant may develop on the Premises (“**Premises Surface Parking**”).

Subject to the terms of the Offsite Parking Land Lease, Tenant shall have the right to use the Offsite Parking Land to surface park at least 1,200 parking spaces (“**Surface Parking Improvements**”) until ninety (90) days after the issuance of a temporary certificate of occupancy for the Parking Improvements. Subject to the terms of the Offsite Parking Land Lease, Tenant may develop such Surface Parking Improvements as Tenant may deem appropriate on the Offsite Parking Land for use for the Improvements.

(b) Tenant shall construct the Parking Improvements and shall pay to Landlord the Parking Improvement Rent in accordance with the terms and conditions set forth on Exhibit "R-1" attached hereto.

[The following Sections 4.3.3 and 4.3.4 are to be included in this Lease as Sections 4.3.1 and 4.3.2 if the above Section 4.3.1 is not to be included in this Lease:]

**4.3.3** No later than ninety (90) days before the sixth (6th) anniversary of the Commencement Date, Landlord shall notify Tenant whether Landlord will pay the Parking Improvements Development Costs up to the amount of Forty Million Dollars (\$40,000,000).

**4.3.4** If Landlord notifies Tenant that Landlord will pay the Parking Improvements Development Costs up to the amount of Forty Million Dollars (\$40,000,000) in accordance with this Section 4.3.1, the Estimated Parking Improvements Development Costs, as of the time of such notice do not exceed \$44,000,000 and Tenant determines, in the reasonable exercise of its discretion, that Landlord's obligation to contribute funds towards the Parking Improvements Development Cost, is valid, enforceable and in compliance with Laws, including any Laws with respect to Landlord's procurement policies, then:

(a) Tenant shall have (i) the non-exclusive right to use at least 1,600 parking spaces within a parking structure ("**Parking Improvements**") and (ii) the exclusive right to use any surface parking Tenant may develop on the Premises ("**Premises Surface Parking**").

(b) Subject to the terms of the Offsite Parking Land Lease, Tenant shall have the right to use Offsite Parking Land to surface park at least 1,200 parking spaces ("**Surface Parking Improvements**") starting on the Commencement Date and ending until ninety (90) days after the issuance of a temporary certificate of occupancy for the Parking Improvements. Subject to the terms of the Offsite Parking Land Lease, Tenant may develop the Surface Parking Improvements as Tenant may deem appropriate in connection with the use of and on the Offsite Parking Land.

(c) Tenant shall construct the Parking Improvements and shall pay to Landlord the Parking Improvement Rent in accordance with the terms and conditions set forth on Exhibit "R-1" attached hereto. Tenant shall pay Landlord rent for the use of the Surface Parking Improvements in accordance with the terms of the Offsite Parking Land Lease.

#### **4.4 Continuous Operations.**

From and after sixty (60) days after the Completion of the Initial Project Improvements, Tenant shall actively and continuously use and operate the Premises and the Improvements in accordance with the Permitted Use, except to the extent an Operation Force Majeure Event renders Tenant unable to do so (which inability, for the avoidance of doubt, shall be for the period of time that such Operation Force Majeure Event interferes with the use and/or operation of the Premises and/or the Initial Improvements) and except for temporary interruptions reasonably and directly related to Alterations as permitted under Section 6.3 (provided that Tenant shall diligently prosecute construction of such Alterations to Completion in accordance with Section 6.3.3). Active and continuous operation shall mean that that the Improvements, including without limitation, the Resort Hotel and the Convention Center shall be continuously open for business, and appropriately staffed with personnel, on such days and for such hours as is customary for similar business operations in San Diego County, California, but that, as Tenant may decide in its sole discretion and in good faith in order to maximize the long-term best interest of the Project, portions of the Resort Hotel and the Convention Center which are not then in use may be temporarily closed (for example, floors of the Resort Hotel and restaurants

may be closed during low occupancy periods). Tenant acknowledges and agrees that said active and continuous use and operation of the Premises and the Improvements enhances the value of the lands within Landlord's jurisdiction; provides public service; and provides additional employment, taxes, and other benefits to the general economy of the area.

#### **4.5 Compliance with Laws.**

Tenant shall in all activities on or in connection with the Premises and the Improvements, and in all uses thereof, including without limitation the Permitted Use and any construction of the Project Improvements or the making of any Alterations, abide by and comply with, and cause Tenant Parties to abide by and comply with, all Laws at Tenant's sole cost and expense, and Landlord shall not have any obligations or responsibilities to comply with any Laws as to the Premises and the Improvements or any use thereby by Tenant or Tenant Parties. In particular and without limitation, Tenant shall have the sole and exclusive obligation and responsibility, at Tenant's sole cost and expense, to comply with the requirements of the following: (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 6.8 and Article 17 below, (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 Premises or the Improvements, including the use or development thereof, (v) the Port Master Plan ("PMP"), (vi) any other development permits or approvals accepted by Tenant, and (vii) the policies adopted by the Board of Port Commissioners. During the term of the Lease, the BPC shall not adopt a law that only targets RIDA Chula Vista, LLC and the Project, unless the law is determined by the BPC, in its sole and absolute discretion, but in a manner that is neither arbitrary nor capricious, to be necessary for health and safety reasons, to protect the welfare of the people, or to exercise the District's police powers under the Port Act. The foregoing limitation shall not apply to the adoption of any ordinance that authorizes an amendment to this Lease or is adopted to authorize the enforcement of Landlord's rights or the performance of Landlord's obligations under this Lease, including without limitation, any ordinances adopted by the BPC as part of any discretionary approval.

##### **4.5.1 Tenant's Contest Right.**

##### **4.5.2 General.**

Tenant is permitted to pay the Property Tax Expenses under protest and contest the amounts; provided that (a) Tenant shall first provide Landlord at least ten (10) Business Days' written notice prior to commencing any such Contest, (b) Tenant shall reasonably cooperate with Landlord with respect to any such Contest and (c) Tenant shall cause the following conditions (collectively, the "**Contest Conditions**") to remain satisfied:

(i) Such Contest shall not place the fee estate of the Premises in material danger of being forfeited or lost;

(ii) Such Contest shall be without cost, liability, or expense to Landlord;

(iii) Tenant shall prosecute such Contest with reasonable diligence and in good faith;

(iv) No Event of Default shall exist under this Lease at the time of or during such Contest;

#### **4.5.3 Landlord Obligations and Protections**

Provided the BPC has consented to Landlord's participation, and subject to any conditions which may be required by the BPC, Landlord shall join in any Contest only if such Contest is legally required to be initiated or prosecuted in Landlord's name. In such case, Landlord shall cooperate, as Tenant reasonably requests, and at Tenant's sole cost and expense, to permit the Contest to be prosecuted in Landlord's name. Landlord shall give Tenant any publicly available documents requested by Tenant in writing that are in Landlord's control and Tenant determines are reasonably necessary for Tenant to prosecute its 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 Landlord 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 Landlord is a party; or (v) the disclosure or release of the document would result in a violation of Laws. Landlord shall otherwise assist Tenant in such Contest as Tenant reasonably requires at no cost or expense to Landlord. Tenant shall pay all costs and expenses, including any legal costs, of any Contest. Tenant shall, at Landlord's request, advance (when Landlord incurs them) such reasonable costs and expenses that Landlord incurs or reasonably anticipates incurring, for Tenant's Contest and Landlord's assistance with such Contest.

#### **4.5.4 Miscellaneous.**

Tenant shall pay the contested Property Tax Expenses when due and payable regardless of any anticipated or ongoing Contest. Tenant shall be entitled to any refund of any Property Tax Expenses (and penalties and interest) paid by Tenant whether such refund is made during or after the Term (except to the extent such refund includes any tax increase for which Tenant has been reimbursed by Landlord prior to receiving such refund). When Tenant concludes any Contest, Tenant shall pay the amount of any Property Tax Expenses as has been finally determined in such Contest to be due (except for any amounts that Tenant has already paid pursuant to this Section 4.6.3), and any costs, interest, penalties, or other liabilities in connection with such Property Tax Expenses.

#### **4.6 Waste or Nuisance.**

Tenant shall not use, or fail to maintain, the Premises or the Improvements in a manner that constitutes waste or nuisance.

#### **4.7 Reservations.**

Tenant shall take possession of the Property 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"). The Landlord Parties and any third party requested by Landlord shall have the right to enter the Premises 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 Tenant (except in the case of an emergency) and provided that the Landlord Parties comply with all applicable

security and safety procedures of Tenant and use commercially reasonable efforts to minimize any interference with Tenant's operation and use of the Premises and the Improvements while on the Premises and at the Improvements, and Tenant shall not be entitled to any monetary payment or other remuneration for, or resulting from, any such access to the Premises or the Improvements by the Landlord Parties. Except in the case of an emergency, Landlord shall consult with Tenant to ensure that the interference with Tenant's operation and use of the Premises and the Improvements is minimized. In addition, at Tenant's request and expense, Landlord shall, to the extent reasonably feasible, move such monitoring wells so as to minimize any interference with Tenant's operation and use of the Premises and the Improvements. . For the avoidance of doubt, Landlord shall not be limited in its right to enter the Premises for any purpose to enforce its regulatory authority.

Landlord shall reasonably consider any request by Tenant in writing for an easement on, over, under or across the Premises to others, including, without limitation, any Governmental Authority, for the purpose of constructing, installing, maintaining, repairing, replacing and removing utility systems; provided, however, that (A) the term of such easement shall not exceed the Term of this Lease; (B) Landlord shall not be responsible for any cost or expense relating to such easement, including without limitation, maintenance thereof; (C) Landlord shall have the right to terminate such easement at no cost or expense to Landlord in the event of an early termination of this Lease; (D) Landlord shall have the right to relocate such easement, at any time, in Landlord's sole and absolute discretion, at Tenant's sole cost and expense; and (E) Tenant shall, at its own cost and expense, remove any utility system constructed or installed pursuant to such easement at the earlier termination or expiration of the Lease.

If required by an order of the SDRWQCB, Landlord shall have the right to grant a license or easement to Rohr, Inc., a United Technologies Aerospace Systems Company ("Rohr") to construct, install, maintain, repair, replace and remove monitoring wells on the Premises.

#### **4.8 Neighboring Improvements.**

Not later than thirty (30) days prior to submitting to the BPC for consideration a preliminary design review or conceptual plan for those parcels set forth in Exhibit "B-2" attached hereto and incorporated herein by reference ("**Neighboring Parcels**"), Landlord shall provide Tenant with notice of the proposed agenda item related to such Neighboring Parcels. Within thirty (30) days of receiving such notice from Landlord, Tenant shall have the right to deliver written comments to Landlord on the proposed preliminary design review or conceptual plan for such Neighboring Parcels, as applicable, and Landlord shall act in good faith when considering, accepting or rejecting any of Tenant's written comments; provided, however, that Landlord shall have no obligation and shall incur no liability resulting from Landlord's rejection of Tenant's comments or Landlord's failure to consider Tenant's comments because they are not received by Landlord prior to the date of the decision of the BPC, and nothing in this Section 4.9 shall limit the discretion of the Landlord or the BPC in any manner to accept or reject the preliminary design review or conceptual plan for Neighboring Parcels, as applicable, in each case, in its sole and absolute discretion.

#### **4.9 Energy Requirements.**

Tenant shall develop, implement, and maintain a measurement and verification plan for energy efficiency for each building on the Premises ("M&V Plan"). Tenant shall cause the performance of, and deliver to the Landlord and the City, an energy consumption audit for each building on the Premises ("Energy Audit") not less frequently than each three (3) years after the issuance of a temporary certificate of occupancy for each building as more particularly set forth in Section

15.2.2.4 of the Settlement Agreement. Tenant's failure to implement the M&V Plan or deliver an Energy Audit to Landlord in accordance with this Section 4.10 shall result in a default under this Lease. .

#### **4.10 Health Rating.**

Tenant shall use commercially reasonable efforts to maintain the highest health rating given by the County of San Diego for any portion of the Premises and/or the Improvements that involves the sale and/or preparation of food.

### **5. RENT**

Tenant agrees to pay to Landlord Greater Of Rent, Parking Improvement Rent and Additional Rent (collectively "**Rent**") in accordance with this Article 5. All payments of Rent and other sums due to Landlord hereunder shall be paid in legal tender of the United States, without notice, invoice, setoff, deduction or demand, except as otherwise expressly provided herein. No payment by Tenant or receipt or acceptance by Landlord of a lesser amount than the Rent shall be deemed to be a waiver of any current or preceding breach by Tenant of any provision hereof. No endorsement or statement on any check or any letter accompanying any check or payment as Rent shall be deemed an accord and satisfaction, and Landlord has the right to accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy in accordance with this Lease, at law or in equity. Tenant waives all rights that it may have under present or future law to designate the items of Rent to which any payments made by Tenant are to be credited. Tenant agrees that Landlord may apply any payments made by Tenant to such items of Rent as Landlord designates, irrespective of any designation or request by Tenant as to the items of Rent to which such payments should be credited.

All payments of Rent shall be delivered to and statements required under Section 5.4.3 below shall be filed with Landlord's Treasurer. Payments of Rent shall be made by check, electronic wire transfer or automated clearing house ("**ACH**") transfer. Checks shall be made payable to the San Diego Unified Port District and mailed to the San Diego Unified Port District, Finance Department, Post Office Box 120488, San Diego, California 92112-0488, or delivered to the San Diego Unified Port District, Finance Department, 3165 Pacific Highway, San Diego, California 92101. All payments of Rent by electronic wire transfer or ACH transfer shall be directed to (or such other location as Landlord may instruct by notice from time to time):

Beneficiary Bank:	Wells Fargo Bank, N.A.
Bank Location:	420 Montgomery, MAC: A0112-102 San Francisco, CA 94104
ACH/Wire Routing Number:	121000248
Beneficiary:	San Diego Unified Port District
Beneficiary Account Number:	4944-983881
Type of Account:	Deposit
Reference	Description of payment
Required:	Customer number and/or invoice(s) numbers

Landlord has the right to change the designated place of payment or filing at any time upon ten (10) Business Days' written notice to Tenant. Tenant assumes all risk of loss and responsibility for Late Charges and interest at the Default Rate for late payments, as hereinafter described.

## **5.1 Rental Periods and Parking Improvement Rent.**

### **5.1.1 Rental Periods.**

The Term of this Lease shall be divided into the "Rental Periods" described in Section 1.4.

### **5.1.2 Parking Improvement Rent.**

On or before the twentieth (20<sup>th</sup>) day of each month during the Term, Tenant shall pay to Landlord the Parking Improvement Rent described in Section 4.3 based on Tenant Parking Revenues received during the immediately preceding month. If the Commencement Date is other than the first day of the month, then the first monthly payment of Parking Improvement Rent shall be prorated based on the number of days within such initial partial month. If the last month of the Parking Improvement Rent is not a full month, then the last monthly payment of Parking Improvement Rent shall be prorated based on the number of days within such last partial month.

## **5.2 Greater Of Rent.**

Commencing on the Rent Commencement Date, the "**Greater Of Rent**" for each Lease Year shall be the greater of (i) the Minimum Annual Rent for such Lease Year as periodically adjusted as provided in Section 5.3, and (ii) with respect to the Fourth (4<sup>th</sup>) Lease Period, the cumulative total of the Percentage Rent for such Lease Year as provided in Section 5.4 below.

### **5.2.1 Monthly Payments of Greater Of Rent.**

(a) *Calculation of Payments.* Concurrently with the delivery of each Monthly Report, but in no event later than the twentieth (20<sup>th</sup>) day of each month during the Term, and on or before the twentieth (20<sup>th</sup>) day following the last day of the month in which this Lease is terminated or expires, Tenant shall pay to Landlord the greater of the following two amounts as and for the Greater Of Rent due with respect to the immediately preceding month:

(i) For any period of time before the beginning of the Fourth (4<sup>th</sup>) Lease Period, Zero Dollars (\$0), and during the Fourth (4<sup>th</sup>) Lease Period, the total Percentage Rent computed for that portion of the Lease Year ending with and including the last day of the preceding month, less total Percentage Rent and monthly Minimum Annual Rent previously paid for the Lease Year, or

(ii) One-twelfth (1/12<sup>th</sup>) of the Minimum Annual Rent, multiplied by the number of full calendar months from the beginning of the Lease Year to and including the preceding month, plus the amount of Minimum Annual Rent due with respect to any initial partial month in the first Lease Year, less the total Percentage Rent and monthly Minimum Annual Rent previously paid for the Lease Year.

(b) *Survival.* The terms of this Section 5.2.1 shall survive the expiration or earlier termination of this Lease.

## **5.3 Minimum Annual Rent.**

Minimum Annual Rent for each Lease Year of the First (1<sup>st</sup>) Lease Period, Second (2<sup>nd</sup>) Lease Period, and Third (3<sup>rd</sup>) Lease Period is described in Section 1.5. Thereafter, Minimum Annual Rent shall be periodically adjusted by the "**Minimum Annual Rent Look Back Adjustments**" described in Section 5.3.1, which shall occur on the "**Minimum Rent Look Back Adjustment Dates**" described in Section 1.5.1.

### 5.3.1 Minimum Annual Rent Look Back Adjustments.

The Minimum Annual Rent shall be subject to adjustment on each Minimum Rent Look Back Adjustment Date set forth in Section 1.5.1 as follows. Within thirty (30) days following each Minimum Rent Look Back Adjustment Date, Landlord shall determine, and provide to Tenant, a written statement setting forth the calculation of, the average annual Greater Of Rent that was payable by Tenant (a) during the period from the first day of the Fourth (4<sup>th</sup>) Lease Period until the first Minimum Rent Look Back Adjustment Date and (b) with respect to all subsequent Minimum Rent Look Back Adjustment Dates, during the period between the applicable Minimum Rent Look Back Adjustment Date and the prior Minimum Rent Look Back Adjustment Date. Effective as of the applicable Minimum Rent Look Back Adjustment Date, Minimum Annual Rent shall be adjusted to an amount equal to sixty-five percent (65%) of such average annual Greater Of Rent payable over the three (3) Lease Years that immediately precede such Minimum Rent Look Back Adjustment Date; provided that in no event shall such new Minimum Annual Rent be less than the Minimum Annual Rent payable for the Lease Year immediately preceding such Minimum Rent Look Back Adjustment Date. Following the determination of a new Minimum Annual Rent, Tenant shall pay any underpayment of Minimum Annual Rent to Landlord within thirty (30) days following such determination. Tenant shall pay Greater Of Rent based on the Minimum Annual Rent at the rate set forth in Section 1.5 or as determined in accordance with this Section 5.3.1, as applicable, until such Minimum Annual Rent is adjusted by a Minimum Annual Rent Look Back Adjustment in accordance with this Section 5.3.1.

### 5.4 Percentage Rent.

"**Percentage Rent**" is the product of the applicable percentage set forth in Section 5.4.1 below (each, a "**Percentage Rent Rate**") multiplied by the Gross Income with respect to the applicable category described in Section 5.4.1 below. Percentage Rent shall be calculated on a monthly basis as provided in this Section 5.4 above and shall be paid in accordance with Section 5.2 above. Except for the Parking Improvement Rent, during the First (1<sup>st</sup>) Lease Period, the Second (2<sup>nd</sup>) Lease Period and the Third (3<sup>rd</sup>) Lease Period, the amount of the Percentage Rent for each Lease Year shall be equal to Zero Dollars (\$0).

#### 5.4.1 Percentage Rent Categories.<sup>1</sup>

Percentage Rents shall be based on the following percentages of the Gross Income, whether collected, uncollected, received, payable or accrued, in the Fourth (4<sup>th</sup>) Lease Period:

(a) Eight Percent (8%) or Nine Percent (9%) of the Gross Income, as applicable, from rental of Rooms, rental of in-Room movies, sale of similar in-Room entertainment services, charges for room service delivery, sale of telephone services, and sale of laundry and dry-cleaning services as follows:

(i) Lease Years 38 – 47: Eight Percent (8%)

(ii) Lease Years 48 – 66: Nine Percent (9%)

(b) Six Percent (6%) or Seven Percent (7%) of the Gross Income, as applicable, from rental of any meeting space, conference room, banquet room or event space in the Convention Center, Resort Hotel or anywhere else on the Premises ("**Meeting Space**") and sale of related merchandise and services provided to Meeting Space (including Gross Income from recovery charges for materials, utilities, security, and similarly related accommodations, sales and services) as follows:

---

<sup>1</sup> NTD: Subject to review by the Hotel Operator.

(i) Lease Years 38 – 47: Six Percent (6%)

(ii) Lease Years 48 – 66: Seven Percent (7%)

(c) Four Percent (4%) or Five Percent (5%) of the Gross Income, as applicable, from sale of food and nonalcoholic beverages (including, without limitation, coffee, tea or milk) sold in conjunction with food, as follows:

(i) Lease Years 38 – 47: Four Percent (4%)

(ii) Lease Years 48 – 66: Five Percent (5%)

(d) Six Percent (6%) or Seven Percent (7%) of the Gross Income, as applicable, from sale of nonalcoholic beverages (including, without limitation, coffee, tea or milk) not served in conjunction with food for consumption on the Premises and the Improvements, as follows:

(i) Lease Years 38 – 47: Six Percent (6%)

(ii) Lease Years 48 – 66: Seven Percent (7%)

(e) Six Percent (6%) or Seven Percent (7%) of the Gross Income, as applicable, from sale of alcoholic beverages for consumption on the Premises and the Improvements, as follows:

(i) Lease Years 38-47: Six Percent (6%)

(ii) Lease Years 48-66: Seven Percent (7%);

(f) Three Percent (3%) of the Gross Income from sale of packaged alcoholic and nonalcoholic beverages for consumption off of the Premises and the Improvements;

(g) Five Percent (5%) of the Gross Income from sale of merchandise including, but not limited to, gifts, novelties, souvenirs, clothing, luggage, jewelry, cigars, cigarettes, candy, sundries, and incidentals of any kind;

(h) Five Percent (5%) of the Gross Income from any admission, cover, or other entertainment charges;

(i) Five Percent (5%) of the Gross Income from rental of automobiles (whether or not the automobiles are stored or delivered at the Premises and the Improvements);

(j) Five Percent (5%) of the Gross Income from sale of health club services, hair cutting and salon services, make-up and beauty services and/or sale of spa services, including but not limited to facials, massages, body wraps, and aromatherapy;

(k) Fifteen Percent (15%) of the Gross Income from rental of bicycles and other recreational equipment;

(l) Ten Percent (10%) of the Gross Income from sale of recreation lessons;

(m) One-half Percent (0.5%) of the Gross Income from sale of any and all California State Lottery tickets;

(n) Ten Percent (10%) of the Gross Income from the rental of office space to tourism/visitor-serving tenants and maritime related tenants;

(o) Three Percent (3%) of the Gross Income from sale of groceries;

(p) Six Percent (6%) of the Gross Income from sale of passenger tickets for crew-operated excursion boats;

(q) Six Percent (6%) of the Gross Income from sale of passenger tickets for crew-operated sport fishing and whale-watching boats;

(r) Five Percent (5%) of the Gross Income from sale of merchandise and/or services through coin-operated vending or service machines or devices that are owned, rented, or leased by Tenant or Subtenant;

(s) Twenty-five Percent (25%) of any commissions and other compensation received for the right to install and operate coin-operated vending or service machines or devices, including telephones, that are not owned, rented, or leased by Tenant or Subtenant;

(t) Fifty Percent (50%) of the Gross Income from any and all telecommunications uses which shall include, but are not limited to, rooftop wireless antennas, antennas attached to a building façade, microwave antennas, paging antennas and cell phone equipment, excluding telecommunications uses that exclusively serve the uses on the Premises and the Improvements;

(u) Ten Percent (10%) of the Gross Income from sale of business services wherever provided on the Premises and the Improvements, including, without limitation, the sale of internet access or other telecommunication services (including, without limitation, sale of internet access or other telecommunication services in connection with the rental of Rooms, Meeting Space, unless such internet access or other telecommunication services are not separately charged and are incorporated within the rental charge of the relevant Room or Meeting Space);

(v) Ten Percent (10%) of any commissions, "mark-ups," income, fees and commissions that Tenant receives as compensation for handling and/or selling tickets sold for activities or events occurring outside the Premises and the Improvements and in which neither Tenant has a direct or indirect ownership interest (for example, admission tickets to the San Diego Zoo Safari Park located in the City of Escondido);

(w) Ten Percent (10%) of the Gross Income from any and all services or uses permitted under the terms of this Lease and not otherwise addressed within the foregoing provisions; and

(x) Twenty Percent (20%) of the Gross Income from any and all services or uses not permitted under the terms of this Lease and not otherwise addressed within the foregoing provisions.

#### 5.4.2 Gross Income.

(a) *Definition.* "**Gross Income**" shall include all Revenue without any deductions or exclusions except as provided in Section 5.4.2(b) below, resulting from, directly or indirectly, or connected to or generated from, the occupancy or use of the Premises and the Improvements, or any business conducted on or in connection with the Premises and the Improvements in any manner, whether conducted by a Tenant Party, whether for cash or credit, whether collected or uncollected, received, payable or accrued and from whatever source derived, including, but not limited to, any type of sales (whether such sales occur with respect to the Premises, the Improvements, or elsewhere) arising from the customers of any Tenant Party receiving services, products or benefits on or from (i) the Premises, (ii) any property within Landlord's jurisdiction (unless such Revenue is the subject of a separate lease with Landlord), or (iii) in connection with any vessel going to or from the Premises while in San Diego Bay (including, without limitation, any vessel traversing or utilizing San Diego Bay in connection with commercial operations). Without limitation of the foregoing, Gross Income shall be construed to include, without limitation, the entire amount of the actual sales price (including

all finance charges by Tenant or Tenant Party) of all sales, rentals, leases and licenses or for other transfer of merchandise or services, and other receipts whatsoever, including, without limitation, agency sales and all mail, catalogue, computer, facsimile, telephone, telecommunication, electronic and other orders filled, transmitted or received through any media. Gross Income shall include any manufacturer's or importer's excise tax included in the prices of the goods sold, even though the manufacturer or importer is also the retailer thereof, whether or not the amount of such excise tax is stated as a separate charge.

(b) *Exclusions.* Refunds for goods returned shall be deducted from current Gross Income upon their return. Bad debt losses shall not be deducted from Gross Income. Gross Income shall not include any of the following:

- (i) sales of United States postage;
- (ii) any sales or transient occupancy tax payable by Tenant or a Tenant Party to any Governmental Authority as a direct result of operations under this Lease; provided that the amount of such taxes is shown on the books and records elsewhere herein required to be maintained;
- (iii) gratuities; provided that the customer voluntarily determines the amount of said gratuity to be paid, or the customer is aware that Tenant or a Tenant Party has added a pre-established gratuity to the charge for the services rendered and said additional amount is segregated and identified as a gratuity on the billing to the customer;
- (iv) proceeds of any disposition of Tenant's trade fixtures (that is fixtures that relate uniquely to Tenant and which are removable without non-repairable damage to the Improvements), furnishings, moveable equipment and other personal property of Tenant located on the Premises or at the Improvements;
- (v) the Tenant Parking Improvements Revenue;
- (vi) any rent received by Tenant from any Subtenant pursuant to the applicable Sublease that is in excess of the applicable percentage rent categories charged under this Lease;
- (vii) interest received or accrued with respect to the funds in any repair and replacement reserve required to be maintained under a Hotel Management Agreement; provided that such interest is required to be credited to the reserve;
- (viii) any rebates, discounts and credits of a similar nature that are given, paid or returned in the course of obtaining Revenue or components thereof, which will be deducted from the Gross Income for the period in which such Revenue was earned; or
- (ix) any insurance proceeds, Condemnation proceeds or any proceeds from a sale of the Project Improvements (or any portion thereof) or any refinancing of the Project (or any portion thereof).

#### **5.4.3 Reports of Gross Income.**

(a) *Monthly Reports.* On or before the twentieth (20<sup>th</sup>) day of each month following the beginning of the Fourth (4<sup>th</sup>) Lease Period, and on or before the twentieth (20<sup>th</sup>) day following the last day of the month in which this Lease is terminated or expires, Tenant shall deliver to Landlord, in a form prescribed by Landlord, a detailed cumulative report of Gross Income for that portion of the Lease Year which ends with and includes the last day of

the previous calendar month ("**Monthly Report**"). Each Monthly Report shall be signed by Tenant or an authorized representative of Tenant under penalty of perjury and shall include the following:

(i) The total Gross Income for said portion of the Lease Year, itemized as to each of the Percentage Rent categories for which a separate Percentage Rent Rate (or per unit charge, if applicable) is established;

(ii) The related itemized amounts of Percentage Rent computed, as herein provided, and the total thereof;

(iii) The total Minimum Annual Rent and Percentage Rent previously paid by Tenant for the Lease Year within which the preceding month falls; and

(iv) A calculation of the Greater Of Rent due for the preceding calendar month determined in accordance with the terms of Section 5.2.1(a).

(b) *Record Keeping.* Tenant shall, during the Term of this Lease and, with respect to each record, for a period of seven (7) years after the date the record was created (or such longer period as Tenant may decide in its sole discretion), keep or cause to be kept, accurate and complete records and books of account of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuit of the rights granted herein (if conducted by or on behalf of Tenant or any Subtenant). The records shall be supported by source documents of original entry such as sales invoices, cash register tapes, bank depository documentation, purchase invoices, or other pertinent supporting documents. A balance sheet and income/expense statement, based upon the books of account, shall be prepared periodically but not less often than once per annum. All sales and other financial transactions shall be recorded by means of a comprehensive system which includes sufficient business processes to ensure that all Gross Income is clearly and accurately recorded and documented by reports and other original source documents. The system shall provide reporting and distinction of all sales and other income and Revenue categories and shall generate an audit trail of all transactions. Any recordation system for sales or other income and Revenue transactions shall be subject to the written approval of the Landlord (such approval not to be unreasonably withheld, conditioned or delayed); provided that, so long as Marriott is the Hotel Operator under the Hotel Management Agreement, the recordation system for sales or other income and Revenue transactions that is used by Marriott at other Marriott branded hotels within the Landlord's jurisdiction as of the Commencement Date shall be deemed to have complied with the requirements set forth in this Section 5.4.3(b) and to have been approved by Landlord. In the event of admission or cover charges, Tenant shall issue either preprinted serially numbered tickets for each such admission or cover charge or such other evidence of the issuance of each individual ticket. In the event of the rental of vehicles or vessels, Tenant shall issue or cause to be issued either preprinted serially numbered rental agreements for each such rental transaction or such other evidence of the issuance of each individual rental transaction. The terms of this Section 5.4.3(b) shall survive the expiration or earlier termination of this Lease.

(c) *Maintenance of Records; Audit.* All of Tenant's books of account, records, financial statements, and documentation related to this Lease or to business operations conducted within or from the Premises or the Initial Project Improvements, shall be kept during the Term and, with respect to each record, for a period of seven (7) years after the date the record was created (or such longer period as Tenant may decide in its sole discretion), either at the Premises, the Initial Improvements, Tenant's main business office, any of Hotel Operator's business offices or at such other location in San Diego County, California as is reasonably acceptable to Landlord. Without limitation of the foregoing, if there is any

Subtenant occupying or operating from any portion of the Premises or the Improvements, then the books and records also shall include any occupancy, licensing, permit or operating agreements pertaining to such Subtenant, as well as the books of account, records, financial statements, and documentation, relating to the operations of such Subtenant at the Premises or the Improvements, as applicable. Upon at least forty-eight (48) hours' prior notice to Tenant, Landlord shall have the right to examine and audit said books of account, records, financial statements, and documentation (the "**Tenant Records**"), including, without limitation, for the purpose of determining the accuracy thereof, the accuracy of the Monthly Reports, and the accuracy of the Rent paid to the Landlord. Landlord's audit rights shall apply to the current Lease Year and all prior Lease Years and Tenant waives the right to assert any statute of limitations in connection with any audit or any underpayment disclosed pursuant to such audit. In the event that the business operations conducted within or from the Premises or the Improvements are part of a larger business operation, and any part of the Tenant Records herein is prepared only for the larger operation, and not solely for the business operations of the Premises or the Improvements, then Landlord shall also have the right to examine and audit that part of said books of account, records, financial statements, and documentation of the larger business operation. If Tenant assigns its interest under this Lease, Tenant shall deliver to the Transferee the originals (or complete copies) of the Tenant Records which shall be retained by Transferee and available to audit on the same terms as under this Section 5.4.3(c).

(d) *Failure to Maintain Records.* Tenant shall keep or cause to be kept each Tenant Record for a period of seven (7) years after the date the Tenant Record was created and to make each Tenant Record available for inspection by Landlord in accordance with the terms hereof. After the seven (7) year period has expired for a certain Tenant Record, Tenant shall deliver the original Tenant Record to Landlord at the address set forth in Section 1.11 or such other location designated by Landlord in writing, which may include the main offices of the City; provided, however, Tenant may elect to deliver all of the Tenant Records that expire in a given Lease Year at one time, in one delivery, on or about July 1 of each Lease Year. Landlord may request that Tenant implement any additional accounting methods or controls that Landlord reasonably deems necessary, subject to prior written notice to Tenant. If Landlord does so, then Tenant will in good faith consider implementing such additional accounting methods or controls, as applicable, but Tenant may, in consultation with the Hotel Operator, elect in its reasonable discretion not to implement such additional accounting methods and controls. In the event the Tenant does not make available to Landlord the original Tenant Records, including in electronic form, within San Diego County, then Tenant agrees to pay all reasonable travel and other expenses incurred by Landlord Parties in conducting an audit at the location where the Tenant Records are kept.

(e) *Underpayment/Overpayment.* If the audit conducted by Landlord under Section 5.4.3(c) above reveals an underpayment or an overpayment of the Rent due, Tenant shall pay to Landlord the amount of the underpayment within thirty (30) days following written notice thereof from Landlord, or Landlord shall refund the amount of the overpayment within thirty (30) days following the determination of such overpayment (or, at Landlord's option, Landlord shall credit the overpayment against the installment of Greater Of Rent first coming due after such thirty- (30-) day period), as applicable. If the audit reveals a discrepancy of five percent (5%) or more between the Rent due as reported by Tenant and the Rent due as determined by the audit, and/or Tenant has failed to maintain (or has failed to cause to be maintained) complete and accurate Tenant Records as described in this Section 5.4 above, then Tenant shall also pay the cost of the audit within thirty (30) days after written notice thereof from Landlord.

## 5.5 Additional Rent.

For each Lease Year of the First (1<sup>st</sup>) Lease Period, Second (2<sup>nd</sup>) Lease Period, and Third (3<sup>rd</sup>) Lease Period, Tenant shall pay additional rent (“**Additional Rent**”) to Landlord equal to twenty percent (20%) (“**Additional Rent Percentage**”) of the amount by which the Net Operating Income for such Lease Year exceeds eleven percent (11%) of the Actual Capital Investment (“**Additional Rent Hurdle**”).

For purposes of this Section 5.5, the following definitions shall apply:

“**Net Operating Income**” shall mean for any Lease Year the total Project Revenues less all Operating Expenses calculated on an annual basis.

“**Actual Capital Investment**” shall mean the actual cost incurred by Tenant to design, construct and develop the Initial Project Improvements or, if and after Tenant substantially completes the Parking Improvements in accordance with Section 4.3, the Project Improvements, including, without limitation, all financing costs and other costs that are capitalized in accordance with generally accepted accounting principles, as certified by a reputable, certified public accountant as of the Completion of the Initial Project Improvements and/or as of the substantial completion of the Parking Improvements, as applicable.

“**Project Revenues**” shall mean all income, receipts, proceeds, amounts, money, cash, assets, property or things of value received by Tenant for all goods and merchandise sold, room revenues derived from hotel operations, food and beverages sold, the charges for all services performed, or any other revenues generated by or otherwise payable to Tenant (and Tenant Parties) (including, without limitation, use fees, retail and commercial rent, revenue from rooms, accommodations, food and beverage, and the proceeds of business interruption insurance) in, at or from the Premises, whether collected, uncollected, received, payable or accrued, and all rent actually received by Tenant from any Subtenant pursuant to the applicable Sublease. Project Revenues shall exclude (a) proceeds from any sale of the Improvements (or any portion thereof), or (c) proceeds of any disposition of Tenant's trade fixtures (that is fixtures that relate uniquely to Tenant and which are removable without non-repairable damage to the Improvements), furnishings, moveable equipment and other personal property of Tenant located on the Premises or at the Improvements.

“**Operating Expenses**” shall mean expenses, costs, and amounts of every kind that Tenant pays or incurs during any Lease Year because of or in connection with the ownership, operation, management, maintenance, repair, replacement, or restoration of the Premises and the Initial Project Improvements or, if and after Tenant substantially completes the Parking Improvements in accordance with Section 4.3, the Project Improvements, or the operation or management of the business conducted thereon consistent with this Lease (collectively, “**Operation**”), including, by way of example, all direct and indirect employment expense (including wages, salaries, and other compensation and benefits of all persons engaged in Operation, including employer's social security taxes, unemployment taxes, insurance, and any other taxes imposed on Tenant that may be levied on those wages, salaries, and other compensation and benefits), cost of goods sold, costs of supplies or materials consumed and any other cost or expense of any kind incurred in connection therewith; cost of equipment and fixtures installed in the Project Improvements or the Premises (to the extent not included in the calculation of Actual Capital Investment); the cost of any utilities; the cost of operating, managing, maintaining, and repairing any building system; the cost of licenses, certificates, permits, and inspections; the cost of any Contest; the costs incurred in connection with the

implementation and operation of a transportation system management program or similar program; advertising and marketing expense of any kind (including the cost of participating in a reservation management or loyalty program); fees, charges, and other costs including management fees (or amounts in lieu of such fees), consulting fees, legal fees, and accounting fees of all persons engaged by Tenant or otherwise reasonably incurred by Tenant in connection with the operation, management, maintenance, and repair of the Premises and the Project Improvements, or the operation of the business conducted thereon; payments under any easement, license, operating agreement, declaration, restrictive covenant, or instrument relating to the sharing of costs by the Premises or the Project Improvements; including industry standard operator and franchise fees, replacement reserves, and replacement costs in excess of reserves; asset management fees for the Project Improvements (which shall not exceed one percent (1%) of the Project Revenues); gross tax receipts for the Project Improvements; sales, use, transient occupancy or similar tax; the cost of maintaining insurance premiums for the Initial Project Improvements and, if required pursuant to Section 4.3, the Parking Improvements (including liability insurance); property taxes for the Project Improvements; possessory interest tax on Tenant's leasehold interest (land value); incentive management fees ("**Management Incentive Fee**") for the Project Improvements (which shall not exceed twenty percent (20%) ("**Maximum Incentive Fee Percentage**") of the portion of the Net Operating Income that exceeds [Seventy-Five Million Six Hundred and Eighty Thousand Dollars (\$75,680,000) ("**Incentive Fee Hurdle**")]; Rent actually paid by Tenant under this Lease; any other cost or expense that is properly allocated to the operation of the Premises or the Project Improvements under USALI; and all other expenses categorized as "deductions" under the Hotel Management Agreement. Operating Expenses shall exclude debt service (principal and interest) paid by Tenant for the Project Improvements, depreciation of the Project Improvements, income taxes paid by Tenant for Project Revenues related to the Project Improvements and the costs or expenses of operating any business within any portion of the Premises or Project Improvements that is subleased to any Subtenant (but not the costs incurred by Tenant (as sublandlord and as Tenant) in operating such portion of the Premises or Project Improvements (such as insurance costs, maintenance and repair costs and Property Tax Expenses)).

On or before the twentieth (20<sup>th</sup>) day of each month of the First (1<sup>st</sup>) Lease Period, Second (2<sup>nd</sup>) Lease Period, and Third (3<sup>rd</sup>) Lease Period, commencing on the second month of the first Lease Year of the First (1<sup>st</sup>) Lease Period and ending on the first month of the first Lease Year of the Fourth (4<sup>th</sup>) Lease Period, Tenant shall render to Landlord, a monthly report of Net Operating Income for the immediately preceding month of the Lease Year and the Additional Rent due, if any. Each report shall be signed by Tenant or its authorized representative under penalty of perjury and shall be accompanied by payment of all Additional Rent due.

### 5.5.1 Additional Rent Example Calculation.

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

AR = Additional Rent

MIF = Management Incentive Fee

a = Additional Rent Percentage

b = Maximum Incentive Fee Percentage

c = Incentive Fee Hurdle

d = Additional Rent Hurdle

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

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

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

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

$$AR = \frac{20\% (\$100M - 20\% \times \$24.32M - \$86.35M)}{1 - .04}$$

$$AR = \frac{20\% (\$100M - \$4.864M - \$86.35M)}{.96}$$

$$AR = \frac{20\% \times \$8.786M}{.96}$$

$$AR = \frac{\$1.7572M}{.96}$$

AR = \$1.830 Million

### 5.6 Late Charges.

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

Tenant fails to pay any Rent when due, then the unpaid Rent amount shall accrue interest at the Default Rate from the date due until paid, and such interest shall constitute Additional Rent.

#### **5.7 Net Lease.**

Tenant acknowledges that the Rent will be absolutely net of any costs or expenses to Landlord relating to Premises or any Improvements and acknowledges and agrees that Landlord shall not be responsible for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Premises or any Improvements during the Term, whether foreseen or unforeseen and whether or not within the contemplation of the Parties as of the Commencement Date, except as shall be otherwise expressly provided in this Lease. Without limitation of the foregoing, Landlord shall not be required to construct, install, provide or arrange for any utilities, roadway, docks, tide walls, drainage or other improvements of any nature on, in, under or above the Premises or any other location, except as shall be otherwise expressly provided in this Lease.

#### **5.8 Reimbursement.**

If under the terms of this Lease an amount expended by Landlord is to be reimbursed by Tenant pursuant to the "**Reimbursement Procedure**", then Tenant shall reimburse Landlord for the subject amount within thirty (30) days of Tenant's receipt of reasonable evidence of the work performed by or for Landlord and the costs incurred by Landlord for such work, including, without limitation, a reasonably detailed invoice or statement from Landlord for the subject amount and, if applicable, copies of any applicable third party invoices, and/or work description. Any amounts owed to Landlord pursuant to the Reimbursement Procedure shall constitute Additional Rent and shall accrue interest at the Default Rate from the date due until paid if not paid within the time period permitted under the Reimbursement Procedure.

### **6. CONSTRUCTION AND ALTERATION OF INITIAL PROJECT IMPROVEMENTS**

#### **6.1 Commencement and Completion of Initial Project Improvements.**

Subject to the terms of Section 6.5, following the Commencement Date, but not later than the Outside Construction Commencement Date, Tenant shall commence the construction of the Initial Project Improvements. Tenant shall be deemed to have commenced the construction of the Initial Project Improvements when Tenant delivers a notice to proceed with respect to the construction of the Initial Project Improvements to Tenant's contractor. Thereafter, Tenant shall diligently proceed with the construction of the Initial Project Improvements to Completion, and Complete the Initial Project Improvements by the Outside Construction Completion Date. Without limiting the generality of the foregoing, Tenant acknowledges and agrees that the cessation of construction of the Initial Project Improvements for more than thirty (30) consecutive days shall, unless caused by a Construction Force Majeure Event, be deemed a failure by Tenant to prosecute the construction of the Initial Project Improvements to Completion and shall constitute an Event of Default under this Lease without further notice or cure right by Tenant if Tenant does not resume construction of the Initial Project Improvements within ten (10) days after Tenant receives notice thereof from Landlord. The Initial Project Improvements shall be constructed substantially in accordance with the plans and specifications, including but not limited to working drawings, described in Exhibit "C" attached hereto (the "**Plans**"). The Plans have been previously approved in writing by Landlord. Changes to the Plans must be approved by Landlord in writing, in Landlord's sole discretion, and, once approved, shall be considered a part of the "Plans"; provided, however, Landlord's approval of any change in the Plans shall not be required if: (a) such change does not change

the design principles of the exterior appearance of the Initial Project Improvements, as set forth in the CDP; (b) such change does not require approval by the Landlord pursuant to BPC Policy No. 357; (c) such change is not inconsistent with the Chula Vista Building Code; and (d) such change is not inconsistent with the PMP, CDP, the EIR, CVBMP Documents or any other Laws. The Plans are by this reference made a part hereof. In the event of any inconsistency between the Plans and the terms and conditions of this Lease, the terms and conditions of this Lease shall prevail.

In constructing the Initial Project Improvements, Tenant shall comply with all Construction Requirements set forth in Exhibit D-1 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 Premises or the use or development thereof and any conditions of approval or mitigation measures or Project changes pursuant to any environmental review under CEQA. In addition, in connection with the construction or Alteration of the Initial Project Improvements, Tenant shall comply with Section 6.8 regarding PWL requirements.

Notwithstanding the existence of a Force Majeure Event, Tenant hereby acknowledges that if the Initial Project Improvements are not Complete by the Outside Construction Completion Date, Landlord will incur costs not contemplated by this Lease. Accordingly, in the event Tenant does not Complete the Initial Project Improvements by the Outside Construction Completion Date, Tenant shall pay to Landlord the amount(s) set forth in Schedule 1 attached hereto and incorporated herein by reference for each day that Tenant fails to Complete the Initial Project Improvements after the Outside Construction Completion Date ("**Construction Late Charges**"). The Parties hereby agree that said Construction Late Charges are Additional Rent and are not interest. The Parties further agree that the Construction Late Charges apply whether or not Tenant receives notice of its failure to Complete the Initial Project Improvements, and that said Construction Late Charges are appropriate to compensate Landlord for loss resulting from the revenues that would have been received should the Initial Project Improvements have been Completed by the Outside Construction Completion Date; provided, however, Tenant acknowledges and agrees that there will be an Event of Default under this Lease if Tenant fails to Complete the Initial Project Improvements within three hundred and sixty (365) days after the Outside Construction Completion Date.

## **6.2 Premises Preparation Work.**

Landlord shall pay to Tenant up to the Premises Preparation Cap for the work to be completed by Tenant to prepare the Premises for the construction of the Initial Project Improvements ("**Premises Preparation Work**"); provided, however, that the Premises Preparation Cap shall be decreased by Four Million Dollars (\$4,000,000) if Landlord delivers one hundred thirty thousand (130,000) cubic yards of soil to the Premises prior to the Commencement Date or if Landlord is unable to deliver the one hundred and thirty thousand (130,000) cubic yards to the Premises, the Premises Preparation Cap shall be decreased proportionally by the amount of cubic yards of soil that Landlord actually delivers to the Premises prior to the Commencement Date. For example, if Landlord delivers thirty-two thousand five hundred (32,500) cubic yards of soil prior to the Commencement Date, the Premises Preparation Cap will be decreased by One Million Dollars (\$1,000,000). On or before the twentieth (20<sup>th</sup>) day of each month, Tenant shall provide to Landlord on a monthly basis invoices for an amount equal to the difference (a) the amount of all costs that Tenant has incurred in connection with the Premises Preparation Work ("**Premises Preparation Work Costs**") less (b) the amount that Landlord has previously paid to Tenant in respect of Premises Preparation Work Costs. With each such invoice, Tenant shall submit supporting documentation and statutory conditional mechanics lien waivers from all of

Tenant's contractors for the Premises Preparation Work who have not submitted statutory final lien waivers. Landlord shall pay the amount of each invoice to Tenant no later than thirty (30) days after Landlord receives such invoice. Tenant shall send to Landlord the statutory mechanics' final lien waivers for any Premises Preparation Work when Tenant delivers the statutory mechanics' final lien waivers for the Initial Project Improvements; provided however, nothing herein shall be interpreted as a modification of or waiver by Landlord of Tenant's obligations pursuant to Article 9. Notwithstanding the foregoing, Landlord will not be required to disburse any amount under this Section 6.2 in excess of the Premises Preparation Cap.

### **6.3 Alterations.**

#### **6.3.1 Major Alterations.**

The term "**Major Alterations**" means all Alterations other than Minor Alterations and the Initial Project Improvements. Tenant shall comply with all Laws, at its sole cost and expense, including, without limitation, obtaining any permits and approvals required to be obtained for the Major Alterations from any Governmental Authority. Tenant may not make any Major Alterations without the prior written consent of Landlord. Landlord's consent will not be unreasonably withheld; provided, however, nothing in this Section 6.3.1 shall limit the discretion of the BPC in any manner to approve or disapprove a Major Alteration in their sole and absolute discretion. Any Major Alteration shall be subject to Section 6.7. Landlord may condition its approval of a Major Alteration on compliance with the Laws and Tenant obtaining insurance coverages in addition to those required under Article 18 if such additional coverage is customarily obtained in connection with work similar in scope to the Major Alteration. All Major Alterations shall be in accordance with plans and specifications, including but not limited to working drawings (collectively, "**Alteration Plans**") submitted to and approved by Landlord in writing prior to the commencement of the Major Alterations. Following approval by Landlord, any changes in the Alteration Plans shall be subject to Landlord's approval, in Landlord's sole discretion. If Landlord approves the Alteration Plans, and if Tenant elects to proceed with the Major Alterations, then Tenant shall construct and Complete all of the Major Alterations set forth in the Alteration Plans in one (1) integrated construction project with all due diligence; provided, however, that any Major Alterations may be Completed in phases if such phasing is permitted by the Laws.

#### **6.3.2 Minor Alterations.**

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

#### **6.3.3 Diligent Construction; Continuous Operations.**

Once construction of any Alterations is commenced, Tenant shall diligently prosecute construction of the Alterations to Completion. After Completion of the Initial Improvements, Tenant shall continue to operate the Premises and the Improvements for the Permitted Use during the course of construction of the Major Alterations to the greatest extent feasible. Once

an Alteration is Complete, Tenant shall operate the Alteration as part of the Premises and the Improvements, as applicable, throughout the Term of the Lease.

#### **6.3.4 Construction Requirements.**

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

#### **6.4 Cost Reporting.**

Tenant 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 Tenant may decide in its sole discretion), maintain customary records of construction costs incurred by Tenant in connection with the Improvements and any Major Alterations. Such records shall include, but are not limited to, a general ledger, vendor invoices, cancelled checks, agreements with third-party contractors and contractor progress payment billings. Tenant shall furnish to Landlord an itemized statement of the construction costs incurred and paid by Tenant in connection with the Improvements or any Major Alterations thereto, as applicable, within thirty (30) days after Tenant receives Landlord's request therefor (which request shall not be provided to Tenant until the Initial Improvements or the respective Major Alterations have been Completed). The statement shall be sworn to and signed, under penalty of perjury, by Tenant as fairly representing, to the best of Tenant's knowledge, the construction costs incurred and paid by Tenant. Should Tenant perform any construction with its own personnel, Tenant 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 Tenant 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 Premises, the Improvements, or at such other location in San Diego County, California as is reasonably acceptable to Landlord. Landlord 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 Tenant does not make available the original books and records at the Premises or within the limits of San Diego County, California, then Tenant agrees to pay all expenses incurred by Landlord Parties in conducting an audit at the location where said books and records are maintained in accordance with Section 5.4.3. After the seven (7) year period has expired for any record subject to this Section 6.4, Tenant shall deliver the original of such record to Landlord at the address set forth in Section 1.11 or such other location designated by Landlord in writing, which may include the main offices of the City of Chula Vista; provided, however, Tenant may elect to deliver all of the records subject to this Section 6.4 that expire in a given Lease Year at one time, in one delivery, on or about July 1 of each Lease Year.

#### **6.5 Force Majeure Event.**

- 6.5.1 Definition. "Force majeure" means the occurrence of any of the following events, individually or in any combination, to the extent that such event is beyond the reasonable control of Tenant and prevents Tenant from the performance of its obligations under this Lease:
- (a) A strike, or similar labor disturbances causing a work stoppage, excluding any such strike or work stoppage that could have been avoided had Tenant or a Tenant Party, as applicable, complied with Law or labor agreements, if any.
  - (b) Hurricanes, typhoons, tornadoes, cyclones, other severe storms, lightning or floods.
  - (c) Days of precipitation or high winds in any month in excess of ten (10) year average for the area within Landlord's jurisdiction.
  - (d) An earthquake, volcanic eruptions, wildfires, explosions, disease, epidemics or other natural disaster.
  - (e) Fires.
  - (f) 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 Tenant's or Tenant Parties' acts or failure to act).
  - (g) 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.
  - (h) Delays in the issuance of any approvals or authorizations from any Governmental Authority (excluding the District and the City of Chula Vista) that is necessary to proceed with development or operation of the Initial Project Improvements (provided that Tenant 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 Tenant or a Tenant Party is not primarily responsible for the delay in the issuance of such approvals or authorizations).
    - (i) An act of God.
    - (j) Embargoes or blockades.
- 6.5.2 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.
- 6.5.3 Exclusions. For purposes of this Section 6.5, a Force Majeure event shall not include adverse general economic or market conditions not caused by any of the events described in 6.5.1(a) through (h), above.
- 6.5.4 Obligation to Pay Rent. In no event will a Force Majeure event excuse the payment of rent or any other monies due Landlord under this Lease.

6.5.5 Notice and Acceptance Requirement. Tenant shall notify Landlord in writing within ten (10) days after Tenant learns of, and in no event later than thirty (30) days after commencement of a Force Majeure event. Such notice (the “Force Majeure Notice”) must be made in good faith and describe the Force Majeure Event creating delay, why such delay is occurring, the expected duration of such delay, and the commercially reasonable efforts that Tenant is taking to minimize the period of delay. Landlord’s approval of Tenant’s assertion of the existence of a Force Majeure event shall not be unreasonably withheld or delayed. As long as Tenant delivers the Force Majeure Notice in accordance with this Section 6.5 and requests then, until the propriety and duration of such extension is agreed to by the Parties, such extension shall be deemed granted.

6.5.6 Initial Public Financing Payments. Construction of the Initial Project Improvements includes public financing provided in part by Landlord through a Joint Exercise of Powers Agreement (JEPA) with the City of Chula Vista (the “Public Debt Service Obligation” or PDSO). From and after the fifth year of the Lease, if a Force Majeure event results in a delay in the Completion of construction of the Initial Project Improvements, then Tenant shall pay to Landlord each month the total annual payment for the Public Service Debt Obligation, prorated monthly, (the “Tenant Public Financing Payment” or TPF) less:

(a) “Existing Revenues” contributed by the City of Chula Vista as defined under Section 3.1.B of that certain Revenue Sharing Agreement between City and Landlord dated April 24, 2018 (“Revenue Sharing Agreement”), that are generated and ultimately received by City (the “City Force Majeure Contribution” or CFMC); and

(b) “Existing Revenues” and “District Support Payments” contributed by Landlord as defined under Section 3.1.A of the Revenue Sharing Agreement that are generated and ultimately received by Landlord (the “Landlord Force Majeure Contribution” or LFMC).

(c) Calculation of Tenant Public Financing Payment (TPFP) Formula

$$TPFP = \frac{PDSO - (CFMC + LFMC)}{12}$$

(d) Example Calculation of Tenant Public Financing Payment (TPFP)

Assuming the following annual amounts:

- Annual PDSO: \$18,000,000
- Annual CFMC: \$4,000,000
- Annual LFMC: \$4,000,000

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

$$TPFP = \frac{\$10,000,000}{12}$$

TPFP = \$833,333.33

6.5.7 Limits on Term of Force Majeure. In no event shall a Force Majeure event extend beyond the term of the Ground Lease.

## 6.6 Advertising Devices.

All signs, flags and other advertising devices (collectively, the "Advertising Devices") visible from outside the Premises or the Improvements, as applicable, except the Advertising Devices set forth on Exhibit "N" attached hereto which have been previously approved by the Landlord in writing, must be expressly approved by Landlord (in its reasonable discretion, if such approval is ministerial, and in the Landlord's sole and absolute discretion, if such approval is discretionary), prior to installation. Not later than one hundred and eighty (180) days prior to the Completion of the Resort Hotel, Tenant may submit to Landlord a list of Advertising Devices to be flown, installed, placed or erected on the Premises and the Improvements, to be approved or disapproved by Landlord as provided herein. Such list shall specify, with respect to each proposed Advertising Device, its form, proposed location on the Premises or the Project Improvements, dimensions, frequency and duration of display and any other information that Landlord may request. Tenant shall not sell any naming rights to any portion of the Convention Center without the prior written consent of the Landlord, which consent may be denied, conditioned, or withheld in the Landlord's sole and absolute discretion. If Landlord consents to the sale of naming rights, Tenant shall pay Landlord percentage rent, in an amount to be mutually agreed to by Landlord and Tenant, based on the gross income for the sale of such naming rights. All signage in the Landlord's jurisdiction is subject to all Laws, including without limitation, San Diego Unified Port District Code Section No. 8.30. If Landlord hereafter adopts any other ordinance or policy governing signage, Tenant shall comply with such ordinance or policy subject to any grandfathering terms thereof.

## 6.7 Tenant Percent for Art.

Tenant shall expend no less than the Tenant Art Investment amount set forth in Section 1.8. Tenant acknowledges and agrees that any requests for proposed Alterations during the Term may be conditioned on the payment of additional commissions or purchases of artwork and/or in-lieu contributions.

## 6.8 Prevailing Wage.

6.8.1 Tenant acknowledges and agrees that:

(a) Any construction, alteration, demolition, installation or repair work required or performed under this Lease constitutes "public work" under California Prevailing Wage Law, including Labor Code §§ 1720 through 1861, et seq. ("**PWL**"), and obligates Tenant to cause such work to be performed as "public work," including, but not limited to, the payment of applicable prevailing wages to all persons or entities subject to the PWL.

(b) Tenant shall cause all Persons performing "public work" under the Lease to comply with all applicable provisions of the PWL and other applicable wage laws.

(c) Landlord hereby notifies Tenant and Tenant 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 or 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,” unless it is currently registered and qualified to perform “public work” pursuant to § 1725.5. It is not a violation of § 1771.1 for an unregistered contractor to submit a bid that is authorized by § 7029.1 of the Business and Professions Code or by §§ 10164 or 20103.5 of the Public Contract Code provided the contractor is registered to perform “public work” pursuant to § 1725.5 at the time the contract is awarded.

(d) Tenant acknowledges that its obligations under the PWL 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 five (5) days of the award. 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 of the contractor, 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 Tenant shall determine and use whatever form the DIR requires.

(e) Landlord shall not be responsible for Tenant’s failure to comply with any applicable provisions of the PWL.

(f) Tenant’s violations of the PWL shall constitute a default under this Lease.

(g) Tenant shall not be responsible for Landlord's failure to comply with any applicable provisions of the PWL with respect to any work performed solely by any Landlord Party.

## **6.9 Historical Designation.**

Neither Landlord nor Tenant shall designate, cause any Person to designate, submit or support any application to designate, the Premises or any Improvements as a federal, state or local historical landmark or as a historical resource, without the other Party's prior written consent, which may be withheld by such other Party in its sole and absolute discretion. The terms of this Section 6.9 shall survive the expiration or earlier termination of this Lease.

## **6.10 Submission of Redevelopment Plan.**

Provided that there is no Event of Default, and subject to the restrictions set forth in Section 15.1 and Tenant’s submission of an Inspection Report and completion of any outstanding work pursuant to Section 15.3, Tenant shall have the right to submit a redevelopment plan to the Landlord for the Project Improvements (“**Redevelopment Plan**”) during or before the fifty-fifth

(55<sup>th</sup>) Lease Year. The Redevelopment Plan shall be accompanied by the following documents, which collectively shall be referred to herein as, the “**Redevelopment Plan Package**”: (a) description of the development concept and the proposed project sufficient for the Landlord to understand the reason for the proposed redevelopment (including business expansion, modernization of facilities, aesthetic enhancement, increase in revenues); (b) description of the development concept and the proposed project sufficient for the Landlord to understand the scope of the entire development concept and whether it covers some or all of the Premises or Improvements, which may include renderings and drawings showing a scaled site layout, interiors and exteriors of all significant buildings, landscape development and layout, preliminary sign concept, and any other prominent features; (c) evidence that Tenant is a “tenant in good standing”, which means that the Tenant has (i) maintained the Premises and Improvements in good condition, free of deferred maintenance; (ii) a prompt payment history; (iii) not had an Event of Default; (iv) maximized the gross revenue of the Improvements; and (v) maintained accurate financial records that are accessible to the Landlord in accordance with the terms hereof; (d) any proposed changes to ownership; (e) description of the development team and its qualifications; (f) proforma cash flows for each part of the proposed redevelopment; (g) any proposed changes to the Acceptable Brand or Resort Hotel management team; (h) anticipated development cost, with repair and maintenance, furniture, fixture and equipment items separately identified; and (i) any proposed changes to the existing use. Within sixty (60) days after the Landlord’s receipt of the Redevelopment Plan Package, Landlord shall determine in its reasonable discretion whether additional information is required or if the Redevelopment Plan Package is complete. Landlord shall have the right to request additional information related to the Redevelopment Plan Package. Within ninety (90) days of the date that Landlord determines that the Redevelopment Plan Package is complete, Landlord’s staff shall present the Redevelopment Plan Package to the BPC for the BPC’s consideration, which the BPC may approve or disapprove in the BPC’s sole and absolute discretion. If the BPC approves the Redevelopment Plan, Tenant shall proceed with the Redevelopment Plan in accordance with the terms of this Lease related to Alterations, including, without limitation, Article 6 and Article 8 herein, and any other direction from the BPC. The terms of this Section 6.10 shall survive the expiration or earlier termination of this Lease.

#### **6.11 Construction of Developer’s Phase 1A Improvements**

Concurrently with the construction of the Initial Improvements, Tenant shall construct those certain public improvements described in Exhibit [ ] attached hereto and incorporated herein by reference (“Developer’s Phase 1A Improvements”). Tenant shall construct the Developer’s Phase 1A Improvements in accordance with the Plans.

### **7. TITLE TO AND DEMOLITION OF ALTERATIONS AND IMPROVEMENTS**

#### **7.1 Title.**

All Improvements which may be installed, constructed or placed in, on, over or under the Premises, from time to time by Tenant in accordance with Section 6, (a) shall be so installed, constructed or placed at Tenant's sole cost and expense except for the JEP A Development Cost Contribution, (b) shall remain Tenant's property during the Term (excluding the Convention Center for so long as the Convention Center is subject to public financing including any associated leases or subleases), and (c) subject to the terms of Section 7.2, at the expiration or earlier termination of this Lease, shall either be demolished by Tenant at Tenant’s sole cost and expense or remain on the Premises and automatically become the property of Landlord without

additional compensation from Landlord; provided that, subject to Section 7.3 below, Tenant's trade fixtures (that is fixtures relating uniquely to Tenant and which are removable without non-repairable damage to the other Improvements), furnishings, moveable equipment and other personal property of Tenant shall remain the property of Tenant and shall be removed by Tenant as provided in Section 7.3. Upon Landlord's request, following the expiration or earlier termination of this Lease, Tenant shall execute and deliver (at no cost or expense to Landlord) a quitclaim deed as provided in Article 23 to confirm Landlord's ownership of the Improvements which are to remain on the Premises pursuant to Section 7.2, which obligation shall survive the expiration or earlier termination of this Lease. Notwithstanding the foregoing, if title to artwork in fulfillment of Tenant Art Investment is governed by a separate agreement between Tenant and the artist which has been approved by Landlord, then such agreement shall govern over this Lease with respect to the title of such artwork following the expiration or earlier termination of this Lease.

## **7.2 Demolition of Improvements.**

If the Redevelopment Plan is disapproved by the BPC pursuant to Section 6.10, and Tenant elects to demolish the Improvements ("**Tenant's Demolition Election**") by written notice to Landlord at any time before the end of the sixty-third (63<sup>rd</sup>) Lease Year, then Tenant shall demolish all of the Improvements, except for any Existing Improvements and any public and private utilities that Landlord requires that Tenant does not demolish by written notice to Tenant ("**Landlord's Non-Demolition Notice**"), and shall perform all remediation work that is required pursuant to Section 21.3 by the Expiration Date, but not earlier than twelve (12) months prior to the Expiration Date, and Tenant shall obtain all permits required to perform such work in advance of the Expiration Date. Tenant acknowledges that demolition of the Improvements and/or the remediation work pursuant to Section 21.3 may require Tenant to obtain permits, certain of which may be discretionary. If Tenant makes Tenant's Demolition Election, then Tenant shall surrender the Premises to Landlord in a Buildable Condition. A "**Buildable Condition**" means (i) the demolition and removal of any subsurface Improvements (including foundations and pilings, the Existing Improvements, and the public and private utilities, unless Landlord requests that such Existing Improvements and/or public and private utilities not be removed in the Landlord's Non-Demolition Notice), any Hazardous Materials and Pre-Existing Materials as required under Article 21, and any debris resulting from the demolition and removal; (ii) the remediation of any Hazardous Materials and Pre-Existing Materials required under Article 21; and (iii) the repair of any damage to the Premises, Improvements, Existing Improvements and/or public and private utilities, caused by (i) and (ii) above, pursuant to plans and specifications approved by Landlord. If Tenant fails to surrender the Premises to Landlord in a Buildable Condition within the period allowed under Section 7.5, Landlord may do so, without obligation, and may charge the cost thereof to Tenant pursuant to the Reimbursement Procedure, together with Additional Rent for estimated administrative costs in the amount of ten percent (10%) of such cost, and interest on all such sums at the Default Rate from the date incurred until paid. Nothing contained in this Section 7.2 shall be interpreted to limit Tenant's indemnity obligations, including without limitation, Tenant's obligations under Section 21.3.

Tenant acknowledges and agrees that, if (a) the Redevelopment Plan is not submitted by Tenant during or before the fifty-fifth (55<sup>th</sup>) Lease Year in accordance with Section 6.10, or (b) there is an early termination of this Lease by Tenant or an Event of Default, or (c) Tenant fails to implement the Redevelopment Plan approved by the BPC prior to the end of the sixty-third (63<sup>rd</sup>) Lease Year, then, within thirty (30) days after the early termination of this Lease or any time after the end of the sixty-third (63<sup>rd</sup>) Lease Year, as may be applicable, Landlord may notify Tenant in writing of what Improvements Landlord in its sole discretion requires Tenant to demolish (such notice is referred to herein as the "**Landlord End of Term Election**"). Unless

Landlord has previously delivered to Tenant the Landlord End of Term Election, not later than one (1) year before the Expiration Date or within sixty (60) days after the earlier termination of this Lease, as applicable, Tenant shall request in writing from Landlord the Landlord End of Term Election. If Landlord has not provided the Landlord End of Term Election within thirty (30) days thereafter, the same shall be deemed to be an election by Landlord for all Improvements to remain upon and be surrendered with the Premises, and title to such Improvements shall vest in Landlord in accordance with Section 7.1 and Article 23 (but Tenant shall remain responsible for any remedial work that may be required in accordance with Section 21.3). If Landlord provides to Tenant the Landlord End of Term Election in accordance with this Section 7.2, then Tenant shall demolish all of the Improvements set forth in such Landlord End of Term Election, perform all remedial work in connection therewith pursuant to Section 21.3 and obtain all permits required to perform such work, by the Expiration Date (but not earlier than six (6) months prior to the Expiration Date) or, in the event of an early termination of this Lease, by the date set forth in such Landlord End of Term Election (which date shall not be earlier than ninety (90) days after Landlord provides such Landlord End of Term Election to Tenant). Tenant acknowledges that demolition of the Improvements and/or the remediation work in connection therewith pursuant to Section 21.3 may require Tenant to obtain permits, certain of which may be discretionary. Tenant shall repair any damage to the Premises (and the Improvements which Landlord is not requiring Tenant to demolish) caused by such demolition, and Tenant shall surrender the Premises to Landlord in a Buildable Condition. If Tenant does not make Tenant's Demolition Election or if Landlord provides to Tenant the Landlord End of Term Election with respect to fewer than all of the Improvements, then Tenant shall not demolish any Improvements that Tenant is not required to demolish, and, if any of the Improvements that Tenant or Landlord elect not to be demolished are not in full compliance with Article 15, then Landlord may require, at Tenant's sole cost and expense, that such Improvements be modified to a state and condition which complies with Article 15.

### **7.3 Removal of Personal Property.**

Except as provided below, all of Tenant's personal property including machines, appliances and equipment and trade fixtures (even though not personal property), located at or on the Premises and the Improvements, shall be removed by Tenant by the Expiration Date or earlier termination of this Lease. Tenant shall repair any damage occasioned by any removal of personal property and trade fixtures pursuant to Section 7.3 by the Expiration Date or earlier termination of this Lease. Notwithstanding the foregoing, at least ninety (90) days before the Expiration Date or, in the case of earlier termination of this Lease, within ten (10) days after such termination, unless Landlord expressly elects within the same time periods to require Tenant to remove the same, any artworks that constitute personal property and that were provided to comply with Tenant Art Investment but which are not governed by a separate agreement between Tenant and the artist relating to the removal of such artworks at the end of the Term, shall not be removed and shall remain located on the Premises or the Improvements, as applicable. If any personal property that is required to be removed is not removed by Tenant in accordance with this Section 7.3, then the same may be considered abandoned and, at the option of Landlord, shall thereupon become the property of Landlord, without cost to Landlord and without any payment to Tenant, except that Landlord shall have the right to have such personal property removed and to repair any and all damage occasioned by such removal, at the sole expense of Tenant pursuant to the Reimbursement Procedure.

#### **7.4 [Intentionally Omitted].**

#### **7.5 Removal/Demolition/Remediation Period.**

If (a) Tenant has made Tenant's Demolition Election, or (b) Landlord has provided the Landlord End of Term Election, and/or (c) Tenant is required to perform remediation work pursuant to Section 21.3, then Tenant shall continue to pay the full Rent to Landlord in accordance with this Lease during such demolition work and/or any remediation work. If Tenant's demolition work and remediation work is not completed by the Expiration Date or, in the event of an early termination of this Lease, by the date set forth in the Landlord End of Term Election (which date shall not be earlier than ninety (90) days after Landlord provides such Landlord End of Term Election to Tenant), then the terms of Article 26 regarding Rent payable during holdover shall apply. Notwithstanding any provision of this Article 7 to the contrary, if (i) Tenant has made Tenant's Demolition Election, or (ii) Landlord has provided the Landlord End of Term Election other than because of an early termination of this Lease by Tenant or due to an Event of Default, and/or (iii) Tenant is required to perform remediation work pursuant to Section 21.3, and, in each case, the Demolition and Remediation Report indicates that the time period for completion of such demolition work and/or remediation work is estimated to be greater than six (6) months, then Tenant shall commence such demolition work and/or remediation work sufficiently prior to the Expiration Date so that such demolition work and/or remediation work is anticipated to be completed no later than the Expiration Date (for example, if the estimated removal period is ten (10) months, then Tenant shall commence such work at least ten (10) months prior to the end of the Term).

#### **7.6 Survival.**

The terms of this Article 7 shall survive the expiration or earlier termination of this Lease.

### **8. ENTITLEMENTS**

#### **8.1 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 Landlord's sole and absolute determination, in connection with the any Improvements or Alterations, demolition work, remediation work or other projects undertaken by Tenant on or at the Premises or the Improvements (each, the "**Discretionary Project**"), then Tenant shall enter into agreements, consistent with the Landlord'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 Landlord or any other relevant Governmental Authority to consider the Discretionary Entitlement or Discretionary Project. Tenant shall be directly responsible for the costs of the Consultant Services and Tenant shall reimburse Landlord pursuant to the Reimbursement Procedure for all reasonable costs and expenses incurred by Landlord 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 Tenant fails to reimburse Landlord for such costs or expenses pursuant to the Reimbursement Procedure, then, in addition to any other remedies that Landlord may have, following three (3) Business Days' prior written notice to Tenant, Landlord 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 Tenant reimburses Landlord, and Tenant shall be responsible for any costs and expenses incurred by Landlord related to such discontinuance as Additional Rent and such failure shall be an Event of Default. Nothing herein shall obligate Landlord to seek, process or obtain any Discretionary Entitlement or any other third-party Governmental Authority approval for a Discretionary Project for the benefit of Tenant, and Landlord makes no warranty or representation to Tenant that Tenant will obtain any Discretionary Entitlement or ministerial approval. Landlord shall not be required to pay any Governmental Authority fees or any Consultant Services associated with any Discretionary Entitlement or any other third-party Governmental Authority approval for a Discretionary Project. Notwithstanding the foregoing, Landlord shall, at Tenant's request and at no cost to Landlord, reasonably cooperate with and provide reasonable assistance to Tenant's efforts to obtain from any Governmental Authority any licenses, approvals, notifications, registrations or permits in connection with development, use and operation of the Premises and the Improvements, including the construction of the Project Improvements.

### **8.2 Entitlements Indemnity.**

Without limitation of Tenant's other obligations under this Lease, Tenant agrees, at its sole cost and expense, and with counsel reasonably acceptable to Landlord, to indemnify, defend and hold harmless the Landlord Parties from any third-party claims, demands, actions, causes of action, suits and Related Costs, arising out of Landlord's approval of any Discretionary Project, Discretionary Entitlement or appeal of a CDP or Coastal Act exclusion to the CCC. Landlord may, in its sole and absolute discretion, participate in the defense of any claims, demands, actions and causes of action and suits, and Tenant shall reimburse Landlord for all reasonable costs that are incurred by Landlord in connection therewith, including, without limitation, reimbursement for attorneys' fees, experts' fees and other costs. Landlord's participation in such defense shall not relieve Tenant of any of its obligations under this Section 8.2. The foregoing indemnity obligations of Tenant are in addition to, and not in limitation of, any other indemnity obligations of Tenant contained in this Lease, and this Section 8.2 shall survive the expiration or earlier termination of this Lease.

### **8.3 Reservation of Discretion.**

Tenant acknowledges and agrees that, notwithstanding the terms and conditions of this Lease, Landlord 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 Lease will be construed as circumventing or limiting Landlord'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 Law. Tenant acknowledges and agrees that any and all Discretionary Entitlements may be conditioned, approved or denied by Landlord, in its sole and absolute determination, and Tenant accepts the risk that Landlord may deny any and all Discretionary Entitlements, and hereby waives any claims, demands, actions, causes of action, suits against Landlord for such conditions or denial.

## 9. LIENS

### 9.1 No Right to Bind Landlord.

Neither Tenant, nor any Tenant Party, shall have any power or authority to do any act or thing, or to make any contract or agreement which shall bind Landlord in any way whatsoever, and Landlord shall have no responsibility to Tenant, Tenant Party or other Person who performs, causes to perform, engages in or participates in any construction of any Improvements, Alterations or any other work on the Premises at the request of Tenant or Tenant Party or other Persons. Landlord shall not be required to take any action to satisfy any such contract or agreement or to remove or satisfy any lien resulting therefrom.

### 9.2 Notice of Non-Responsibility.

Tenant shall give written notice to all contractors, subcontractors and materialmen of Landlord's non-responsibility in connection with any construction of any Improvements, Alterations or any other work on the Premises, and shall immediately provide Landlord with true copies of such notices not less than ten (10) days prior to the commencement of any work on the Premises. The Landlord Parties shall have the right to post and keep posted thereon notices of non-responsibility, or such other notices which Landlord may deem to be proper for the protection of Landlord's interest in the Premises. Tenant shall provide Landlord with any information required by Landlord to complete the notice of non-responsibility.

### 9.3 Mechanics' Liens.

Tenant shall pay or cause to be paid all costs for work, labor, services or materials supplied to or performed on the Premises that might result in any mechanics' lien or similar lien as and when Tenant is required to do so under Tenant's agreement with the respective provider thereof. If Tenant receives notice that any mechanics' lien or any similar lien is recorded against the Premises and Tenant is not contesting such lien in accordance herewith, then Tenant shall cause such lien to be released and removed of record within thirty (30) days from the recordation of the mechanics' lien or similar lien. Tenant shall indemnify, defend, release and save Landlord 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 Premises by or for any Tenant Party and all Related Costs.

### 9.4 Contest of Lien.

If Tenant in good faith wishes to contest the amount or validity of any lien, then Tenant shall have the right to do so; provided that Tenant first records a surety bond sufficient to release such lien.

### 9.5 Landlord's Right to Pay.

If Tenant shall be in default in paying any charge for which a lien claim has been filed, and if Tenant has not contested such lien in accordance with Section 4.6.1, then Landlord 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 Tenant to Landlord, and Tenant shall pay the same to Landlord pursuant to the Reimbursement Procedure, together with interest on the full amount thereof at the Default Rate from the date of Landlord's payments until paid.

## **9.6 Notice of Liens.**

Should any claims of lien be filed against the Premises or any Improvement or any action affecting the title to the Premises 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.

## **9.7 Right of Entry.**

Nothing herein shall imply any consent on the part of Landlord to subject Landlord's estate to liability under any mechanics' lien or other lien. Without limiting Tenant's obligations under Section 9.2 above, the Landlord Parties shall have the right, but not the obligation, to enter upon and inspect the portions of the Improvements that are generally accessible to the general public or the portions of the Premises where the construction of the Improvements is ongoing, during normal business hours and upon a three (3) Business Days' prior notice to Tenant (except in the case of an emergency where no prior notice shall be required) and provided that the Landlord Parties comply with all applicable security and safety procedures of Tenant and use commercially reasonable efforts to minimize any interference with Tenant's operation and use of the Premises and the Improvements while on the Premises and at the Improvements. Notwithstanding the foregoing, nothing herein shall limit the Landlord's right to enter the Premises and Improvements at any time to exercise its police powers.

# **10. LEASE ENCUMBRANCE**

## **10.1 Restrictions on Encumbrance.**

### **10.1.1 Landlord's Consent.**

Tenant shall not encumber or hypothecate this Lease or the Convention Center Subleases, Tenant's leasehold interest, or the Improvements thereon, or any part thereof or interest therein (such encumbrance or hypothecation being referred to herein as, a "**Financing Transaction**"), without Landlord's prior written consent to each Financing Transaction, which consent, subject to the terms of Section 10.1.2, shall not be unreasonably withheld, conditioned or delayed. Tenant shall submit its request for consent to the Financing Transaction in writing to Landlord, together with the required minimum documentation required pursuant to BPC Policy No. 355, or any other BPC policy then in effect governing Landlord's consent to a Financing Transaction. Within ten (10) days of receiving Tenant's request, Landlord may request from Tenant additional information regarding the lender and/or the proposed Financing Transaction. Landlord shall provide its response to Tenant's request for consent to the Financing Transaction within forty-five (45) days following Landlord's receipt of Tenant's request and all information reasonably requested by Landlord from Tenant. As a condition subsequent to the effectiveness of such consent, Tenant shall provide to Landlord the final loan documents for the Financing Transaction (each, a "**Loan Document**" and, collectively, "**Loan Documents**") which shall conform substantially to the term sheet, without any material changes, delivered pursuant to Section 10.1.2(d) below and (b) after the recordation of the encumbrance in connection with such Financing Transaction, copies of all Loan Documents recorded in connection with such Financing Transaction. Tenant shall reimburse Landlord pursuant to the Reimbursement Procedure for all of Landlord's reasonable costs and expenses associated with its review of the Financing Transaction, including without limitation, any Cost Recovery Fee pursuant to BPC Policy No. 106. Said costs shall include, without limitation, Landlord's reasonable legal fees (whether with in-house or outside counsel or both) and disbursements relating to or arising out of Landlord's review of any Financing Transaction, regardless of whether such Financing Transaction is consented to by Landlord or consummated, and Landlord's transaction

processing fees charged by Landlord for Landlord's analysis and processing of Tenant's request.

#### 10.1.2 Conditions.

Notwithstanding anything to the contrary herein, Landlord shall administratively grant consent to any Financing Transaction for a Permitted Lease Encumbrance if all of the following conditions and requirements are satisfied to the reasonable satisfaction of Landlord:

- (a) The lender is a Financial Institution;
- (b) The maximum principal amount of the indebtedness that is secured by an encumbrance does not exceed the greater of: (1) seventy-five percent (75%) of the value of the aggregate of (i) Tenant's fee interest in the Resort Hotel pursuant to this Lease, provided that if the Resort Hotel is not Completed, the value of the Resort Hotel as Completed, (ii) Tenant's fee interest in the Convention Center pursuant to this Lease provided that if the Convention Center is not Completed, the value of the Convention Center as Completed, (iii) Tenant's leasehold interest in the Convention Center pursuant to the Convention Center Sublease, (iv) Tenant's fee interest in any other Improvements (except the Parking Improvements) pursuant to this Lease, provided that if the Resort Hotel is not Completed, the value of the Improvements; (v) Tenant's interest in the Parking Improvements, and (vi) Tenant's leasehold interest in the Premises created by this Lease, as determined by an Appraisal without accounting for any indebtedness secured by any existing Permitted Equity Encumbrance; or (2) the amount of repayment of an existing Permitted Lease Encumbrance which the proposed Financing Transaction is intended to replace (provided that such Permitted Lease Encumbrance was initially consented to by Landlord);
- (c) With respect to any Financing Transaction proposed to occur on or after the commencement of the Fourth (4<sup>th</sup>) Lease Period, if requested by Landlord, Tenant has considered amendments to non-economic provisions of this Lease in good faith for the purpose of conforming this Lease to Laws that are then in effect; provided that any such amendment shall neither create any new obligations for Tenant, increase any obligations of Tenant nor limit any rights or remedies of Tenant that are set forth in this Lease, in each case, except to a *de minimis* extent;
- (d) The loan secured by the Financing Transaction has a payment term that provides for the full repayment of the loan prior to the Expiration Date;
- (e) The loan secured by the Financing Transaction is not cross-collateralized with other real property(ies);
- (f) The loan secured by the Financing Transaction is not cross-defaulted with other financings unrelated to the Project;
- (g) A written acknowledgment from Tenant that it will not seek rent relief as a result of not being able to meet its debt service or debt repayment obligations;
- (h) A recent Appraisal in accordance with Section 10.1.2(b);
- (i) Cash flow projections from Tenant;
- (j) If later than the first two years of the Lease, audited financial statements of Tenant for not less than the past two (2) years (or such shorter period of time as Tenant has existed);

(k) Such other documents, information and materials relating to the Financing Transaction as Landlord may reasonably request within the ten (10) day period described in Section 10.1.1; and

(l) Term sheet or loan commitment with respect to the Financing Transaction.

“Appraisal” shall be defined as a third party appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) as modified from time to time and for so long as it is a generally accepted standard for commercial real estate appraisals or if the USPAP is no longer in existence or is not a generally accepted standard for commercial real estate appraisals, a successor or comparable acceptable standard for commercial real estate appraisals.

### **10.1.3 Permitted Equity Encumbrance.**

Notwithstanding anything to the contrary herein, Landlord shall administratively grant consent to an encumbrance of the interest in all (or substantially all) of the equity interests of any Persons that, in the aggregate, directly or indirectly, own all (or substantially all) of the equity interests of Tenant (“Mezzanine Interests”) if all of the following conditions and requirements are satisfied to the reasonable satisfaction of Landlord:

- (a) The lender is the financing arm of the Acceptable Brand;
- (b) The borrower is a Person(s) that, in the aggregate, directly or indirectly, own all of the equity interests of Tenant (collectively, the “Pledgor”);
- (c) After the loan of the Mezzanine Interests is consummated, there will only be one outstanding loan of the equity interests in Tenant; and
- (d) the loan of the Mezzanine Interests has a payment term that provides for the full repayment of the loan prior to the Expiration Date;
- (e) the loan of the Mezzanine Interests is not cross-collateralized with other equity interests;
- (f) the loan of the Mezzanine Interests is not cross-defaulted with other equity financing unrelated to the Project;
- (g) Written acknowledgment from Tenant that it will not seek rent relief as a result of not being able to meet its debt service or debt repayment obligations;
- (h) Cash flow projections from Tenant;
- (i) If later than the first two (2) years of the Lease, audited financial statements of Tenant for not less than the past two (2) years (or such shorter period of time as Tenant has existed);
- (j) Such other documents, information and materials relating to the encumbrance as Landlord may reasonably request within the ten (10) day period described in Section 10.1.1; and
- (k) Landlord has received a term sheet or other form of commitment with respect to the encumbrance.

Any Permitted Equity Encumbrance shall be subject to the same condition subsequent set forth in the Section 10.1.1 regarding the delivery of final loan documents.

[MICC (California), LLC, a Delaware limited liability company (“MICC”) and an Affiliate has been approved by Landlord as a Permitted Mezzanine Lender.]

The term “**Equity Collateral Enforcement Action**” means any action or proceeding or other exercise of a Permitted Mezzanine Lender's rights and remedies in connection with its security interests in the Pledgor in order to realize upon its equity collateral, including, without limitation, the acceptance of an assignment in lieu of foreclosure for the equity collateral. With respect to any Permitted Equity Encumbrance, (a) the granting of such Permitted Equity Encumbrance by Landlord shall not be deemed a Change of Control of Tenant, (b) any enforcement action and/or the completion of any Equity Collateral Enforcement Action (including, without limitation, the acquisition of all (or substantially all) of the direct or indirect ownership of Tenant) by a Permitted Mezzanine Lender with respect to such equity collateral security interest shall not be deemed a Change of Control of Tenant and shall not be prohibited by this Lease if it is permitted pursuant to the terms of a Permitted Equity Encumbrance consented to by Landlord, (c) the Permitted Mezzanine Lender shall have the same notice rights and cure rights pursuant to Section 10.3.2 below, and (d) such Permitted Mezzanine Lender shall have the New Lease rights as described in Section 10.3.2(d) below.

## **10.2 Definition of “Permitted Lease Encumbrance”, “Permitted Equity Encumbrance” and “Permitted Encumbrance”.**

Each mortgage, deed of trust or similar security instrument securing Tenant's payment and performance under the Financing Transaction that is consented to by Landlord is a “**Permitted Lease Encumbrance**”. Any security interest in the direct or indirect equity interests in Tenant securing obligations owed to a Permitted Mezzanine Lender that is consented to by Landlord is a “**Permitted Equity Encumbrance**” (together with the Permitted Lease Encumbrance, “**Permitted Encumbrance**”). Landlord's consent shall not be required for an assignment or transfer of indebtedness secured by a Permitted Encumbrance.

## **10.3 Rights of Permitted Lender.**

### **10.3.1 Voluntary Lease Surrender.**

So long as a Permitted Encumbrance remains outstanding, Landlord will not accept the voluntary surrender, cancellation, or termination of this Lease by Tenant before the Term expires, unless each Permitted Lender with an outstanding Permitted Encumbrance provides prior written consent thereto. Nothing in this Section 10.3.1 shall impair Landlord's right to terminate this Lease as a result of an Event of Default or by reason of Landlord's other rights to terminate this Lease as set forth in this Lease, subject to the Permitted Lender's notice and cure rights pursuant to Section 10.3.2 below, if applicable, and the New Lease rights pursuant to Section 10.3.2(d) below, if applicable.

### **10.3.2 Right to Cure/New Lease.**

(a) *Notice of Default.* So long as one or more loans secured by a Permitted Encumbrance remain outstanding, Landlord hereby agrees to give each Permitted Lender with a Permitted Encumbrance that has provided Landlord with its address and has requested a copy of the same, a copy of any written notice, which Landlord gives to Tenant pursuant to Section 12.1, at the same time as it delivers it to Tenant, and such notice shall be deemed delivered three (3) days after delivery thereof to the respective Permitted Lenders, whereupon each Permitted Lender shall have the right, but not the obligation, to cure such default or Event of Default. This Lease shall not terminate as a result of an Event of Default if a Permitted Lender cures such Event of Default within (i) thirty (30) days after the Permitted Lender is

deemed to have received such notice of an Event of Default in the payment of Rent, or (ii) subject to the terms of this Section 10.3.2, within ninety (90) days after the Permitted Lender is deemed to have received such notice of any other Event of Default under this Lease. Landlord shall accept performance of the terms of this Lease by the Permitted Lender provided such performance is completed within the time frames set forth in this Section 10.3.2 as if the terms were performed by Tenant, regardless of whether there has been an Event of Default. If there is more than one Permitted Lender and there is a conflict between the cure rights which the Permitted Lenders assert, then Landlord shall have no duty to resolve such conflict and shall recognize only the cure rights of the Permitted Mortgage Lender with the first Permitted Lease Encumbrance without any liability to Tenant or the other Permitted Lenders; provided, however, that Landlord shall accept without the necessity of further inquiry, as confirmation that no conflict exists, a written notice executed by all of the Permitted Lenders that recognizes which Permitted Lender has the first right to exercise any cure rights under this Lease or enter into a New Lease as set forth in Article 10.

(b) *Possession Required.* If the Event of Default specified in Section 10.3.2(a)(ii) cannot be cured until the Permitted Lender has obtained possession of the Premises (or, in the case of a Permitted Mezzanine Lender, control of Tenant) through foreclosure or otherwise, and if the Permitted Lender has delivered to Landlord within the ninety- (90-) day cure period specified in Section 10.3.2(a)(ii) Permitted Lender's written commitment (in form acceptable to Landlord in its sole discretion) to use diligent efforts to cure (or to cause Tenant to cure) such Event of Default with due diligence upon obtaining possession of the Premises (or, in the case of a Permitted Mezzanine Lender, control of Tenant) through foreclosure or otherwise, then the Permitted Lender shall have such additional time (but in no event to exceed two hundred and seventy (270) days from the date of obtaining possession of the Premises) as is reasonably necessary to cure (or to cause Tenant to cure) such Event of Default, but only if the Permitted Lender: (i) unless judicially stayed, commences the judicial or other foreclosure of the Permitted Encumbrance within ninety (90) days from receipt of written notice of the occurrence of an Event of Default under this Lease; (ii) prosecutes said foreclosure with due diligence; and (iii) cures, during said period, all monetary Events of Default and, during the period of said stay and/or foreclosure, continues to pay and perform during said period of stay and/or foreclosure all other monetary obligations of Tenant in a timely manner, including, without limitation, payment of all Rent, taxes, assessments, utility charges, insurance premiums and all other amounts required to be paid by Tenant under this Lease. Notwithstanding anything herein to the contrary, nothing herein shall require a Permitted Lender who has taken possession of the Premises or, in the case of an Equity Collateral Enforcement Action, control of Tenant, to cure any non-monetary default that, by its nature, is not capable of being cured by the Permitted Lender, such as a Bankruptcy Event (an "**Incurable Default**"). All such Incurable Defaults shall be deemed to be permanently waived following the Permitted Lender's taking possession of the Premises or, in the case of an Equity Collateral Enforcement Action, control of Tenant. All monetary obligations and non-monetary obligations that are not Incurable Defaults shall still be performed as required under this Lease, subject to the extended cure periods set forth in this Section 10.3.2. In no event shall Tenant's waste or nuisance be an Incurable Default.

(c) *No Termination by Landlord.* Landlord shall not terminate this Lease by reason of an Event of Default if Landlord has failed to comply with its obligations under Section 10.3 or if the Permitted Lender (i) has cured all Events of Defaults under the Lease in the payment of Rent within the time frames provided in Section 10.3.2(a)(i) above, and/or (ii) has cured all other Events of Default within the time frames provided in Sections 10.3.2(a)(ii) and 10.3.2(b) above, other than any Incurable Default.

(d) *New Lease*. In the event of any termination of this Lease by reason of a surrender, cancellation, or termination by Tenant, or as a result of the rejection or disaffirmance of this Lease pursuant to bankruptcy law or other Law affecting creditors rights, or as a result of a termination of this Lease by Landlord in violation of Section 10.3.2(c) above, then Landlord shall deliver notice to each Permitted Lender that the Lease has been terminated or rejected, as applicable. The notice shall include a statement of all amounts that would be due under this Lease but for the termination hereof and all other Events of Default then known to Landlord. The Permitted Mortgage Lender (a "**New Tenant**") shall then have the option, to be exercised within sixty (60) days following receipt of such notice of termination or rejection, as applicable, to enter into a new lease ("**New Lease**") with Landlord and, if Permitted Mortgage Lender does not exercise such option within such sixty- (60-) day period, then the Permitted Mezzanine Lender shall have the option, to be exercised no later than seventy-five (75) days following receipt of such notice of termination, to enter into a New Lease with Landlord, in each case, on the following terms and conditions:

(i) The New Lease shall commence as of the date of the termination of this Lease and shall be for the remainder of the Term, and at the Rent, terms, covenants, and conditions as this Lease.

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

(iii) Upon execution of the New Lease, the New Tenant shall cure all other defaults under this Lease, which have not yet been cured (other than any Incurable Default), with due diligence in a timely manner in accordance with the cure periods under the Lease assuming such cure periods commence with the execution of the New Lease and without additional notice.

(iv) Nothing herein shall be construed to require Landlord to deliver possession of the Premises to the New Tenant. Upon execution and delivery of the New Lease, the New Tenant may take any and all appropriate actions as may be necessary to remove parties in possession from the Premises. Landlord shall not grant any real property interest in the Premises during the sixty (60) day period, or seventy-five (75) day period, as applicable set forth in Section 10.3.2(d).

During such sixty (60) day period and thereafter if Permitted Lender timely accepts such offer of a New Lease until the termination or expiration of such New Lease, ownership of the Improvements (excluding the Convention Center for so long as the Convention Center is subject to public financing including any associated leases or subleases) shall not vest in Landlord, and the Permitted Lender's lien in and to the Improvements shall continue unaffected by the termination of this Lease.

Should the Permitted Lender fail to accept said offer for such New Lease in writing within said sixty (60) day or seventy-five (75) day period, as applicable, or, having so accepted said offer, should it fail promptly to execute the New Lease or satisfy the requirements of clauses (ii) and (iii) above in a timely manner, then the termination of this Lease shall be effective as to all of the Permitted Lenders and the Permitted Lenders shall have no further rights hereunder, except for any rights that may continue to exist for the Permitted Equity Lender pursuant to Section 10.3.2(d).

### 10.3.3 Loan Default.

If a Permitted Encumbrance is in default at any time, then the Permitted Lender shall, as provided by Law, have the right, without Landlord's prior consent, to:

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

(b) In the case of a Permitted Mortgage Lender, cause a foreclosure sale to be held pursuant to either judicial proceedings, power of sale and/or foreclosure proceedings as provided in its Permitted Lease Encumbrance;

provided, however, that no Assignment to the successful bidder (a "**Foreclosure Purchaser**") that is not the Permitted Mortgage Lender shall be effective without Landlord's prior written consent in accordance with Section 10.4 below.

### 10.3.4 Assume Lease Obligations.

Notwithstanding anything in this Lease to the contrary, before the Permitted Lender, or any Foreclosure Purchaser, acquires the leasehold interest, it shall (a) in the case of the acquisition in connection with a Permitted Mortgage Encumbrance and as an express condition precedent thereto, agree in writing to be bound by all provisions of, and assume each and every obligation of Tenant, under this Lease and (ii) in the case of an Equity Collateral Enforcement Action, cause Tenant to reaffirm, in writing, promptly after the Equity Collateral Enforcement Action, its obligations under this Lease; provided, however, that under no circumstance shall such Permitted Lender or such Foreclosure Purchaser have any liability hereunder unless and until it becomes Tenant under this Lease. Notwithstanding the foregoing, nothing in this Section 10.3.4 shall limit the liability of a Permitted Lender caused by Permitted Lender's attempt to cure a non-monetary Event of Default. A Permitted Lender that has: (i) acquired the leasehold interest and assumed the Tenant's obligations, or (ii) entered into a New Lease pursuant to Section 10.3.2(d) above, shall be released from all obligations under this Lease first arising after the effective date of the assignment and assumption of the leasehold interest to an assignee consented to by Landlord, in accordance with Section 10.4.

## 10.4 Landlord's Consent to Assignment or Transfer.

### 10.4.1 Landlord's Consent to Assignment

Landlord's prior written consent shall be required for the following: (a) an Assignment to a Foreclosure Purchaser that is not the Permitted Mortgage Lender, or (b) an Assignment by the Permitted Lender should the Permitted Lender become the tenant by reason of: (i) being the successful bidder upon said foreclosure, (ii) an assignment in lieu of foreclosure, or (iii) a New Lease entered into pursuant to Section 10.3.2(d) above. Landlord shall provide its response to Tenant's request for consent to the Assignment within sixty (60) days following Landlord's receipt of Tenant's request and all information reasonably requested by Landlord from Tenant. Landlord will grant such consent if in Landlord's reasonable determination the following items have been satisfied:

(a) The assignee 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 history of, or reputation for, either discriminatory employment practices which violate any Laws or non-compliance with applicable Environmental Laws;

(b) The assignee shall satisfy the subsections 11.5.3(a) (Sufficient Experience), (b) (Consistent Use), (d)(Reputation), (e) (Public Financing), (f) (Hotel Brand), (g) (Default), and (i) (Completion Guaranty) of this Lease.

(c) The assignee agrees in writing to assume each and every obligation of the Tenant under this Lease or the New Lease, as the case may be, pursuant to a form of assignment and assumption agreement that has been approved by Landlord; and

(d) The assignee agrees in writing to cure all uncured defaults with due diligence in a timely manner arising under this Lease or the New Lease (including any uncured defaults under this Lease even if replaced by the New Lease), other than any Incurable Default.

No such assignee shall subsequently: (i) assign this Lease, or sublease any or all of the Premises or the Improvements without Landlord's prior written consent, in accordance with Article 11 herein; or (ii) encumber this Lease, leasehold interest, equity interests of Tenant, the Premises or the Improvements thereon without Landlord's prior written consent, in accordance with this Article 10.

#### 10.4.2 Basis for Decision

The burden of producing evidence and the burden of proof showing Landlord that a prospective assignee meets each and all of the aforesaid qualifications and standards shall be on said Permitted Lender. Landlord's decision shall be based upon Landlord's high duty of care in administering a valuable public resource, which it holds in trust for the people of the State of California. In the absence of fraud or arbitrary action in applying or failing to apply said standards, Landlord's decision shall be final.

#### 10.4.3 If Landlord Rejects Lease Transferee

(a) *Arbitration.* In the event Landlord rejects: a proposed assignee of the Permitted Lender (the "**Rejected Transferee**," and said proposed assignee being sometimes referred to hereinafter as the "**Applicant**"), the sole remedy of the Applicant and Rejected Transferee shall be to seek relief in the nature of specific performance through the arbitration procedure hereinafter established and in no event shall Landlord be liable to the Rejected Transferee or Applicant, or any Person whatsoever, for monetary damages. Notwithstanding the foregoing, the Rejected Transferee shall be entitled to recover such monetary damages, if any, it may sustain as a result of Landlord's failure or refusal to comply with a final, non-appealable, Superior Court order confirming an award in favor of the Rejected Transferee in said arbitration.

(b) *Issue.* The issue to be submitted to arbitration shall be whether the BPC's record contains substantial evidence to support the decision to reject the Applicant in accordance with the standards set forth in Sections 10.4.1 and 10.4.2 above. The Rejected Transferee may submit said issue to arbitration.

(c) *Arbitration Procedure.* The arbitration shall be conducted pursuant to Title 9 of Part 3 of the California Code of Civil Procedure (section references herein shall be to the Code of Civil Procedure), as amplified and modified by the following provisions:

(i) Arbitration shall be initiated by the Rejected Transferee filing a written demand for arbitration with Landlord no later than thirty (30) days following Landlord's adoption of a resolution rejecting the Applicant;

(ii) Said arbitration shall be conducted by a single neutral arbitrator;

(iii) If the parties have not agreed on the selection of the arbitrator within five (5) days after said demand for arbitration is filed, either party may petition the Superior Court of the State of California, County of San Diego, to select the arbitrator pursuant to Section 1281.6;

(iv) Each party shall submit its nominees, if any, to the court within five (5) days after said petition is served and filed;

(v) Said arbitrator shall not conduct a trial *de novo*, but shall consider only said record before the BPC; provided, however, that said arbitrator may consider evidence outside said record if the arbitrator believes that the BPC's decision was affected by Landlord's fraudulent action which was not reasonably discoverable prior to the BPC's decision;

(vi) Said arbitrator shall make the award in writing within forty-five (45) days of being appointed;

(vii) The right of any party to take depositions for discovery purposes, as provided in Section 1283.05, shall be waived;

(viii) Certain time periods established in said Title 9 shall be shortened as follows:

(A) Sections 1284, 1288.4, 1290.2, and 1290.6--halved;

(B) Section 1288 -- four years to 30 days and 100 days to 15 days; and

(C) Section 1288.2--100 days to 15 days;

(ix) San Diego, California shall be the venue of the arbitration hearing and any court proceedings;

(x) The decision of the Superior Court in any proceeding to confirm, correct, or vacate the award shall be final, and the parties to said arbitration waive any rights to appeal therefrom, as provided in Sections 1294 and 1294.2, or otherwise; and

(xi) The parties shall bear their costs, fees, and expenses incurred in connection with said arbitration, in accordance with the provisions of Section 1284.2.

#### **10.4.4 Notice of Foreclosure Sale.**

Permitted Lender shall include a statement in any notice of foreclosure sale covering the requirements under Section 10.4 for Landlord's consent to an Assignment upon said foreclosure.

#### **10.4.5 Cancellation; Surrender; Modification; Amendment.**

So long as a Permitted Encumbrance remains outstanding, Landlord shall not consent to any amendment of this Lease that is not consented to in writing by each Permitted Mortgage

Lender with an outstanding Permitted Lease Encumbrance of which Landlord has received notice.

### **10.5 Subordination, Non-Disturbance and Attornment Agreement.**

Prior to or on the Commencement Date, (a) Landlord and each Permitted Mortgage Lender shall enter into a subordination, non-disturbance and attornment agreement substantially in the form of Exhibit "P-1" attached hereto and (b) Landlord and each Permitted Mezzanine Lender shall enter into a subordination, non-disturbance and attornment agreement substantially in the form of Exhibit "P-2" attached hereto.[Subject to Review]

### **10.6 Miscellaneous.**

#### **10.6.1 Estoppel Statements.**

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

#### **10.6.2 Completion of Initial Project Improvements.**

If any Foreclosure Purchaser acquires the leasehold interest before the date when the Initial Project Improvements are Completed, such Foreclosure Purchaser shall have the right, but no obligation, to Complete any of the Initial Project Improvements. If such Foreclosure Purchaser elects to Complete any of the Initial Project Improvements ("**Initial Project Improvements Completion Election**"), then such Foreclosure Purchaser shall notify Landlord thereof no later than ninety (90) days after acquiring the leasehold interest ("**Initial Project Improvements Completion Election Notice**"). If such Foreclosure Purchaser does not provide an Initial Project Improvements Completion Election Notice in accordance with this Section 10.6.2, then Landlord shall have the right to terminate this Lease by giving such Foreclosure Purchaser written notice thereof and such Foreclosure Purchaser shall have no liability for any failure to Complete any of the Initial Project Improvements. If such Foreclosure Purchaser provides an Initial Project Improvements Completion Election Notice in accordance with this Section 10.6.2, then Landlord shall negotiate in good faith with such Foreclosure Purchaser to set a new commercially reasonable timetable for Completion of the applicable Initial Project Improvements ("**New Initial Project Improvements Completion Timetable**") (for the avoidance of doubt, the new date of Completion of the applicable Initial Project Improvements ("**New Outside Construction Completion Date**") may be later than the Outside Construction Completion Date set forth in Section 1.8(b)), based on the facts in existence at the time of the applicable foreclosure or action in lieu of foreclosure, as applicable. Once Landlord and such Foreclosure Purchaser agree on a New Initial Project Improvements Completion Timetable, then such Foreclosure Purchaser shall Complete the applicable Initial Project Improvements in accordance with such New Initial Project Improvements Completion Timetable and such Foreclosure Purchaser shall pay Construction Late Charges in accordance with Section 6.1 only if and to the extent that any of the applicable Initial Project Improvements are not Completed by the New Outside Construction Completion Date. For the avoidance of doubt, nothing in this Section 10.6.2 shall be construed as limiting Landlord's right to recover from the original Tenant Construction Late Charges based on the original Outside Construction Completion Date.

### 10.6.3 Amendments and Modifications to Loan Documents.

Notwithstanding anything to the contrary herein, Tenant and Permitted Lender shall have the right to make any amendment or modification to any of the Loan Documents without Landlord's consent if the amendment or modification (i) does not modify any material term of the loan, including without limitation, the amount of the loan, maturity date, borrower or lender; (ii) is consistent with the terms and conditions of Landlord's encumbrance approval; and (iii) Landlord receives a copy of the amendment or modification within thirty (30) days after it has been executed. Notwithstanding the foregoing, no Landlord consent shall be required for any protective advances made by a Permitted Lender under and in compliance with the applicable Loan Documents approved by Landlord.

## 11. SUBLEASE; ASSIGNMENT

### 11.1 Sublease.

#### 11.1.1 Consent Required.

The Subleases for the Convention Center that are attached hereto as Exhibit [ ] and incorporated herein by reference ("**Convention Center Subleases**") have been consented to by the Landlord in the form attached.

Subject to the terms of Sections 11.1 through 11.4 and except for (a) any Sublease that is less than five thousand (5,000) square feet of the total square footage of the Project or (b) any of the Convention Center Subleases, no Sublease shall be made or permitted without the prior written consent of Landlord (which consent shall not be unreasonably withheld, conditioned or delayed).

#### 11.1.2 Request for Consent.

If a Sublease is proposed for which Landlord consent is required, Tenant shall notify Landlord in writing, which notice (the "**Sublease Notice**") shall include (i) the proposed effective date of the Sublease, which shall not be less than sixty (60) days and not more than one hundred eighty (180) days after the date of delivery of the Sublease Notice, (ii) a narrative description, with supporting documents, of the proposed Sublease, including without limitation, the name of the subtenant, the term of the Sublease, the proposed use, the experience of the subtenant, the organizational structure of the subtenant, and any additional information that Landlord would require to evaluate the sublease based on the factors set forth in Section 11.1.3, (iii) with respect to any Sublease that has a maximum total term of more than five (5) years, a copy of the proposed sublease agreement, (vi) a statement of any current litigation or litigation which was resolved within the prior five (5) years affecting the proposed Transferee and (vii) such other information as Landlord may reasonably require. Any Sublease made without Landlord's prior written consent shall, at Landlord's option, be null, void and of no effect undone at Tenant's sole cost and expense and shall not be binding on Landlord. Tenant shall pay to Landlord Landlord's standard applicable fee set by the BPC in connection with Landlord reviewing and approving each Sublease for which Landlord's consent is required pursuant to the Reimbursement Procedure, regardless of whether the Sublease is consummated or Landlord's consent thereto is granted. Any Sublease shall be subject to the terms and provisions of this Lease. Notwithstanding anything to the contrary in this Lease, if Tenant claims that Landlord has unreasonably withheld, conditioned or delayed its consent under this Section 11.1 or otherwise has breached or acted unreasonably under this Section 11.1 and, in each case, Landlord demonstrates that it has acted reasonably under this Section 11.1, then

Tenant's sole remedies shall be a declaratory judgment and an injunction for the relief sought without any monetary damages, and Tenant hereby waives the provisions of Section 1995.310 of the California Civil Code, or any successor statute, and all other remedies. The burden of producing evidence and the burden of proof showing Landlord that a prospective Subtenant meets each and all of the aforesaid qualifications and standards shall be on the Tenant.

#### **11.1.3 Consent Factors.**

If Landlord consents to any Sublease, Tenant may within one hundred eighty (180) days after the date of delivery of the Sublease Notice, enter into such Sublease; provided that, if there is any material change to the financial condition of the Subtenant or any other material change to any of the proposed terms or conditions of the Sublease as set forth or attached to the Sublease Notice, then Tenant shall again submit a Sublease Notice to Landlord for its approval and take all other action required under this Section 11.1.

Notwithstanding anything to the contrary herein, Landlord shall grant consent to any Sublease that is required hereunder if all of the following conditions and requirements are satisfied:

(a) Consistent Use.

The Subtenant's proposed use of the Premises and the Improvements following the proposed Sublease will be for the Permitted Use only or such proposed use as has been approved by the Landlord or BPC, as applicable;

(b) Reputation.

The Subtenant is reputable (which shall mean the absence of reputations for dishonesty, criminal conduct or association with criminal elements – "reputable" shall not mean "prestigious", nor shall the determination of whether one is reputable involve considerations of personal taste or preference) and has no history of, or reputation for, either discriminatory employment practices which violate any applicable Laws or non-compliance with applicable Environmental Laws;

(c) Financial Stability.

The Subtenant has sufficient financial resources for the Subtenant to perform its obligations under the Sublease;

(d) Event of Default.

At the time of the delivery of the Sublease Notice and at the time of the execution of the Sublease, there is no Event of Default;

(e) Public Financing.

The Sublease and Subtenant meet the criteria of any outstanding public financing issued by the Landlord, City or the JEPA for or related to the Premises, the Phase 1A Infrastructure Improvements or the Convention Center; provided that such criteria must be no more stringent than the criteria that were in effect under the public financing that is outstanding as of the Commencement Date; and

(f) Term.

The proposed Sublease will be for no longer than the remainder of the Term.

#### **11.1.4 Effect of Sublease.**

If Landlord consents to a Sublease, (i) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed

consent to any further Sublease by either Tenant or a Subtenant, and (iii) Tenant shall deliver to Landlord, within ten (10) days after execution, an original executed copy of all documentation pertaining to the Sublease, and any document evidencing a Sublease shall be in form acceptable to Landlord.

#### **11.1.5 Conditions.**

In the event Landlord consents to any Sublease as required hereunder, then at Landlord's election said consent shall be conditioned upon the following: (i) in the case of a Subtenant under a Sublease of all or substantially all of the Premises and the Improvements, such Subtenant shall agree to be bound by all provisions, and assume each and every obligation, under this Lease (including those obligations arising or pertaining to periods prior to the effective date of the Sublease), or, in the case of a Subtenant under a Sublease of less than all or substantially all of the Premises and the Improvements, such Subtenant shall execute a document reasonably acceptable to Landlord acknowledging that all rights of the Subtenant are subject to all terms and conditions of this Lease as the same relate to the space subject to the Sublease; and (ii) the Subtenant shall execute an attornment agreement as provided in Section 11.2 below.

#### **11.2 Subtenant Attornment.**

Every Sublease hereunder is subject to the express condition, and by accepting a Sublease hereunder each Subtenant shall be conclusively deemed to have agreed, that if this Lease terminates or if Landlord succeeds to Tenant's estate in the Premises, the Subtenant shall, at the option of Landlord, attorn to and recognize Landlord as the Subtenant's landlord under the Sublease, provided that Landlord shall not (i) be liable for any act or omission or negligence of Tenant, (ii) be subject to any counterclaim, offset or defense which theretofore accrued to such Subtenant against Tenant, (iii) be bound by any payment of Rent or other sums of money for more than one (1) month in advance or any security deposit (unless actually received by Landlord), (iv) be obligated to perform any work in the sublet space, (v) in the event of a casualty, be obligated to repair or restore Improvements, (vi) in the event of a partial Taking, be obligated to repair or restore Improvements, (vii) be obligated to make any payment to such Subtenant, or (viii) be bound by any obligations that Landlord lacks the capacity to perform; provided, however, that, in the case of clause (v) and (vi), if Landlord determines in its sole and absolute discretion that the casualty or partial Taking, as the case may be, does not allow Subtenant to reasonably and economically use the remainder of the Improvements subject to its Sublease for the Permitted Use of the Sublease, and in the case of clause (v), Subtenant does not have an obligation to rebuild under the Sublease or did not receive insurance proceeds from the casualty or in the case of clause (vi), Subtenant did not receive proceeds from condemnation, then Landlord may elect to allow Subtenant to terminate the applicable Sublease. Any Subtenant shall promptly execute and deliver any instrument that Landlord may reasonably request to evidence such attornment. Upon early termination of this Lease, Tenant shall pay over to Landlord all sums held by Tenant for the benefit of Subtenants or as security under the provisions of the existing Subleases. In addition, at Tenant's request, Landlord may agree, in its sole and absolute discretion and without obligation and without liability to the Landlord, to negotiate a non-disturbance agreement with a Subtenant with a Sublease in excess of 50% of the Project if Landlord has previously approved the Sublease in writing to such Subtenant pursuant to which such non-disturbance agreement Landlord would agree not to disturb the possession of such Subtenant in the event this Lease is terminated.

### **11.3 Sublease Rent Requirements.**

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

### **11.4 Reporting of Sublease Information.**

If Tenant has entered into any Subleases, then, within thirty (30) days of request from Landlord and within sixty (60) days after the end of each calendar year, Tenant shall submit to Landlord a rent roll in the form of Exhibit "G" attached hereto containing the information described therein for each Sublease then in effect, along with a site plan showing locations of any Subleases.

### **11.5 Assignment.**

#### **11.5.1 Consent Required.**

Subject to the terms of this Section 11.5 and except for any Assignment to a Foreclosure Purchaser that is a Permitted Lender, no Assignment or Change of Control of Tenant (collectively, "**Transfer**") shall be made or permitted without, in each instance, the prior written consent of Landlord (which consent shall not be unreasonably withheld, conditioned or delayed). Consents to Assignment to a Foreclosure Purchaser are addressed in Section 10.4. It is mutually agreed that Landlord is a Governmental Authority holding title to the Premises in trust for the citizens of the State of California and acting as a prudent steward of the Premises and that the personal qualifications of the parties Controlling Tenant are a part of the consideration for granting this Lease. As such, a Change of Control is as relevant to Landlord as an Assignment. No Transfer is allowed prior to the date that the Initial Project Improvements are Completed and Landlord has received a copy of the final certificate of occupancy.

#### **11.5.2 Request for Consent.**

If a Transfer is proposed for which Landlord consent is required, Tenant shall notify Landlord in writing, which notice (the "**Transfer Notice**") shall include (i) the proposed effective date of the Transfer, which shall not be less than ninety (90) days and not more than one hundred eighty (180) days after the date of delivery of the Transfer Notice, (ii) narrative description, with supporting documents, of the proposed Transfer, including without limitation, the name of the Transferee, the proposed use, the experience of the Transferee, the organizational structure of the Transferee, and any additional information that Landlord would require to evaluate the Transfer based on the factors set forth in Section 11.5.3, (iii) all of the terms of the proposed Transfer, including without limitation, any proposed encumbrances, and, with respect to an Assignment, the name and address of the proposed assignee or, with respect to a Change of Control of Tenant, the name and address of the Person(s) acquiring an interest resulting in a Change of Control of Tenant (each such assignee, or Person acquiring an interest resulting in a Change of Control of Tenant, a "**Transferee**"), and, with respect to a Change of Control of Tenant, a complete description of the direct and indirect ownership and Control of Tenant immediately before and immediately after the Transfer in writing and depicted in an organizational chart and a copy of all existing and/or proposed documentation pertaining to the proposed Transfer, including all existing and proposed operative documents to be executed to evidence such Transfer and the agreements incidental or related to such Transfer, which shall at a minimum include, organizational documents, and, with respect to an Assignment, a

complete description of the direct and indirect ownership and Control of the proposed assignee in writing and depicted in an organizational chart, (iii) a statement of any current litigation or litigation which was resolved within the prior five (5) years affecting the proposed Transferee, (iv) in the case of an Assignment only, financial statements of the proposed Transferee as of the end of the most recent calendar quarter that ended at least one hundred fifty (150) days before the date of submission that are certified by a reputable, certified public accountant or certified under penalty of perjury on behalf of the proposed Transferee as being prepared in accordance with GAAP by a Person that is authorized to execute such financial statements on behalf of the proposed Transferee, as applicable (which shall be audited if that is the customary practice of the Transferee), and (v) such other information as Landlord may reasonably require. Any Assignment made without Landlord's prior written consent shall, at Landlord's option, be null, void and of no effect, undone at Tenant's sole cost and expense and shall not be binding on Landlord. Tenant shall pay to Landlord Landlord's standard applicable fee set by the BPC Policy No. 106, or its equivalent, in connection with Landlord reviewing each Transfer for which Landlord consent is required pursuant to the Reimbursement Procedure, regardless of whether the Transfer is consummated or Landlord's consent thereto is granted. Any Transfer shall be subject to the terms and provisions of this Lease. Notwithstanding anything to the contrary in this Lease, if Tenant claims that Landlord has unreasonably withheld, conditioned or delayed its consent under this Section 11.5 or otherwise has breached or acted unreasonably under this Section 11.5, then Tenant's sole remedies shall be a declaratory judgment and an injunction for the relief sought without any monetary damages, and Tenant hereby waives the provisions of Section 1995.310 of the California Civil Code, or any successor statute, and all other remedies. The burden of producing evidence and the burden of proof showing Landlord that a prospective Transferee meets each and all of the aforesaid qualifications and standards shall be on the Tenant.

### **11.5.3 Consent Factors.**

If Landlord consents to any Transfer, Tenant may within one hundred eighty (180) days after the date of delivery of the Transfer Notice, enter into such Transfer, upon the same terms and conditions as set forth in the Transfer Notice furnished by Tenant to Landlord; provided that, if there is any material change to the financial condition of the Transferee or any other material change to any of the proposed terms or conditions of the Transfer as set forth or attached to the Transfer Notice, then Tenant shall again submit a Transfer Notice to Landlord for its approval and take all other action required under this Section 11.5.

Notwithstanding anything to the contrary herein, Landlord shall grant consent to any Transfer that is required hereunder if all of the following conditions and requirements are satisfied (it being understood that for the purposes of this Section 11.5.3 and Section 11.5.5, in the case of a Change of Control, references to "**Transferee**" shall mean the Person that Controls the Tenant following the Change of Control):

(a) Sufficient Experience.

The Transferee has at least ten (10) years of experience (directly or through one or more of its subsidiaries) owning or managing hotels that have at least 500 rooms and meeting space comparable to the Meeting Space (or retains a manager with such qualifications);;

(b) Consistent Use.

The Transferee's proposed use of the Premises and the Improvements following the proposed Transfer will be for the Permitted Use only or such proposed use as has been approved by the Landlord or BPC, as applicable;

(c) Initial Project Improvements Are Complete and a copy of the Final Certificate of Occupancy has been received by Landlord.

The Transfer is to occur after the date the Initial Project Improvements are Completed and a copy of the final certificate of occupancy has been received by Landlord; provided that this clause (c) shall not apply if such Transfer is (i) in connection with any foreclosure on the Permitted Encumbrance or any action in lieu of foreclosure to a Foreclosure Purchaser that is a Permitted Lender or (ii) the immediately subsequent Transfer by such Foreclosure Purchaser that is a Permitted Lender to any other Person, and in either (i) or (ii), the Foreclosure Purchaser or immediately subsequent purchaser agree in writing to complete the Initial Project Improvements and the Completion Guarantor(s) deliver a written acknowledgment to Landlord, in a form acceptable to Landlord, consenting to the Assignment and reaffirming the obligations of the Completion Guarantor(s) under the Completion Guaranty.

(d) Reputation.

The Transferee 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 history of, or reputation for, either discriminatory employment practices which violate any applicable Laws or non-compliance with applicable Environmental Laws;

(e) Public Financing.

The Transfer and Transferee meet the criteria of any outstanding public financing issued by the Landlord, City or JEPA for or related to the Premises, the Phase 1A Infrastructure Improvements or the Convention Center; provided that such criteria must be no more stringent than the criteria that were in effect under the public financing that is outstanding as of the Commencement Date;

(f) Hotel Brand.

The Transferee's proposed hotel brand will be in compliance with the Permitted Use; provided that if the Transfer is prior to the third (3<sup>rd</sup>) anniversary of the Completion of the Initial Project Improvements, the Landlord may disapprove of the Transfer on the grounds that the hotel brand will not be Gaylord Hotels brand;

(g) Default.

At the time of request or Transfer, there is no Event of Default under this Lease or any other lease between Landlord and Tenant or an entity that is Controlled by or under common Control with Tenant or which Controls Tenant;

(h) Assignment and Assumption Agreement.

In the case of an Assignment, the Transferee shall be irrevocably committed to assume all of the obligations of Tenant on and after the effective date of the Transfer pursuant to a form of Assignment and Assumption Agreement that has been approved by Landlord.

#### **11.5.4 Effect of Transfer.**

If Landlord consents to a Transfer, (i) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee, and (iii) Tenant shall deliver to Landlord, within one hundred and eighty (180) days after Landlord's consent, an original executed copy of all documentation pertaining to the Transfer, including any documents set

forth in Section 11.5.3, in a form acceptable to Landlord. In the case of an Assignment of this Lease only, that complies with the terms of this Section 11.5, upon Landlord's receipt of the items set forth in (iii) above in a form acceptable to Landlord to relieve Tenant (but not the Completion Guarantor(s) from any liability under this Lease for periods after the effective date of such Transfer.

#### **11.5.5 Conditions.**

In the event Landlord consents to any Assignment as required hereunder, then said consent shall be conditioned upon (i) the assignee agreeing in writing to be bound by all provisions, and assuming each and every obligation, under this Lease (including those obligations arising or pertaining to periods prior to the effective date of the Assignment) through an assignment and assumption agreement in a form acceptable to Landlord and executed and delivered to Landlord pursuant to Section 11.5.4; and (ii) the Completion Guarantor(s) (if applicable) delivering a written acknowledgement, in a form acceptable to Landlord, consenting to the Assignment and reaffirming their obligations under the Completion Guaranty. Without limiting the generality of the foregoing, any assignee shall be obligated for the payment to Landlord of any underpayment of Rent determined to be due under Section 5.4.3(e) above, together with the cost of the audit, if applicable, notwithstanding that such underpayment of Rent, and related audit, pertains to a period of time prior to the effective date of the Assignment.

#### **11.6 Landlord Participation Fee.**

Upon each (a) Assignment of this Lease pursuant to Section 11.5, (b) a change in the composition of the direct or indirect ownership of Tenant, and (c) Sublease of all or substantially all of the Premises and the Improvements, Tenant shall pay to Landlord a fee (the "**Assignment Participation Fee**") in an amount equal to one percent (1%) of the Assignment Proceeds of such transaction; provided, however, that Tenant shall not pay the Assignment Participation Fee (i) if one or more of the original members of Tenant (as of the time of Completion of the Initial Project Improvements and Landlord's receipt of a copy of the final certificate of occupancy), collectively, directly or indirectly, owns at least a ten percent (10%) ownership interest in the Project Improvements, (ii) in the case of any Transfer in connection with any foreclosure on the Permitted Encumbrance or any action in lieu of foreclosure to a Foreclosure Purchaser that is a Permitted Lender or the immediately subsequent Transfer by such Foreclosure Purchaser that is a Permitted Lender to any other Person consented to by Landlord, (iii) in the case of a change in the composition of the direct or indirect ownership of Tenant 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 Tenant resulting from a transfer of ownership interests traded on a recognized public exchange, except in the case of a shareholder with a direct or indirect interest of ten percent (10%) or more in Tenant. Prior to Landlord's consent to any transaction subject to an Assignment Participation Fee, Tenant shall deliver to Landlord a written statement showing the calculation of the Assignment Participation Fee owed to Landlord from Tenant based on the terms of the transaction and an organizational chart showing all Persons with a direct and indirect ownership interest in the 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 Landlord to verify the calculation of the Assignment Participation Fee. The Assignment Participation Fee due to Landlord shall be payable in full to Landlord concurrent with the completion of the transaction and shall be a joint and several obligation of the transferee and transferor. When owed, the Assignment Participation Fee shall constitute Additional Rent.

For the purposes of this Section 11.6, the term "**Assignment Proceeds**" shall mean the purchase price or other consideration 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 Tenant and/or holders of direct or indirect interests in Tenant in connection with the subject transaction less the sum of (x) any reasonable prorations, 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 Landlord, which sum shall be prorated in the case of an assignment of a portion of the Improvements.

Upon the request of Landlord from time to time (which request shall not be made more frequently than once per year), except in the case of Completion of the Initial Project Improvements, in which case Tenant shall deliver to Landlord such schedule, without request from Landlord, within five (5) days of Completion of the Initial Project Improvements, Tenant shall provide Landlord with a schedule listing the name and mailing address of each Person holding at least ten percent (10%) of direct or indirect interests in Tenant. In the event that such Person is a trust, Tenant 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.

#### **11.7 Permitted Lender and Foreclosure Purchasers.**

The foregoing provisions of this Article 11 shall not apply to the Transfers which are governed by Sections 10.3 and 10.4.

### **12. EVENTS OF DEFAULT AND REMEDIES**

#### **12.1 Events of Default.**

The occurrence of any one (1) or more of the following events shall constitute an event of default by Tenant hereunder (each, an “**Event of Default**”):

##### **12.1.1 Abandonment.**

“**Abandonment**” shall mean that either for thirty (30) consecutive days or longer, the Hotel Operator does not operate a portion of the Project Improvements, except for temporary closures permitted under Section 4.4 or as a result of an existing Force Majeure Event in accordance with Section 6.5 that prevents Hotel Operator from being on the Premises or operating a portion of the Project Improvements and Tenant does not cure such condition within sixty (60) days after written notice thereof from Landlord.

##### **12.1.2 Failure to Pay.**

Failure by Tenant to pay, when due, any Rent, other payment, and/or charge that Tenant is required to pay hereunder, where such failure continues for a period of five (5) days after written notice thereof from Landlord; provided, however, that any notice provided under this Section 12.1.2 shall be in lieu of, and not in addition to, any notice required under Section 1161 of the California Code of Civil Procedure, as amended.

##### **12.1.3 Failure to Perform.**

Failure by Tenant to perform any express or implied covenants or conditions in this Lease (other than as provided in the other subsections of this Section 12.1), where such failure continues for thirty (30) days after written notice thereof from Landlord; provided that, if the

nature of such failure is such that the same cannot reasonably be cured within such thirty (30) day period, and Tenant diligently commences such cure within such thirty (30) day period and thereafter diligently proceeds to rectify and cure such failure, but in no event exceeding a period of time in excess of one hundred and twenty (120) days after written notice thereof from Landlord, then such failure shall not constitute an Event of Default.

#### **12.1.4 Bankruptcy Event.**

The occurrence of a Bankruptcy Event.

#### **12.1.5 Specified Defaults.**

The occurrence of any event expressly stated to constitute an Event of Default under this Lease.

### **12.2 Remedies.**

Upon any Event of Default, Landlord may, in addition to all other rights and remedies afforded to Landlord hereunder or by law or in equity, take any one or more of the following actions:

#### **12.2.1 Termination of Lease.**

Terminate this Lease by giving Tenant written notice thereof, in which event Tenant shall immediately surrender the Premises to Landlord. In the event that Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant:

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

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

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

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

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

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

Failure by Landlord 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. Tenant hereby waives for Tenant and for all those claiming under Tenant all rights now or

hereafter existing to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease.

**12.2.2 Continue Lease in Effect.**

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

**12.2.3 Perform Acts on Behalf of Tenant.**

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

**12.2.4 Increased Security Deposit.**

Notwithstanding anything to the contrary in Section 28.4, require Tenant to, in which case Tenant shall, increase the security deposit with an amount equal to three (3) months of the Minimum Annual Rent (which remedy may be exercised on more than one occasion with further increases in the security deposit on any subsequent Event of Default); provided that Landlord shall return such increased amount of the security deposit to Tenant on the first anniversary of the date on which the applicable Event of Default ceased to exist upon request in writing from Tenant except if another Event of Default currently exists.

**12.2.5 Payment by Tenant.**

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

**12.2.6 Assignment of Plans and Other Matters.**

Require Tenant to, in which case Tenant shall, (i) at Tenant's sole cost and expense, assign and transfer to Landlord all of Tenant'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 Premises, free and clear of liens and claims by third parties, in connection with and (ii) execute and deliver to Landlord, within five (5) Business Days of Landlord's request, in a form provided by and acceptable to Landlord, an instrument confirming the Assignment and transfer of such property and interests to Landlord 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 Premises to Landlord. Tenant agrees to reasonably cooperate with Landlord at no cost or expense to Landlord 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 Premises, which may be required for Landlord to rely on such plans,

drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Premises.

## **13. BANKRUPTCY**

### **13.1 Bankruptcy Event.**

Upon occurrence of a Bankruptcy Event, Landlord shall have all rights and remedies available pursuant to Article 12. After the commencement of a Bankruptcy case: (i) the Tenant shall perform all post-petition obligations of Tenant under this Lease; and (ii) if Landlord is entitled to damages (including unpaid Rent) from and after any order for relief pursuant to the terms of this Lease, then all such damages shall be entitled to administrative expense priority pursuant to the Bankruptcy Code. Tenant acknowledges that this Lease is a lease of nonresidential real property and therefore Tenant, as the debtor in possession, or the trustee shall not seek or request any extension of time to assume or reject this Lease or to perform any obligations of this Lease which arise from or after the order of relief.

### **13.2 Assignment/Assumption.**

#### **13.2.1 General.**

Any Person to which this Lease is assigned pursuant to the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of Assignment, and any such assignee shall upon request by Landlord execute and deliver to Landlord an instrument confirming such assumption in a form acceptable to Landlord. If the Tenant desires to assume and assign this Lease under the Bankruptcy Code to any Person who shall have made a bona fide offer, then the Tenant shall give Landlord written notice of such proposed Assignment (which notice shall set forth the name and address of such Person, all of the terms and conditions of such offer, and the adequate assurance to be provided Landlord to assure such Person's future performance under this Lease) prior to the date Tenant shall make application to the appropriate court for authority and approval to enter into such Assignment and assumption. Landlord shall thereupon have the prior right and option, to be exercised by notice to the Tenant given at any time prior to the effective date of such proposed Assignment, to accept an Assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such Person, less any brokerage commissions which may be payable out of the consideration to be paid by such Person for the Assignment of this Lease. If the Tenant fails to assume or assume and assign this Lease in accordance with the requirements of the Bankruptcy Code within the period provided by the Bankruptcy Code or allowed by the Bankruptcy Court, then the Lease shall be deemed rejected and the Landlord shall have all rights and remedies available to it pursuant to Section 12.2.

#### **13.2.2 Financial Statements.**

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

### **13.3 Adequate Assurances.**

In the event Tenant or proposed assignee under Section 13.2 proposes under the Bankruptcy Code to cure any default under this Lease or to assume or assign this Lease and is obliged to provide adequate assurance to Landlord that (a) a default shall be cured, (b) Landlord shall be compensated for its damages arising from any breach of this Lease and (c) future performance of Tenant's obligations under this Lease shall occur, then such adequate assurances shall include all of the following, as designated by Landlord in its sole and absolute discretion:

- (a) Those acts specified in the Bankruptcy Code or other applicable laws as included within the meaning of "adequate assurance";
- (b) A prompt cash payment to compensate Landlord for any monetary defaults or actual damages arising directly from a breach of this Lease;
- (c) A cash deposit in an amount at least equal to the then-current amount of the security deposit; and
- (d) The assumption or Assignment of all of Tenant's interest and obligations under this Lease.

## **14. EMINENT DOMAIN**

### **14.1 Eminent Domain.**

If all or any portion of the Premises and the Improvements shall be condemned pursuant to exercise of the power of eminent domain, or acquired under an actual threat of the exercise of such power (collectively, "**Condemnation**"), then the rights and obligations of Landlord and Tenant with respect thereto shall be as set forth in this Article 14. Nothing in this Article 14 shall be interpreted to prevent Landlord from exercising its power of eminent domain as to Tenant's leasehold interest, Premises and/or the Improvements.

### **14.2 Notice of Condemnation.**

If either Party receives notice of any Condemnation or intended Condemnation (including, without limitation, service of process), then, within five (5) Business Days of receipt thereof, such Party shall deliver to the other Party an exact copy of such notice of any Condemnation or intended Condemnation and the date such notice was received.

### **14.3 Representation of Interest.**

Landlord and Tenant shall each have the right to represent its respective interests in such proceeding or negotiation with respect to a Condemnation or intended Condemnation and to make full proof of its claims. Landlord and Tenant each agrees to execute and deliver to the other Party any instrument which may be required to effectuate or facilitate the provisions of this Article 14.

### **14.4 Early Termination.**

In the event of a Condemnation (other than a Temporary Condemnation) of all of the Premises, all of the Improvements or such portion of the Premises or the Improvements so that Tenant cannot reasonably and economically use the remainder of the Premises or the Improvements, as applicable for the Permitted Use (as reasonably determined by Tenant and reasonably approved by Landlord), this Lease shall then terminate as of the date of such Condemnation. A termination of this Lease pursuant to this Section 14.4 shall act to relieve Tenant from any further liability under this Lease except as to obligations accruing or arising on or prior to such

termination or which are otherwise required to be performed in connection with such termination or surrender of the Premises or which otherwise expressly survive such termination. Tenant shall deliver the Premises to Landlord in the condition required for the surrender of the Premises under this Lease.

#### **14.5 Partial Condemnation.**

If only a portion of the Premises or the Improvements is subject to Condemnation and this Lease is not terminated pursuant to Section 14.4 above, then this Lease shall continue in full force and effect upon the same terms and conditions as set forth herein, and the Minimum Annual Rent shall be reduced in proportion to the reduction in the value of the Premises and/or the Improvements, as applicable, after the Condemnation as compared to the value of the Premises and/or the Improvements, as applicable, immediately prior to the Condemnation (as reasonably determined by Landlord and approved by Tenant in its reasonable discretion).

#### **14.6 Temporary Condemnation.**

If the Premises, the Improvements or any portion thereof is subject to a Temporary Condemnation, then this Lease shall continue in full force and effect and there shall be no adjustment or abatement in Rent during the term of such Temporary Condemnation. Any portion of an award, settlement or other compensation or damages which may be given for such Temporary Condemnation attributable to the Term shall be the property of Tenant and any portion attributable to any period following the expiration of the Term shall be the property of Landlord. As used herein, a "**Temporary Condemnation**" shall mean any taking which is not intended by the condemning authority to be permanent at the time such Condemnation initially occurs.

#### **14.7 Award.**

##### **14.7.1 Leasehold Award.**

In the event of any Condemnation of all or any portion of the Premises or all or any portion of the Improvements (other than a Temporary Condemnation), Landlord shall be entitled to any and all awards and/or settlements or other compensation or damages which may be given for (a) any "bonus value" respecting this Lease (which is the excess value of the leasehold arising from the fact that the scheduled rent is less than the market rent for the Premises and the Improvements), and (b) the land (and water, if applicable) comprising the Premises. Any and all other awards and/or settlements or other compensation or damages (collectively, "**Leasehold Award**") for the Improvements and the leasehold estate created by this Lease (excluding any bonus value thereof) shall be paid as follows:

(a) Provided this Lease is not terminated pursuant to Section 14.4 above, that portion of the Leasehold Award determined by Landlord to be reasonably necessary to repair and restore the Premises and/or Improvements shall be payable in trust to the Permitted Mortgage Lender that is a Financial Institution with the first Permitted Lease Encumbrance that is outstanding, if any, and shall be disbursed for the payment of the costs of repairing and restoring the remaining portion of the Premises and/or Improvements to substantially its value, condition and character prior to such Condemnation to the extent the same may be practicable. If there is no Permitted Mortgage Lender or if there is but the Permitted Mortgage Lender declines to act as a trustee for the disbursement of funds as provided above, then such Leasehold Award shall be payable in trust to a bank or trust company doing business in the County of San Diego California agreed upon by the Parties, or if the Parties fail to agree, to Bank of America, N.A., or its successor, and shall be disbursed by such trustee as provided

above. If the Permitted Mortgage Lender is the trustee, then the Permitted Mortgage Lender may disburse the progress payments in accordance with its normal loan disbursement procedures (e.g. upon receipt of appropriate mechanics' lien releases, and invoices) so long as such disbursement procedures are reasonably acceptable to Landlord and ensure that the Leasehold Award is applied to the costs of repairing and restoring the remaining portion of the Premises and Improvements.

(b) If this Lease is terminated pursuant to Section 14.4, or if there are excess proceeds available after completion of the repair and restoration of the remaining portion of the Premises and the Improvements as provided above, then any portion of the Leasehold Award not used for the repair and restoration of the remaining portion of the Premises and the Improvements pursuant to clause (a) above, or used to place the Premises and Improvements in the condition required for the surrender of same to Landlord, shall be paid as follows (1) first, to any Permitted Mortgage Lender, to the extent necessary to reduce the amount of indebtedness that is secured by such Permitted Mortgage Lender's Permitted Encumbrance, so that such indebtedness is in the same proportion to the value of the Premises and/or the Improvements, as applicable, after the Condemnation as compared to the proportion of this indebtedness to the value of the Premises and/or the Improvements, as applicable, immediately prior to the Condemnation; (2) second, to the JEPA, if such condemnation occurs while there is any public financing outstanding, to the extent necessary to reduce the amount of the JEPA Development Cost Contribution, so that such JEPA Development Cost Contribution is in the same proportion to the value of the Convention Center, as applicable, after the Condemnation as compared to the proportion of the JEPA Development Cost Contribution to the value of the Convention Center, immediately prior to the Condemnation; (3) third, to the Landlord for the any loss to the value of the Premises; and (4) fourth, to the Tenant to reduce the amount of Tenant's equity investment, so that such equity investment is in the same proportion to the value of the Improvements (excluding the Convention Center for so long as the Convention Center is subject to public financing including any associated leases or subleases), after the Condemnation as compared to the proportion of Tenant's equity investment to the value of the Improvements (excluding the Convention Center for so long as the Convention Center is subject to public financing including any associated leases or subleases), immediately prior to the Condemnation..

(c) Any portion of the Leasehold Award relating to the Project Improvements (excluding the Convention Center for so long as the Convention Center is subject to public financing including any associated leases or subleases) and not used as described in clauses (a) and (b) and which is payable to Tenant pursuant to clause (b) shall be paid to the Permitted Lender to be applied against the indebtedness that is secured by its Permitted Encumbrance to the extent such payment is required to be made by Tenant pursuant to the terms of the Permitted Encumbrance held by the Permitted Lender.

(d) Any remaining portion of the Leasehold Award relating to Project Improvements (excluding the Convention Center for so long as the Convention Center is subject to public financing including any associated leases or subleases) and not used as described in clauses (a), (b) and (c) shall be paid to Tenant. Notwithstanding the foregoing sentence, with respect to any Leasehold Award received in connection with any Condemnation for street widening or the installation of utilities, public sidewalks or walkways which occurs at any time following the Commencement Date, and provided such Condemnation does not result in material physical damage to then existing buildings or driveways, parkway access or access ways serving the Improvements and does not impair the use or operation of the Improvements, Landlord shall be entitled to receive, in addition to any award otherwise payable to Landlord

pursuant to this Article 14, all of that portion of the Leasehold Award that would otherwise be distributed to Tenant pursuant to this clause (d).

#### **14.7.2 Claims by Tenant.**

Nothing in this Article 14 shall be construed to preclude Tenant from prosecuting any claim directly against the condemning authority, but not against Landlord, if such claim does not diminish or otherwise adversely affect the Leasehold Award or Landlord's rights herein. Notwithstanding anything in this Article 14 to the contrary, Tenant shall not be entitled to any funds, awards, rights, benefits or entitlement of any kind arising from or out of a Condemnation, except so far as is designated for damage to Tenant's personal property, if the same occurs during the period of any Event of Default or after Landlord has exercised any remedy referred to in Section 12.2 above by reason of the Event of Default, or if the same occurs after Tenant has exercised its right to terminate this Lease. Tenant shall be entitled to any award allocated by a court of competent jurisdiction to Tenant's personal property.

### **15. MAINTENANCE AND REPAIR**

#### **15.1 Maintenance and Repair.**

Tenant's maintenance and repair obligations with respect to the Parking Improvements (if any) shall be as set forth in Section 4.3, and not this Article 15. Tenant shall, at its sole cost and expense, and at all times during the Term, comply with the maintenance and repair standards for the Premises and the Improvements set forth in the Hotel Management Agreement.

Tenant, at its sole cost and expense, shall also maintain, repair, replace and rebuild the Premises and Improvements as necessary to keep the Improvements in first-class condition and repair except for reasonable wear and tear. Without limitation of the foregoing, Tenant shall perform all maintenance and make all repairs and replacements, ordinary as well as extraordinary, foreseen or unforeseen, structural or otherwise, which may be necessary or required so that all times the Premises and the Improvements (together with all equipment, trade fixtures, mechanical and utility systems, paving, landscaping, installations and appurtenances) shall be in compliance with the Hotel Management Agreement, and in first-class condition and repair, except for reasonable wear and tear. Tenant acknowledges and agrees that, during the Term, in order to adhere to these maintenance and repair standards, certain repairs and replacements which are accounted for as capital expenditures shall be required and are bargained for by Landlord as consideration for this Lease, and that regular capital reinvestment in the Premises and the Improvements should therefore be anticipated by Tenant and that capital reinvestment for such purposes does not qualify Tenant for any concessions, subsidies, or other modifications of the Lease during the Term. Tenant also acknowledges that capital expenditures related to maintenance and repair so as to keep or return the Improvements to first-class condition and repair are not to be equated with capital expenditures for a major refurbishment or renovation representing an upgrade to the appearance and/or operation of the Improvements which extends its useful life and repositions the Improvements in a manner likely to generate more Revenue. Further, Tenant shall provide containers for the collection of trash and garbage outside the Improvements, which may require Landlord's approval, and keep the Premises and the Improvements in a clean, safe, healthy and sanitary condition, free and clear of rubbish, litter, and any fire hazards. Tenant's maintenance shall include, without limitation, all preventive maintenance, painting and replacements necessary to maintain and preserve the Premises and Improvements, and compliance with the Best Management Practices ("BMPs") set forth in the Jurisdictional Runoff Management Program incorporated by reference in Article 10 of the San Diego Unified Port District Code.

Prior to Tenant performing any non-routine repair or replacement (which shall mean any repair or replacement that does not occur with an expected or known frequency in the normal course of business) to the exterior, the structure or building systems or which will substantially interfere with the typical operation of the Improvements, or affect the portions of the Improvements that are generally accessible to the public, such as the lobby area of the Resort Hotel, Tenant shall submit to Landlord plans and specifications with respect to such repair or replacement, as applicable, and receive Landlord's written approval thereof, pursuant to the procedures set forth in Article 6, as if such repair or replacement, as applicable, were Alterations. If such approval is administrative, Landlord shall not unreasonably reject any plans or specifications with respect to any repair or replacement, as applicable, that if not performed by Tenant would result in an Event of Default.

By entering into this Lease, Tenant expressly waives all rights to make repairs at the expense of Landlord, as provided in Section 1942 of the California Civil Code, and all rights provided by Section 1941 of the California Civil Code.

### **15.2 Condition in Compliance with Laws.**

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

### **15.3 Inspection Report.**

Within sixty (60) days after notice from Landlord to Tenant requesting an Inspection Report, which notice shall not be given more than once in any five- (5-) year period (unless Landlord determines that Tenant may be in default of its obligations under this Article 15, in which event such time limitation shall not apply), Tenant, at Tenant's sole expense, shall provide to Landlord a detailed inspection report listing any known defects, required repairs or deferred maintenance items in the Premises and the Improvements and recommendations for work to be performed to ensure that the condition of the Premises and the Improvements is in full compliance with this Lease, including the standard of condition set forth in Section 15.1 (the "**Inspection Report**"). If Landlord requests an Inspection Report more than once in any Rental Period, then Landlord shall pay Tenant for any reasonable costs incurred by Tenant in connection with such Inspection Report unless such Inspection Report demonstrates that Tenant is in default of its obligations under this Article 15. The Inspection Report shall be (i) prepared by an unrelated third-party inspector licensed in the State of California selected by Tenant, (ii) certified to Landlord, to the best knowledge of the Person conducting the inspection, as complete and accurate, and (iii) in a form reasonably acceptable to Landlord. Without limitation of Tenant's obligations or Landlord's remedies hereunder, Tenant shall commence work to comply with the recommendations set forth in such Inspection Report within thirty (30) days of receipt of same and diligently pursue such work to completion within not later than one hundred eighty (180) days of receipt of such Inspection Report. As a condition precedent to Tenant submitting the Redevelopment Plan Package, notwithstanding that Landlord may not have requested an Inspection Report, Tenant shall deliver an Inspection Report not earlier than six (6) months prior to the submission of the Redevelopment Plan Package and perform any work recommended therein prior to submitting the Redevelopment Plan Package.

Notwithstanding the requirement in Section 15.3 that Tenant provide Landlord with an Inspection Report within sixty (60) days after notice from Landlord, so long as there is no Event of Default and the Premises and the Improvements are operated pursuant to a Hotel Management Agreement under an Acceptable Brand, and such Hotel Management Agreement

requires Tenant to maintain and repair the Premises and Improvements in accordance with such Hotel Management Agreement and requires there to be established a reserve for repair and maintenance of the Premises and Improvements, including without limitation, the furniture, trade fixtures and equipment, and such repair and maintenance occur in accordance with the requirements of such Hotel Management Agreement and Sections 15.1 and 15.2, then the foregoing Inspection Reports shall not be required; provided, however, that the delivery of an Inspection Report and performance of the work recommended therein shall continue to be a condition precedent to Tenant's submission of the Redevelopment Plan Package.

#### **15.4 Hotel Management Agreement.**

##### **15.4.1 Consent Required.**

Subject to the terms of Section 15.4, any Hotel Management Agreement with a Person other than Marriott as Hotel Operator shall be subject to prior written consent of Landlord (which consent shall not be unreasonably withheld, conditioned or delayed).

##### **15.4.2 Request for Consent.**

**15.4.3** If a Hotel Management Agreement is proposed for which Landlord consent is required, Tenant shall notify Landlord in writing, which notice (the "**Hotel Management Agreement Notice**") shall include (a) the proposed effective date of the Hotel Management Agreement, which shall not be less than one hundred and eighty (180) days and not more than one (1) year after the later of: (i) the date of delivery of the Hotel Management Agreement Notice containing all of the information required in (b) and (c) and (ii) Landlord's review of the original unredacted version of the proposed Hotel Management Agreement at Landlord's office at 3165 Pacific Highway, San Diego, California, (b) a copy of the proposed Hotel Management Agreement with all proprietary information contained therein redacted together with a certificate from an authorized representative of Tenant certifying under penalty of perjury that (i) the redacted version of the Hotel Management Agreement is a true, correct and complete copy of the final proposed Hotel Management Agreement and no additions, deletions, or revisions will be made to the Hotel Management Agreement; and (ii) Tenant is not in default or in breach under the provisions of the Lease, and (c) such other information as Landlord may reasonably require. Any Hotel Management Agreement executed without Landlord's prior written consent shall, at Landlord's option, be null, void and of no effect and not binding on Landlord. Tenant shall pay to Landlord Landlord's standard applicable fee set by BPC Policy No. 106 for the review of subleases in connection with Landlord reviewing each Hotel Management Agreement pursuant to the Reimbursement Procedure, regardless of whether the Hotel Management Agreement is consummated or Landlord's consent thereto is granted. Any Hotel Management Agreement shall be subject to the terms and provisions of this Lease. Consent Factors.

If Landlord consents to any Hotel Management Agreement, Tenant may within one hundred eighty (180) days after the date that is the later of: (i) the date of delivery of the Hotel Management Agreement Notice containing all of the information required in (b) and (c) above and (ii) Landlord's review of the original unredacted version of the proposed Hotel Management Agreement at Landlord's office at 3165 Pacific Highway, San Diego, California, enter into such Hotel Management Agreement; provided that, if there is any material change to the financial condition of the proposed Hotel Operator or any other material change to any of the proposed terms or conditions of the Hotel Management Agreement as reviewed by Landlord in person or as set forth or attached to the Hotel Management Agreement Notice, then Tenant shall again

submit a Hotel Management Agreement Notice to Landlord for its approval and take all other action required under this Section 15.4.

Notwithstanding anything to the contrary herein, Landlord shall grant consent to any Hotel Management Agreement that is required hereunder if all of the following conditions and requirements are satisfied:

(a) Completion of Initial Project Improvements.

The effective date of the proposed Hotel Management Agreement is later than the third (3<sup>rd</sup>) anniversary of the date that the Initial Project Improvements are Completed and the date the Landlord receives a copy of the final certificate of occupancy.

(b) Consistent Use.

The Hotel Operator's proposed use of the Premises and the Improvements under the proposed Hotel Management Agreement will be for the Permitted Use only or such proposed use has been approved by the Landlord or BPC, as applicable;

(c) Reputation.

The Hotel Operator 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 history of, or reputation for, either discriminatory employment practices which violate any applicable Laws or non-compliance with applicable Environmental Laws;

(d) Financial Stability.

The Hotel Operator has sufficient financial resources for the Hotel Operator to perform its obligations under the Hotel Management Agreement and this Lease, where applicable;

(e) Event of Default.

At the time of the Hotel Management Agreement Notice and at the time of the execution of the Hotel Management Agreement, there is no Event of Default;

(f) Public Financing.

The Hotel Management Agreement and the Hotel Operator meet the criteria of any outstanding public financing issued by Landlord or issued for or related to the Premises, the Phase 1A Infrastructure Improvements or the Convention Center; provided that such criteria must be no more stringent than the criteria that were in effect under the public financing that is outstanding as of the Commencement Date; and

(g) Term.

The proposed Hotel Management Agreement will be for no longer than the remainder of the Term.

(h) Sufficient Experience.

The Hotel Operator has at least ten (10) years of experience (directly or through one or more of its subsidiaries) managing or operating hotels that have at least five hundred (500) rooms and meeting space comparable to the Meeting Space.

#### **15.4.4 Effect of Hotel Management Agreement.**

If Landlord consents to a Hotel Management Agreement, then (a) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (b) such consent shall not be deemed consent to any further Hotel Management Agreement by either Tenant or a Hotel Operator or any amendments to the Hotel Management Agreement (c) Tenant shall deliver to Landlord, within ten (10) days after execution, an original executed copy of all documentation pertaining to the Hotel Management Agreement, and any document evidencing a Hotel Management Agreement shall be in form acceptable to Landlord; and (d) a certificate from an authorized representative of Tenant certifying under penalty of perjury that (i) the redacted version of the Hotel Management Agreement provided to Landlord with the Hotel Management Agreement Notice is a true, correct and complete copy of the Hotel Management Agreement executed by Tenant and the new Hotel Operator and no additions, deletions, or revisions were made to the original unredacted Hotel Management Agreement reviewed by Landlord prior to execution of the new Hotel Management Agreement.

#### **15.4.5 Conditions.**

In the event Landlord consents to any Hotel Management Agreement as required hereunder, then at Landlord's election said consent shall be conditioned upon such Hotel Operator executing a document reasonably acceptable to Landlord acknowledging that all rights of the Hotel Operator are subject to all terms and conditions of this Lease as the same relate to the space subject to the Hotel Management Agreement.

#### **15.4.6 Non-Disturbance Agreement.**

Prior to or on the Commencement Date and prior to or concurrently with the execution of each new Hotel Management Agreement, Landlord and the applicable Hotel Operator shall enter into a non-disturbance agreement with such Hotel Operator based on terms reasonable acceptable to both Landlord and Hotel Operator.

### **15.5 Performance by Landlord.**

#### **15.5.1 Inspection.**

Landlord shall have the right but not an obligation to enter, view, inspect and determine the condition of, and protect its interests in the Premises and Improvements (other than Rooms that are occupied by guests), during normal business hours and upon a three (3) Business Days' prior notice to Tenant (except in the case of an emergency where no prior notice is required) and provided that Landlord complies with all applicable security and safety procedures of Tenant and uses commercially reasonable efforts to minimize any interference with Tenant's operation and use of the Premises and the Improvements while on the Premises and at the Improvements. If Landlord determines that the Premises and/or the Improvements are not in the condition required pursuant to the terms of this Lease, Landlord shall deliver written notice to Tenant detailing the items to be corrected and Tenant shall commence the necessary maintenance, alteration, repair, replacement and rebuilding work necessary to remedy the issues set forth in Landlord's notice within ten (10) days after written notice from Landlord and diligently pursue such work to completion. Further, if at any time Landlord determines the Premises are not in the condition required pursuant to the terms of this Lease, upon ten (10) days' prior written notice thereof Landlord may require Tenant to file and pay for a performance bond. The amount of said bond shall be adequate, in Landlord's opinion, to correct all unsatisfactory conditions.

### **15.5.2 Landlord Repair Rights.**

At Landlord's option, if Tenant fails to commence to perform the necessary maintenance, alteration, repair, replacement or rebuilding work within ten (10) days of Landlord's written demand therefor (except in the event of an emergency in which case no such notice shall be required) in accordance with this Lease, then Landlord may, but shall not be required to, perform such maintenance, alteration, repair, replacement or rebuilding work, and Tenant shall pay Landlord the actual cost thereof, together with interest thereon at the Default Rate from the date due until paid and an administrative fee in the amount of ten percent (10%) of the cost of such work, pursuant to the Reimbursement Procedure. Such payments shall constitute Additional Rent under this Lease and shall be paid monthly as billed by Landlord or in a lump sum payment, as directed by Landlord. If requested by Landlord, Tenant shall pay to Landlord the entire estimated cost of such work in advance, but such payment shall not relieve Tenant from the obligation to pay any excess costs that may be actually incurred by Landlord. For all maintenance, alteration, repair, replacement, or rebuilding work undertaken by Landlord, Tenant hereby indemnifies and shall defend, at Tenant's sole expense and with counsel reasonably acceptable to Landlord, and hold the Landlord Parties harmless from any and all liability, Related Costs, demands, damages, expenses (including, without limitation, attorneys', consultants' and experts' fees, court costs and amounts paid in settlement of any claims or actions), arising directly or indirectly out of such work or the performance thereof, unless the same is the result of the sole gross negligence or sole willful misconduct of Landlord. Landlord shall have no obligation to repair or maintain any portion of the Premises. The rights of Landlord under this Section 15.5.2 shall not create any obligations or increase any obligations of Landlord set forth elsewhere in this Lease, nor shall the exercise of such rights, or the failure to exercise same, limit any other rights or remedies of Landlord. Landlord shall have the right to enter the portions of the Premises where the necessary maintenance, alteration, repair, replacement or rebuilding work, as applicable, is to be performed or is being performed in accordance with this Section 15.5.2 during normal business hours and upon a three (3) Business Days' prior notice to Tenant (except in the case of an emergency where no prior notice is required) and provided that Landlord complies with all applicable security and safety procedures of Tenant and uses commercially reasonable efforts to minimize any interference with Tenant's operation and use of the Premises and the Improvements while on the Premises and at the Improvements.

### **15.6 Records.**

Tenant shall, during the Term and, with respect to each record, for a period of seven (7) years from the date the record was created (or such longer period as Tenant may decide in its sole discretion), keep or cause to be kept, accurate and complete records of maintenance conducted at the Premises and the Improvements. The records must be supported by source documents of original entry such as invoices, receipts, work orders, construction contracts, service contracts or other pertinent supporting documents. All of Tenant's maintenance records relating to the Premises and the Improvements shall be kept either at the Premises or at such other locations in San Diego County, California as are acceptable to Landlord. Landlord shall have the right at any time to examine such maintenance records without restriction and, at Landlord's request, Tenant shall provide Landlord with copies thereof at Tenant's expense for the purpose of determining the accuracy thereof. After the seven (7) year period has expired for a certain record of maintenance, Tenant shall deliver the original record of maintenance to Landlord at the address set forth in Section 1.11 or such other location designated by Landlord in writing, which may include the main offices of the City; provided, however, Tenant may elect to deliver all of the records of maintenance that expire in a given Lease Year at one time, in one delivery, on or about July 1 of each Lease Year.

## 16. TAXES AND PROPERTY EXPENSES

### 16.1 Taxes.

This Lease may result in a taxable possessory interest and be subject to the payment of property and other taxes. Tenant shall pay, prior to delinquency, all Tax Expenses attributable to any time period during the Term now or hereafter assessed against, or relating in any way to the Tenant, this Lease, the Premises, the Improvements, or the use or occupancy thereof by Tenant and Tenant Parties. Tenant shall promptly following written request therefor from Landlord, provide Landlord with evidence of the payment of Tax Expenses. "**Tax Expenses**" shall include, without limitation, all federal, state, county, or local governmental or municipal taxes, fees, assessments, charges or other impositions of every kind and nature, whether general, special, ordinary or extraordinary (including, without limitation, real estate taxes, possessory interest taxes, use taxes, general and special assessments, leasehold taxes or taxes based upon Tenant's receipt of rent, including gross receipts or sales taxes applicable to Tenant'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 Tenant in connection with the Premises and the Improvements) and any taxes and assessments relating to the business or other activities of Tenant upon or in connection with the Premises and the Improvements. Tax Expenses also shall include, without limitation:

(a) Any tax on Landlord's receipt of Rent, right to Rent or other income from the Premises and the Improvements;

(b) 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 Tenant and Landlord that all such new and increased assessments, taxes, fees, levies, and charges and all similar assessments, taxes, fees, levies and charges be included within the definition of Tax Expenses for purposes of this Lease; and

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

Notwithstanding the foregoing, Tenant shall not be responsible for any Tax Expenses that are, after the Commencement Date, imposed on the Premises or the Improvements by Landlord.

### 16.2 Property Expenses.

Without limitation of Tenant's other obligations under this Lease, Tenant 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 Premises 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 Tenant pursuant to this Lease and the Hotel Management Agreement with respect to the Premises and/or the Improvements including without limitation any premiums and deductibles; (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 Premises and/or the Improvements; (v) payments under any easement, license, permit, operating agreement, declaration, or covenant or instrument pertaining to the Premises that exist as of the Commencement Date or that are created or consented to by Tenant; and (vi) the cost of any Improvements, capital repairs, capital alterations, or capital equipment, required by Law, the Hotel Management Agreement or otherwise required under this Lease.

## **17. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION AND OFAC**

### **17.1 Nondiscrimination.**

Tenant 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, Tenant shall be solely responsible for such compliance and required programs, and there shall be no allocation of any such responsibility between Landlord and Tenant. Each Subtenant shall comply with the requirements of this Article 17.

### **17.2 Compliance with Employment and Labor Requirements.**

Tenant 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. Tenant shall also comply with the National Labor Relations Act, including the provisions with respect to the rights of employees to organize.

### **17.3 OFAC Compliance.**

Tenant represents and warrants that (i) Tenant and, to the best of Tenant's knowledge, the Persons that directly or indirectly hold an interest in Tenant ("Tenant's Members", each a "Tenant Member") (other than any such Person that owns an interest in Tenant through publicly traded securities) is not now, and neither Tenant nor Tenant's Members, (other than any such Person that owns an interest in Tenant through publicly traded securities) shall during the Term of this Lease become, a Person with whom Landlord 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 Tenant's knowledge, none of the funds or other assets of Tenant constitute property of, or are beneficially owned, directly or indirectly, by any Prohibited Persons (iii) to the best of Tenant's knowledge, no Prohibited Person directly or indirectly Controls Tenant, or any of Tenant's Members, either individually or in the aggregate, (iv) to the best of Tenant's knowledge, none of the funds of Tenant have been derived from any unlawful activity with the result that the investment in Tenant is prohibited by Laws or that the Lease is in violation of Laws, and (v) Tenant has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times during the Term. Tenant shall reimburse Landlord for all reasonable costs, including, without limitation, attorneys' fees, resulting from Tenant's failure to comply with this Section 17.3. Notwithstanding any limits set forth in this Section 17.3 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. For avoidance of doubt, wherever "to the best of Tenant's knowledge" is used in this Section 17.3, such knowledge shall include a duty of inquiry and investigation..

## **18. INSURANCE**

### **18.1 Insurance.**

Tenant shall maintain the policies of insurance described in this Article 18 in full force and effect throughout the Term.

### **18.2 Forms of Coverage.**

The policies for said insurance shall, as a minimum, provide the following:

#### **18.2.1 Commercial General Liability.**

"**Occurrence**" form Commercial General Liability covering the Premises, operations and contractual liability assumed by Tenant in this Lease in the amount of not less than as set forth in Section 1.9. Tenant's indemnification obligations under this Lease shall in no event be limited by the terms or qualifications to the contractual liability coverage under such insurance.

#### **18.2.2 Liquor Liability.**

If alcoholic beverages are served or sold on the Premises, Liquor Liability coverage in the amount of not less than as set forth in Section 1.9 shall be obtained. If no alcoholic beverages are served or sold on the Premises, the proof of insurance shall so state.

#### **18.2.3 All Risk and Builder's Risk Property Coverage.**

Tenant's property insurance obligations with respect to the Parking Improvements (if any) shall be as set forth in Section 4.3, and not this Article 18. All Risk of Physical Loss Property Coverage, including flood and debris cleanup provisions, in an amount of not less than the full 100% replacement value of all Improvements, together with business interruption and extra expense coverage, including a provision for the continuation of Rent payments for twenty-four (24) months, and coverage for vandalism and malicious mischief, earthquake sprinkler leakage, boiler and machinery and, if so required by Landlord, earthquake in an amount of not less than the maximum probable loss for all Improvements. Specific limits of insurance for earthquake shall be determined at the joint discretion of Tenant and Landlord. The coverage policies shall be endorsed with a Loss Payee endorsement in favor of the Landlord. It is agreed that any insurance proceeds in excess of Twenty-Five Thousand Dollars (\$25,000) resulting from a loss under said policies shall be payable jointly to Tenant and Permitted Lender, and it is

understood that said proceeds will be reinvested in rebuilding and/or repairing the damaged Improvements and applied to Tenant's Rent obligations hereunder, as applicable. However, if there is a Permitted Mortgage Lender, then all property damage proceeds from such policies of insurance (other than from the business interruption and extra expense coverage) shall be payable in trust, with safeguards reasonably acceptable to Landlord, to such Permitted Lender to be disbursed for the repair and restoration of the Improvements (or, if there is no Permitted Mortgage Lender, or if there is, but the Permitted Mortgage Lender declines to hold and disburse such proceeds, to a bank or trust company doing business in the County of San Diego agreed upon by the parties, or if the parties fail to agree, to Bank of America, N.A., or its successor, which proceeds shall be deposited in interest bearing accounts or deposits agreed upon by the parties, or if the parties fail to agree, then in the bank's regular passbook savings account); provided, however, if this Lease terminates in accordance with Section 20.2, then such proceeds shall be disbursed as provided in Section 20.2. All interest shall be added to the trust funds to be disbursed with the principal. All such proceeds shall be disbursed in progress payments for the payment of the cost of repairing or restoring the property so damaged or destroyed. The specific manner of holding such proceeds and the method and conditions of disbursement shall be subject to the prior written approval of Landlord (which approval shall not be unreasonably withheld, conditioned or delayed) so as to ensure the application of such proceeds in compliance with this Lease.

During the construction of the Initial Project Improvements or any subsequent Alterations or restoration work, builder's risk completed value form insurance covering the perils insured under the ISO special causes of loss form, including collapse, water damage, transit and flood and earthquake coverage, 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 earthquake shall be determined at the joint discretion of Tenant and Landlord. The damage coverage shall be endorsed with a Loss Payee endorsement in favor of Landlord. The insurance proceeds shall be paid and disbursed in the same manner as set forth in this Section 18.2.3 above.

#### **18.2.4 Worker's Compensation.**

Workers' compensation insurance covering all persons employed by Tenant at the Premises and with respect to whom death or bodily injury claims could be asserted against Tenant, Landlord or the Premises, 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 Landlord Parties.

#### **18.2.5 Automobile Liability.**

Business automobile liability insurance covering liability arising out of vehicles used on or about the Premises by Tenant 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.

#### **18.2.6 UST Insurance Obligations.**

In the event underground storage tanks are located on the Premises, Tenant is required to comply with all Laws applicable to underground storage tanks, including, without limitation, United States Code, Title 42, Chapter 82, Subchapter IX, 40 Code of Federal Regulations

("CFR") Part 280, 40 CFR Part 281 and 40 CFR Parts 282.50 – 282.105, and Title 23, Division 3, Chapter 18 of California Code of Regulations, collectively, herein "UST Law." At the time Tenant is required to comply with any provisions of UST Law requiring financial assurance mechanisms, Tenant shall provide Landlord with a certified copy of its Certification of Financial Responsibility. If Tenant's program for financial responsibility requires insurance, then Tenant's policy(ies) shall name the Landlord Parties as additional insureds, and all other terms of Section 18.3 below, shall apply. Should Tenant change its financial assurance mechanisms, Tenant shall immediately provide Landlord with a certified copy of its revised Certification of Financial Responsibility.

#### **18.2.7 Contractor's Pollution Liability Coverage.**

If the Landlord determines, in its sole and absolute discretion, that Tenant 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, Tenant 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 Landlord Parties shall also be named as an additional insured on any such policy. Immediately upon learning of or reasonably suspecting that a release of Hazardous Materials has occurred on, in, under or about the Premises, Tenant shall provide notice of the same to Landlord.

### **18.3 General Requirements.**

#### **18.3.1 Certificates and Other Requirements.**

All required insurance shall be in force the first day of the Term, and shall be maintained continuously in force throughout the Term. In addition, the cost of all required insurance shall be borne by Tenant. During the entire Term, Tenant shall provide Landlord with insurance certificates, in the form attached as Exhibit [\_\_\_], issued by the insurer evidencing the existence of the necessary insurance policies and certified endorsements effecting coverage required by this Article 18 ("**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, upon written request from Landlord, Tenant shall make available to Landlord for its review the complete, certified copies of all required insurance policies at the Premises.

#### **18.3.2 Additional Insureds and Other Requirements.**

All liability insurance policies shall name, or be endorsed to name the Landlord Parties as additional insureds and protect the Landlord Parties against any legal costs in defending claims. All liability policies shall provide cross-liability coverage. Tenant shall provide Landlord with at least fifteen (15) days' prior written notice of any material change to any insurance policy required under this Lease, including without limitation, any modification, suspension, voiding, or cancellation of an insurance policy. 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 Landlord. All insurance policies shall be endorsed to state that Tenant's insurance is primary and not excess

or contributory to any insurance issued in the name of Landlord. Further, all insurance companies must have a S&P or AM Best rating of not less than "A-".

#### **18.3.3 Deductibles.**

Any deductibles or self-insured retentions must be declared and acceptable to both Tenant and Landlord. If the deductibles or self-insured retentions are unacceptable to Landlord, then Tenant shall discuss with Landlord the financial impact of revising the deductible to an amount acceptable to Landlord. If such agreement cannot be met, then Tenant shall have the option to either: (i) reduce or eliminate such deductibles or self-insured retentions as respects the Landlord 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 Landlord.

#### **18.3.4 Updates.**

If Landlord reasonably determines that the insurance provisions in this Lease do not constitute adequate insurance, then Landlord shall notify Tenant thereof and of the changes to the insurance requirements of this Lease that Landlord reasonably believes are necessary. The Parties agree that the insurance provisions will be modified to increase Tenant's insurance obligations to the extent that such changes are required by Landlord of other similarly situated tenants within the Landlord's jurisdiction with hotels in excess of five hundred (500) rooms. Tenant shall deposit new Certificates incorporating such changes within thirty (30) days of receipt of Landlord's notice. Failure by Tenant to maintain insurance or deposit insurance Certificates as required in this Article 11, where such failure is not cured by Tenant within ten (10) days following written notice to Tenant, shall constitute an Event of Default. Without limitation of the foregoing, Tenant agrees that if Tenant does not take out and maintain such insurance or furnish Landlord with Certificates in a timely manner, Landlord may (but shall not be required to), procure said insurance on Tenant's behalf and charge Tenant the cost thereof, which amount shall be payable by Tenant to Landlord pursuant to the Reimbursement Procedure.

#### **18.3.5 No Limit on Liability.**

The procuring of such required policies of insurance shall not be construed to limit Tenant's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Lease.

#### **18.3.6 Compliance with Insurance Requirements.**

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

### **18.4 Waiver of Subrogation.**

Tenant hereby releases the Landlord Parties from any and all liability or responsibility to Tenant or anyone claiming through or under Tenant by way of subrogation or otherwise for any loss or damage to the Premises, any Improvements, or any of Tenant'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 Lease or is actually carried, even if such fire or other event shall have been caused by the fault or negligence of any of the Landlord Parties. Each Subtenant similarly

releases the Landlord Parties. Tenant, and any Subtenant, shall also obtain an endorsement waiving the insurance company's subrogation rights against the Landlord Parties for any insurance policies required by the terms of this Lease. Tenant and Subtenant shall also defend and indemnify the Landlord Parties in the manner specified in Section 19.1 in the event any Person asserts such a claim.

## **19. INDEMNITY**

### **19.1 Indemnity.**

Tenant hereby indemnifies and shall defend the Landlord Parties, at Tenant's sole cost and expense and with counsel reasonably selected by Landlord, and hold the Landlord 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 Tenant of its obligations under this Lease, (ii) the construction of any Improvements, (iii) any breach by Tenant of its obligations under this Lease, (iv) any accident, injury or damage whatsoever caused to any Person or the property of any Person on or about the Premises or at the Improvements; (v) the use, occupancy, possession or operation of the Premises and the Improvements by any Tenant Party, or any acts or omissions of any Tenant Party, except for claims or litigation arising through the sole gross negligence or sole willful misconduct of any Landlord Party (but subject to Section 18.4). The foregoing indemnity, defense and hold harmless obligations of Tenant 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) Landlord's failure to comply with any applicable provisions of the PWL in connection with any work solely performed by Landlord or caused to be performed by Landlord except for any work performed by Tenant pursuant to this Lease or any other agreement entered into between Tenant and Landlord.<sup>2</sup> Landlord, at its election, may conduct its own defense with its own counsel independent from Tenant's counsel (and in that event Tenant will select its own counsel) and the costs incurred by Landlord in such defense shall be covered by the foregoing indemnification, hold harmless and defense obligations and be subject to immediate payment once incurred. The terms of this Article 19 shall survive the expiration or earlier termination of this Lease. The foregoing indemnity obligations of Tenant are in addition to, and not in limitation of, any other indemnity obligations of Tenant contained in this Lease or any other agreement between Landlord and Tenant.

## **20. DAMAGE OR DESTRUCTION**

### **20.1 Casualty.**

Tenant's obligations with respect to any damage to or destruction of the Parking Improvements (if any) shall be as set forth in Section 4.3, and not this Article 20. Subject to Section 20.2, in the event of any damage to or destruction of any Improvements, whether or not from a risk coverable by the insurance described in Article 18, Tenant shall promptly repair and restore such Improvements, in a manner reasonably approved in writing by Landlord, so that after such restoration and repair, the Initial Improvements are at least as valuable and usable as immediately prior to such damage or destruction. If the casualty or destruction happens on and after Lease Year 38, Tenant shall be entitled to have any insurance policy proceeds received by Tenant held in trust with the Permitted Mortgage Lender with a Permitted Lease

Encumbrance that has the Improvements as collateral and disbursed as progress payments as the work of repair, restoration or replacement progresses, to be used solely for paying for such work; and upon completion of such work free and clear of mechanics or other liens, any remaining balance of any insurance proceeds shall be paid first to the Permitted Mortgage Lender to reduce the indebtedness of the Permitted Lease Encumbrance, and thereafter, if the Permitted Lender permits or if it is required by the terms of the Permitted Encumbrance, to Tenant and Landlord proportionate to the equity investment of each Party in the Improvements. The Permitted Mortgage Lender may disburse the progress payments in accordance with its normal disbursement procedures (e.g. upon receipt of appropriate mechanics lien releases, invoices, etc.) so long as such disbursement procedures are reasonably satisfactory to Landlord and ensure that the proceeds of insurance are applied to the costs of repairing, restoring or replacing the Improvements that were damaged or destroyed. To the extent that the insurance proceeds are insufficient to pay for the costs of restoring, repairing or replacing the damaged Improvements, Tenant shall pay such deficiency to the trustee for application to the restoration costs within sixty (60) days after the insurer first makes available such insurance proceeds for repair, restoration or replacement, and, if Tenant does not pay such deficiency as required hereunder, then Permitted Lender shall be permitted to apply such insurance proceeds towards repayment of the indebtedness that is secured by its Permitted Encumbrance. The provisions of Articles 6 and 7 shall apply to all work performed pursuant to this Article 20. Notwithstanding the foregoing, if Tenant and the Permitted Lender are not able to obtain sufficient insurance proceeds (in the case of an insured casualty) or construction funds (in the case of an uninsured casualty) to commence repair, restoration or replacement of the damaged Initial Improvements within ninety (90) days of such damage or destruction, and in the case of an insured casualty, Tenant and the Permitted Lender have used their best efforts to so obtain such insurance proceeds, or in the case of an uninsured casualty, Tenant and the Permitted Lender have used their best efforts to obtain sufficient construction funds, then Tenant and the Permitted Lender shall have such additional time as is necessary to obtain such insurance proceeds or construction funds (but in no event to exceed one hundred and eighty (180) days from the date of such damage or destruction) in which to commence to repair, restore or replace the damaged Improvements.

## **20.2 Termination.**

Notwithstanding Section 20.1 to the contrary, if (a) there is damage or destruction to the Initial Improvements during the last three (3) years of the Term, the cost of repairing said damage or destruction exceeds the cost of demolishing and removing the remaining Initial Improvements as determined by the Demolition and Remediation Report, and Landlord has delivered to Tenant a Landlord End of Term Election that requires that Tenant demolish the Initial Project Improvements, then Tenant shall have the option to terminate this Lease, subject to Tenant's satisfaction of all of the following requirements: (a) Tenant shall, within ninety (90) days after the date of the casualty, give Landlord written notice of its election to terminate ("**Notice of Election to Terminate**"); and (b) Tenant shall within one hundred and eighty (180) days of Landlord's receipt of the Notice of Election to Terminate, surrender the Premises to Landlord in a Buildable Condition. Any and all property damage insurance proceeds (exclusive of any proceeds applicable to Tenant's personal property that would be retained by Tenant at the end of the Term, all of which shall be paid to Tenant) paid as a result of the damage or destruction giving rise to the termination, shall be distributed in accordance with the following order of priority: (i) first, to the repayment of any indebtedness that is secured by a Permitted Lease Encumbrance, if any such Permitted Lease Encumbrance is still outstanding; (ii) second, to the Tenant and Landlord pro rata based on the equity investment of Tenant and in the case of

Landlord, the JEPA, in the Initial Project Improvements; and (iii) third, to Landlord to cover the rent that would have been paid by Tenant for the remaining Term but for the termination.

### **20.3 No Rental Abatement.**

Except as may be expressly permitted in this Agreement, Tenant shall not be entitled to any abatement or reduction in the Rent during any period of time that any Initial Improvements located on the Premises are in need of repair, restoration or replacement or are under construction for such repairs, restoration or replacements or any other period of time during the Term of this Lease.

### **20.4 Waiver of Statutory Provisions.**

The provisions of this Lease, including this Article 20, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises or Initial Improvements, or any other portion thereof, and any California statute or regulation, now or hereafter in effect, regarding the rights or obligations of a tenant concerning damage or destruction following a casualty event are waived and shall have no application to this Lease or any damage or destruction to all or any part of the Premises or Initial Improvements as a result of a casualty event.

## **21. HAZARDOUS MATERIALS**

### **21.1 Hazardous Materials.**

#### **21.1.1 Tenant Use of Hazardous Materials.**

Tenant shall not cause or permit any Hazardous Material, or products or materials which include any hazardous substance as a component to be generated, brought onto, used, stored, emitted, released or disposed of in or about the Premises or Improvements (collectively and individually, a "**Hazardous Materials Activity**") by Tenant or its agents, whether by a Tenant Party or any other Person, during the Term (including any extensions or holdover periods resulting from Tenant's obligations pursuant to Section 21.1.4) unless expressly approved, at Landlord's sole discretion, in writing by Landlord after submittal by Tenant of Material Safety Data Sheets or other information requested by Landlord regarding the Hazardous Material. Approval by Landlord of any Hazardous Materials Activity shall not create or impose any liability or obligation on Landlord with respect to such Hazardous Material or Hazardous Materials Activity and Tenant shall assume all liability and obligations related thereto. All Hazardous Materials Activity shall be in strict compliance with all applicable Laws and other requirements in effect during the Term, including, without limitation, Laws and requirements that regulate Hazardous Materials or otherwise relate to public health and safety or the protection of the environment ("**Environmental Laws**"). Tenant shall comply at all times with all Environmental Laws. Provided that Tenant is in compliance with Environmental Laws, Tenant shall not be required to obtain Landlord's consent to generate, store or use reasonable and customary quantities of Hazardous Materials for cleaning materials or supplies, construction materials or supplies, food service materials or supplies, paint, auto supplies (including, without limitation, gasoline, oil and other supplies incidental to motorized vehicles) or office materials or supplies reasonably required to be used in the normal course of the Permitted Use.

#### **21.1.2 Notice of Release or Inquiry.**

If Tenant becomes aware of (i) any actual or threatened release that occurs during the Term of any Hazardous Material on, in, under, from, or about the Premises or Improvements or

(ii) any notice, inquiry, investigation, proceeding, or claim by any government agency or other Person regarding the presence that occurs during the Term of any Hazardous Material on, in, under, from or about the Premises or Improvements (collectively, "**Inquiry**"), Tenant shall give Landlord written notice of such release or Inquiry within twenty-four (24) hours after Tenant learns that there has been a release or Inquiry and shall simultaneously furnish to Landlord copies of any notices of inquiry or investigation, claims, notices of violation, reports, warning or other writings received by Tenant that concern such release or Inquiry. Unless Landlord receives separate notice, Tenant shall provide Landlord with advance written notice of any meeting scheduled between any Tenant Party and any federal, state or local government agency (including, but not limited to, the United States Environmental Protection Agency, the Regional Water Quality Control Board, Department of Toxic Substances Control or Air Resources Board) ("**government agency**") where a material item of discussion is directly related to the subject matter of this Article 21, at least five (5) Business Days prior to such meeting or as soon as reasonably possible if the government agency schedules such meeting with any Tenant Party for less than five (5) Business Days from the date the meeting is proposed. Landlord shall be entitled to have its representatives attend and participate in any and all such meetings. If the government agency brings up Hazardous Material on, in, under, from, or about the Premises or Improvements in any other scheduled meeting, Tenant shall suggest that a separate meeting should be scheduled so that Landlord can participate in such meeting.

#### **21.1.3 Landlord Right to Inspect and Data.**

If Hazardous Materials Activity has occurred during the Term or is ongoing, Landlord or its designated representatives, at Landlord's sole discretion, may, but are not obligated to, enter upon the Premises and/or Improvements and make any inspections, non-intrusive tests or measurements that Landlord deems necessary or desirable to determine if a release or discharge of Hazardous Materials has occurred. Landlord shall furnish to Tenant a minimum of twenty-four (24) hours' notice prior to conducting any inspections or tests, unless, in Landlord's reasonable judgment, circumstances require otherwise. If Landlord reasonably suspects a possible release of Hazardous Materials or a use of Hazardous Materials in violation of Environmental Law, then Landlord shall describe the concern to Tenant, and may require Tenant, at Tenant's sole expense, to have additional investigation for such Hazardous Materials conducted on, under or about the Premises and/or Improvements by an environmental consultant or engineering firm designated by Landlord; provided, however, that Tenant's obligation to conduct such investigation shall terminate if Tenant can demonstrate to Landlord's reasonable satisfaction that there was neither any release of Hazardous Materials, nor any use of Hazardous Materials during the Term in violation of Environmental Law. Such tests may include, without limitation, any area outside the Premises or Improvements that may have been contaminated, including but not limited to surface and groundwater. Tenant shall provide to Landlord, as soon as reasonable after they become available to Tenant, access to all non-privileged information reports and data obtained, generated or learned as a result of sampling or testing activities on the Premises or Improvements, including raw and verified lab data and consultant reports. Tenant shall be permitted to have representatives present during any sampling or testing on or at the Premises, and may obtain split samples, if requested, copies of the results of on-site testing and visual inspections, and complete access to all samples and tests taken or conducted as a result of any investigations of the Premises or Improvements. Access to any non-privileged consultant reports issued by or on behalf of Tenant concerning the Premises or Improvements shall be provided to Landlord as soon as reasonable after such reports are finalized. Any environmental reports issued by or on behalf of Tenant regarding the Premises, the Improvements, or Hazardous Materials Activities related thereto shall first be

generated in draft form and furnished to Landlord for review and comment, except in the case when any resulting delay in producing a final environmental report would violate any Laws or any order of any government agency. Except in the case when any resulting delay in producing a final environmental report would violate any Laws or any order of any government agency, no such report shall be made final until Landlord has had reasonable opportunity to review the draft and to identify any factual inaccuracies therein; provided, however, that if Landlord fails to comment on a draft report within thirty (30) days after Tenant provides Landlord with the final draft report and any information needed by Landlord to complete its review, Tenant shall provide Landlord with notice to deliver any comments to the draft report within fifteen (15) days of the delivery of the notice. If Landlord does not respond after the second notice, Tenant may complete and submit the report. Notwithstanding the foregoing, under no circumstance shall any report submitted by Tenant pursuant to this Section 21.1.3 bind the Landlord or contain any representation from Landlord. Landlord's failure to inspect, test or take other actions pursuant to this Section 21.1.3 shall in no way relieve Tenant of any responsibility for a release of a Hazardous Material.

#### **21.1.4 Environmental Cleanup Obligations.**

If, on or after the Commencement Date, any Hazardous Material has been released by Tenant Parties, or any Pre-Existing Hazardous Material is exacerbated by Tenant Parties and thereby violates any Environmental Laws and/or results in (a) any investigation mandated by any government agency, (b) any clean-up order by any government agency, (c) any third-party claim or demand against Landlord, (d) any material increase in Landlord's liability or (e) any material increase in the cost or amount of investigation, removal or remediation action required ("**Material Exacerbation**", and "**Materially Exacerbate**" and "**Materially Exacerbated**" shall have correlative meanings to "Material Exacerbation"), , , then Tenant shall promptly take all necessary actions, at Tenant's sole expense, 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 Cleanup**"). Tenant shall have no obligation to undertake any Environmental Cleanup with respect to any contamination caused by any Pre-Existing Hazardous Material unless such Environmental Cleanup is required as a result of Tenant's Material Exacerbation, and the extent of Tenant's obligation to undertake such Environmental Cleanup shall be limited to that required as a result of the Material Exacerbation. Tenant shall provide notice to Landlord prior to performing any removal or remedial action. In the event that an Environmental Cleanup conducted or required of Tenant interferes with the current or future use of the Premises, Improvements, or other property of Landlord, Tenant shall promptly alter or amend the Environmental Cleanup (whether such is completed or not and regardless of the time period elapsed between the cleanup activities and Landlord's request to alter the Environmental Cleanup because of the interference), upon notice from Landlord, as necessary to prevent and/or eliminate such interference. Tenant shall not propose, and Landlord is under no obligation to agree to, any covenant of use restriction or other institutional controls as part of any removal or remediation required as a result of this Section 21.1.4. Unless otherwise agreed in writing by Landlord, an Environmental Cleanup required under this Section 21.1.4 shall avoid and not include the use of additional restrictive covenants or other institutional controls. To the extent Landlord incurs any costs or expenses in performing Tenant's obligation to conduct an Environmental Cleanup which is Tenant's obligation under this Lease or under Environmental Law, Tenant shall reimburse Landlord for all such costs and expenses in accordance with the Reimbursement Procedure. This provision does not limit the indemnification obligation set forth in Section 21.2. Notwithstanding any provision of this Lease to the contrary, if there is contamination caused by Pre-Existing Hazardous Material and Tenant determines that the additional cost to Tenant of developing the Improvements as a result of Pre-

Existing Hazardous Materials, including, but not limited to, the cost of investigating such contamination, removing such Pre-Existing Hazardous Material or remediating such contamination, and incremental soft costs, any additional general conditions costs and interest during construction as a result of such Pre-Existing Hazardous Materials, exceeds \$10,000,000, then Tenant shall have the right to terminate this Agreement. Tenant's right to terminate pursuant to the foregoing sentence shall be conditioned upon Tenant's satisfaction of the following conditions: (i) Tenant, at its own cost and expense, obtains and delivers to Landlord a report prepared by a contractor licensed in the State of California with expertise in demolition and remediation, which report details and estimates the cost and time period for completion of the demolition of the Project Improvements (if any) and any remediation work that may be required by Section 21.3; (ii) Tenant delivers to Landlord commercially reasonable evidence that Tenant has immediately available funds in an amount equal to the estimated costs set forth in clause (i); (iii) Tenant obtains consent of each of the Permitted Lenders (which consent shall not be unreasonably withheld, conditioned or delayed); and (iv) Tenant pays to Landlord an amount equal to the amounts that shall have been disbursed to Tenant from the proceeds of the JEPA bond issuance pursuant to \_\_\_\_\_ to pay the costs of developing the [Publicly Financed Improvements]. If the existence of any Pre-Existing Hazardous Materials delays the Completion of the Initial Project Improvements, then the Outside Construction Completion Date shall be extended by the duration of such delay.

#### **21.1.5 Environmental Cleanup Extending Beyond Term.**

Should any Environmental Cleanup of Hazardous Materials for which Tenant is responsible not be completed prior to the expiration or earlier termination of this Lease, then: (i) Tenant shall deposit with Landlord an amount of money equal to the balance of the estimated costs of such Environmental Cleanup as reasonably determined by an independent third-party environmental consultant that is acceptable to Tenant and selected by Landlord (the "**Independent Consultant**"), and (ii) if the nature of the contamination or Environmental Cleanup required of Tenant is such as to make any portion of the Premises untenable or unleaseable, then Tenant shall be liable to Landlord as a holdover Tenant until the Environmental Cleanup has been completed the extent required by this Agreement, or to the extent necessary to render the Premises and/or Improvements, as applicable, in full compliance with all Environmental Laws and to make the Premises and/or Improvements, as applicable, suitable for lease to third parties. The estimated cost of the Environmental Cleanup shall require approval of the Landlord. Landlord shall release funds from such deposit from time to time to pay for such Environmental Cleanup costs incurred with Landlord's approval. To the extent the Independent Consultant estimates, at any time, that the funds remaining on deposit may not be sufficient to cover all remaining anticipated Environmental Cleanup costs, then Tenant shall deposit, within thirty (30) days of Landlord's written demand therefor, such additional funds with Landlord as Independent Consultant may estimate at such time may be required to complete the Environmental Cleanup.

#### **21.1.6 Financial Security.**

If Landlord determines, in its reasonable discretion, that Tenant does not have insurance or other financial resources sufficient to enable Tenant to fulfill its obligations under this Article 21 whether or not accrued, liquidated, conditional, or contingent, then Tenant shall, at the request of Landlord, procure and thereafter maintain in full force and effect such commercially available environmental impairment liability and/or pollution liability insurance policies and endorsements, or shall otherwise provide such collateral or security reasonably acceptable to Landlord as is appropriate to assure that Tenant will be able to perform its duties and obligations hereunder.

## **21.2 Hazardous Materials Indemnification.**

Excluding Pre-Existing Hazardous Material, Tenant hereby assumes for itself and shall indemnify, defend Landlord Parties, and hold the Landlord 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 Landlord'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 Tenant Party, or any breach by Tenant of its obligations under this Article 21, at Tenant's sole cost and expense and with counsel and experts selected by Landlord in its reasonable discretion and who act according to Landlord's reasonable direction, with reasonable input and cooperation from Tenant. Tenant's obligations under this Article 21 (including the indemnification of Landlord by Tenant under this Section 21.2) include, without limitation, any Environmental Cleanup required by this Lease, costs incurred in connection with any investigation of site conditions or any cleanup, treatment, remedial, removal, or restoration work required by this Lease 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 Premises or Improvements. Landlord shall have a direct right of action against Tenant even if no third party has asserted a claim. The indemnification and Environmental Cleanup requirements under Article 21 include, but, are not necessarily limited to:

- (a) Losses attributable to diminution in the value of the Premises or Improvements;
- (b) Losses of rental or other income from the Premises or Improvements;
- (c) Loss of or damage to natural resources regarding which Landlord is the lawfully designated trustee;
- (d) Loss or restriction of use of rentable space(s) in the Premises or Improvements;
- (e) Adverse effect on the marketing of any space(s) in the Premises or Improvements; and
- (f) 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).

## **21.3 Termination of Lease.**

Upon the expiration or earlier termination of this Lease Tenant shall: (i) cause all Tenant Hazardous Materials (and Pre-Existing Hazardous Materials Materially Exacerbated by a Tenant Party) to be removed from the Premises and Improvements and disposed of in accordance with all applicable provisions of Environmental Law; (ii) remove any underground or aboveground storage tanks or other containers installed or used by Tenant, or its predecessors as Tenant or otherwise under this Lease, if any, to store any Hazardous Material on the Premises or Improvements, and repair any damage to the Premises caused by such removal; (iii) cause any soil or other portion of the Premises or Improvements which has become contaminated by any Hazardous Material (or any Pre-Existing Hazardous Materials Materially

Exacerbated by a Tenant Party) during the Term to be decontaminated, detoxified, or otherwise cleaned up in accordance with the applicable requirements of any government agency with authority over the Premises or Improvements; and (iv) surrender possession of the Premises and Improvements to Landlord free of any Tenant Hazardous Materials (and any Pre-Existing Hazardous Material Materially Exacerbated by a Tenant Party); provided, however, with respect to any Material Exacerbation of any Pre-Existing Hazardous Material, Tenant's responsibility shall be limited to remediating such Existing Hazardous Material condition to such an extent that Landlord's liability and responsibility for such Pre-Existing Hazardous Material is no greater than such liability and responsibility would have been on the Commencement Date had Tenant not Materially Exacerbated such Pre-Existing Hazardous Material condition thereafter.

## **21.4 Storage Tanks.**

### **21.4.1 Storage Tanks.**

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

### **21.4.2 Records.**

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

### **21.4.3 Aboveground Storage Tanks.**

In the event Tenant obtains approval to install an AST or such approval is not required, Tenant shall be responsible for complying with all Laws pertaining to such AST. In connection with such AST, Tenant shall, in accordance with this Lease and applicable Laws, secure and pay for all necessary permits and approvals, prepare a spill prevention control counter measure plan and conduct periodic inspections to ensure compliance therewith. In addition, Tenant shall maintain and repair said tanks to conform and comply with all other applicable Laws for ASTs, including without limitation all of the requirements of Health & Safety Code, Chapter 6.67,

Sections 25270 through 25270.13 as presently existing or as hereinafter amended, including without limitation conducting daily visual inspection of such ASTs, allowing the San Diego Regional Water Quality Control Board ("**SDRWQCB**"), Landlord, and/or responsible agency, to conduct periodic inspections. Tenant also shall comply with valid orders of the SDRWQCB, filing the required storage tank statement and payment of the fee therefor, establishing and maintaining the required monitoring program and systems, reporting spills as required, and payment of lawfully imposed penalties as provided therein and as otherwise provided by Law.

## **21.5 Environmental Covenants.**

### **21.5.1 Excavated Soil Removal.**

Tenant hereby acknowledges that excavation of soils from the Premises could result in exportation of a regulated waste requiring appropriate characterization, handling, transport and disposal (collectively, "**Excavated Soil Removal**"). Landlord takes no responsibility and assumes no liability whatsoever for Excavated Soil Removal. Accordingly, Tenant hereby waives any claim, or potential claim, it may have to recover costs or expenses from Landlord arising out of or associated with Excavated Soil Removal and agrees to indemnify, defend and hold harmless the Landlord Parties from and against any and all claims (including under negligence or strict liability), liabilities, losses, damages, costs, and expenses arising from, out of, or in any way related to Excavated Soil Removal, except only claims or litigation arising through the gross negligence or willful misconduct of Landlord.

### **21.5.2 Worker Claims for Hazardous Material.**

Landlord shall have no liability or responsibility for ensuring that Tenant's workers, including without limitation those conducting testing, construction and maintenance activities on the Premises and Improvements are protected from any Hazardous Material existing on the Premises and Improvements. Tenant shall assess all human health risks from vapor transport or direct contact with residual hazardous substances or contaminants and incorporate such engineering and institutional controls as may be required to sufficiently protect human health of onsite workers and transient visitors. Tenant hereby waives any claim, or potential claim, it may have to recover any damages, losses, Related Costs related to worker exposure or alleged worker exposure to any residual onsite contamination and to indemnify, defend and hold harmless the Landlord Parties from and against any and all such Related Costs, claims (including under negligence or strict liability), liabilities, losses and damages, except only claims or litigation arising through the gross negligence or willful misconduct of Landlord.

### **21.5.3 Covenant Not To Sue and Release of Landlord.**

Tenant hereby RELEASES the Landlord Parties from, COVENANTS NOT TO SUE the Landlord Parties for and ASSUMES FOR ITSELF all obligations, requirements and liabilities of Tenant under Article 21, including for claims for contribution, equitable indemnity or otherwise seeking to transfer or limit the obligations, requirements and liabilities of Tenant under Article 21. With respect to all releases made by Tenant under or pursuant to this Article 21, Tenant hereby waives the application and benefits of California Civil Code § 1542 and hereby verifies that it has read and understands the provision of California Civil Code § 1542 set forth in Article 22.

## **21.6 Survival.**

The terms of this Article 21 shall survive the expiration or earlier termination of this Lease.

## 22. "AS-IS" LEASE AND WAIVERS

### 22.1 Tenant's Acknowledgment.

Tenant acknowledges that prior to entering into this Lease, Landlord has given Tenant sufficient opportunity to consider, inspect and review, to Tenant's complete satisfaction: (1) any and all rights, appurtenances, entitlements, obligations, and liabilities concerning the Premises, including without limitation any Existing Improvements; (2) the physical condition of the Premises, including, without limitation, the condition and value of any Improvements and the soils, subsoil media, and ground waters at or under the Premises; (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 Premises; (4) the development potential of the Premises 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 Premises and local market conditions; (7) Tenant's determination of the feasibility of Tenant's intended use and enjoyment of the Premises; (8) the presence of any Pre-Existing Hazardous Material and any other contamination of the Premises, including any Improvements, soils, groundwater and adjacent to San Diego Bay water and sediment; and (9) all other facts, circumstances, and conditions affecting, concerning or relating to the Premises. The land use; the environmental, biological, physical and legal condition of the Premises; the risks associated with possible climate change; the feasibility of Tenant's intended use and enjoyment of the Premises; and such other facts, circumstances and conditions being collectively referred to herein as the "**Condition of the Premises**"; and, without limitation on any other provision of this Lease, Tenant expressly assumes the risk that adverse conditions affecting the Premises have not been revealed by Tenant's investigations.

### 22.2 Only Landlord's Express Written Agreements Binding.

Tenant acknowledges and agrees that no Person acting on behalf of Landlord is authorized to make, and that except as expressly set forth in this Lease, neither Landlord nor anyone acting for or on behalf of Landlord has made, any representation, warranty, agreement, statement, guaranty or promise to Tenant, or to anyone acting for or on behalf of Tenant, concerning the Condition of the Premises or any other aspect of the Premises. Tenant 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 Landlord which is not expressly set forth in this Lease will be valid or binding on Landlord.

### 22.3 As-Is Lease.

Tenant further acknowledges and agrees that Tenant's execution of this Lease shall constitute Tenant's representation, warranty and agreement that the Condition of the Premises has been independently verified by Tenant to its full satisfaction, and that, except to the extent of the express covenants of Landlord set forth in this Lease, Tenant will be leasing the Premises based solely upon and in reliance on its own inspections, evaluations, analyses and conclusions, or those of Tenant's representatives; and that **TENANT IS LEASING THE PREMISES 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 TENANT'S EXECUTION OF THIS LEASE, INCLUDING ANY EXISTING IMPROVEMENTS.** Without limiting the scope or generality of the foregoing, Tenant expressly assumes the risk that the Premises do not or will not comply with any Laws now or hereafter in effect.

## **22.4 Waivers, Disclaimers and Indemnity.**

### **22.4.1 Waiver and Disclaimer.**

Tenant hereby fully and forever waives, and Landlord hereby fully and forever disclaims, all warranties of whatever type or kind with respect to the Premises, whether expressed, implied or otherwise including, without limitation, those of fitness for a particular purpose, tenantability, habitability or use.

### **22.4.2 Landlord's Materials.**

Tenant 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 Tenant has received or may hereafter receive from Landlord Parties or its agents or consultants (collectively, the "**Landlord's Materials**") have been furnished without warranty of any kind and on the express condition that Tenant will make its own independent verification of the accuracy, reliability and completeness of such Landlord's Materials and that Tenant will not rely thereon. Accordingly, subject to terms of Section 22.4.3 below, Tenant 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, Landlord Parties or any of the Persons that prepared or furnished any of the Landlord's Materials as a result of the inaccuracy, unreliability or incompleteness of, or any defect or mistake in, any such Landlord's Materials, and Tenant hereby fully and forever releases, acquits and discharges Landlord Parties and each Person furnishing such Landlord's Materials of and from, any such claims, actions, causes of action, proceedings or liability, whether known or unknown.

### **22.4.3 Release and Waiver.**

(a) *Release.* Except to the extent of Claims (as defined below) against Landlord arising from any breach by Landlord of its covenants and obligations expressly provided in this Lease, Tenant, on behalf of Tenant, its successors and assigns, hereby fully and forever releases, acquits and discharges Landlord 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 Tenant Party or any of Tenant'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 Landlord (or any Person acting for or on behalf of Landlord or for whose conduct Landlord may be liable), whether or not such act be the active, passive or sole negligence of Landlord, in connection with prior ownership, maintenance, operation or use of the Premises; (ii) any condition of environmental contamination or pollution at the Premises (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 Premises and any clean-up or abatement order effecting the Premises); (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 Premises (including, without limitation, the release or discharge, or threatened release, of any Hazardous Materials into the air at the Premises or into any soils, subsoils, surface waters or ground waters at the Premises); (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 Premises; (vi) the Condition of the Premises, including, without limitation, the condition of any improvements located on the Premises 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 Premises (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 Premises; 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 Premises by Landlord or any predecessor(s)-in-interest in the Premises of Landlord.

(b) *Waiver of Civil Code Section 1542.* With respect to all releases made by Tenant under or pursuant to Article 21 and this Article 22, Tenant 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 which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Tenant: \_\_\_\_\_

#### **22.4.4 Survival.**

The terms of this Article 22 shall survive the expiration or earlier termination of this Lease.

### **23. QUITCLAIM OF TENANT'S INTEREST UPON TERMINATION**

Subject to the terms of this Article 23 and Article 7 upon the expiration or earlier termination of this Lease, all Improvements, excluding trade fixtures, installed or constructed on the Premises, that either (i) Tenant elects not to demolish pursuant to Tenant's Demolition Election and the Existing Improvements and public or private utilities that Landlord requests that Tenant does not demolish pursuant to Landlord's Non-Demolition Notice, or (ii) Landlord elects that Tenant not demolish pursuant to Landlord End of Term Election, as applicable, shall become the property of Landlord and a part of the realty without compensation to Tenant and shall be surrendered to Landlord. In order to confirm such transfer of ownership, at Landlord's request following the expiration or earlier termination of the Lease, Tenant shall deliver to Landlord a Tenant-executed quitclaim deed in recordable form conveying the Improvements to Landlord free and clear of any mechanics' or materialmen's liens and other encumbrances. Without limitation of the foregoing, Tenant hereby appoints Landlord as Tenant's attorney-in-fact to execute such deed in the name and on behalf of Tenant and to record same in the official records of San Diego County, California. This power of attorney is irrevocable and coupled with an interest.

### **24. PEACEABLE SURRENDER**

Upon expiration or earlier termination of this Lease, Tenant shall peaceably surrender the Premises to Landlord in accordance with the end of Term obligations set forth in this Lease, including without limitation, Articles 7, 21 and 23. Notwithstanding the foregoing, Tenant shall leave or demolish such Improvements as required pursuant to Article 7. If Tenant fails to surrender the Premises at the expiration of this Lease or the earlier termination or cancellation thereof in the condition required under this Lease, in addition to Landlord's other remedies, Tenant shall defend and indemnify Landlord from all liability and expense resulting from the

delay or failure to surrender, including without limitation any succeeding tenant claims based on Tenant's failure to surrender or Landlord's failure to deliver the Premises and loss of profits.

## **25. WAIVER**

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

## **26. HOLDOVER**

This Lease shall terminate without further notice at expiration of the Term. Any holding over by Tenant after either expiration or earlier termination of this Lease without Landlord's prior written consent shall be a tenancy-at-sufferance upon all of the provisions of this Lease, except those pertaining to the Term, and except that Minimum Annual Rent shall be 150% of the Minimum Annual Rent in effect prior to such expiration or termination. If Tenant, with Landlord's consent, remains in possession of the Premises after the expiration or earlier termination of this Lease, such possession shall be deemed a month-to-month tenancy terminable upon thirty (30) days' notice furnished at any time by either Party to the other Party. All provisions of this Lease, except those pertaining to the Term, shall apply to the month-to-month tenancy, and Tenant shall continue to pay all Rent required by this Lease. Notwithstanding anything herein to the contrary, in no event shall the Term of this Lease, together with any holdover period, exceed sixty-six (66) years.

## **27. NOTICES**

All notices provided for by this Lease or by Law to be given or served upon Landlord or Tenant shall be addressed as provided in Section 1.11 (as such address may have been changed by subsequent notice given to the other Party) and shall be in writing and: (i) personally served upon Landlord or Tenant, or any Person hereafter authorized by either Party in writing to receive such notice, (ii) delivered via reputable over-night courier service, or (iii) delivered by U.S. postal service certified letter.

Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the parties so served; provided, however, that, if served by certified mail, service shall be considered completed and binding on the Party served forty-eight (48) hours after deposit in the U.S. Mail.

## 28. SECURITY DEPOSIT

### 28.1 Amount of Security Deposit.

A security deposit in the amount set forth in Section 1.10 shall be provided to Landlord by Tenant, on or before Tenant's execution of this Lease. The security deposit shall be held by Landlord and used for the purpose of remedying an Event of Default. If there shall be an Event of Default, then Landlord shall have the right, but shall not be obligated, to use, apply or retain all or any portion of the security deposit for the payment of any (a) Rent or any other amount applicable to such Event of Default, or (b) amount that Landlord may spend or become obligated to spend, or for the compensation of Landlord for any losses incurred, by reason of such Event of Default (including any damage or deficiency arising in connection with the reletting of the Premises). If any portion of the security deposit (in whatever form) is so used or applied, then, within three (3) Business Days after Landlord gives written notice to Tenant of such use or application, Tenant shall increase the Letter of Credit (as defined below) (or deliver to Landlord additional funds, in the case of a cash security deposit) in an amount sufficient to restore the security deposit to the original security deposit amount, and Tenant's failure to do so shall constitute an Event of Default if such failure is not cured within the notice and cure period set forth in Section 12.1.2 above. Tenant waives any and all rights that Tenant may have under Section 1950.7 of the California Civil Code, any successor statute, and all similar provisions of Law, now or hereafter in effect. Tenant agrees that (i) any statutory time frames for the return of a security deposit are superseded by the express period identified in this Article 28, and (ii) Landlord has the right to claim from the security deposit any and all sums expressly identified in this Article 28, and any additional sums reasonably necessary to compensate Landlord for any and all losses or damages caused by the Event of Default, including, but not limited to, all damages or Rent due upon termination of this Lease pursuant to Section 1951.2 of the California Civil Code. Landlord shall not be required to keep the security deposit in trust, segregate it or keep it separate from Landlord's general funds, and Tenant shall not be entitled to any interest accrued on the security deposit.

### 28.2 Letter of Credit.

Except as provided in this Section 28.2, the security deposit shall be in the form of an irrevocable stand-by letter of credit ("**Letter of Credit**") drawn on Wells Fargo Bank. The principal sum of the Letter of Credit shall be made payable to Landlord or order. Each Letter of Credit provided during the Term shall be valid for a minimum of twelve (12) months from date of issuance; provided, however, that, when the remaining Term is one (1) year or less, the Letter of Credit shall be valid for a minimum of three (3) months beyond the Expiration Date and if a Letter of Credit is not valid for the entire remaining Term plus three (3) months beyond the Expiration Date, then such Letter of Credit shall be extended or renewed at least sixty (60) days prior to its expiration.

All of the principal sum of the Letter of Credit shall be available unconditionally to Landlord for the purposes and uses for the security deposit provided in Section 28.1. The bank, and the form and provisions of the Letter of Credit shall be acceptable to the Landlord, in its reasonable discretion, and if not so acceptable, Landlord shall have the right to reject such Letter of Credit; provided, however, that a Letter of Credit substantially in the form of Exhibit "J" attached hereto without material changes shall be deemed acceptable to Landlord and any of the banks listed on of Exhibit "K" attached hereto shall be deemed acceptable to Landlord. The Letter of Credit and Drawing Certificate shall not be acceptable to Landlord if it requires Landlord to present the Letter of Credit in person, send written notice of an Event of Default or request or demand

payment from Tenant after an Event of Default, prior to Landlord drawing on any funds under the Letter of Credit.

### **28.3 Cash Alternative.**

Notwithstanding the above, Tenant may elect to provide said security deposit in the form of cash.

### **28.4 Release of Security Deposit.**

Subject to Section 12.2.4, Landlord shall release to Tenant or order, as applicable, the full then-remaining amount of the security deposit within ninety (90) days following Completion of all of the Initial Project Improvements and receipt by Landlord of a copy of the final certificate of occupancy with respect to the Initial Project Improvements.

## **29. GENERAL PROVISIONS**

### **29.1 Terms: Captions.**

The necessary grammatical changes required to make the provisions hereof apply either to corporations, limited liability companies or partnerships or individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed. The captions of Articles and Sections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections. The word "including" or any variation thereof means "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

### **29.2 Binding Effect.**

Each of the provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of Landlord and of Tenant, but also of their respective heirs, successors or assigns, provided this clause shall not permit any Assignment by Tenant contrary to the provisions of Article 11 of this Lease.

### **29.3 No Merger.**

If both Landlord's and Tenant's estates in the Premises become vested in the same owner (other than by termination of this Lease following an Event of Default hereunder, subject to the rights of a Permitted Lender pursuant to Section 10.3 above), this Lease shall not be terminated by application of the doctrine of merger except at the express election of Landlord and with the consent of any Permitted Lender.

### **29.4 Recording.**

Unless the Parties agree otherwise in writing in advance, on or before the Commencement Date, Landlord and Tenant shall execute a Memorandum of Lease substantially in the form of Exhibit "F" attached hereto without any material changes (the "**Memorandum of Lease**"). At Tenant's option, Tenant shall cause the Memorandum of Lease to be recorded at Tenant's sole cost and Tenant shall be solely responsible for any transfer taxes or fees required to be paid in connection with the recording of the Memorandum of Lease.

### **29.5 Landlord Transfer.**

Tenant acknowledges that, subject to the Port Act and the oversight of the California State Lands Commission, Landlord has the right to transfer all or any portion of its interest in the Premises and in this Lease, and Tenant agrees that in the event of any such transfer (a "**Landlord Transfer**"), Landlord shall automatically be released from all liability under this Lease, and Tenant agrees to look solely to such transferee for the performance of Landlord's obligations hereunder after the date of such Landlord Transfer. Each landlord hereunder shall be liable only for those obligations arising during its period of ownership and shall be released from further obligations after it completes a Landlord Transfer. The liability of Landlord and any transferee of Landlord shall be limited to their respective interests in the Premises and Improvements, as the case may be, and Landlord and such transferee shall be without personal liability under this Lease, and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all Persons claiming by, through or under Tenant.

### **29.6 Time of Essence.**

Time is of the essence with respect to this Lease and each of its provisions.

### **29.7 Partial Invalidity.**

If any term, provision or condition contained in this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, provision 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 and condition of this Lease shall be valid and enforceable to the fullest extent possible permitted by Law.

### **29.8 Entire Agreement.**

It is understood and acknowledged that there are no oral agreements between the Parties affecting this Lease and this Lease supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the Parties with respect to the subject matter hereof. This Lease contains all of the terms, covenants, conditions, warranties and agreements of the Parties relating in any manner to the rental, use and occupancy of the Premises and the Improvements and shall be considered to be the only agreement between the Parties and their representatives and agents; and none of the terms, covenants, conditions or provisions of this Lease 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 Lease. However, Tenant acknowledges and agrees that other documents may restrict Tenant's use of the Premises and the Improvements or impose other obligations not specifically referenced in this Lease, including, but not limited to, conditions of approval of a CDP or mitigation measures under CEQA.

### **29.9 Joint and Several.**

If there is more than one Person constituting Tenant (i) the obligations imposed upon such persons or entities under this Lease 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 Lease 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.

**29.10 Tenant's Authority.**

Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in the state in which the Premises are located and that Tenant has full right and authority to execute and deliver this Lease and that each Person signing on behalf of Tenant is authorized to do so.

**29.11 Financial and Other Information Supplied by Tenant.**

Tenant represents and warrants that the financial statements provided to Landlord from the Completion Guarantor are true, correct and not misleading in any material respect. The breach of this warranty shall constitute an Event of Default.

**29.12 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, including without limitation a summary action commenced by Landlord 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.

**29.13 Transaction Costs.**

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

**29.14 Governing Law.**

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

**29.15 Brokers.**

Landlord and Tenant each hereby warrant to each other that neither has retained or employed any real estate broker or agent in connection with the negotiation of this Lease. Tenant shall be solely responsible for the payment of any fee or commission due to any broker and agrees to indemnify and defend and hold Landlord harmless from any and all claims, demands, losses, liabilities, lawsuits and costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing by Landlord.

**29.16 Counterparts.**

This Lease 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.

**29.17 Drafting Presumption; Review Standard.**

The parties acknowledge that this Lease has been agreed to by both the parties, that both Landlord and Tenant have consulted with attorneys with respect to the terms of this Lease and that no presumption shall be created against the drafting party. Any deletion of language from this Lease prior to its execution by Landlord and Tenant 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 Lease, any approval or consent to be given by Landlord or BPC may be given or withheld in Landlord's or BPC's sole and absolute discretion.

**29.18 Certified Access Specialist.**

For purposes of Section 1938 of the California Civil Code, Landlord hereby discloses to Tenant, and Tenant hereby acknowledges, that the Premises have not undergone inspection by a Certified Access Specialist.

**29.19 Third Party Beneficiaries.**

There are no third party beneficiaries of this Agreement, except for any rights the Permitted Lender may have under Section 10.3.2 of the Lease.

**Signature page follows.**

---

---

IN WITNESS WHEREOF, LANDLORD AND TENANT HAVE EXECUTED THIS LEASE AS OF THE DATE FIRST SET FORTH ABOVE.

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

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

By: \_\_\_\_\_  
Assistant/Deputy

By: \_\_\_\_\_  
Tony Gordon  
Director, Real Estate

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

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

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

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

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

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

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

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

SDUPD Docs No. \_\_\_\_\_

## DEFINITIONS ADDENDUM

This Definitions Addendum constitutes a part of that certain Lease (the "Lease") entered into as of \_\_\_\_\_, 20\_\_\_\_ by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation ("Landlord") and RIDA CHULA VISTA, LLC, a Delaware limited liability company ("Tenant") and by reference to the same in the Lease, the following definitions are incorporated into and constitute a part of the Lease.

---

### DEFINITIONS ADDENDUM

---

**ABANDONMENT:** defined in Section 12.1.1.

---

**ACCEPTABLE BRAND:** defined in Section 1.3.

---

**ACH:** defined in Section 5.

---

**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 RENT:** defined in Section 5.5.

---

**ADEQUATE INSURANCE:** insurance that using standards customary in the insurance industry provides adequate protection for the Landlord Parties and/or members of the public using the Premises or using services connected with Tenant's use or occupancy of the Premises.

---

**ADVERTISING DEVICES:** defined in Section 6.6

---

**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.

---

**ALTERATIONS:** any alterations, additions, installations, removals, demolitions, improvements or other physical changes to the Premises and the Improvements following the Completion of the Initial Project Improvements, 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.

---

**ALTERATION PLANS:** defined in Section 6.3.1.

---

**APPLICANT:** defined in Section 10.4.3(a).

---

**ASSIGNMENT:** any disposition, assignment, sale, conveyance, exchange or other transfer of all or any portion of Tenant's interest in this Lease (including without limitation any easements), the leasehold estate created hereby, the Premises or the Improvements, whether by operation of law or otherwise.

---

**ASSIGNMENT PARTICIPATION FEE:** defined in Section 11.6.

---

**ASSIGNMENT PROCEEDS:** defined in Section 11.6.

---

---

**DEFINITIONS ADDENDUM**

---

<b>ASTS:</b>	defined in Section 21.4.1.
<b>BANKRUPTCY CODE:</b>	the United States Bankruptcy Code (11 U.S.C. § 101, et seq.), as amended, and any successor statute.
<b>BANKRUPTCY EVENT:</b>	the occurrence with respect to Tenant, any Completion Guarantor(s) or any other Person liable for Tenant's obligations hereunder (including without limitation any member or manager of Tenant) of any of the following: (a) appointment of a receiver or custodian for any property of such Person, or the institution of a foreclosure or attachment action upon any property of such Person; (b) filing by such Person of a voluntary petition under the provisions of the Bankruptcy Code; or (c) such Person making or consenting to an assignment for the benefit of creditors or a composition of creditors.
<b>BRAND STANDARDS:</b>	standards of the brand that are applicable to the Improvements, subject to any waivers or limitations agreed by the holder of such brand.
<b>BMPS:</b>	defined in Section 15.1.
<b>BPC:</b>	Board of Port Commissioners of the San Diego Unified Port District.
<b>BUILDABLE CONDITION:</b>	defined in Section 7.2.
<b>BUSINESS DAY:</b>	a day (other than a Saturday or Sunday) on which banks in San Diego County, California are open for ordinary banking business.
<b>CCC:</b>	defined in Section 4.5.
<b>CDP:</b>	defined in Section 4.5.
<b>CEQA:</b>	defined in Section 4.5.
<b>CERTIFICATES:</b>	defined in Section 18.3.1.
<b>CFR:</b>	defined in Section 18.2.6.
<b>CHANGE OF CONTROL:</b>	with respect to any Person, a merger, consolidation, recapitalization or reorganization of such Person or other transaction or an amendment to any governing document of such Person that, in the case of any of the foregoing, results in any third party that is not an Affiliate of such Person having the ability to Control such Person; provided that, with respect to Tenant, as long as Ira Mitzner or any of his replacements set forth in the Original LLC Agreement is the manager of Tenant in accordance with the Original LLC Agreement, then there shall be no Change of Control of Tenant.
<b>CHANGE IN OWNERSHIP:</b>	defined on Exhibit R-1 attached hereto.
<b>CHULA VISTA BUILDING</b>	Chula Vista Building Standards Code (Title 15 of the Chula

DEFINITIONS ADDENDUM	
CODE:	Vista Municipal Code), as amended, and any successor statute.
CLAIMS:	defined in Section 22.4.3(a).
COMMENCEMENT DATE:	defined in Section 1.1.1.
COMPLETION AND COMPLETE:	shall mean that Tenant has obtained and delivered to Landlord (i) a certificate of occupancy or temporary certificate of occupancy for substantially all of the Initial Project Improvements or Alterations with respect to the Initial Project Improvements, as applicable, from the appropriate Governmental Authority or (ii) equivalent certification from the appropriate Governmental Authority certifying that substantially all of the Initial Project Improvements or Alterations to the Initial Project Improvements, as applicable, may be used in accordance with the designs therefor; provided, however, that the Phase 1A Infrastructure Improvements shall be complete when they are substantially completed.
COMPLETION GUARANTOR(S):	defined in Section 1.12.
COMPLETION GUARANTY:	defined in Section 1.12.
COMPONENT OF PROJECT IMPROVEMENTS:	defined in Paragraph 7 of Exhibit "D" hereto.
CONDEMNATION:	defined in Section 14.1.
CONDITION OF THE PREMISES:	defined in Section 22.1.
CONTEST:	defined in Section 4.6.1.
CONTEST CONDITIONS:	defined in Section 4.6.1.
CONSTRUCTION FORCE MAJEURE EVENT:	defined in Section 6.5.
CONSTRUCTION LATE CHARGES:	defined in Section 6.1.
CONSTRUCTION REQUIREMENTS:	those requirements, conditions and procedures regulating the installation, construction, modification and repair of Improvements and Alterations as described in Exhibit "D" attached to this Lease.
CONSULTANT SERVICES:	defined in Section 8.1.
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 or other voting interest of such Person or the ownership of beneficial interests in such Person, or (ii) the power to direct the

---

**DEFINITIONS ADDENDUM**

---

management of such Person with respect to major decisions of such Person, whether through voting interests or by way of agreement.

---

**CONVENTION CENTER:** the convention center that is to be located adjacent to the Resort Hotel as depicted in Exhibit "B-1" hereto.

---

**CPI:** the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, now known as the "Consumer Price Index" for all Urban Consumers (Index 1982-1984 = 100). As used in this Lease, the phrase "as adjusted for CPI" with respect to any Dollar amount means such Dollar amount multiplied by a fraction, the numerator of which is the CPI as of the first day of the Lease Year in which such adjustment occurs, and the denominator of which is the CPI as of the Commencement Date.

---

**CVBMP DOCUMENTS:** [TO BE INSERTED]

---

**DDA:** defined in Section 22.3.

---

**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 Landlord and Tenant 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.

---

**DEMOLITION AND REMEDIATION REPORT:** a report prepared by a contractor licensed in the State of California with expertise in demolition and remediation, which report details and estimates the current cost and time period for completion of the demolition work that is required by Section 7.2 and any remediation work that may be required by Section 21.3.

---

**DEMOLITION NOTICE:** defined in Section 20.2.

---

**DEVELOPMENT COSTS:** the costs of the entire design, architectural work, engineering work, development work and construction work with respect to the Resort Hotel and the Convention Center.

---

**DIR:** defined in Section 6.8.1(d)(ii).

---

**DISCRETIONARY ENTITLEMENT:** defined in Section 8.1.

---

**DISCRETIONARY PROJECT:** defined in Section 8.1.

---

**EIR:** defined in Section 1.3.

---

**ENVIRONMENTAL CLEANUP:** defined in Section 21.1.4.

---

---

**DEFINITIONS ADDENDUM**

---

**ENVIRONMENTAL LAWS:** defined in Section 21.1.1.

---

**EQUITY COLLATERAL ENFORCEMENT ACTION:** defined in Section 10.1.3.

---

**EQUITY INVESTMENT:** defined in Section 6.5.

---

**ESTIMATED JEP A DEVELOPMENT COST CONTRIBUTION:** defined in Section 1.8(d).

---

**ESTIMATED PARKING IMPROVEMENTS DEVELOPMENT COSTS:** the costs of the entire design, architectural work, engineering work, development work and construction work with respect to the Parking Improvements that are estimated by Tenant in its reasonable discretion.

---

**ESTIMATED TENANT DEVELOPMENT COST CONTRIBUTION:** defined in Section 1.8(df).

---

**ESTIMATED TOTAL DEVELOPMENT COSTS:** defined in Section 1.8(c).

---

**EVENT OF DEFAULT:** defined in Section 12.1.

---

**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 Premises as of the date of this Lease, whether constructed by Landlord, a prior tenant or another third party.

---

**EXPIRATION DATE:** defined in Section 1.1.2.

---

**FINANCIAL INSTITUTION:** (i) an insurance company qualified to do business in the state of California; or (ii) a U.S. federally- or state-chartered bank, savings bank, or savings and loan association; or (iii) a pension or retirement fund operated for the employees and former employees of, and regulated and controlled by, the United States of America or any state thereof, or any agency thereof (e.g., the California State Teachers' Retirement System); or (iv) a real estate investment trust; or (v) any lender or investment fund whose regular on-going business includes real property secured financing for commercial or industrial properties, or (vi) a Person owned and controlled by any one or more of the preceding entities, or (vii) a combination of two or more of the preceding entities.

---

**FINANCING TRANSACTION:** defined in Section 10.1.1.

---

**FORCE MAJEURE EVENT:** defined in Section 6.5.

---

**FORECLOSURE PURCHASER:** defined in Section 10.3.3.

---

---

DEFINITIONS ADDENDUM

---

**GOVERNMENTAL AUTHORITY:** each and every governmental agency, authority, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Premises (or any activity this Lease allows), including the United States federal government, the State and County governments and their subdivisions and municipalities, and all applicable Government Agencies, governmental authorities, and subdivisions thereof.

---

**GOVERNMENT AGENCY:** defined in Section 21.1.2.

---

**GREATER OF RENT:** defined in Section 5.2.

---

**GROSS INCOME:** defined in Section 5.4.2(a).

---

**HARD CONSTRUCTION COSTS:** with respect to any component of the Project Improvements, all costs that Tenant is required to pay to the respective construction contractor for the construction of such component of the Project Improvements under the construction agreement for such component of the Project Improvements.

---

**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:** defined in Section 21.1.1.

---

**HMMD:** defined in Section 21.4.1.

---

**HOTEL MANAGEMENT AGREEMENT:** management agreement for the Resort Hotel between Tenant and the Hotel Operator.

---

**HOTEL MANAGEMENT AGREEMENT NOTICE:** defined in Section 15.4.2.

---

**HOTEL OPERATOR:** Marriott or its successor in accordance with this Lease.

---

**IMPROVEMENTS:** Initial Improvements and any Alterations thereto.

---

**INCURABLE DEFAULT:** defined in Section 10.3.2(b).

---

---

DEFINITIONS ADDENDUM

---

INITIAL PROJECT IMPROVEMENTS: the Improvements that are located on the Premises and are initially developed by Tenant and described by the Plans referred to in Exhibit "C" to this Lease, (as opposed to Existing Improvements and subsequent Alterations to the Project Improvements), and specifically excluding the Parking Improvements and other than any Alterations to the Parking Improvements.

INSPECTION REPORT: defined in Section 15.3.

INQUIRY: defined in Section 21.1.2.

LANDLORD: defined in the preamble of this Lease.

LANDLORD END OF TERM ELECTION: defined in Section 7.2.

LANDLORD PARTIES: Landlord, its officers, directors, members of the BPC, employees, partners, affiliates, agents, contractors, successors and assigns.

LANDLORD TRANSFER: defined in Section 29.5.

LANDLORD'S MATERIALS: defined in Section 22.4.2.

LANDLORD'S NON-DEMOLITION NOTICE: defined in Section 7.2.

LATE CHARGES: defined in Section 5.5.1.

LAWS: All applicable present and future state of California, federal and local laws, rules, 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), 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; and the Port Master Plan ("PMP"); the policies of the Board of Port Commissioners; any applicable ordinances of the city in which the Premises are located, including the building code thereof, and any permits and approvals by any Governmental Authority

---

**DEFINITIONS ADDENDUM**

---

	and the Landlord, including, without limitation, any California Coastal Development Permit, applicable to the Premises or the use or development thereof.
<b>LEASE:</b>	defined in the preamble to this Lease.
<b>LEASE YEAR:</b>	defined in Section 1.5.
<b>LEASEHOLD AWARD:</b>	defined in Section 14.7.1.
<b>LETTER OF CREDIT:</b>	defined in Section 28.2.
<b>LOAN DOCUMENTS:</b>	defined in Section 10.1.1.
<b>MAJOR ALTERATIONS:</b>	defined in Section 6.3.1.
<b>MARRIOTT:</b>	Marriott Hotel Services, Inc. and any of its Affiliates.
<b>MATERIAL CHANGE IN OWNERSHIP OF TENANT:</b>	shall occur when the Persons who own, directly or indirectly, any equity interest in Tenant as of the Commencement Date, do not, in the aggregate, and would not if they acted in concert, Control Tenant.
<b>MEMORANDUM OF LEASE:</b>	defined in Section 29.4.
<b>MINIMUM ANNUAL RENT:</b>	defined in Section 1.5 and Section 5.3.
<b>MINIMUM ANNUAL RENT LOOK BACK ADJUSTMENT:</b>	defined in Section 5.3.
<b>MINIMUM RENT LOOK BACK ADJUSTMENT DATES:</b>	defined in Section 1.5.1.
<b>MINOR ALTERATIONS:</b>	defined in Section 6.3.2.
<b>MONTHLY REPORT:</b>	defined in Section 5.4.3.
<b>MSDS:</b>	defined in Section 21.1.1.
<b>NEIGHBORING PARCELS:</b>	defined in Section 4.9.
<b>NEW LEASE:</b>	defined in Section 10.3.2(d).
<b>NEW OUTSIDE CONSTRUCTION COMPLETION DATE:</b>	defined in Section 10.6.2.
<b>NEW PROJECT IMPROVEMENTS COMPLETION TIMETABLE</b>	defined in Section 10.6.2.
<b>NEW TENANT:</b>	defined in Section 10.3.2(d).

---

---

DEFINITIONS ADDENDUM

---

NOTICE OF ELECTION TO TERMINATE: defined in Section 20.2.

---

OFAC: defined in Section 17.3.

---

OFFSITE PARKING LAND LEASE: that certain Offsite Parking Land Lease, dated as of the date hereof, between Landlord, as lessor, and Tenant, as lessee.

---

OPERATION: defined in Section 5.5.

---

OPERATION FORCE MAJEURE EVENT: defined in Section 6.5.

---

OPERATION FORCE MAJEURE EVENT TERMINATION OPTION: defined in Section 6.5.

---

OPERATION FORCE MAJEURE EVENT TERMINATION OPTION CONDITION: defined in Section 6.5.

---

OPERATION FORCE MAJEURE EVENT TERMINATION OPTION ELECTION NOTICE: defined in Section 6.5.

---

OPERATION FORCE MAJEURE EVENT TERMINATION OPTION PURCHASE PRICE: defined in Section 6.5.

---

OPERATION FORCE MAJEURE EVENT TERMINATION OPTION PURCHASE PRICE PERIOD: defined in Section 6.5.

---

ORIGINAL LLC AGREEMENT: that certain Limited Liability Company Agreement of RIDA Chula Vista, LLC, dated as of [●], as amended pursuant to any amendment that does not amend the management of Tenant.

---

OUTSIDE CONSTRUCTION COMMENCEMENT DATE: defined in Section 1.8(a).

---

OUTSIDE CONSTRUCTION COMPLETION DATE: defined in Section 1.8(b).

---

PARKING IMPROVEMENTS: defined in [●].

---

PARKING IMPROVEMENTS the costs of the entire design, architectural work, engineering work, development work and construction work with respect to

---

---

DEFINITIONS ADDENDUM

---

DEVELOPMENT COSTS: the Parking Improvements.

---

PARKING IMPROVEMENT RENT: defined in [●].

---

PARKING IMPROVEMENT RENT RATE: defined in [●].

---

PARKING STRUCTURE LAND: the land described on Exhibit "W" hereto.

---

PAYMENT BOND: defined in Paragraph 7 of Exhibit "D" hereto.

---

PERCENTAGE RENT: defined in Section 5.4.

---

PERCENTAGE RENT RATE: defined in Section 5.4.

---

PERFORMANCE BOND: defined in Paragraph 7 of Exhibit "D" hereto.

---

PERMITTED ENCUMBRANCE: defined in Section 10.2.

---

PERMITTED EQUITY ENCUMBRANCE: defined in Section 10.2.

---

PERMITTED LEASE ENCUMBRANCE: defined in Section 10.2.

---

PERMITTED MEZZANINE LENDER: defined in Section 10.1.3.

---

PERMITTED MORTGAGE LENDER: defined in Section 10.2.

---

PERMITTED LENDER: defined in Section 10.2.

---

PERMITTED USE: defined in Section 1.3.

---

PERSON: any individual, partnership, firm, joint venture, association, corporation, limited liability company, government agency or any other form of business entity.

---

[PHASE 1A INFRASTRUCTURE IMPROVEMENTS: [●]].

---

PLANS: defined in Section 6.1.

---

PMP: defined in Section 1.3.

---

PMPA: defined in Section 8.1.

---

PRE-EXISTING HAZARDOUS MATERIAL: any Hazardous Material located on or under the Premises prior to the Commencement Date, whether known or unknown, and any Hazardous Material located outside the Premises (including any premises owned by Landlord) prior to the Commencement Date that migrates onto the Premises thereafter.

---

DEFINITIONS ADDENDUM	
PREMISES:	defined in Section 1.2.
PREMISES PREPARATION CAP:	defined in Section 1.8(e).
PREMISES PREPARATION WORK:	defined in Section 6.2.
PREMISES PREPARATION WORK COSTS:	defined in Section 6.2.
PREMISES SURFACE PARKING:	defined in Section [●].
PRIMARY USE:	defined in Section 1.3.
PROHIBITED PERSON:	defined in Section 17.3.
PROHIBITED PERSONS:	defined in Section 17.3.
PROJECT:	Tenant's development of the Project Improvements.
PROJECT IMPROVEMENTS:	the Initial Project Improvements and, if and when substantially completed by Tenant in accordance with Section 4.3, the Parking Improvements.
PROJECT IMPROVEMENTS COMPLETION ELECTION:	defined in Section 10.6.2.
PROJECT IMPROVEMENTS COMPLETION ELECTION NOTICE:	defined in Section 10.6.2.
PROPERTY EXPENSES:	defined in Section 16.2.
PROPERTY TAX EXPENSES:	property taxes (including, without limitation, real estate taxes, possessory interest taxes, use taxes, general and special assessments, leasehold taxes or taxes based upon Tenant's receipt of rent).
PURCHASED PROPERTY:	defined in Section 6.5.
PWL:	defined in Section 6.8.1(a)
REGULATED WASTE REMOVAL:	defined in Section 21.5.1.
REDEVELOPMENT PLAN:	defined in Section 6.10.
REDEVELOPMENT PLAN PACKAGE:	defined in Section 6.10.

---

DEFINITIONS ADDENDUM

---

REIMBURSEMENT PROCEDURE: defined in Section 5.8.

---

REJECTED TRANSFEREE: defined in Section 10.4.3(a).

---

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.

---

RENT: defined in Article 5.

---

RENT COMMENCEMENT DATE: defined in Section 1.4.

---

RENTAL PERIODS: defined in Section 1.4.

---

RESORT HOTEL: defined in Section 1.3.

---

RETURN ON INVESTMENT: defined in Section 5.5.

---

REVENUE: all income, receipts, proceeds, amounts, money, cash, assets, property or other things of value, whether collected, uncollected, received, payable or accrued.

---

ROOM: a separately keyed lodging unit of the Resort Hotel.

---

SDRWQCB: defined in Section 21.4.3.

---

SETTLEMENT AGREEMENT: Chula Vista Bayfront Master Plan Settlement Agreement, dated May 4, 2010, among the Bayfront Coalition Member Organizations identified therein, Landlord, the City of Chula Vista and the Redevelopment Agency of the City of Chula Vista (District Clerk No. 56523).

---

SUBLEASE: any sublease (or sub-sublease or other level of sublease), and any occupancy, franchise, license, concession agreement or other right to use applicable to this Lease or the Premises or the Improvements or any part thereof; provided, however, that "Sublease" excludes (i) any agreement for temporary use of the Meeting Space or Rooms in the Resort Hotel and (ii) Hotel Management Agreement.

---

SUBLEASE NOTICE: defined in Section 11.1.2.

---

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

---

SURFACE PARKING defined in Section [●].

---

DEFINITIONS ADDENDUM	
IMPROVEMENTS:	
TAX EXPENSES:	defined in Section 16.1.
TEMPORARY CONDEMNATION:	defined in Section 14.6.
TENANT:	defined in the Preamble of this Lease.
TENANT ART INVESTMENT:	defined in Section 1.8(g).
TENANT HAZARDOUS MATERIAL:	any Hazardous Material either (i) brought onto the Premises or Improvements during the Term of this Lease by any Person or (ii) brought onto the Premises, Improvements or any other property by Tenant or Tenant Party or generated by any of the same.
TENANT PARKING IMPROVEMENT REVENUE:	defined in [●].
TENANT PARTY:	Tenant, its agents, employees, representatives, contractors, subcontractors, suppliers, materialmen, workmen, licensees, concessionaires, Affiliates and successors and assigns and Subtenants, and the agents, employees, representatives, contractors, subcontractors, suppliers, materialmen, workmen, concessionaires, licensees, Affiliates and successors and assigns of each of such Subtenants.
TENANT RECORDS:	defined in Section 5.4.3(c).
TENANT USE PARKING IMPROVEMENTS:	defined in Section [●].
TENANT'S DEMOLITION ELECTION:	defined in Section 7.2.
TENANT'S PARKING IMPROVEMENT OPTION:	defined in [●].
TERM:	defined in Section 1.1.
TRANSFER:	defined in Section 11.5.1.
TRANSFER NOTICE:	defined in Section 11.5.2.
TRANSFeree:	defined in Section 11.5.2 and 11.5.3, as applicable.
USA PATRIOT ACT:	defined in Section 17.3.
USTs:	defined in Section 21.4.1.

**SCHEDULE 1**  
**(Section 6.1)**

(to be inserted prior to execution.)

**EXHIBIT A**

**LEGAL DESCRIPTION OF PREMISES**

(to be attached prior to execution.)

**EXHIBIT B**

**DEPICTION OF PREMISES**

(to be attached prior to execution.)

**EXHIBIT B-1**

**DEPICTION OF PARKING IMPROVEMENTS**

(to be attached prior to execution.)

**EXHIBIT B-2**

**DEPICTION OF NEIGHBORING IMPROVEMENTS**

(to be attached prior to execution.)

**EXHIBIT C**  
**PROJECT IMPROVEMENTS PLANS**

**[INCLUDE RESORT HOTEL AND CONVENTION CENTER]**

**Preparer:**

**Project:**

**Job No.:**

**Approval Date:**

**Number of pages attached:**

**EXHIBIT D-1**  
**CONSTRUCTION REQUIREMENTS**  
**(Initial Project Improvements)**

1. **GENERALLY.** TENANT SHALL COMPLY WITH THE PROVISIONS OF THIS EXHIBIT D-1 AS FOR THE INITIAL PROJECT IMPROVEMENTS, THE CONDITIONS OF PROJECT APPROVAL SET FORTH IN EXHIBIT D-1 FOR THE INITIAL PROJECT IMPROVEMENTS, AND THE PROVISIONS OF THE LEASE IN CONNECTION WITH ALL CONSTRUCTION OR DEMOLITION WORK AT THE PREMISES ("CONSTRUCTION WORK").

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

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

4. **Contractors, Architects and Engineers Agreements.** Landlord shall have the right to approve the architectural, engineering and construction contracts for all of the Improvements (other than Minor Alterations), in its reasonable discretion. All such contracts for work related to the Convention Center shall provide, in form and content reasonably satisfactory to Landlord, (i) for the assignment thereof to Landlord as security to Landlord for Tenant's performance hereunder (ii) that if this Lease is terminated Landlord may, at its election, use any plans and specifications created by such architect, engineer or contractor for the contemplated Convention Center at the Premises.

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

6. **Dust and Trash Control.** Tenant 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.** Prior to Tenant commencing the construction of the Project Improvements, Tenant shall furnish Landlord with the following separate corporate surety bonds in connection with the construction of each of the components of the Project Improvements other than the Resort Hotel (each, a "Component of Project Improvements"):

(i) A corporate surety performance bond ("Performance Bond") issued by a surety company licensed and admitted to transact business as such in the State of California, in an amount not less than one hundred percent (100%) of the estimated Hard Construction Costs of the applicable Component of Project Improvements. The Performance Bond and its issuer shall be reasonably satisfactory to Landlord. The Performance Bond shall name Tenant as principal and Landlord as obligee, assuring full completion of the construction by Tenant of such Component of Project Improvements; and

(ii) A corporate surety payment bond ("Payment Bond") issued by a surety company licensed and admitted to transact business as such in the State of California, in an amount equal to one hundred percent (100%) of the estimated Hard Construction Costs of the applicable Component of Project Improvements, guaranteeing payment for all

materials, provisions, supplies and equipment used in, upon, for or about the performance of the construction of such Component of Project Improvements and for labor done thereon and protecting Landlord from any and all liability, loss or damages arising out of or in connection with any failure to make any such payments. The Payment Bond shall name Tenant as principal and Landlord as obligee.

(iii) The Payment Bond and Performance Bond shall be in form and content reasonably satisfactory to Landlord.

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

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

10. Contractor Insurance. Tenant 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 Landlord from time to time in its sole and absolute 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) \$5,000,000 aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the Work); and

(4) \$5,000,000 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 Landlord determines, in its sole and reasonable discretion, that Tenant 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, Tenant 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.

Landlord 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 Lease, nor shall it be allowed to expire, without at least thirty (30) days prior written notice to Landlord. The foregoing insurance shall include a waiver of subrogation in favor of Landlord Parties.

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

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

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

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

**EXHIBIT D-1**  
**Conditions of Project Approval**  
**(Initial Project Improvements)**

To be attached prior to execution of Lease.

(PLACEHOLDER PAGE)

**EXHIBIT D-2<sup>3</sup>**  
**CONSTRUCTION REQUIREMENTS**  
**(Alterations)**

1. **GENERALLY.** TENANT SHALL COMPLY WITH THE PROVISIONS OF THIS EXHIBIT D, THE CONDITIONS OF PROJECT APPROVAL SET FORTH IN EXHIBIT D-1, AND THE PROVISIONS OF THE LEASE IN CONNECTION WITH ALL CONSTRUCTION OR DEMOLITION WORK AT THE PREMISES ("CONSTRUCTION WORK").
2. **Contractors.** Landlord shall have the right to approve the general contractor for Construction Work (other than Minor Alterations), in its reasonable discretion. All contractors and subcontractors performing any Construction Work must be licensed in the State of California.
3. **Architects and Engineers.** All architects and engineers must have an active license to practice in the State of California.
4. **Contractors, Architects and Engineers Agreements.** Landlord shall have the right to approve the architectural, engineering and construction contracts for all of the Improvements (other than Minor Alterations), in its reasonable discretion.
5. **Construction Barricades.** Tenant shall install a construction barricade around the area of Construction Work (other than Minor Alterations), and erect such other protective measures as may be reasonably required by Landlord.
6. **Dust and Trash Control.** Tenant 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.** Prior to Tenant commencing the construction of the Project Improvements, Tenant shall furnish Landlord with the following separate corporate surety bonds in connection with the construction of each of the components of the Project Improvements other than the Resort Hotel (each, a "Component of Project Improvements"):
  - (i) A corporate surety performance bond ("Performance Bond") issued by a surety company licensed and admitted to transact business as such in the State of California, in an amount not less than one hundred percent (100%) of the estimated Hard Construction Costs of the applicable Component of Project Improvements. The Performance Bond and its issuer shall be reasonably satisfactory to Landlord. The Performance Bond shall name Tenant as principal and Landlord as obligee, assuring full completion of the construction by Tenant of such Component of Project Improvements; and
  - (ii) A corporate surety payment bond ("Payment Bond") issued by a surety company licensed and admitted to transact business as such in the State of California, in an amount equal to one hundred percent (100%) of the estimated Hard Construction Costs of the applicable Component of Project Improvements, guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the performance of the construction of such Component of Project Improvements and for labor done thereon and protecting Landlord from any and all liability, loss or damages

---

<sup>3</sup> NTD: Landlord to provide a mark-up of this Exhibit D.

arising out of or in connection with any failure to make any such payments. The Payment Bond shall name Tenant as principal and Landlord as obligee.

(iii) The Payment Bond and Performance Bond shall be in form and content reasonably satisfactory to Landlord.

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

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

10. Contractor Insurance. Tenant 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 Landlord from time to time in its sole and absolute 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) \$5,000,000 aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the Work); and
    - (4) \$5,000,000 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 Landlord determines, in its sole and reasonable discretion, that Tenant 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, Tenant 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.

Landlord 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 Lease, nor shall it be allowed to expire, without at least thirty (30) days prior written notice to Landlord. The foregoing insurance shall include a waiver of subrogation in favor of Landlord Parties.

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

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

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

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

**EXHIBIT E**

**FORM OF COMPLETION GUARANTY**

(to be attached prior to execution.)

**EXHIBIT F**

**FORM OF MEMORANDUM OF LEASE**

RECORDING REQUESTED BY:

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

(Above Space for Recorder's Use Only)

**MEMORANDUM OF LEASE**

This Memorandum of Lease, hereinafter "Memorandum," is dated \_\_\_\_\_, 20\_\_, between SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, "Landlord" and RIDA CHULA VISTA, LLC, a Delaware limited liability company, "Tenant" concerning that certain real property described in Exhibit "A" and depicted in Exhibit "B", attached hereto and by this reference made a part hereof (the "Leased Premises").

For good and adequate consideration, Landlord leases the Leased Premises to Tenant, and Tenant hires them from Landlord, for the term and on the provisions contained in that certain Lease of even date herewith by and between Landlord and Tenant (the "**Lease**"), including without limitation provisions prohibiting assignment, subleasing, and encumbering said leasehold without the express written consent of Landlord in each instance, all as more specifically set forth in said Lease, and, subject to the terms of Article 23 of the Lease, Landlord conveys to Tenant and Tenant accepts from Landlord, all of Landlord's right, title and interest in and to the Existing Improvements, which said Lease is incorporated in this Memorandum by this reference.

The term of the Lease is sixty-six (66) years, beginning \_\_\_\_\_, 20\_\_, and ending \_\_\_\_\_, 20\_\_.

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

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Lease as of the date first set forth above.

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

By: \_\_\_\_\_  
Assistant/Deputy

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

By: \_\_\_\_\_  
Tony Gordon  
Director, Real Estate

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

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

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

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

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

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

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

**EXHIBIT A TO MEMORANDUM OF LEASE**

**LEGAL DESCRIPTION OF PREMISES**

(to be attached prior to execution.)

**EXHIBIT B TO MEMORANDUM OF LEASE**

**DEPICTION OF PREMISES**

(to be attached prior to execution.)

**(FOR USE BY SAN DIEGO UNIFIED PORT DISTRICT)**

**EXHIBIT F**

STATE OF CALIFORNIA)  
COUNTY OF SAN DIEGO)

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.

On \_\_\_\_\_ before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person whose name is  
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 \_\_\_\_\_ (Seal)

----- **OPTIONAL** -----

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

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

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

**Capacity(ies) Claimed by Signer(s)**

Signer's Name \_\_\_\_\_

- Individual
- Corporate Officer -- Title(s): \_\_\_\_\_
- Partner --  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

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

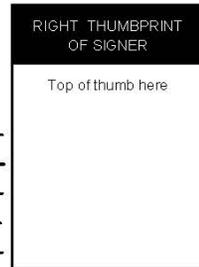


Signer's Name \_\_\_\_\_

- Individual
- Corporate Officer -- Title(s): \_\_\_\_\_
- Partner --  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

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



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

STATE OF CALIFORNIA)  
COUNTY OF SAN DIEGO)

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.

On \_\_\_\_\_ before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person whose name is  
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 \_\_\_\_\_ (Seal)

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

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

**Capacity(ies) Claimed by Signer(s)**

Signer's Name \_\_\_\_\_

- Individual
- Corporate Officer --Title(s): \_\_\_\_\_
- Partner --  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

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

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer's Name \_\_\_\_\_

- Individual
- Corporate Officer --Title(s): \_\_\_\_\_
- Partner --  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

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

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here



**EXHIBIT H**  
**FORM OF ESTOPPEL STATEMENT**

Name  
Address

RE: [ \_\_\_\_\_ ] ("**Premises**")

Ladies and Gentlemen:

This Estoppel Statement ("**Statement**") is issued by the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (hereinafter referred to as "**Landlord**"), as landlord under that certain lease dated [ \_\_\_\_\_ ], covering a portion of those lands conveyed to Landlord by that certain act of the Legislature of the State of California entitled "San Diego Unified Port District Act", Stats. 1962, 1st Ex. Sess., c. 67, as amended, between Landlord and RIDA Chula Vista, LLC, a Delaware limited liability company (hereinafter referred to as "**Tenant**"), as tenant, a copy of which lease is on file in the Office of the Clerk of Landlord bearing Document No. [ \_\_\_\_\_ ] (the "**Lease**").

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

1. The Lease is currently in full force and effect and has not been modified in whole or in part, except as provided by [that/those] certain amendment[s] described and dated as follows: [N/A or list amendment(s)], copies of which amendment(s) [is/are] on file in the Office of the Clerk of Landlord bearing Document No.(s) [ \_\_\_\_\_ ].
2. The Lease is for a term of sixty-six (66) years, commencing [ \_\_\_\_\_ ] and ending [ \_\_\_\_\_ ].
3. As of the date of this Statement, Tenant [is/is not], to the actual knowledge of Landlord (without any duty of investigation or inquiry), in default or in breach under the provisions of the Lease.
4. Landlord has no actual knowledge (without any duty of investigation or inquiry) of any other assignment or hypothecation of said leasehold estate, or any pledge or assignment of rents with respect to said Premises [except any security interest therein created in favor of [ \_\_\_\_\_ ] for a loan in the amount of [ \_\_\_\_\_ ] Dollars (\$[ \_\_\_\_\_ ]) as consented to by Landlord in an Administrative Approval or Resolution No. [ \_\_\_\_\_ ], a copy of which is attached hereto and by reference incorporated herein].
5. All rent, and any other charges payable by Tenant pursuant to the Lease (referred to collectively hereinafter as "**Rent**") has been paid through and including [ \_\_\_\_\_ ]; provided, however, there may be Rent still due and owing which will be discovered at the time of audit by Landlord and, to that extent, Landlord cannot represent that all Rent has been paid.





**EXHIBIT I**

**FORM OF LETTER OF CREDIT**

(to be attached prior to execution.)

**EXHIBIT J**

**LETTER OF CREDIT ISSUERS**

(to be attached prior to execution.)



**EXHIBIT K**

**PRIOR AGREEMENTS**

(to be attached prior to execution.)

**EXHIBIT N**

**PRE-APPROVED SIGNS**

(to be attached prior to execution.)

**EXHIBIT O**

**PROPERTY TAX EXPENSES**

(to be attached prior to execution.)

**EXHIBIT P**

**FORM OF SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

(to be attached prior to execution.)

**EXHIBIT Q**

**SUBLEASE QUESTIONNAIRE**

(to be attached prior to execution.)

## EXHIBIT R-1

### PARKING IMPROVEMENTS

1. Tenant shall construct a parking structure with approximately 1,600 spaces (the "**Parking Improvements**" to Completion substantially in accordance with plans and specifications to be approved by the Landlord in its reasonable discretion (the "**Plans**").
2. Landlord shall fund the Parking Improvements Development Costs up to the amount of \$40,000,000. Tenant shall provide to Landlord on a monthly basis invoices for an amount equal to the difference (a) the amount of all Parking Improvements Development Costs that Tenant has incurred *less* (b) the cost of all Parking Improvements Development Costs for which Landlord has previously paid Tenant. With each such invoice, Tenant shall submit supporting documentation and statutory conditional mechanics lien waivers from all of Tenant's contractors for the Parking Improvements who have not submitted statutory final lien waivers. Landlord shall pay the amount of each invoice to Tenant no later than 30 days after Landlord receives such invoice. Notwithstanding the foregoing, Landlord will not be required to pay any amount in excess of the Parking Contribution Amount.
3. Landlord shall own the Parking Improvements. Landlord shall grant to Tenant an easement to use, operate and maintain the Parking Improvements in the form of Exhibit "U" attached hereto.
4. Tenant shall be responsible for all maintenance, repair and replacement of the Parking Improvements; provided, however, Landlord shall be responsible for the replacement of the Parking Improvements in the case of casualty, destruction or Condemnation), if in the case of the casualty or destruction, such casualty or destruction is not the result of the actions or inactions of Tenant or any Tenant Party. Landlord shall have the right to elect not to rebuild the Parking Improvements if Landlord does not receive sufficient insurance proceeds to do so. Except to the extent caused by Tenant or Tenant Parties, Landlord shall bear the risk of loss with respect to the structure of the Parking Improvements only; provided, however, Landlord shall not be responsible for any personal property of the Tenant, Tenant Parties, any visitor, invitee or any other third party. If the Parking Improvements are damaged or destroyed, and such damage or destruction does not result from Tenant's failure to perform ordinary and regular maintenance of the Parking Improvements, or the actions or inactions of Tenant or Tenant Parties, then Landlord shall pay Tenant to reconstruct and repair the Parking Improvements, at Landlord's sole cost and expense, and funds shall be distributed in a manner substantially similar to the manner set forth in Section 2.]
5. Commencing on the Rent Commencement Date, Tenant shall pay to Landlord monthly parking improvement rent equal to the product of the applicable percentage set forth below ("**Parking Improvement Rent Rate**") multiplied by all Tenant Parking Improvement Revenue received during the applicable calendar month, which shall be prorated as set forth in Section 5.1.2 and subject to the adjustment set forth in the next bullet point ("**Parking Improvement Rent**"):

- Lease Years 1 – 37: 12.5%
- Lease Years 38 – 66: 15%

**"Tenant Parking Improvement Revenue"** means the following amounts whether collected or uncollected, received, payable or accrued by Tenant, without any deductions or exclusions, whether paid in cash or for credit: (a) any amounts paid to Tenant by any Person for using a parking space in the Parking Improvements, Premises Surface Parking and, if applicable, Surface Parking Improvements through the Resort Hotel valet service or (b) any amounts paid to Tenant by any Person for self-parking in the Parking Improvements, Premises Surface Parking and, if applicable, Surface Parking Improvements. For the avoidance of doubt, if Tenant permits Tenant's employees, Subtenants, independent contractors, or visitors to use any of the Parking Improvements, Premises Surface Parking or, if applicable, Surface Parking Improvements without charge, then no Tenant Parking Improvement Revenue will accrue for such use; and no monthly Parking Improvement Rent will accrue for such use.

Upon written notice to Tenant, and not more frequently than five (5) times per year, Landlord shall have the right to reserve all parking spaces in the Parking Improvements that Tenant or the Hotel Operator determines, each in its reasonable discretion, are available during the specified times, for use by the general public during special events in the Chula Vista Bayfront. Landlord shall have the right to set the rates for such reserved parking spaces and shall not be required to pay Tenant, any other Tenant Party or the Hotel Operator for the use of such reserved parking spaces but any revenues for the use of such spaces will be paid to Tenant shall be included in the Tenant Parking Improvement Revenue.

6. If the Persons that own the direct and indirect ownership interests in Tenant as of the Commencement Date own, in the aggregate, less than fifty-one percent (51%) of the direct and indirect ownership interest in Tenant ("**Change in Ownership**"), then the applicable Parking Improvement Rent Rate shall increase as follows, and shall be effective immediately as of the date of such Change in Ownership:
  - Lease Years 1 – 37: 15%
  - Lease Years 38 – 66: 20%;

provided, however, that the foregoing increases in the Parking Improvement Rent Rate shall not apply in the case of any Change in Ownership in connection with any foreclosure on the Permitted Encumbrance or any action in lieu of foreclosure to a Foreclosure Purchaser that is a Permitted Lender.

1.



**EXHIBIT S**

**APPROVED DOCUMENTS**

Right of Entry with Rohr

Easement with Rohr

CVBMP Documents

Approved Title Exceptions

(to be completed prior to execution.)

**EXHIBIT T**

**LANDLORD TRANSFER DOCUMENTS**

(to be attached prior to execution.)

**EXHIBIT U**

**PARKING EASEMENT**

(to be attached prior to execution.)

**EXHIBIT V**

**PARKING STRUCTURE LAND**

(to be attached prior to execution.)





# San Diego Unified Port District

3165 Pacific Hwy.  
San Diego, CA 92101

**File #:**2017-0338

**DATE:** June 20, 2017

**SUBJECT:**

**RESOLUTION AUTHORIZING A NON-BINDING LETTER OF INTENT (LOI) WITH RIDA CHULA VISTA, LLC AND THE CITY OF CHULA VISTA FOR A RESORT HOTEL AND CONVENTION CENTER WITHIN THE CHULA VISTA BAYFRONT**

**EXECUTIVE SUMMARY:**

The Chula Vista Bayfront Master Plan<sup>1</sup> (CVBMP) (Attachments A and B) is the result of a decade-long joint planning effort by the San Diego Unified Port District (District), the City of Chula Vista (City), Pacifica Companies LLC (Pacifica), and a broad coalition of stakeholders. The CVBMP was collaboratively planned through an extensive public participation program that included over 100 community meetings and resulted in a comprehensive Environmental Impact Report (EIR) and Port Master Plan Amendment, which was approved by the Board of Port Commissioners (Board) in May 2010 and certified by the California Coastal Commission (CCC) in August 2012. The financing agreement<sup>2</sup> (Financing Agreement) for the Chula Vista Bayfront (CVB) was approved by the Board in 2012 and set forth the framework for the financing and development of the public improvements and infrastructure within the CVB by the District and City, referred to collectively herein, as the “Public Entities”. The Amended and Restated CVBMP Financing Agreement (Amended and Restated Financing Agreement) was adopted by the City in November 2016 and will be considered by the Board on June 20, 2017.

After two years of negotiations with RIDA Chula Vista, LLC (RIDA), the District and the City staffs believe that an important interim step is to enter into a nonbinding Letter of Intent (LOI) for development of the resort hotel and convention center (RHCC), the catalyst project for development of the CVB. Attachment C includes the complete LOI executed by RIDA. Staff recommends that the Board approve the LOI because in RIDA and the City, the District has found the right partners that are ready to move forward with the implementation of the CVBMP; the project economics represent a good deal for the District, for the City, and for RIDA; and time is of the essence to memorialize the economics to ensure that the redevelopment of the CVB proceeds as soon as possible. The LOI is an important next step toward catalyzing other additional development within the CVB. Once the CVBMP is implemented, the CVB will become a world-class destination that reflects strong planning and design principles, economic feasibility, and community benefits.

On May 6, 2014, the Board adopted a resolution authorizing the issuance of a Request for Qualifications (RFQ) for a hotel and convention center located on 36 acres (Site) within the CVB. The RFQ also allowed for potential additional development opportunities on the H23 parcel, directly adjacent to the Site. After considerable local, regional, national, and international marketing efforts

---

**File #:2017-0338**

---

by District staff, City staff, and consultants, RFQ 14-24<sup>3</sup> was released on June 30, 2014. A highly-qualified response from RIDA Development Corporation was received, and on October 14, 2014, the Board selected RIDA Development Corporation as the successful respondent to the RFQ and authorized staff to negotiate an Exclusive Negotiating Agreement (as amended from time to time, ENA) with RIDA Development Corporation. On February 10, 2015, the ENA was approved by the Board and the District entered into the ENA with RIDA. The ENA currently expires on February 16, 2018<sup>4</sup>.

Over the past two years, the District, City and RIDA have been working to negotiate the key deal terms for the RHCC project. This unique partnership has identified the economics necessary to proceed with development of the CVB while achieving market returns for the District, City and RIDA factoring in the undeveloped nature of this Site and other development challenges. Working cooperatively with the City and RIDA, staff has negotiated a non-binding LOI which will be considered jointly by the District and the City on June 20, 2017. This LOI will be the first major, public milestone for the RHCC since the ENA and will set the stage by defining the key economic terms which will be the basis for a Disposition and Development Agreement (Definitive Agreement), which will be presented to both Public Entities for consideration later this year.

The RHCC will be the catalyst project for the CVB and is sure to be the impetus needed for additional world-class development within the CVB. Public contributions from both the District and the City are necessary to enable RIDA to achieve a reasonable return on their investment in the RHCC project and to allow the District and City to construct public infrastructure and improvements. These concepts are the foundation for the economic terms included in the LOI. Keyser Marston Associates (KMA) prepared a comprehensive report that analyzes the project feasibility, proposed method of financing for the project, and public investment. The full report is included as Attachment D. The details of the LOI, including a brief overview of the agreements and previous actions taken by the Board related to the redevelopment of the CVB, project scope and public contribution, is discussed below.

**RECOMMENDATION:**

Resolution authorizing a non-binding LOI with RIDA Chula Vista, LLC and the City for a resort hotel and convention center within the Chula Vista Bayfront

**FISCAL IMPACT:**

The requested Board action will not result in any direct fiscal impact to the District, as the LOI is non-binding and any contribution of revenue sources by the District to the implementation of the CVBMP will be subject to a future plan of finance, as set forth in the Financing Agreement, which may be amended from time to time. Further, the plan of finance will be presented to the Board at a future date and will also be subject to Board approval. Based on preliminary financial modeling projections from various consultants' reports and initial financial analysis, the development of the RHCC could potentially result in positive surplus revenues to the District in as early as Year 4 of hotel operations.

**COMPASS STRATEGIC GOALS:**

This agenda item supports the following Strategic Goal(s).

---

**File #:2017-0338**

---

- A vibrant waterfront destination where residents and visitors converge.
- A Port with a healthy and sustainable bay and its environment.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A Port that is a safe place to visit, work and play.
- A financially sustainable Port that drives job creation and regional economic vitality.

### **DISCUSSION:**

After two years of negotiations with RIDA, District and City staff believe that the nonbinding LOI should be approved by the Board because the right partners are ready to move forward with the right plan for the CVB, the project economics represent a good deal for the Public Entities and for RIDA, and time is of the essence to memorialize the economics to ensure that the redevelopment of the CVB proceeds as soon as possible.

After extensive due diligence efforts, the parties wish to enter into the LOI to memorialize the basic economic terms of the project, subject to the terms of the ENA. These economic terms will allow the District and City to deliver not only the RHCC, which is a key part of the CVB vision, but also a majority of the public amenities for the CVBMP including parks and public access that were envisioned through the community planning effort.

The LOI is subject to the provisions of the ENA and does not supersede the terms of the ENA. The intent of the LOI is to guide the negotiations pursuant to the ENA with the ultimate goal to enter into a Definitive Agreement. The terms of the ENA will remain in effect until such time as the ENA either terminates by its terms or a Definitive Agreement is approved and adopted by the Public Entities.

This discussion provides a detailed overview of the planning efforts associated with the CVB, the development partnerships necessary for the RHCC, and an explanation of the financial structure of the project. For reference, a Glossary of Terms and a Timeline Overview are included as Attachments E and F, respectively. Below is a table of contents for the complete discussion section:

- I. Background: Assembling Land, Creating a Plan, and Forming the Partnership
  - a. South Bay Memorandum of Understanding
  - b. South Bay Power Plant Acquisition
  - c. Rohr Relocation Agreement
  - d. Chula Vista Bayfront Master Plan
  - e. Early Efforts with Gaylord
  - f. Obtaining the Port Master Plan Entitlements
  - g. Pacifica Land Exchange
  - h. Chula Vista Bayfront Settlement Agreement
  - i. Port/City Partnership
- II. Request for Qualifications for the Resort Hotel and Convention Center
  - a. Marketing the RFQ
  - b. RFQ Selection: RIDA Development Corporation
- III. Project Economics: A Good Deal for RIDA and the Public Entities
  - a. Due Diligence Process

---

**File #:2017-0338**

---

- IV. Development Partnerships
  - a. Private Development Program
  - b. Public Development Program
- V. Financing Agreement
- VI. Key Economic Terms
  - a. Overview of Proposed Method of Financing
  - b. Proposed Financing Structure
  - c. Proposed Public Contributions toward Infrastructure and Convention Center
  - d. Required Private Investment
  - e. Basic Ground Lease Terms
  - f. Public Entities Participation in NOI
  - g. Financial Returns to RIDA
  - h. Proposed Cash Flow Distribution (“Waterfall”)
  - i. Parking Space Funding TBD - Port Obligation
  - j. Ancillary Development Rights
- VII. Next Steps
  - a. Disposition and Development Agreement
- VIII. Recommendation

## **I. BACKGROUND: ASSEMBLING LAND, CREATING A PLAN, AND FORMING THE PARTNERSHIP**

In partnership with the City, the District has been working on redeveloping the CVB for more than 20 years. Throughout the past two decades, many actions have been taken by the Board to allow the District and the City to implement a new vision for the CVB. These actions started with the consolidation of lands on the CVB and the elimination of blighted industrial uses through the Relocation Agreement<sup>5</sup> (Relocation Agreement) with Rohr, Inc., a United Technologies Aerospace Company (Rohr) and the acquisition of the South Bay Power Plant (SBPP). Each successive action has built upon the previous to establish a foundation for the master planning process which resulted in the CVBMP and to allow for the full implementation of the vision for the CVB. The following are brief summaries of each of these actions.

### **I. a. South Bay Memorandum of Understanding**

In 1996, the District entered into a Memorandum of Understanding<sup>6</sup> (MOU) with each of the South Bay cities (National City, Chula Vista, Imperial Beach, and Coronado) as a result of the District’s contribution to the phase two expansion of the San Diego Convention Center. These MOUs identified specific projects that the District would fund in each city within the District’s jurisdiction. Many of the projects were implemented shortly after execution of the MOUs. Chula Vista utilized the funds received from its MOU for projects that would lead to the long term redevelopment of the CVB.

### **I. b. South Bay Power Plant Acquisition**

In 1999, the District acquired the SBPP in order to facilitate the vision of reinventing the CVB. The District entered into a lease agreement with Duke Energy South Bay, LLC, and thereafter, consented to the assignment of the SBPP Lease and associated agreements to Dynegy South Bay, LLC (Dynegy South Bay)<sup>7</sup>. In October of 2010, Dynegy South Bay received a letter from the California

---

**File #:2017-0338**

---

Independent Systems Operator terminating the Reliable Must Run status of the SBPP and clearing the way for decommissioning and removal of the SBPP along with associated remediation of the site. Since then, the District and Dynegy South Bay have demolished the SBPP, which occurred on February 2, 2013. The removal of the SBPP initiated the development of the CVBMP by providing additional land area for public infrastructure, improvements and revenue generating development opportunities on the CVB and was a powerful signal to the community.

I. c. Rohr Relocation Agreement

In 1999, the District entered into the Relocation Agreement with Rohr and the City in order to consolidate Rohr's operations to its north campus and to free up additional land for future redevelopment. Specifically, the Relocation Agreement contemplated a series of land exchange transactions that included the transfer of the uplands portion of Rohr's industrial campus located south of H Street (referred to as the South Campus) from Rohr to the District, in exchange for Rohr's tidelands portion of its campus north of H Street.

I. d. Chula Vista Bayfront Master Plan

In 2002, the District and City entered into a Joint Planning Agreement<sup>8</sup> and began a collaborative planning process to create a master plan for the CVB area - comprised of historic tidelands, the acquired SBPP site and realigned Rohr campus. This process included an award-winning public participation program with the Citizens Advisory Committee (CAC). The program established three primary goals for the master plan: to develop a world-class waterfront; to create a plan that is supported by sound planning and economics; and, to create a plan that has broad-based community support. In response to the CAC's request, Pacifica joined this process in 2003<sup>9</sup> in order to integrate its planning effort with the master plan being implemented for District properties.

The master planning effort involved extensive community outreach and public participation, and has served as a hallmark example of a successful joint and collaborative planning effort between the Public Entities. The resulting plan is representative of the collective vision and planning goals of the community, the broader region, the District, and the City. The CVBMP promotes public access to and engagement with the water, while enhancing the quality and protection of key habitat areas. Once fulfilled, the CVBMP will create a world-class destination that reflects strong planning and design principles, economic feasibility, and community benefits.

For planning purposes, the CVBMP was divided into three districts: the Sweetwater District, which comprises the northern portion of the planning area, south of the Living Coast Discovery Center; the Harbor District, which includes the central portion of the planning area where the marinas are located and the RHCC is proposed; and the Otay District which encompasses the southern portion of the planning area where the SBPP was previously located.

*Sweetwater District*

The Sweetwater District, located in the northernmost portion of the CVBMP area, consists of approximately 130 acres. Development in the Sweetwater District focuses on lower scale, environmentally sensitive, and environmentally themed uses. Approved uses include a large ecological buffer, a 21-acre signature park, a bike path and pedestrian trails and other open space

---

**File #:2017-0338**

---

areas.

### *Harbor District*

The Harbor District is most directly accessible to downtown Chula Vista and will be redeveloped to provide a significant link from the City to the CVB. It consists of approximately 221 acres of land and 59 acres of water. Visitor-serving amenities and mixed-uses will be clustered in the Harbor District to reduce impact on environmentally sensitive areas. A close up of the Harbor District parcels is included as Attachment G.

### *Otay District*

The Otay District, which consists of approximately 125 acres at the southernmost end of the CVBMP area, is planned to include industrial business park uses, lower-cost visitor serving recreational uses, a park, as well as other open space areas, an ecological buffer, bike path, pedestrian trails, and new roadways and infrastructure.

Surrounded by unique and valuable natural resource lands, the CVB seeks to best protect and enhance environmental resources while accommodating reasonable commercial development for a vibrant and viable waterfront project. When completed, more than 53% of the plan (286 acres) will be dedicated to the public realm, including parks, open space, habitat restoration/preservation, and water areas, as well as roads, bikeways, and promenades. Marina improvements will create an active commercial harbor with retail shops, restaurants and public space at the water's edge.

#### I. e. Early Efforts with Gaylord

In June 2005, the District received an unsolicited letter of interest from the Gaylord Hotels brand (Gaylord) regarding development of a major resort hotel and convention center on the CVB. Gaylord presented its qualifications, experience and concept to the Board, City Council, and CAC at a number of public meetings. The Gaylord concept was well received and was recognized as a more economically viable alternative to the stand-alone event center that had been originally contemplated as an element of the CVB.

In August 2005 the Board concluded that the Gaylord proposal represented an attractive concept and suitable "anchor" use for the CVBMP, and directed District staff to conduct a competitive RFQ to determine if there were other developers that would advance potentially superior proposals. The Board reviewed the responses to the RFQ at its October 25, 2005 meeting, concluded that the Gaylord proposal was the best choice, and directed staff to enter into an exclusive negotiating agreement with Gaylord.

The District entered into exclusive negotiations with Gaylord and in July 2007, the District, the City, the Redevelopment Agency of the City of Chula Vista, and Gaylord Entertainment Company entered into a letter of intent. Due to several factors, including the economic downturn, Gaylord chose not to move forward at that time and the letter of intent expired on December 31, 2008.

#### I. f. Obtaining the Port Master Plan Entitlements

---

**File #:2017-0338**

---

The environmental review process for the CVBMP was lengthy and complex, subject to multiple changes in direction, and resulted in the public circulation of two EIRs - in total taking more than five years to complete.

The first draft EIR was circulated to the public in 2006 and received substantial public comment. In order to address comments received, the 2008 Revised Draft EIR included greater detail and added analysis to address the project specific components of the plan. One of these projects contemplated in the 2008 Revised Draft EIR was the Gaylord proposal, which would serve as the catalyst and economic driver for the redevelopment of the CVB. Preparation of the final EIR was nearly complete when Gaylord withdrew its plan for developing the RHCC. To move the EIR forward, despite Gaylord's exit, staff revised the document to remove specific references to the project proponent, but continued to advance the resort hotel and convention center on the H3 parcel in acknowledgement of that development component as the critical catalyst of the master plan.

In May 2010, the Board certified the final EIR<sup>10</sup>. At this hearing, the Board unanimously approved the amendment to the Port Master Plan, and the City Council, City Planning Commission, and City Redevelopment Corporation each unanimously approved amendments to the City's Local Coastal Program.

Later that year, in December 2010, the California State Lands Commission (SLC) approved the land exchange between the District and Pacifica, as described below.

On August 9, 2012, the CCC unanimously approved the CVBMP amendments to the Port Master Plan and the Local Coastal Program. The adopted Port Master Plan Amendment<sup>1</sup> includes text, a precise plan, and a project list specific to the CVB Planning District, as well as a Public Access Program<sup>11</sup> and Development Policies<sup>12</sup>. This approval followed many months of collaboration with CCC staff, which served to strengthen and enhance the master plan's provision of coastal access and protection of natural resources.

I. g. Pacifica Land Exchange

It was recognized through the planning process that shifting high density residential land uses from the more environmentally sensitive Sweetwater District to the centrally located Harbor District would serve as an economic catalyst for the overall CVB and would also create an environmentally superior land use plan. Since residential uses are not permitted on District owned land, an exchange was necessary. To achieve this, Pacifica agreed to give SLC its approximately 97 acre parcel located in the Sweetwater District in exchange for the District's approximately 35 acre parcel within the Harbor District.

The Board approved the land exchange between the District and Pacifica on February 2, 2010, and it was subsequently approved by the SLC on December 10, 2010<sup>13</sup>. The exchange closed on February 18, 2016.

I. h. Chula Vista Bayfront Settlement Agreement

During the planning stages of the CVBMP, the District and the City sought to obtain the Bayfront Coalition's (Coalition) support for approval of the CVBMP. Similarly, the Coalition wished to obtain

---

**File #:2017-0338**

---

additional measures for protection of the environment above and beyond those required by the California Environmental Quality Act and any other federal, state, and local laws and regulations applicable to the project. As a result, a Settlement Agreement was negotiated between the Coalition, the District, and the City detailing the commitments of the parties as they relate to the approvals of the master plan<sup>14</sup>.

The Coalition is comprised of the Environmental Health Coalition, San Diego Audubon Society, San Diego Coastkeeper, Coastal Environmental Rights Foundation, Southwest Wetlands Interpretative Association, Surfrider Foundation (San Diego Chapter), and Empower San Diego.

The Settlement Agreement includes specific planning, design, funding, and implementation elements, many of which were incorporated into the EIR and Mitigation Monitoring and Reporting Program<sup>15</sup>, as well as the Development Policies included with the Port Master Plan Amendment approved by the CCC. The Settlement Agreement also required the formation of the Wildlife Advisory Group and the Bayfront Cultural Design Committee.

#### *Wildlife Advisory Group (WAG)*

In recognition of the sensitivity of the natural resources in the CVB and the importance of protecting, restoring, and managing, those resources, the Settlement Agreement required the formation of the South Bay Wildlife Advisory Group (WAG). One of the primary duties of the WAG is to advise the District in the preparation of a Natural Resources Management Plan (NRMP)<sup>16</sup>. The NRMP, which was adopted by the Board on May 10, 2016, achieves specific management objectives established by the Settlement Agreement for areas designated as Wildlife Habitat Areas. The WAG actively meets quarterly to discuss progress on the CVB.

#### *Bayfront Cultural Design Committee (BCDC)*

The Settlement Agreement also required the formation of a Bayfront Cultural Design Committee (BCDC) to advise the District in the establishment of design guidelines to ensure cohesive development and streetscape design standards, walkways and bikeways design to promote safe walking and biking, standards for design of park areas, and cultural facilities throughout the CVB.

The BCDC is also required to provide input on the design of major development projects on the CVB. As such, prior to the Board's consideration of a design concept for the RHCC, District and City staff will consult with the BCDC to ensure their feedback is incorporated into the design of this project.

#### I. i. Port/City Partnership

In 2002, the District and City began a collaborative planning process to create a master plan for the CVB. Through the collaborative process, the partnership worked together to certify the EIR and amended the Chula Vista Local Coastal Plan. These efforts created the foundation to then identify the key financing sources and mechanisms needed to implement the CVBMP. The Public Entities entered into the Financing Agreement, setting forth the revenue sources and financing alternatives necessary to implement the development of the CVBMP, which Financing Agreement is now being updated as the Amended and Restated Financing Agreement to incorporate new sources of revenue and will be considered by the Board on June 20, 2017. The District and City team continue to work

---

**File #:2017-0338**

---

diligently towards the implementation of the CVBMP. Within the CVBMP program, there are numerous individual project elements that have been identified. Below are some examples of the functions the District and the City continue to collaborate on:

Finance and Pre-Development

- Infrastructure - Planning, Development and Operations
- Environmental Compliance and Entitlements
- Real Estate - Leasing and Acquisitions
- Communications and Inter-Governmental Affairs

The team includes both District and City representation in order to continue the collaborative spirit that helped to establish the success of the CVBMP.

## **II. REQUEST FOR QUALIFICATIONS FOR THE RESORT HOTEL AND CONVENTION CENTER**

The centerpiece and catalyst for development on the CVB is the RHCC project. It is most critical to the implementation of the CVB because it includes or is expected to generate the revenues necessary to fund the public infrastructure and improvements and environmental obligations associated with the CVBMP and the Settlement Agreement requirements for this project. To begin the process of identifying a developer qualified to construct the project consistent with the vision of the CVBMP, on May 6, 2014, the Board adopted a resolution authorizing the issuance of a RFQ for development of Phase 1 of the CVB, which included developing a 1,400-to 1,600-room resort hotel and an approximate 400,000 square foot convention center. The RFQ also allowed for potential additional development opportunities on other parcels directly adjacent to the Site. After an extensive international marketing campaign, RIDA was selected as the developer of the RHCC.

### **II. a. Marketing the RFQ**

The CVB development opportunity was addressed through a multidimensional marketing plan that was international in scope including a marketing plan for the RFQ that specifically addressed the hotel convention center industry. The effort included an international invitation to respond to the RFQ placed in major publications and trade journals and directed to an extensively developed mailing list and a professionally produced and branded RFQ and pre-solicitation marketing materials were developed to include high quality graphics and images.

The RFQ was released through web and print based formats. Additionally, the RFQ was marketed directly to potentially interested parties. Notwithstanding this marketing effort, due to the extremely complex nature of this project, 1,400 -1,600 room resort hotel and approximately 400,000 square feet convention center, only one qualified response was received.

### **II. b. RFQ Selection: RIDA Development Corporation**

The RFQ was issued on June 30, 2014 and responses were due on September 8, 2014. One response to the RFQ was received from RIDA. ARES Management, L.P. (ARES), was included as the financial partner, WELBRO as the general contractor and three well qualified architectural firms. A

---

**File #:2017-0338**

---

two stage RFQ/RFP solicitation process for the hotel and convention center parcel was originally envisioned, however, since there were not multiple responses to the RFQ, and RIDA Development Corporation is one of the most well-qualified firms to complete a project of this magnitude, the Board selected RIDA Development Corporation as the successful respondent on October 14, 2014 and authorized staff to negotiate an ENA with RIDA Development Corporation.

RIDA Development Corporation is the ideal partner to make the RHCC project a reality. RIDA Development Corporation is a full service real estate organization that has created and invested in innovative and economically successful office, residential, industrial, hospitality and retail developments for more than forty years. RIDA Development Corporation's corporate headquarters are located in Houston, TX with regional offices in Orlando, FL and Warsaw, Poland. These centralized locations allow RIDA Development Corporation to oversee its projects in the US, as well as Europe. Among RIDA Development Corporation's strategic relationships is a longstanding partnership with ARES with whom they have co-invested in over \$4 billion worth of investments and development on three continents. RIDA Development Corporation and ARES have previously partnered on at least five projects comparable in size and scope to the RHCC project, including the recently opened Marriott Marquis Houston and the currently under construction Gaylord Rockies Hotel (Aurora, CO).

The qualifications and experience that RIDA and its prospective subcontractors bring to the project are summarized below:

- Successfully developed, or in the process of developing, convention style full service hotels consisting of similar large scale resort hotels and convention centers
  - Hilton, Orlando (1,400 room, 175,000 square foot (sf) convention)
  - Omni Orlando at Champions Gate (720 room, 128,000 sf convention)
  - Marriott Marquis, Houston (1,000 room, 105,000 sf convention)
  - Gaylord Rockies Hotel, Aurora, CO (1,507 room, 485,000 sf convention)
- Team members have led the architectural design of similar large scale resort hotels and convention centers
  - Marriott Marquis, Houston
  - Omni Orlando at Champions Gate
  - Hilton, Orlando
  - The Palazzo, Las Vegas
- Team members have successfully secured equity and debt financing for pre-construction, construction and permanent operations of similar large scale resort hotels and convention centers
  - Hilton, Orlando
  - Hyatt Regency, New Orleans
- Relevant experience as a team
  - Hilton, Orlando
  - Marriott Marquis, Houston
  - Omni Orlando at Champions Gate
  - Gaylord Rockies Hotel, Aurora, CO (Opening 2018)

---

**File #:2017-0338**

---

RIDA embraces the District's and the City's vision and commitment to enhance, but respect the environment. RIDA's proposal successfully captures the vision and understanding of the RHCC project objectives and thoroughly defines the elements necessary to make the project work. Their project concept is well-positioned to attract international and national visitors, residents of the South Bay Area and San Diego County in general.

### **III. PROJECT ECONOMICS: A GOOD DEAL FOR RIDA AND THE PUBLIC ENTITIES**

Concurrent with the Board's selection of RIDA Development Corporation as the successful respondent to the RFQ, the Board also authorized staff to negotiate an ENA with RIDA. An ENA was negotiated through a collaborative effort between District staff, City staff and RIDA. The ENA sets forth a timeline for items to be delivered to the District during the term of the ENA, including a proposal for the RHCC. The ENA commenced on February 10, 2015 and will terminate on February 16, 2018.

#### **III. a. Due Diligence Process**

Since the ENA was entered into, the District, the City and RIDA have conducted extensive due diligence to understand the challenges of the project, the needs of the CVB and potential economic impacts. Over the course of the past two years, RIDA has provided staff with financial projections, including both revenue and cost estimates. Staff has also worked with multiple outside consultants to provide specific, specialized analysis to understand the information provided by RIDA, and create the financial projections that will ultimately be used as support for the economic terms of the LOI, and ultimately the Definitive Agreement. The following are the major consultant reports used in staff's analysis of the RHCC economic deal terms:

- Revenue Analysis: Report from CBRE Hotels
- Development Cost Analysis: Jones Lang LaSalle (JLL) Development Cost Review
- Feasibility and Financial Gap Analysis: KMA Report

For the Revenue Analysis, staff engaged CBRE Hotels (formerly PKF) to analyze the projected hotel revenues proposed by RIDA. Attachment H is the most recent CBRE report that analyzes expected hotel revenues for the RHCC. This analysis provided the basis for the District's and KMA's financial projections, ultimately assisting with key negotiated deal terms.

For the Development Cost Analysis, JLL provided feedback on estimated development costs presented by RIDA for the RHCC. This analysis was also used to help understand the proposed contribution of each of the parties and RIDA's overall project cost. JLL's analysis determined that compared to recent, new hotels in the market, the higher-than-average cost projections submitted by RIDA could be justified by their use of additional amenities, hotel theming, and quality of design. Development cost refinements will be factored into the Definitive Agreement with the requirement that the District will have the right to review and confirm costs. JLL's report on development cost is included as Attachment I.

Utilizing the information from RIDA, CBRE and JLL as well as their industry expertise, KMA has modeled potential financing scenarios and returns which are further described in the Key Economic

**File #:2017-0338**

Terms section below.

#### **IV. DEVELOPMENT PARTNERSHIPS**

##### **IV. a. Private Development Program**

The RIDA proposal chosen in 2014 is consistent with the vision of the CVB and RHCC project. Through extensive due-diligence review and constant on-going negotiations with RIDA, the project scope for the RHCC has been identified.

##### *Project Scope*

The following lists the key components of the RHCC project, with concept drawings included as Attachment J. The renderings have not been reviewed for consistency with the CVBMP, EIR, or other agreements applicable to the CVB, and may be presented with some modifications for approval at a future date.

Proposed Brand	Gaylord Hotels
Hotel Rooms	1,450
Convention & Meeting Space	275,000 Usable Square Feet
Amenities	Associated Retail and Resort-level Amenities
Parking	Approximately 1,500 spaces

RIDA is negotiating with Marriott to operate a Gaylord hotel for the proposed RHCC. This introduction of Gaylord is expected to reduce projected risk associated with the project and provide for certainty in bookings. The Gaylord product type has a proven track record of inducing demand in unproven markets and guarantees long-term bookings.

Gaylord Hotels is the large convention hotel brand of Marriott International <[https://en.wikipedia.org/wiki/Marriott\\_International](https://en.wikipedia.org/wiki/Marriott_International)>. The Gaylord properties are owned by Ryman Hospitality Properties, Inc. (Ryman). It owns four large hotels <<https://en.wikipedia.org/wiki/Hotel>>, each with an attached convention center <[https://en.wikipedia.org/wiki/Convention\\_center](https://en.wikipedia.org/wiki/Convention_center)> and overflow support hotel property. On May 31, 2012, Marriott International bought the rights to manage Gaylord's four hotels under the ownership of Ryman and managed under the Gaylord name.

##### **IV. b. Public Development Program**

In the process of determining the financial feasibility of the RHCC, it was determined that in order for the RHCC to move forward and to be developed, there was a need for a public financial subsidy. As described in further detail in the attached KMA report, the public subsidy contribution contemplated, but subject to a plan of finance between the District and the City (Plan of Finance) to be developed during the term of the Definitive Agreement, can be described as follows:

1. Phase 1A Infrastructure: \$56.3 Million
2. Public Entities Contribution for Convention Center Project: \$225 Million
3. District-developed and owned parking
4. City sewer improvements and fire services

---

**File #:2017-0338**

---

The District and City will provide evidence of the revenue sources through a future Plan of Finance that will cover the public portion of the convention center and required infrastructure of the RHCC; it is anticipated that bond financing will be required to finance the public contribution. Subject to the terms of the Plan of Finance, the Public Entities would work collaboratively to issue the debt prior to the close of escrow of the ground lease for the Site. According to the attached Amended and Restated Financing Agreement (Attachment K), which was approved by the City in November and will be considered by the Board on June 20, 2017, subject to the Plan of Finance, the Public Entities would commit sources of revenues identified in the Amended and Restated Financing Agreement that could be used to pay down the infrastructure bonds and associated debt service.

As a part of the strategy to finance the public infrastructure and improvements, a Phase 1A public infrastructure program has been developed to identify the infrastructure needed to support the RHCC. This Phase 1A program includes providing roadway access and utility service to the H-3 parcel; improving the adjacent area; and building new parks. It is currently contemplated that the Public Entities will fund the Phase 1A infrastructure through the issuance of debt to be further defined in a Plan of Finance. Similarly, the District will deliver the Site to RIDA upon ground lease execution. Prior to delivery of the Site to RIDA, the District will complete such portions of the Phase 1A infrastructure to be agreed to by the parties in the Definitive Agreement and remove, or cause the removal of, the existing recreational vehicle (RV) park.

To serve the proposed RHCC, new streets and utilities will be constructed around the perimeter of H-3 as a part of the Phase 1A public infrastructure. H Street will be extended to the expanded Bayside Park, and the new roadway will continue to the north and east to connect to existing Lagoon Drive.

The existing Bayside Park will be expanded into a 24-acre park with improvements that may include lawns, plaza, landscaping and parking. A pedestrian and Class I bicycle path will run through the new Harbor Park and extend to the north through the Sweetwater Signature Park to connect to the Bayshore Bikeway and City of Chula Vista pedestrian system at E Street and Bay Boulevard.

The District also plans to construct parking spaces to serve not only the RHCC but ultimately the CVB as a whole. RIDA has requested the use of some of the parking spaces for hotel guests and employees, with the remainder of the spaces for public use.

## **V. FINANCING AGREEMENT**

The Financing Agreement for the CVB was approved by the Board in 2012 and set forth the framework for the financing and development of the public improvements and infrastructure within the CVB by the District and the City. The development of public improvements and infrastructure is necessary for the implementation of the CVBMP in accordance with the certified EIR and Port Master Plan Amendment, and for the RHCC to move forward together with other development within the CVB project area. As contemplated in the Financing Agreement, a subsequent plan of finance would further define and implement the financing contemplated by the Financing Agreement. Since the Financing Agreement was entered into in 2012, the parties have been working to update the approach to the financing and development of the public improvements and infrastructure within the CVB. Specifically, new sources of revenue from both the District and the City have been identified. The Financing Agreement is now being updated and on June 20, 2017, the Board will consider the

---

**File #:2017-0338**

---

Amended and Restated Financing Agreement, which identifies these new revenue sources and differentiates between the RHCC related public infrastructure and improvements and those required for future phases of the development on the CVB.

### *Joint Powers Authority Formation*

In 2014, the District and the City formed the Chula Vista Bayfront Facilities Financing Authority (CVBFFA) to undertake the financing of the CVB project contemplated by the Financing Agreement. The Amended and Restated Financing Agreement lays the foundation for the District and the City to use either the CVBFFA or form a new joint powers authority to issue the financing of the public infrastructure and improvements related to the RHCC.

## **VI. KEY ECONOMIC TERMS**

### VI. a. Overview of Proposed Method of Financing

District, the City, and RIDA have worked together to identify the key economic terms that will support the construction and operation of the RHCC, all while achieving favorable market returns to both the Public Entities and RIDA. During earlier discussions with Gaylord and prior to the selection of RIDA, the District and City had already anticipated that early phases of development on the CVB would require public financial contributions.

The Financing Agreement identified sources of revenues from the City and District to develop the public improvements and infrastructure, and the Amended and Restated Financing Agreement that will be considered by the District on June 20, 2017, identifies further sources of revenue from the District and City in order to make the RHCC project feasible. The District and City will provide evidence of the sources of revenue and financing based on the Plan of Finance in order to fund the public portion and required infrastructure of the RHCC, and it is anticipated that bond financing will be used. The Public Entities will work collaboratively pursuant to the terms of the Plan of Finance and Definitive Agreement to issue the debt for the public contribution prior to the close of escrow of the ground lease for the Site.

The District and City proposed financial contributions identified in the proposed LOI have been analyzed by KMA, and the KMA feasibility and financial gap analysis is presented in Attachment D. The KMA report includes a comprehensive financing gap analysis justifying the need for the District and City proposed contributions toward construction of infrastructure, parking, and the convention center portion of the RHCC. Additionally, the KMA report presents a feasibility analysis of the proposed method of financing for the RHCC. The KMA report illustrates how the public contribution toward the RHCC related public infrastructure and improvements will be supported primarily through project-generated revenues, i.e., most of the District and City financial contribution amounts are in effect “performance-based”. To that end, KMA has concluded that the RIDA projected return after the public investment and rent structure is not excessive. This finding indicates that the Public Entities contribution and District rent structure is warranted and needed in order for the RHCC to move forward and to be developed. Ultimately RIDA will need to control development costs and/or improve operating performance in order to achieve a satisfactory long-term return.

### VI. b. Proposed Financing Structure



---

**File #:2017-0338**

---

The revenue sources identified are from the Financing Agreement and the proposed Amended and Restated Financing Agreement. If the Board authorizes the Amended and Restated Financing Agreement on June 20, 2017, new sources of revenue will be considered. Table IV-6 in the attached KMA report provides an illustrative example of the District and City revenue contributions toward the proposed bonds to finance the convention center contribution and infrastructure based on the Amended and Restated Financing Agreement at Lease Year 7, i.e. projected stabilized year of RHCC operations.

Furthermore, it is contemplated that the District will lease the land to RIDA with a modified rent structure that will allow the RHCC project to achieve the necessary return. The District's contribution of the land under a modified rent structure is essential and represents an additional contribution not represented in the table referenced.

#### *Preliminary Estimate of Supportable Bond Underwriting*

The City engaged JP Morgan Securities, LLC (JP Morgan) to provide investment banking and bond underwriting services. JP Morgan prepared estimates of achievable bond financing based on the revenue streams to be pledged by the District and City. In the KMA Report, KMA analyzed JP Morgan's estimates. Based on this analysis, KMA determined that the JP Morgan projections were based on currently available bond underwriting terms, the relative creditworthiness of the pledged revenue streams, and JP Morgan's professional judgement regarding debt service coverage, interest rate, and costs of issuance and capitalized interest during construction. Moreover, KMA found that the JP Morgan bond runs assume a 37-year term, inclusive of the construction period, and effective interest rates of 5.48% for taxable bonds and 4.41% for tax-exempt bonds. Notably, KMA has used a 1.75 debt service coverage ratio recommended by JP Morgan. KMA concluded that JP Morgan assumed ascending debt service schedules, i.e., annual debt service rises over the term subject to the 1.75 debt service coverage limit. In effect, KMA determined the bond sizing is based on \$1.00 of debt service for every \$1.75 of projected revenue. KMA concludes in its report that while this is a conservatively high debt service coverage assumption, i.e., it reduces the achievable bond financing amounts, it also results in significant projected surplus cash flow after debt service (see further discussion in Section VI.h below).

The following table summarizes the KMA analysis on the currently anticipated underwriting terms for the District/City bond financing for the convention center contribution and infrastructure. KMA determines that by using the currently anticipated underwriting terms, the pledged revenues are projected to be sufficient to support the net bond proceeds required to fund the District and City obligations under the LOI. KMA qualified its finding with the fact that the bonds will be issued at a future date to be determined, at which time economic conditions may vary from the figures used in this preliminary feasibility analysis. KMA recommends that RIDA, the District, and the City continually monitor real estate market factors and bond financing parameters to determine if any changes to these projections are warranted.

File #:2017-0338

PRELIMINARY UNDERWRITING TERMS FOR PROPOSED BOND FINANCING

Total Revenues Pledged, Lease Year 7 Estimates

District	\$7.7M
City	\$22.9M
Total	\$30.6M
Debt Service Coverage Factor	1.75 DSC
Interest Rate	5.48% taxable 4.41% tax-exempt
Bond Term	37 Years (including construction period)
Approx. Net Bond Proceeds	\$225M Convention Center Contribution \$56M Infrastructure

VI. d. Required Private Investment

KMA's report provides that RIDA will be responsible for a private investment in the RHCC project of no less than \$688 million. This investment is expected to take the form of a combination of debt (third party loans) and equity. The chart below is taken from the KMA report and summarizes the required private investment in the RHCC project.

## REQUIRED PRIVATE INVESTMENT

	<u>Factor (Loan to Value)</u>	<u>Amount</u>
A. Maximum Debt	65% LTV	\$447M
B. <u>Minimum Equity</u>	35% LTV	\$241M
C. TOTAL PRIVATE		\$688M

VI. e. Basic Ground Lease Terms

Under the terms of the LOI, RIDA will pay a fixed ground rent schedule for the project during the bond financing term, estimated to coincide with Lease Years 1-37. The fixed ground rent schedule for this period is as shown below.

- Lease Years 1-18                      \$0
- Lease Years 19-23                    \$3.0 million
- Lease Years 24-37                    \$3.5 million

As detailed in the KMA report, beginning in Year 38, the proposed rent structure for the project will be in line with or higher than the District's standard percentage rent categories for room, food, and beverage. The banquet percentage rent category has been broken out from the room rent category and is slightly lower than in typical District leases. Percentage rent rates for the remaining categories

**File #:2017-0338**

of revenue are to be agreed to in the Definitive Agreement. However, since the proportional size of the convention center space is larger than found in other hotel properties on District tidelands, the RHCC is projected to generate disproportionately higher banquet revenues. On this basis, staff agreed that a lower banquet percentage rate is justified. Additionally, the banquet rate increases to the District's standard room rent rate in Lease Year 48.

VI.f. Public Entities Participation in NOI

The KMA report also explains that in addition to ground rent paid to the District, RIDA will pay the Public Entities an annual participation payment based on surplus Net Operating Income (NOI) from the RHCC project. As set forth in the KMA report, the Public Entities will receive 20% of surplus NOI above an 11% ROI threshold for RIDA during Lease Years 4-37. KMA has prepared a preliminary projection of this potential future revenue stream, which is summarized in the chart below. Section VI.h below provides a discussion related to the proposed distribution of the Public Entities participation payments, as well as surplus cash flow after debt service, between the District and City.

## PROJECTED Annual NOI Participation Payments to Public Entities

<u>Lease Year</u>	<u>Estimated NOI Participation Payme</u>
Years 1-3 (Construction)	\$0
Years 4-11	\$0
Year 12	\$0.025M
Year 20	\$2.7M
Year 30	\$7.8
Year 37	\$12.6M

VI.g. Financial Returns to RIDA

Calculations of a target Return on Investment (ROI) to RIDA, and the share of NOI between RIDA and the Public Entities, were based on an analysis of target returns for RIDA. Given the level of risk associated with undertaking such a major new investment on the relatively undeveloped CVB in a single phase, Consultants agree that the upper end of this range is warranted for the proposed RHCC. The proposed District and City financial contributions are structured to target an ROI to RIDA of 11% in the stabilized year, i.e., the fourth year of operations or Lease Year 7. The KMA report projects that RIDA will achieve an ROI in Lease Year 7 of 10%, lower than the target return threshold.

KMA also prepared long-term operating income and expense projections for the duration of the proposed 66-year ground lease. These projections indicate that the District and City contributions are warranted, that the RIDA return is not excessive, and ultimately that RIDA will need to control development costs and/or enhance operating performance in order to achieve a satisfactory long-term return. At the same time, the proposed participation in RHCC NOI provides for the Public Entities to participate in the success of the RHCC project as well.

VI.h. Proposed Cash Flow Distribution ("Waterfall")

The KMA reports notes that the proposed bond financing structure will result in significant surplus

---

**File #:2017-0338**

---

cash flow after debt service. Additionally, RIDA will make NOI participation payments to the Public Entities. District and City staff have discussed in detail various approaches to distribute these funds. The KMA report outlines the current concept to allocate these funds through a “waterfall”, with the priority sequence shown in Table IV-11 in the attached KMA report. As an example, the KMA chart presents the projected figures for Lease Years 7 (stabilized operations) and 13 (10<sup>th</sup> year of operations).

KMA concludes that once the RHCC project has stabilized, the District anticipates that it will receive a reimbursement of its annual contribution toward debt service. Moreover, KMA finds that both the District and City will be able to reimburse themselves for their respective CVB infrastructure operating and maintenance (O&M) expenditures. KMA forecasts a remaining positive cash flow even after the priority distributions,. KMA recommends that District and City staff will need to negotiate how these surplus funds are distributed.

#### VI.i. Parking Space Funding TBD - Port Obligation

The KMA report points out that its analysis requires that the District be responsible for financing, constructing, owning, and operating approximately 1,500 parking spaces to serve the RHCC project. District staff is evaluating the potential to develop 1,500-space parking spaces on Parcel H3. The District would assume all operating and maintenance expenditures for the parking for the duration of the RIDA ground lease. Parking gross revenues would be allocated 90% to RIDA and 10% to the District. The District’s share will increase to 15% of gross revenue if RIDA sells, on a cumulative basis, 51% or more of the RHCC project.

The total cost for the construction of the 1,500 parking spaces will be estimated at a future date. District staff is evaluating a variety of approaches to finance the parking. The preferred approach would be determined by the Board at a later date.

#### VI.j. Ancillary Development Rights

In order to implement the model adopted by Gaylord to attract sufficient convention business, Gaylord represents it needs access to additional rooms within close proximity of the main hotel and convention center in order to maximize the booking opportunities. Allowing for control over bookings five to six years out is integral to Gaylord operations, especially since standard hotels do not typically book that far in advance. RIDA requests a portion of the H23 parcel in order to facilitate the construction of 550 additional rooms necessary for the success of RHCC. Under the LOI, when the Definitive Agreement is executed, the District will execute a one year exclusive right to negotiate agreement with RIDA concerning a definitive agreement for the lease of up to 10 acres of the H23 parcel that are closest to the H3 parcel to develop up to 550 hotel rooms.

In addition, RIDA has requested the right to comment on future development projects on the H1, H1A, H8,H9 and H23 parcels that surround H3 parcel. See Attachment G for a map view of the H parcels. The reason this was requested was to provide guidance on types of operations, to ensure no duplications in operations, and to offer feedback on quality of design on those parcels. Since RIDA is a major partner in the development of the CVB, staff supports RIDA’s ability to comment on future development projects and welcomes feedback on future growth opportunities.

---

File #:2017-0338

---

## VII. NEXT STEPS

If the Board and the City Council approve the LOI, RIDA will expend additional funds to advance the RHCC project, specifically on project design. It is anticipated that the design process will take approximately 18 months to complete. Concurrent with RIDA making advancements on the RHCC project, the District will continue to advance other components on the CVB. The District is in the process of acquiring approximately four acres of land, known as the triangle parcel, which is an integral part of the development of the CVB and the RHCC. Also, the existing RV park leasehold is located within a portion of the CVB, on the future location of the Harbor District Park and RHCC. The lease for the Chula Vista RV Park expires in 2021<sup>17</sup>. The CVBMP requires all 237 RV stalls be replaced prior to the existing RV park closing. On October 13, 2016, the Board authorized the issuance of a RFP for the development and operation of the new RV park. On April 11, 2017, the Board selected the Sun Communities, Inc./Northgate Resort LLC team to build and operate the new RV park. Project design, environmental review and lease negotiations are currently under way. It is anticipated that construction on the new location will begin in 2018, paving the way for the development of the RHCC.

Staff will also continue to work with the City in developing the public infrastructure design and negotiating the Plan of Finance necessary to fund the public infrastructure and improvements.

### VII.a. Disposition and Development Agreement

The ENA between the District and RIDA sets forth the intent to exclusively negotiate and potentially enter into a binding agreement that specifies the rights and obligations of the District, the City and RIDA with respect to the lease, development and operation of the RHCC (Definitive Agreement). Based on the complexity of the transaction, and the various performance milestones that must be satisfied by the parties prior to the execution of the ground lease, the parties are currently negotiating the Definitive Agreement which is anticipated to be brought back to the Board for approval by the end of 2017.

The Definitive Agreement is contemplated to be for a 4 year term, with three, 1 year options to extend, and will set forth the obligations of the parties and the performance milestones needed to complete the pre-construction phase of the RHCC based on an agreed upon schedule of performance. This schedule of performance will set forth the various steps involved in the pre-construction phase and the obligations of all parties to complete that phase.

The Definitive Agreement will terminate (a) upon the execution of the ground lease, which will happen concurrently with the closing of the public and private financing, and commence the construction phase of the RHCC, or (b) (i) an uncured default or (ii) failure to satisfy a condition precedent prior to the close or a milestone set forth in the schedule of performance.

At each of the performance milestones to be identified in the Definitive Agreement, the City, District and RIDA will have the ability to evaluate their respective progress in meeting their milestones. In the event any of the performance milestones are not timely completed by any of the parties, the other parties will have certain rights to pause, delay or terminate such performance milestone under the Definitive Agreement. Only upon satisfaction of all of the conditions precedent and performance milestones set forth in the schedule of performance, will the necessary public and private financing

---

**File #:**2017-0338

---

be issued and the District and RIDA enter into the ground lease for the future Site of the RHCC.

### **VIII. RECOMMENDATION**

After two years of negotiations with RIDA, District and City staffs believe that the nonbinding LOI should be approved by the Board and City Council for the development of the RHCC, the catalyst project for development of the CVB. The LOI should be approved because in RIDA and the City, the District has found the right partners that are ready to move forward with the implementation of the CVBMP; the project economics represent a good deal for the District, for the City, and for RIDA; and time is of the essence to memorialize the economics to ensure that the redevelopment of the CVB proceeds as soon as possible. The LOI is an important next step toward catalyzing other additional development within the CVB. Once implemented, the CVBMP will create a world-class destination that reflects strong planning and design principles, economic feasibility and community benefits.

#### **General Counsel's Comments:**

The Office of the General Counsel has ongoing involvement in this matter and assisted in the preparation of this agenda sheet. As such, the Office of the General Counsel approves this agenda sheet and the proposed non-binding Letter of Intent as presented to it as to form and legality.

#### **Environmental Review:**

The proposed Board actions to authorize a non-binding Letter of Intent (LOI) does not constitute an "approval" of a project under the California Environmental Quality Act (CEQA) because the Board's authorization does not constitute a binding commitment to approve the proposed lease or any other associated discretionary approvals. Any negotiated lease would require Board approval. CEQA requires that the District adequately assess the environmental impacts of its leases and reasonably foreseeable activities that may result from its leases prior to the approval of the same. Accordingly, if negotiations are completed, and before the Board considers approval of a proposed lease, the District will conduct CEQA review of any potential environmental impacts from the proposed lease and any reasonably foreseeable activities that may occur as a result of the proposed lease. Such CEQA review may result in the District, in its sole and absolute discretion, requiring implementation of mitigation measures or adopting an alternative, including without limitation, a "no project alternative." The current Board action in no way limits the exercise of this discretion. Nevertheless, development associated with the Chula Vista Bayfront Master Plan, including the proposed hotel and convention center contemplated in the LOI, was previously analyzed under the Chula Vista Bayfront Master Plan and Port Master Plan Amendment Final Environmental Impact Report (UPD #83356-EIR-658, SCH #2005081077) which was certified by the Board on May 18, 2010 (Resolution No. 2010-78). At this time, no further action under CEQA is required.

In addition, the presentation and direction to staff allows for the District to administrate its obligations under the Port Act and/or other laws. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed presentation is consistent with the Public Trust Doctrine.

The proposed Board actions do not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal

**File #:2017-0338**

---

Development Permit (CDP) Regulations. Therefore, issuance of a Coastal Development Permit or exclusion is not required for the proposed Board actions. However, the District's leases and activities that may arise from those leases require processing under the District's CDP Regulations. If a proposed lease is negotiated, the Board will consider approval of a proposed lease after the appropriate determination under District's CDP Regulations is made, which could include a Coastal Development Permit. The current Board action in no way limits the exercise of the District's discretion under the District's CDP Regulations.

**Equal Opportunity Program:**

A Small Business Enterprise (SBE) Participation Plan including SBE goals for design/construction and leasing/operations is required.

**PREPARED BY:**

Adam Meyer,  
Department Manager, Redevelopment

Lesley Nishihira  
Principal, Planning and Green Port

Linda Scott  
Capital Projects Manager, Engineering-Construction

Stephanie Shook  
Asset Manager, Real Estate

**Attachment(s):**

- Attachment A: Historic Chula Vista Tidelands Map
- Attachment B: CVBMP Illustrative Graphic
- Attachment C: Non-Binding Letter of Intent
- Attachment D: KMA Feasibility Report
- Attachment E: Glossary of Terms
- Attachment F: Timeline Overview
- Attachment G: Harbor District Parcel Map
- Attachment H: October 4, 2016 Report from CBRE Hotels
- Attachment I: March 30, 2017 JLL RIDA Development Cost Review
- Attachment J: RIDA RHCC Project Renderings
- Attachment K: Amended and Restated Financing Agreement

---

<sup>1.</sup> SDUPD Clerk's Office Document No. 59406 filed October 5, 2012, Port Master Plan Amendment  
<sup>2.</sup> SDUPD Clerk's Office Document No. 59001 filed May 30, 2012, Chula Vista Bayfront Master Plan Financing Agreement between City of Chula Vista and San Diego Unified Port District  
<sup>3.</sup> SDUPD Clerk's Office Document No. 62033 filed July 3, 2014, Request for Qualifications for Chula Vista Bayfront Development Opportunity for Waterfront Convention Destination Resort Hotel  
<sup>4.</sup> SDUPD Clerk's Office Document No. 62899 filed February 11, 2015, Exclusive Negotiating Agreement; SDUPD Clerk's Office Document No. 65707 filed October 13, 2016 (Amendment No. 1); SDUPD Clerk's Office Document No. 66141 filed February 14, 2017 (Amendment No. 2)

**File #:2017-0338**

---

5. SDUPD Clerk's Office Document No. 39466 filed August 5, 1999, Relocation Agreement by and among City of Chula Vista, Redevelopment Agency of the City of Chula Vista, San Diego Unified Port District and Rohr, Inc..
6. SDUPD Clerk's Office Document No. 33004, filed September 12, 1996, Memorandum of Understanding between the San Diego Unified Port District and the City of Chula Vista.
7. SDUPD Clerk's Office Document No. 38358, filed November 29, 1999, Lease Agreement between San Diego Unified Port District and Duke Energy South Bay, LLC
8. SDUPD Clerk's Office Document No. 44952 filed December 18, 2002, Joint Planning Agreement Between San Diego Unified Port District and the City of Chula Vista
9. SDUPD Clerk's Office Document No. 47047 filed June 03, 2004, First Amendment to Joint Planning Agreement Between San Diego Unified Port District and the City of Chula Vista
10. Final Environmental Impact Report for the Chula Vista Bayfront Master Plan and Port Master Plan Amendment (UPD #83356-EIR-658, SCH #2005081077), dated June 18, 2010, on file in the Office of the District Clerk bearing Document No. 56562
11. SDUPD Clerk's Office Document No. 59408 filed October 5, 2012, Chula Vista Bayfront Master Plan Public Access Program San Diego Unified Port District and the City of Chula Vista
12. SDUPD Clerk's Office Document No. 59407 filed October 5, 2012, Chula Vista Bayfront Development Policies
13. SDUPD Clerk's Office Document No. 56067 filed February 19, 2010, Exchange Agreement by and between San Diego Unified Port District and North C.V. Waterfront L.P.
14. SDUPD Clerk's Office Document No. 56523 filed May 20, 2010, Chula Vista Bayfront Master Plan Settlement Agreement by and among the Bayfront Coalition, San Diego Unified Port District and City of Chula Vista, the Redevelopment Agency of the City of Chula Vista
15. SDUPD Clerk's Office Document No. 56555 filed June 2, 2010, Mitigation Monitoring and Reporting Program for the Chula Vista Bayfront Master Plan
16. SDUPD Clerk's Office Document No. 65065 filed June 6, 2016, Natural Resources Management Plan for the Chula Vista Bayfront
17. SDUPD Clerk's Office Document No. 14243 filed November 9, 1981, Lease between Chula Vista Marina/RV Park, Ltd. and San Diego Unified Port District, as amended from time to time.

# Historic Chula Vista Tidelands





**Chula Vista Bayfront Master Plan Illustrative Locally and State-Approved Land Use Plan by City of Chula Vista and Port of San Diego**

**NON-BINDING LETTER OF INTENT**

June 14, 2017

RIDA Chula Vista, LLC  
1777 Walker Street, Suite 501  
Houston, Texas 77107

**Re: Chula Vista Bayfront Hotel and Convention Center Project**

The San Diego Unified Port District (“District”), the City of Chula Vista (“City”) and RIDA Chula Vista, LLC, a Delaware limited liability company (“RIDA”), are working together with the goal of creating a world-class Chula Vista Bayfront through strong planning and design, economic feasibility, protection of key habitat areas and community outreach. The District, City and RIDA shall collectively be referred to herein, as the “Parties.”

On February 10, 2015, the District entered into an Exclusive Negotiating Agreement (“ENA”) with RIDA (“Original ENA”), as modified by Agreement for Amendment of Exclusive Negotiating Agreement Amendment No. 1 dated August 9, 2016 (“First Amendment”), and Agreement for Amendment of Exclusive Negotiating Agreement Amendment No. 2 dated January 25, 2017 (“Second Amendment”) (the Original ENA, First Amendment and Second Amendment are collectively referred to herein as, the “ENA”).

The District, the City and RIDA are entering into this Letter of Intent (“LOI”) with the understanding that it is subject to the provisions of the ENA and does not supersede the terms of the ENA. This LOI represents a statement of intent by the City, the District and RIDA and, as further provided in Section 15 below, nothing set forth in this LOI shall be construed as a binding agreement or enforced against any of the Parties hereto. The particular business terms and legal obligations of the Parties will be detailed in the Definitive Agreement to be negotiated by the authorized representatives of the City, District and RIDA, and will be presented to the City Council, the Board of Port Commissioners and the authorized representative(s) of RIDA for approval and execution at a future date. This LOI sets forth the basic economic terms and conditions upon which the District, City and RIDA may enter into a future agreement related to the development of portions of the Chula Vista Bayfront under the following terms and conditions:

**KEY TERMS**

1. Purpose:

The purpose of this LOI is to facilitate the negotiation of a disposition and development agreement (“Definitive Agreement”) that sets forth the rights and obligations of the Parties with respect to the ground lease, use, occupancy, development, operation and financing of the development of certain private improvements and public infrastructure located on the Chula Vista Bayfront, to include a large scale resort hotel and convention center, to serve as the anchor project of the Chula Vista Bayfront (as further defined in Paragraph 5, “Project”), all as further

described below. Among other things, the Definitive Agreement shall set forth terms relating to the contribution of certain revenues from each of the Parties to support the financing necessary to develop the Project and timing of the development of the private improvements and public infrastructure.

2. Parties:

The Parties shall be parties to the LOI and the Definitive Agreement. The District and the City and/or a Joint Exercise of Powers Authority (“JEPA”) between the City and District shall collectively be referred to herein as, the “Public Entities”.

3. Term of Definitive Agreement:

a. The Definitive Agreement shall be for an initial 4-year term with up to 3 one-year extensions to be exercised by RIDA upon satisfaction of certain conditions precedent and the milestones set forth in a schedule of performance to be mutually agreed to by the Parties and to be included in the Definitive Agreement.

b. The Term will expire upon the execution of the ground lease for the resort hotel and convention center by RIDA and the District and of any ancillary document that may be required to document the Parties’ respective continuing obligations in respect of the development of the Project, unless the Definitive Agreement is terminated earlier due to the failure to satisfy (i) a condition precedent to the execution and close of escrow on the ground lease under the Definitive Agreement or (ii) a milestone set forth in the schedule of performance, or an uncured event of default.

4. Site for Ground Lease; Other Property:

The Definitive Agreement shall define the specific land to be ground leased from the District to RIDA, and shall include the following:

- a. Approximately 36 acres located at Parcel H-3, subject to a reservation of a portion of Parcel H-3 by the District for the construction of the Parking Improvements (as defined below) (the “Site”).
- b. District shall provide up to 15 acres of land adjacent to the Site on Parcel H-23 in a location and configuration mutually acceptable to the District and RIDA to house construction trailers, construction material, and equipment staging, and parking during the construction of the Project at no cost to RIDA.
- c. When the Definitive Agreement is executed, the Parties shall execute a one year exclusive right to negotiate agreement with RIDA concerning a definitive agreement for the lease of up to 10 acres of Parcel H-23 that are closest to Parcel H-3 to develop up to 550 hotel rooms.

- d. District shall consult RIDA, without obligation from the District or liability to the District, and RIDA shall have the ability to comment on developments on the H-1, H-1A, H8, H9 and H23 parcels, and the District shall act in good faith when considering, accepting or rejecting any of RIDA's written comments to the District, but in no way limit the discretion of the District.

5. Role of RIDA; Project Description:

RIDA will be responsible for the design, development, construction and operation of the Project subject to terms and conditions to be negotiated in the Definitive Agreement. The Project shall include, but not be limited to, the following:

- a. Approximately 1,450 room resort hotel, which must initially be branded as a Gaylord Hotel and which must be designed, constructed and operated in accordance with the Automobile Association of America ("AAA") Four Diamond rating standards or the equivalent;
- b. Approximately 275,000 net usable square feet of meeting space in the hotel and the convention center, including all ancillary uses (including pre-function); and
- c. Associated retail and related development and resort level amenities, subject to discretionary review by regulatory entities.

6. RIDA Financial Commitment; Return on Investment; Security Deposit:

- a. The estimated total Project costs are approximately \$913 million. RIDA's contribution shall be the total Project cost less Convention Center Project Funds (as defined below) (the "RIDA Contribution"). The RIDA Contribution is currently estimated to be \$688 million and will be made up of various forms of debt and equity.
- b. RIDA's Return on Investment ("ROI") in any given year will be equal to NOI (as defined below) divided by RIDA's actual capital investment which is defined as the cost of designing, constructing and developing the Project, as certified annually:

(i) "NOI" shall mean the total Project revenues less all operating expenses derived from the uniform system of accounts to be defined in the Definitive Agreement. Operating expenses shall also include industry standard operator and franchise fees; replacement reserves and replacement costs in excess of reserves to be defined further in the Definitive Agreement; asset management fees, which shall not exceed 1% of gross revenues; gross tax receipts; insurance; property taxes; incentive management fees; and ground rent actually paid by RIDA. Such incentive management fees shall be limited to 20% of the portion of NOI that exceeds \$75.68 million; provided that solely for purposes of calculating the maximum amount of the incentive management fee that will be treated as an

operating expense, NOI shall be calculated before deductions for the incentive management fee, asset management fee, and gross receipts tax;

(ii) Operating expenses will exclude debt service (principal and interest), depreciation, and income taxes;

(iii) Shortfall in achieving the 11% ROI in a given year will not carry over to subsequent years; and

(iv) Project revenues excluding proceeds from any sale of the Project (or any portion thereof) or any refinancing of the Project (or any portion thereof).

- c. Public Entities do not guarantee ROI.
- d. RIDA shall deliver to the District a \$1 million security deposit in cash or as a letter of credit upon execution of the Definitive Agreement, which shall then become the security deposit for the ground lease for the Site upon its execution, unless the Definitive Agreement is terminated earlier due to the failure to satisfy a condition precedent or an uncured event of default. The District shall return to RIDA any unused amounts of such security deposit upon substantial completion of the Project.
- e. Prior to execution of the ground lease, RIDA shall deliver commercially normal and customary assurances and guarantees that it will complete the Project as approved and permitted and as may be reasonably required to facilitate the financing of the Public Entities Contribution.
- f. The Project is subject to RIDA's payment of all customary fees required by City and District, including but not limited to City permit processing fees, District cost recovery and Public Art requirements.

7. Public Entities Contribution:

It is expected that on June 20, 2017, the District and City shall execute the Amended and Restated Chula Vista Bayfront Master Plan Financing Agreement, which identifies sources of funding and other requirements to finance the construction of public improvements or other financial assistance within the Chula Vista Bayfront ("Financing Agreement"). Subject to the Financing Agreement and a "Plan of Finance" (to be developed by the District and the City pursuant to the Definitive Agreement and subject to any Discretionary Actions (as defined below)), the financial commitment of the Public Entities ("Public Entities Contribution") will consist of the following three primary elements:

- a. Phase 1A Infrastructure, which includes those items listed on Exhibit A, attached hereto and incorporated herein by reference ("Phase 1A Infrastructure"), shall be financed by the Public Entities, collectively, through the issuance of debt that is to

be subject to the Plan of Finance and in an amount currently estimated to be Fifty-Six Million Three Hundred Thousand Dollars (\$56,300,000.00).

- b. The Public Entities will together finance an amount up to Two Hundred Twenty-Five Million Dollars (\$225,000,000.00) for the convention center improvements (which shall be defined in the Definitive Agreement) for the Project (the “Convention Center Project Funds”). The manner of such financing will be determined by the District and City in the Plan of Finance. The District expects that the Plan of Finance will include the District’s annual debt service commitment towards the financing of the Convention Center Project Funds not to exceed the amounts reflected in the following schedule:

- Years 1-3 \$0
- Years 4-13 \$5 million
- Years 14-18 \$6 million
- Years 19-23 \$3 million
- Years 24- 37 \$3.5 million

- c. The District will provide for the construction on Parcel H-3 of approximately 1,500 parking spaces (the “Parking Improvements”), to be financed as further defined in the Plan of Finance.

- d. The City will provide for the construction of the required sewer and fire service (together the “City Infrastructure”).

8. Participation Provisions Benefiting Public Entities:

- a. Public Entities shall provide evidence of financing based on a Plan of Finance subject to and consistent with the Financing Agreement to be agreed to by the Parties prior to the close of escrow of the ground lease for the Site, the Public Entities financing and the RIDA financing. Bond proceeds will be structured to pay for the convention center and related infrastructure which will be owned by Public Entities and the convention center shall be leased back to RIDA (“Convention Center Lease”) for \$1 per year.

- b. If total project costs fall below the current estimate of \$913 million, the Convention Center Project Funds will be reduced proportionately. For example, a Project with total Project costs of \$800 million (a 12% reduction in total Project cost) would receive \$197 million in Convention Center Project Funds, with RIDA’s Contribution making up the remaining \$603 million. However, if total project costs exceed the current estimate of \$913 million, the Convention Center Project Funds are capped at \$225 million. For example, a Project with total Project costs of \$1.1 billion would receive \$225 million in Convention Center Project Funds, with RIDA’s Contribution increasing to \$875 million.

- c. The Convention Center Project Funds will generally be utilized *pari passu* with RIDA's equity contribution (currently estimated at \$200,000,000) and before any mezzanine or mortgage debt.
  - d. Mechanisms to ensure application of the above concepts will be addressed in the Definitive Agreement.
9. Site Condition Prior to Execution of Ground Lease: The Site shall be delivered to RIDA upon ground lease execution for the Site in the following condition:
- a. Completion by the Public Entities of those portions of the Phase 1A Infrastructure to be agreed to by the Parties in the Definitive Agreement; and
  - b. District to remove, or cause to be removed, the existing RV Park.
10. Project Timing:
- a. RIDA shall complete the Project generally according to plans and specifications approved by the Public Entities. RIDA shall cause construction to commence no later than 90 days following the mutual execution of the ground lease for the Site, and shall cause construction to be completed no later than 36 months following the mutual execution of the ground lease for the Site, as each such deadline may be equitably extended from time to time subject to force majeure events to be agreed to by the Parties during the negotiation of the Definitive Agreement.
  - b. The Public Entities shall complete any remaining Phase 1A Infrastructure, and City shall complete City Infrastructure, required for the certificate of occupancy for the Project.
  - c. A detailed schedule of performance, which may include performance milestones to be completed prior to the certificate of occupancy for the Project, including financing and development milestones for all Parties, and provisions regarding force majeure and schedule extensions will be included in the Definitive Agreement.
11. Basic Ground Lease Terms:
- The basic terms of the ground lease for the Site by the District to RIDA are set forth on Exhibit B attached hereto and incorporated herein by reference. The final terms of the ground lease shall be attached to the Definitive Agreement.
12. Operations and Maintenance Cost Sharing:
- a. Public Operating & Maintenance ("O&M") Expenses to be provided by Public Entities for all offsite infrastructure.

- b. Private O&M Expenses to be provided by RIDA for O&M expenses incurred with respect to the Project and associated retail and related development on the Site.
- c. Parking O&M Expenses to be provided by District for the term of the ground lease.

13. Compliance with Laws:

Compliance with all applicable federal, state, and local laws and regulations will be RIDA's sole responsibility with respect to the Project. The Parties shall negotiate indemnities as part of the negotiation of the Definitive Agreement.

14. Assignment and Sublease/Exit Fee:

a. RIDA shall have the right to assign and sublease the ground lease for the Site, subject to District's prior written approval (subject to negotiated carve-outs), not to be unreasonably withheld, and subject to an Exit Fee (defined below). Upon sale of the Project or portion thereof, RIDA shall pay to Public Entities an exit fee (the "Exit Fee") equal to 1% of the difference of (a) the net proceeds from such sale minus (b) the sum of (i) the certified cost price of the Project as of the time of the completion of the construction of the Project and (ii) 100 times the amount of any Exit Fee that has previously been paid to Public Entities (which sum will be pro-rated in the case of sale of a portion of the Project); provided that RIDA shall pay no Exit Fee to Public Entities as long as one or more of the original partners in RIDA (as of the time of substantial completion of the Project), collectively, directly or indirectly, owns at least a 10% ownership interest in the Project.

b. City shall have the right, not to be unreasonably withheld, to consent to any assignment or sublease of the Convention Center Lease subject to negotiated carve-outs.

15. Non-Binding:

The Parties acknowledge that this Letter of Intent is not intended to nor shall it be interpreted to create a binding agreement between the Parties, and is subject to further analysis by the Parties. The Parties understand and acknowledge further that, while this LOI is intended to guide the Parties in their negotiations relative to the Project pursuant to the ENA, it does not waive or limit any of the rights of the District and RIDA in the ENA and does not bind the Parties to continue negotiations for any reason. Moreover, each of the Parties understands and acknowledges that, to the extent it expends funds or devotes resources in connection with, or as a result of this LOI, including without limitation, the feasibility of implementing the Project or this LOI, it shall do so at its sole cost and expense, upon its own initiative and not in reliance on this LOI or any representations of any of the other Parties.

16. Discretionary Actions:

The Parties understand and acknowledge that, notwithstanding the terms and conditions of this LOI, certain actions incidental to matters described in this LOI may require the exercise

of discretion by one or more of the Public Entities (collectively, “Discretionary Actions”), any and all Discretionary Actions may be exercised in the sole and absolute discretion of the Public Entities and the Parties assume the risk that a Discretionary Action may not be taken or taken in a manner not favorable to one or more of the Parties. By executing this LOI, the Parties do not represent by the LOI or otherwise their legal capacity to provide the financial assistance or other undertakings contemplated herein, such matters to be the subject of future actions and agreements pursuant to the Financing Agreement or otherwise, including certain Discretionary Actions.

### **CONCLUSION**

This LOI shall not be binding upon the Parties. A binding agreement shall not exist until a Definitive Agreement has been approved by the governing bodies of the respective Public Entities and executed and delivered by all parties. No party may claim any legal rights against the other by reason of actions or non-actions taken in reliance upon this non-binding LOI, including, without limitation, any partial performance of the transactions contemplated herein.

If these terms are acceptable, please sign and return to the District. We appreciate your time and consideration in this matter.

Sincerely,

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

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

By: \_\_\_\_\_  
Assistant/Deputy

By: \_\_\_\_\_  
Randa Coniglio  
President/Chief Executive Officer

Dated: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

**CITY OF CHULA VISTA,**  
a municipal corporation

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
Gary Halbert  
City Manager

Dated: \_\_\_\_\_

REVIEWED AND ACCEPTED:

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

By:  \_\_\_\_\_  
Ira Mitzner  
CEO and President

Dated: June 16, 2017

EXHIBIT "A"  
Phase 1A Infrastructure

[To be inserted]

EXHIBIT “B”  
Basic Ground Lease Terms

Lease Term: Lease term: 66 years

Renewal Options: None

Base Rent: Base Rent/ Increases (Graduated Flat Rent) Years 1-37\*<sup>1</sup>  
 (assumed term of debt, actual term determined during the term of the Definitive Agreement)

Lease Years	Rent
1 – 18	\$0
19 – 23	\$3M
24 – 37*	\$3.5M
38 – 66	See Below

Excess Net Operating Income:

- Annual Net Operating Income in excess of 11% of RIDA’s Contribution:

Lease Years	Split
1 – 37* <sup>1</sup>	80% (RIDA)/ 20% (Public Entities)
38-66	100% RIDA

- Net Operating Income for the Parking (for non-RIDA users):

1-66	100% District
------	---------------

For each Lease Year after 37\*<sup>1</sup> and later, the greater of (i) Minimum Annual Rent which shall be calculated every five years based on 65% of the average annual gross rent payable over the previous 3 years; or (ii) Percentage Rent based on the gross revenue in the specified year.

- Rooms Percentage Rent based on following adjusted rent periods:

Lease Years	% Rent
38 – 47	8%
48 – 66	9%

---

\*<sup>1</sup> 37 years is as assumed term of debt (including construction) for the Convention Center Project Funds, but the actual term of Convention Center Project Funds debt identified in the approved Plan of Finance shall be determined during the term of the Definitive Agreement and the Lease Terms will be revised accordingly.

- Banquet Percentage Rent based on following adjusted rent periods:

Lease Years	% Rent
38 – 47	6%
48 – 66	7%

- Food Percentage Rent based on following adjusted rent periods:

Lease Years	% Rent
38 – 47	4%
48 – 66	5%

- Beverage Percentage Rent based on following adjusted rent periods:

Lease Years	% Rent
38 – 47	6%
48 – 66	7%

Percentage rent rates for the remaining categories of revenue are to be agreed during the negotiation of the Definitive Agreement.

Parking Revenue

Throughout the Lease Term, Tenant shall pay to the District ten percent (10%) of all parking revenue received by Tenant, including (a) if a person pays Tenant for using a parking space through the hotel valet service, or (b) if a person pays Tenant for self-parking. If an employee of the hotel management company or the Project uses a parking space, and Tenant does not charge such person for such parking space, then Tenant shall make no payment for using such parking space to the District.

If the construction of the parking is not completed at least sixty (60) days before the hotel is substantially complete, then the District will provide land in the vicinity of Parcel H-3 that is suitable for 1,000 parking spaces from such time until the construction of the parking is completed.

The amount paid to the District by Tenant shall increase to fifteen percent (15%) in the event that there is a change in ownership of the Project greater than fifty-one (51%).

Expenses:

Tenant will pay all expenses of the leasehold of the Site, including without limitation, (i) expenses to maintain all of the improvements (excluding the parking spaces) in first class

condition, (ii) taxes, (iii) insurance, (iv) utilities and (v) any other expenses of the leasehold.

Continuous Operation: Lease shall require a covenant of continuous operation with “no go dark” provisions, subject to negotiated exceptions.

Lease Commencement: Upon satisfaction of conditions precedent in Definitive Agreement and mutual execution of the Lease.

Rent Commencement: Per schedule of Base and Percentage Rent.

**Exhibit A**

## CHULA VISTA BAYFRONT INFRASTRUCTURE, PHASE 1A

Type	District	Project Element
Street	Sweetwater	E Street (Bay Blvd to F Street)
Street	Sweetwater	E Street (Lagoon Drive to G Street)
Street	Sweetwater	Gunpowder Point Drive (Relocation)
Street	Sweetwater	F Street (Bay Blvd to E St) Grading & Utilities
Street	Harbor	E Street (G Street to H Street)
Street	Harbor	G Street Connection
Street	Harbor	H Street (Marina Parkway to E Street)
Street	Harbor	H Street (Bay Blvd to Street A)
Park	Sweetwater	S-2 Sweetwater Signature Park (Initial)
Park	Sweetwater	SP-1 Sweetwater Buffer (for S-2)
Park	Sweetwater	SP-1 Sweetwater Buffer (for S-1)
Park	Sweetwater	SP-2 Seasonal Wetland
Park	Harbor	Harbor Park (Initial)
Pad	Sweetwater	SP-3
Pad	Sweetwater	S-1 RV Park Preparation
Pad	Sweetwater	S-3 Mixed Use Preparation
Pad	Harbor	H-3 Utility Corridor
Pad	Harbor	H-3 Hotel & Convention Center Preparation
	<b>TOTAL</b>	<b>\$ 56,300,000</b>

**MEMORANDUM**

**To:** Adam Meyer, Department Manager, Real Estate  
Port of San Diego

**From:** KEYSER MARSTON ASSOCIATES, INC.

**Date:** June 16, 2017

**Subject:** Proposed Letter of Intent (LOI) with RIDA Chula Vista, LLC  
Chula Vista Bayfront Phase 1 Development

**I. INTRODUCTION**

**A. Objective**

In accordance with your request, Keyser Marston Associates, Inc. (KMA) has undertaken a review of the economic feasibility of the proposed Resort Hotel and Convention Center (RHCC) proposed by RIDA Chula Vista, LLC (RIDA). RIDA intends to develop a 1,450-room resort hotel and approximately 275,000 net square feet (SF) of convention and meeting space on a 36-acre site (Site) within the Chula Vista Bayfront (CVB). The RHCC will be served by 1,500 parking spaces, proposed to be developed and owned by the San Diego Unified Port District (District). The Site is currently owned by the District.

As background, in May 2012 the District and the City of Chula Vista (City) entered into a Financing Agreement for the Chula Vista Bayfront Master Plan (CVBMP) which outlined the financial relationship between the District and the City. The Chula Vista City Council subsequently adopted an Amended and Restated Financing Agreement (Financing Agreement) in November 2016. The Financing Agreement identifies specific revenue sources that each entity agrees to contribute toward public infrastructure and other facilities required for initial phases of development on the Bayfront subject to a Plan of Finance. The Financing Agreement will be presented to the Board of Port Commissioners for consideration on June 20, 2017.

Additionally, the District, City, and RIDA propose to enter into a Letter of Intent (LOI) to identify the key economic terms to be included in a Disposition and Development Agreement (Definitive Agreement). The proposed LOI subject to the Financing Agreement, outlines the terms of the proposed ground lease between the District and RIDA, and further identifies additional contributions from the District and City (Public Entities) in order to make the RHCC project feasible.

In response to your request, KMA has prepared an economic analysis of the District and City financial contributions identified in the proposed LOI. This KMA report provides: (1) a comprehensive financing gap analysis of the proposed District and City contributions toward construction of infrastructure, parking, and the convention center portion of the RHCC; (2) a feasibility analysis of the proposed method of financing for the RHCC; and (3) estimates of the economic benefits to the City and region as a result of development of the RHCC and build-out of the balance of the CVB.

## **B. Methodology**

In completing this economic analysis, KMA performed the following key work tasks:

- Reviewed background documentation and historical data relevant to the CVB.
- Reviewed development cost estimates and cash flow projections provided by RIDA.
- Participated in meetings and teleconferences with the District, City, and RIDA to understand project parameters, anticipated market performance, and other financial factors.
- Prepared financial models to estimate developer returns from development of the RHCC.
- Prepared an analysis of the potential economic impact caused by development of the CVB.

## **C. Report Organization**

This economic analysis has been organized as follows:

- Following this introduction, Section II presents an overview of the RHCC project and future phases of development within the CVB.
- Section III outlines the key business and economic deal terms contained in the proposed LOI.

- Section IV presents the KMA financing gap analysis of the RHCC.
- Section V presents the KMA economic impact assessment for development of the RHCC and the balance of the CVB.
- Limiting conditions pertaining to this economic analysis are presented in Section VI.

**II. PROJECT OVERVIEW**

**A. Chula Vista Bayfront**

Development of the CVB is guided by the CVBMP. The CVBMP calls for the development of 556 acres of the CVB over the next 20 years to include parks, open space areas, a resort hotel, convention center, other hotels, mixed-use office/commercial, industrial business park, and public facilities, in three separate planning districts.

Table II-1 presents a summary of the projected development planned within the CVB by anticipated Phase and Sub-Area:

<b>Table II-1: Chula Vista Bayfront Projected Development by Phase and Sub-Area</b>				
<b>Phase / Subarea</b>	<b>District</b>	<b>Parcel</b>	<b>Land Use</b>	<b>Description</b>
Phase 1	Harbor	Parcel H-3	Resort Hotel	1,450 Rooms
	Harbor	Parcel H-3	Convention Center	275,000 SF <sup>(1)</sup>
	Harbor	Parcel H-3	Structured Parking	1,500 Spaces
Phase 2	Harbor	Parcel H-23	Limited Service Hotel	200 Rooms
	Harbor	Parcel H-9/H-21	Retail	225,000 SF
Phase 3	Harbor	Parcel H-3	RIDA Hotel Expansion	150 Rooms
Sub-Area A	Harbor	Parcel H-9/H-21	Retail	200,000 SF
	Harbor	H-18	Mixed-Use Commercial	100,000 SF
	Harbor	H-23	Cultural/Retail	200,000 SF

<b>Table II-1: Chula Vista Bayfront Projected Development by Phase and Sub-Area</b>				
<b>Phase / Subarea</b>	<b>District</b>	<b>Parcel</b>	<b>Land Use</b>	<b>Description</b>
Sub-Area B	Harbor	H-13/H-14	Residential	1,500 Units
	Harbor	H-13/H-14	Retail	15,000 SF
	Harbor	H-15	Limited Service Hotel	250 Rooms
	Harbor	H-15	Office	420,000 SF
Sub-Area C	Harbor	H-3/H-23	Limited Service Hotel	525 Rooms
	Harbor	H-3/H-23	Full Service Hotel	525 Rooms
Sub-Area D	Sweetwater	S-3	Mixed-Use Commercial	60,000 SF
	Sweetwater	S-4	Office	60,000 SF
	Otay	O-1/O-4	Industrial Business Park	274,500 SF
Sub-Area E	Sweetwater	S-3	Mixed-Use Commercial	60,000 SF
	Sweetwater	S-4	Office	60,000 SF
	Otay	O-1/O-4	Industrial Business Park	274,500 SF
(1) Reflect net usable area.				

## **B. Proposed Development**

The proposed RHCC is planned for development on Chula Vista Master Plan Parcel H-3. Parcel H-3 consists of 36 acres and is currently partially occupied by an existing recreational vehicle (RV) park.

The RHCC will serve as the anchor project for the CVB consisting of a 20-story, 1,450-room resort hotel, branded by Gaylord Hotels; 275,000 SF of net usable convention and meeting space; associated retail and related development; and resort level amenities. The RHCC will be served by 1,500 parking spaces, proposed to be developed and owned by the District, adjacent to the RHCC.

## **III. PROPOSED BUSINESS TERMS**

The following summarizes the salient aspects of the proposed LOI. The LOI will set forth the basic economic terms and conditions upon which the District, City, and RIDA will enter into a Definitive Agreement for the ground lease, use, occupancy, development, operation, and financing of the RHCC and public improvements located on the CVB. The following provides a summary of the key responsibilities of RIDA, the District, and City:

**A. Developer Responsibilities**

- RIDA will enter into a ground lease agreement with the District and City for the Site for a period of 66 years.
- RIDA will construct a 1,450-room resort hotel branded as a Gaylord Hotels and 275,000 net useable SF of convention and meeting space.
- RIDA'S contribution toward the development is currently estimated at \$688 million.
- RIDA will be responsible for all operating and maintenance costs incurred with respect to the RHCC and associated retail and related development on the Site. Operating costs will include industry standard operator and franchise fees; replacement reserves; insurance; property taxes; ground rent actually paid by RIDA; and fees to include (i) asset management fees (not to exceed 1% of gross revenues), (ii) gross tax receipts; and (iii) incentive management fees (limited to 20% of the portion of NOI that exceeds \$75.68 million).

**B. District and City Responsibilities**

- The Public Entities will contribute \$56.3 million toward infrastructure costs including streets, parks, building pads, and utilities.
- The Public Entities will be responsible for all operating and maintenance costs incurred with respect to off-site infrastructure.
- The Public Entities will contribute \$225 million toward development of the convention center improvements, anticipated to be funded through a bond issue.
- The District will provide an annual contribution toward bond debt service to support its portion of the Convention Center Contribution. As presented in Table III-1, the District contribution will not exceed the following schedule of amounts during Lease Years 4 through 37.

<b>Table III-1: District Annual Contribution to Debt Service</b>	
<b>Lease Year</b>	<b>Annual Bond Debt Service Contribution</b>
Years 1-3	\$0
Years 4-13	\$5.0 M
Years 14-18	\$6.0 M
Years 19-23	\$3.0 M
Years 24-37	\$3.5 M

- The District will provide 1,500 parking spaces on Parcel H-3. The District will be responsible for all parking operating and maintenance costs.
- The City will provide for the construction of the required sewer and fire services to enable development of the RHCC.
- The Definitive Agreement will have a term of up to four (4) years with up to three (3) one year extensions.
- The District will provide, on a temporary basis, up to 15 acres of land on Parcel H-23 to house construction trailers, construction materials, equipment staging, and parking during construction of the RHCC.
- When the Definitive Agreement is executed, the District will exclusively negotiate with RIDA for one (1) year a definitive agreement to lease of up to 10 acres of Parcel H-23 (closest to Parcel H-3) for the development of up to 550 hotel rooms.

**C. Proposed Ground Lease**

- The District and RIDA will enter into a 66-year ground lease agreement.
- RIDA will pay ground lease payments to the District during Lease Years 1-37 as shown in Table III-2:

<b>Table III-2: RIDA Annual Ground Lease Payments – Years 1-37</b>	
<b>Lease Year</b>	<b>Annual Ground Lease Payment</b>
Years 1-18	\$0
Years 19-23	\$3.0 M
Years 24-37	\$3.5 M

Beginning in Year 38, the proposed rent structure for the project will be in line with the District’s standard Port percentage rent categories, as shown in Table III-3 below:

<b>Table III-3: RIDA Annual Ground Lease Payments – Years 38-66</b>				
<b>Years 38-66 Percentage Rent Rates</b>	<b>Room Revenue</b>	<b>Banquet Revenue</b>	<b>Food Revenue</b>	<b>Beverage Revenue</b>
Years 38-47	8%	6%	4%	6%
Years 48-66	9%	7%	5%	7%

- Percentage rent rates for the remaining categories of revenue will be determined during the negotiation of the Definitive Agreements.
- Annual Net Operating Income (NOI) in excess of 11.0% of the RIDA Contribution (\$75.68 million) will be split between RIDA and the Public Entities as follows:

<b>Table III-4: Allocation of NOI after RIDA Target Return of 11.0%</b>	
<b>Lease Year</b>	
Years 1-37	80% to RIDA / 20% to Public Entities
Years 38-66	100% to RIDA

RIDA will pay the District 10% of all parking revenue from the RHCC throughout the term of the ground lease. In the event of a sale of the RHCC resulting in a cumulative change of ownership of 51% or greater, the District’s share of parking revenue will increase to 15%.

#### **IV. FINANCING GAP**

##### **A. Financing Gap Analysis**

KMA prepared a financing gap analysis for the proposed RHCC to determine the economic return to RIDA subject to the business terms in the proposed LOI. Specifically, KMA estimated the project’s

financing gap and RIDA's return. The KMA analysis also considered the revenue analysis report prepared by CBRE Hotel (formerly PKF) and the development cost review prepared by Jones Lang LaSalle (JLL).

KMA has analyzed RIDA's return both in terms of stabilized Return on Investment (ROI) and Leveraged Internal Rate of Return (IRR). This section discusses RIDA's return in terms of ROI outcomes. Section IV-C presents a detailed evaluation of RIDA's Leveraged IRR based on a 66-year cash flow projection.

Total project costs, including both public infrastructure and private development, are estimated to be \$969.3 million. Of this total, RIDA will be responsible for a minimum investment, including private debt and equity, of \$688.0 million. The Public Entities will be responsible for a contribution of up to \$225.0 million toward the convention center portion of the RHCC and an estimated \$56.3 million for public infrastructure. Costs for the 1,500 parking spaces provided by the District are to be determined. These cost estimates, and respective responsibilities, are summarized in Table IV-1 below.

	<b>RIDA</b>	<b>Public Entities</b>	<b>Total</b>
A. Hotel/Convention Center	\$688.0 M	\$225.0 M	\$913.0 M
B. Infrastructure	----	\$56.3 M	\$56.3 M
C. Parking	----	TBD	TBD
<b>D. Total</b>	<b>\$688.0 M</b>	<b>\$281.3 M</b>	<b>\$969.3 M</b>

Table IV-2 presents illustrative figures for the stabilized year (Lease Year 7, or operating year 4). As shown, the project is projected to generate \$267.0 million in Effective Gross Income (EGI) in Lease Year 7. This EGI estimate includes both room revenues and other income including food and beverage revenues, banquet sales, gift shop and spa revenues, and parking.

A. Number of Hotel Rooms	1,450 Rooms
B. Average Daily Rate (ADR)	\$275
C. Occupancy	77%
D. Total Room Revenue	\$112.0 M
E. Total Other Income	\$155.0 M
<b>F. Total Effective Gross Income</b>	<b>\$267.0 M</b>

As presented in Table IV-3, the project's Effective Gross Income, less operating expenses and other fees, is projected to generate Net Operating Income (NOI) of \$69.0 million during Lease Year 7. Other fees include asset management fees, incentive management fees, and State of California gross receipts tax.

<b>Table IV-3: Net Operating Income (Lease Year 7)</b>	
A. Total Effective Gross Income	\$267.0 M
B. (Less) Operating Expenses	<u>(\$195.0) M</u>
C. Net Operating Income (NOI)	\$72.0 M
D. (Less) Fees (1)	<u>(\$3.0) M</u>
<b>E. Net Operating Income after Fees</b>	<b>\$69.0 M</b>
(1) Includes asset management fees, incentive management fees, and gross receipts tax.	

RIDA's ROI is estimated as stabilized year NOI (\$69.0 million) divided by RIDA's total capital investment. Absent the proposed Convention Center Contribution from the Public Entities, RIDA would be responsible for the total development costs of the RHCC, i.e., a total capital investment of \$913.0 million. As shown in Table IV-4, this No Public Investment scenario is estimated to generate a ROI to RIDA of 7.6%.

<b>Table IV-4: Developer Return on Investment – No Public Investment in RHCC</b>	
A. Total Development Costs – RHCC	\$913.0 M
B. Net Operating Income after Fees	\$69.0 M
<b>C. Developer Return on Investment (ROI)</b>	<b>7.6%</b>

The proposed LOI identifies the Public Entities contribution toward the convention center portion of the RHCC in the amount of \$225.0 million. As shown in Table IV-5, the proposed Convention Center Contribution results in a reduced capital investment from RIDA of \$688.0 million. At this level of capital investment, RIDA is projected to achieve a stabilized year ROI of 10.0%.

<b>Table IV-5: Developer Return on Investment – With Public Investment in RHCC</b>		
A.	Total Development Costs – RHCC	\$913.0 M
	(Less) Convention Center Contribution	<u>(\$225.0) M</u>
	RIDA Total Capital Investment	\$688.0 M
B.	Net Operating Income after Fees	\$69.0 M
<b>C.</b>	<b>Developer Return on Investment (ROI)</b>	<b>10.0%</b>

Industry standard ROI targets for developers of large-scale, new resort hotel/convention centers are estimated to range between 10.0% and 11.0% (unleveraged Return on Investment in stabilized year of operations). Given the level of risk associated with undertaking such a major new investment on the relatively undeveloped Chula Vista Bayfront in a single phase, KMA finds that the upper end of this range is warranted for the proposed RHCC. The proposed Public Entities financial contributions to the RHCC project are intended to support a ROI to RIDA of 11% in the stabilized year or soon thereafter. The KMA financial analysis projects that RIDA will achieve a ROI in the “With Public Investment” scenario of just 10.0% in Lease Year 7, lower than the target return threshold. Even with the proposed public investment, RIDA is not projected to achieve a 11.0% ROI until Lease Year 12.

To that end, the RIDA projected return after the Public investment and rent structure is not excessive. This finding indicates that the Public Entities contribution is warranted and needed in order for the RHCC to move forward and to be developed. Ultimately RIDA will need to control development costs and/or improve operating performance in order to achieve a satisfactory long-term return.

## **B. Proposed Method of Financing**

### Required Public Investment – Infrastructure and Convention Center Contribution

As indicated above, the Public Entities will contribute \$56.3 million toward infrastructure and \$225.0 million toward the Convention Center. The Public Entities anticipate using one or more bond financings to fund these contributions concurrently or immediately prior to the close of escrow of the ground lease for the Site. Bond debt service will be paid through a combination of existing and projected revenue streams from the Bayfront.

The District will contribute: (1) existing lease revenues from the Chula Vista Bayfront, including the Chula Vista RV Park ground rent and (2) ground rent from the RHCC and new RV Park. Additionally, the District will make one-time contributions toward the infrastructure costs using the previously received SDG&E Relocation Fee of \$1.7 million and the Pacifica Land Exchange Payment of \$3.0

million. The District will also be responsible for an annual contribution toward bond debt service to support the Convention Center Contribution not to exceed the schedule of amounts during Lease Years 4 through 37 as presented in Section III, Table III-1.

The City will contribute: (1) existing Transient Occupancy Tax (TOT) revenues from the Chula Vista RV Park; (2) existing Municipal Services Agreement (MSA) reimbursements that it receives from the District; and (3) RHCC-generated revenues, to include: (a) TOT; (b) Additional Occupancy Based Revenues generated from a proposed TOT Augment; (c) property tax increment; and (d) sales tax revenues. In effect, most of the Public Entities financial contributions will be funded through project-generated revenues.

Furthermore, in addition to the contributions shown above, the District is providing the land with a “soft” ground rent structure that allows RIDA to begin making rent payments, at a reduced level, in Lease Year 19. This ground rent structure is an essential part of the financial package, combined with the District and City contributions, that are necessary to make the RHCC project feasible.

Table IV-6 on the following page, summarizes the District and City annual revenue contributions toward the proposed bonds to finance the Convention Center Contribution and infrastructure. As an illustrative example, the figures shown in the table reflect Lease Year 7, i.e., the projected stabilized year of RHCC operations.

<b>Table IV-6: District and City Annual Contribution at Stabilization (Lease Year 7)</b>			
<b>San Diego Unified Port District</b>		<b>City of Chula Vista</b>	
<b>A. Existing Revenues</b>		<b>A. Existing Revenues</b>	
Existing Lease Revenues (1)	\$2.7 M	RV Park TOT	\$0.8 M
		MSA Reimbursements	<u>\$1.2 M</u>
		Subtotal Existing Revenues	\$2.0 M
<b>B. Project-Generated Revenues</b>		<b>B. Project-Generated Revenues</b>	
Project Lease Revenues	\$0.0 M	Project TOT Revenues	\$10.7 M
		Additional Occupancy Based Revenues	\$5.4 M
		Project Tax Increment (2)	\$3.7 M
		Project Sales Tax Revenues	<u>\$1.1 M</u>
		Subtotal Project Generated Revenues	\$20.9 M
<b>C. Annual Contribution</b>		<b>C. Annual Contribution</b>	
Annual Contribution	\$5.0 M	Annual Contribution	\$0.0 M
<b>D. Total District Annual Contributions</b>	<b>\$7.7 M</b>	<b>D. Total City Annual Contributions</b>	<b>\$22.9 M</b>
<p>(1) Includes projected increase from development of new RV park.</p> <p>(2) Includes both City's and County's share of Project-generated tax increment and incremental property tax in lieu of Vehicle License Fee (VLF).</p>			

The City engaged JP Morgan Securities, LLC (JP Morgan) to provide investment banking and bond underwriting services. JP Morgan prepared estimates of achievable bond financing based on the revenue streams to be pledged by the Public Entities. The JP Morgan projections were based on currently available bond underwriting terms, the relative creditworthiness of the pledged revenue streams, and JP Morgan's professional judgement regarding debt service coverage, interest rate, and costs of issuance and capitalized interest during construction. The JP Morgan bond runs assume a 37-year term, inclusive of the construction period, and effective interest rates of 5.48% for taxable bonds and 4.41% for tax-exempt bonds. Notably, the KMA financial analysis uses the 1.75 debt service coverage ratio recommended by JP Morgan. JP Morgan assumed ascending debt service schedules, i.e., annual debt service rises over the term, subject to the 1.75 debt service coverage limit. In effect, the bond sizing is based on \$1.00 of debt service for every \$1.75 of projected revenue. While this is a conservatively high debt service coverage assumption, i.e., it reduces the achievable bond financing amounts, it also results in significant projected surplus cash flow after debt service. KMA estimates total bond debt service paid by the Public Entities during the 37-year bond term to total \$861.4 million (nominal dollars).

Table IV-7 summarizes the currently anticipated underwriting terms for the Public Entities bond financing for the Convention Center Contribution and infrastructure. It is important to note that these preliminary bond underwriting terms are based on current market and financial data. These terms are considered reasonable for planning purposes, but actual results may vary depending on bond conditions, underwriting factors and future decisions regarding timing and structure for the issuance of debt by the Public Entities. Using the currently anticipated underwriting terms, the pledged revenues are projected to be sufficient to support the net bond proceeds required to fund the Public Entities obligations under the LOI. Of course, the bonds will be issued at a future date to be determined, at which time economic conditions may vary from the figures used in this preliminary feasibility analysis. RIDA and the Public Entities will need to continually monitor real estate market factors and bond financing parameters to determine if any changes to these projections are warranted.

<b>Table IV-7: Preliminary Underwriting Terms for Proposed Bond Financing</b>	
<b>A.</b> Revenues Pledged, Lease Year 7 Estimates	
District	\$7.7 M
City	<u>\$22.9</u> M
Total Revenues	\$30.6 M
<b>B.</b> Debt Service Coverage (DSC) Factor	1.75 DSC
<b>C.</b> Interest Rate	5.48% taxable 4.41% tax-exempt
<b>D.</b> Bond Term	37 years Including construction period
<b>E.</b> Total Debt Service	\$861.4 M Years 1-37 (nominal dollars)
<b>F.</b> Approximate Net Bond Proceeds	\$225 M Convention Center Contribution \$56 M infrastructure

#### Required Public Investment - Parking

The District will also be responsible for financing, constructing, owning, and operating at least 1,500 parking spaces to serve the RHCC project. District staff is evaluating the potential to construct 1,500 parking spaces on Parcel H-3. The District will assume all operating and maintenance expenses for the spaces for the duration of the RIDA ground lease. Parking gross revenues from the RHCC will be allocated 90% to RIDA and 10% to the District. The District's share will increase to 15% of gross revenue if RIDA sells, on a cumulative basis, 51% or more of the RHCC project.

Required Private Investment

As noted above, RIDA will be responsible for a minimum private investment in the RHCC project of \$688 million. This investment is expected to take the form of a combination of debt (third party loans) and equity. The KMA analysis assumes a maximum Loan-to-Value (LTV) of 65%, resulting in a maximum loan of \$447.0 million. The balance of the investment, a minimum of \$241.0 million, will comprise equity investment by RIDA. Table IV-8 summarizes the private investment in the RHCC project.

<b>Table IV-8: Required Private Investment</b>		
	<b>Factor (Loan to Value)</b>	<b>Amount</b>
<b>A.</b> Maximum Debt	65% LTV	\$447.0 M
<b>B.</b> Minimum Equity	35% LTV	\$241.0 M
<b>C. Total Private Investment</b>		<b>\$688.0 M</b>

Under the terms of the LOI, RIDA will pay a fixed ground rent schedule for the project during the bond financing term, estimated to coincide with Lease Years 1-37. The fixed ground rent schedule for this period is itemized in Section III, Table III-2. The District will contribute these ground lease revenues toward the bond debt service.

District/City Participation in NOI

In addition to ground rent paid to the District, RIDA will pay the Public Entities an annual participation payment based on surplus Net Operating Income (NOI) from the RHCC project. Specifically, the Public Entities will receive 20% of surplus NOI above an 11% ROI threshold for RIDA during Lease Years 4-37. KMA has prepared a preliminary projection of this potential future revenue stream, which is summarized in Table IV-9.

<b>Table IV-9: Projected Annual NOI Participation Payments to Public Entities</b>	
<b>Lease Year</b>	<b>Estimated Annual NOI Participation Payment to Public Entities</b>
Years 1-3 - Construction	N/A
Years 4-11	\$0
Year 12	\$0.025 M

<b>Table IV-9: Projected Annual NOI Participation Payments to Public Entities</b>	
<b>Lease Year</b>	<b>Estimated Annual NOI Participation Payment to Public Entities</b>
Year 20	\$2.7 M
Year 30	\$7.8 M
Year 37	\$12.6 M

### **C. Leveraged IRR to RIDA with Public Investment**

KMA prepared projections of NOI and cash flow for the RHCC project for the duration of the proposed 66-year ground lease. The KMA projections are summarized in Table IV-10 on the following page. As shown, the KMA projections estimate that RIDA will achieve a Leveraged IRR of approximately 13.5%. A Leveraged IRR is used as a metric to determine the annualized effective compounded return rate to RIDA, after taking into consideration all of RIDA's financial obligations including debt service. KMA finds that the appropriate industry standard target for Leveraged IRR for a resort hotel convention center of this type is in the range of 16% to 17%. In other words, under current projections, inclusive of the Public Entities financial contribution, RIDA does not achieve an industry standard return on a long-term basis. This finding indicates that the Public Entities contributions and rent structure are warranted, that the RIDA return is not excessive, and ultimately that RIDA will need to control development costs and/or improve operating performance in order to achieve a satisfactory long-term return. At the same time, the proposed participation in NOI provides for the Public Entities to participate in the success of the RHCC project as well.

Table IV-10: RIDA Leveraged Internal Rate of Return – Lease Years 1-66 (\$ Millions)							
Lease Year	Developer Equity	Net Operating Income	Ground Lease Payment	(Less) Public Entities Participation	NOI Before Debt Service	(Less) Debt Service	Annual Cash Flow
1	(\$189.0)	\$0	\$0	\$0	\$0	\$0	(\$189.0)
2	(\$51.8)	\$0	\$0	\$0	\$0	\$0	(\$51.8)
3	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4	\$0	\$42.0	\$0	\$0	\$42.0	(\$35.7)	\$6.3
5	\$0	\$54.9	\$0	\$0	\$54.9	(\$35.7)	\$19.2
6	\$0	\$65.2	\$0	\$0	\$65.2	(\$35.7)	\$29.5
7	\$0	\$71.7	\$0	\$0	\$71.7	(\$35.7)	\$36.0
8	\$0	\$76.3	\$0	\$0	\$76.3	(\$35.7)	\$40.6
9	\$0	\$74.8	\$0	\$0	\$74.8	(\$35.7)	\$39.1
10	\$0	\$76.5	\$0	\$0	\$76.5	(\$35.7)	\$40.8
11	\$0	\$78.2	\$0	\$0	\$78.2	(\$35.7)	\$42.5
12	\$0	\$79.8	\$0	\$0	\$79.8	(\$35.7)	\$44.1
13	\$0	\$81.5	\$0	(\$0.3)	\$81.2	(\$35.7)	\$45.5
14	\$0	\$83.9	\$0	(\$0.7)	\$83.3	(\$35.7)	\$47.6
15	\$0	\$86.4	\$0	(\$1.0)	\$85.4	(\$35.7)	\$49.7
16	\$0	\$89.0	\$0	(\$1.4)	\$87.6	(\$35.7)	\$51.9
17	\$0	\$91.7	\$0	(\$1.8)	\$89.9	(\$35.7)	\$54.2
18	\$0	\$94.5	\$0	(\$2.3)	\$92.2	(\$35.7)	\$56.5
19	\$0	\$97.3	(\$3)	(\$2.2)	\$92.1	(\$35.7)	\$56.4
20	\$0	\$100.2	(\$3)	(\$2.7)	\$94.6	(\$35.7)	\$58.9
21	\$0	\$103.2	(\$3)	(\$3.1)	\$97.1	(\$35.7)	\$61.4
22	\$0	\$106.3	(\$3)	(\$3.6)	\$99.7	(\$35.7)	\$64.0
23	\$0	\$109.5	(\$3)	(\$4.1)	\$102.5	(\$35.7)	\$66.7
24	\$0	\$112.8	(\$3.5)	(\$4.5)	\$104.8	(\$35.7)	\$69.1
25	\$0	\$116.2	(\$3.5)	(\$5.0)	\$107.7	(\$35.7)	\$72.0
26	\$0	\$119.7	(\$3.5)	(\$5.5)	\$110.6	(\$35.7)	\$74.9
27	\$0	\$123.3	(\$3.5)	(\$6.1)	\$113.7	(\$35.7)	\$78.0
28	\$0	\$127.0	(\$3.5)	(\$6.7)	\$116.8	(\$35.7)	\$81.1
29	\$0	\$130.8	(\$3.5)	(\$7.2)	\$120.1	(\$35.7)	\$84.3
30	\$0	\$134.7	(\$3.5)	(\$7.8)	\$123.4	(\$35.7)	\$87.7
31	\$0	\$138.8	(\$3.5)	(\$8.4)	\$126.8	(\$35.7)	\$91.1
32	\$0	\$142.9	(\$3.5)	(\$9.1)	\$130.4	(\$35.7)	\$94.7

Table IV-10: RIDA Leveraged Internal Rate of Return – Lease Years 1-66 (\$ Millions)							
Lease Year	Developer Equity	Net Operating Income	Ground Lease Payment	(Less) Public Entities Participation	NOI Before Debt Service	(Less) Debt Service	Annual Cash Flow
33	\$0	\$147.2	(\$3.5)	(\$9.7)	\$134.0	(\$35.7)	\$98.3
34	\$0	\$151.6	(\$3.5)	(\$10.4)	\$137.7	\$0	\$137.7
35	\$0	\$156.2	(\$3.5)	(\$11.1)	\$141.6	\$0	\$141.6
36	\$0	\$160.9	(\$3.5)	(\$11.8)	\$145.6	\$0	\$145.6
37	\$0	\$165.7	(\$3.5)	(\$12.6)	\$149.7	\$0	\$149.7
38-47 (1)	\$0	\$1,957.3	(\$523.9)	\$0	\$1,433.4	\$0	\$1,433.4
48-57 (1)	\$0	\$2,631.7	(\$803.3)	\$0	\$1,828.3	\$0	\$1,828.3
58-66 (1)	\$0	\$3,135.8	(\$968.4)	\$0	\$2,167.4	\$0	\$2,167.4
<b>Developer Leveraged Internal Rate of Return (IRR)</b>							<b>13.48%</b>
(1) Reflects 10-year total for each time period.							

#### D. Proposed Cash Flow Distribution (“Waterfall”)

As noted above, the currently contemplated bond financing structure will result in significant surplus cash flow after debt service. Additionally, RIDA will make NOI participation payments to the Public Entities. District and City staff have discussed in detail various approaches to distribute these surplus funds. The current concept is to allocate these funds through a “waterfall”, with the priority sequence shown in Table IV-11 below. As an example, the chart presents the projected figures for Lease Years 7 (stabilized operations) and 13 (10<sup>th</sup> year of operations).

Table IV-11: Proposed Distribution of Surplus Cash Flow		
	Lease Year 7 (4 <sup>th</sup> year of operations)	Lease Year 13 (10 <sup>th</sup> year of operations)
• Surplus Cash Flow after Bond Debt Service	\$13.1 M	\$15.2 M
• <i>Priority #1</i> – Repayment to District of its Annual Contribution	(\$5.0 M)	(\$5.0 M)
• <i>Priority #2</i> – Set-aside for Additional Bond Debt Service Reserve (anticipated to be fully funded prior to Lease Year 7)	(\$0.0 M)	(\$0.0 M)

<b>Table IV-11: Proposed Distribution of Surplus Cash Flow</b>		
	<b>Lease Year 7 (4<sup>th</sup> year of operations)</b>	<b>Lease Year 13 (10<sup>th</sup> year of operations)</b>
<ul style="list-style-type: none"> <li>• <i>Priority #3</i> – Reimbursement to District and City of their Bayfront Infrastructure Operating and Maintenance Expenditures</li> </ul>	(\$3.2 M)	(\$3.8 M)
<ul style="list-style-type: none"> <li>• Remaining Cash Flow Available for Distribution</li> </ul>	\$4.9 M	\$6.4 M

As illustrated above, once the RHCC project has stabilized, the District anticipates that it will receive a reimbursement of its annual contribution toward debt service. Moreover, the cash flow projections indicate that both the District and City will be able to reimburse themselves for their respective Bayfront infrastructure operating and maintenance expenditures. Even after the priority distributions, KMA forecasts a remaining positive cash flow. District and City staff will need to negotiate how these remaining surplus funds are distributed.

#### **V. ECONOMIC BENEFITS TO CITY AND REGION**

This section provides an evaluation of the economic benefits from the build-out of the CVB to the County of San Diego and the City of Chula Vista during construction and on an annual on-going basis. KMA prepared a detailed economic impact analysis (EIA) to estimate the total economic output, payroll, and employment generated by development of the RHCC project and the balance of the CVB, during construction and on a permanent basis. The EIA estimates the portion of economic output that is paid out in wages, the average wage by type of employment, and the resulting total construction employment and permanent employment (expressed in person-years). In undertaking this analysis, KMA estimated development costs, valuation, and phasing for each Phase and Sub-Area of the CVB. The KMA EIA relied extensively on IMPLAN (IMPact analysis for PLANning) data multipliers for the County of San Diego and the City of Chula Vista to determine indirect and induced impacts. The IMPLAN model is a commercially available model developed in 1979 and refined over time to quantify the impacts of changes in a local economy.

##### RHCC Project (Phase 1)

- *Construction Economic Impact* - As noted in Section III, Phase 1 of the CVB will consist of development of the RHCC project and 1,500 parking spaces. The construction of the RHCC and associated indirect spending, are projected to generate a construction economic output of \$1.2 billion to the County and \$65.8 million to the City.

KMA estimates that the payroll portion of this total construction economic output comprises approximately \$428.8 million for the County and \$23.5 million for the City. Based on average wages for construction and professional services, KMA translates this total payroll expense to generate 3,140 full-time equivalent workers per year during a 30-month construction period in the County and 170 construction workers in the City.

- *Ongoing Economic Annual Impact* - Phase 1 is projected to generate an annual economic impact (inclusive of indirect and induced impact) of \$391.2 million to the County and \$268.6 million to the City. Of this total economic output, payroll income reflects \$137.0 million of the County's economic output and \$93.4 million of the City's economic output; and annual employment of 3,690 employees in the County and 2,700 employees in the City.

Balance of CVB (Phases 2-3 and Subareas A-E)

- *Construction Economic Impact* - The buildout of the reminder of the CVB (Phases 2, 3, and Sub-Areas A-E) is projected to generate an economic output, including associated indirect and induced impact, of \$1.6 billion in the County and \$382.8 million to the City during construction.

KMA estimates that the payroll portion of this total construction economic output comprises approximately \$556.8 million for the County and \$133.9 million for the City. Based on average wages for construction and professional services, KMA estimates that the development of Phases 2 and 3 and Subareas A-E will result in the employment of an average of 6,610 full-time equivalent workers in the County and 1,590 full-time equivalent workers in the City per year during the construction period.

- *Ongoing Economic Annual Impact* - The remaining buildout of the CVB is projected to generate an annual economic impact (inclusive of indirect and induced impacts) of \$1.7 billion to the County and \$1.3 billion to the City; payroll income of \$855.4 million to the County and \$659.6 million to the City; and annual employment of 16,530 employees in the County and 12,460 employees in the City.

Tables V-1 and V-2 on the following page present a summary of the construction and ongoing economic benefits to the County and City.

<b>Table V-1: Economic Benefits to County of San Diego (1)</b>			
	<b>Phase 1</b>	<b>Phases 2 and 3 and Sub-Areas A-E</b>	<b>Total</b>
<b>I. Construction Economic Impact (2)</b>			
A. Economic Output	\$1.2 B	\$1.6 B	\$2.8 B
B. Personal Income	\$428.8 M	\$556.8 M	\$985.6 M
C. Employment (3)	3,140 Employees	6,610 Employees	9,750 Employees
<b>II. Ongoing Economic Annual Impact (2)(4)</b>			
A. Economic Output	\$391.2 M	\$1.7 B	\$2.1 B
B. Personal Income	\$137.0 M	\$855.4 M	\$992.4 M
C. Employment	3,690 Employees	16,530 Employees	20,220 Employees
<p>(1) All figures reflect 2017 dollars without escalation.</p> <p>(2) Reflects direct, indirect, and induced impact.</p> <p>(3) Reflects an average annual employment over a 30-month construction period for Phase 1; 18-month construction period for Phase 3 and Sub-Areas A, B, D, and E; and a 24-month construction period for Phase 2 and Sub-Area C.</p> <p>(4) Reflects recurring ongoing economic impact from annual operations.</p>			

<b>Table V-2: Economic Benefits to City of Chula Vista (1)(2)</b>			
	<b>Phase 1</b>	<b>Phases 2 and 3 and Sub-Areas A-E</b>	<b>Total</b>
<b>I. Construction Economic Impact (3)</b>			
A. Economic Output	\$65.8 M	\$382.8 M	\$448.6 M
B. Personal Income	\$23.5 M	\$133.9 M	\$157.4 M
C. Employment (4)	170 Employees	1,590 Employees	1,760 Employees
<b>II. Ongoing Economic Annual Impact (3)(5)</b>			
A. Economic Output	\$268.6 M	\$1.3 B	\$1.6 M
B. Personal Income	\$93.4 M	\$659.6 M	\$753.0 M
C. Employment	2,700 Employees	12,460 Employees	15,160 Employees
<p>(1) City figures are included within County figures.</p> <p>(2) All figures reflect 2017 dollars without escalation.</p> <p>(3) Reflects direct, indirect, and induced impact.</p> <p>(4) Reflects an average annual employment over a 30-month construction period for Phase 1; 18-month construction period for Phase 3 and Sub-Areas A, B, D, and E; and a 24-month construction period for Phase 2 and Sub-Area C.</p> <p>(5) Reflects recurring ongoing economic impact from annual operations.</p>			

## VI. LIMITING CONDITIONS

1. The KMA analysis is based, in part, on data provided by secondary sources such as state and local governments, planning agencies, real estate brokers, and other third parties. While KMA believes that these sources are reliable, we cannot guarantee their accuracy.

2. The accompanying projections and analyses are based on estimates and assumptions which were developed using currently available economic data, project-specific data and other relevant information. It is the nature of forecasting, however, that some assumptions may not materialize and unanticipated events and circumstances may occur. Such changes are likely to be material to the projections and conclusions herein and, if they occur, require review or revision of this document.
3. Any estimates of revenue or cost projections are based on the best project-specific and fiscal data available at this time as well as experience with comparable projects. They are not intended to be projections of actual future performance of any specific project. Any changes to costs, development program, or project performance may render the conclusions contained herein invalid.
4. KMA assumes that all applicable laws and governmental regulations in place as of the date of this document will remain unchanged throughout the projection period of our analysis. In the event that this does not hold true, i.e., if any tax rates change, the analysis would need to be revised.
5. The KMA analysis assumes that any necessary entitlements for the proposed development can be obtained in a reasonable time frame.
6. The KMA analysis assumes that property titles are good and marketable; no title search has been made, nor has KMA attempted to determine property ownership.
7. A projection of economic impacts is inherently based on judgment. The projections contained herein are based on the best information available at the time that this document was prepared. However, the actual impacts may vary.
8. Property tax projections reflect KMA's understanding of the assessment and tax apportionment procedures employed by the County. The County procedures are subject to change as a reflection of policy revisions or legislative mandate. While we believe our estimates to be reasonable, taxable values resulting from actual appraisals may vary from the amounts assumed in the projections.
9. No assurances are provided by KMA as to the certainty of the projected tax revenues shown in this document. Actual revenues may be higher or lower than what has been projected and are subject to valuation changes.

**Glossary of Terms:**

CVBMP – Chula Vista Bayfront Master Plan

District - San Diego Unified Port District

City – City of Chula Vista

Pacifica – Pacifica Companies, LLC

EIR – Environmental Impact Report

Board – Board of Port Commissioners

CCC – California Coastal Commission

CVB – Chula Vista Bayfront

Public Entities – District and City

LOI – Letter of Intent

RFQ – Request for Qualifications

Site – 36 acres on the H3 parcel within the CVB

RIDA – RIDA Chula Vista, LLC

ENA – Exclusive Negotiating Agreement

RHCC – Resort Hotel and Convention Center

KMA – Keyser Marston Associates

SBPP – South Bay Power Plant

Rohr – Rohr, Inc, a United Technologies Aerospace Company

MOU – Memorandum of Understanding

Dynergy South Bay – Dynergy South Bay, LLC

CAC – Citizens Advisory Committee

Gaylord – Gaylord Hotels brand

SLC – State Lands Commission

Coalition – Chula Vista Bayfront Coalition

WAG – Wildlife Advisory Group

NRMP – Natural Resources Management Plan

BCDC – Bayfront Cultural Design Committee

ARES – Ares Management, LP

CBRE Hotels – Coldwell Banker Richard Ellis Hotels Group (Formerly PKF)

JLL – Jones Lang LaSalle

RV Park – Recreational Vehicle Park

CVBFFA – Chula Vista Bayfront Facilities Financing Authority

TOT – Transient Occupancy Tax

MSA – Municipal Services Agreement

JP Morgan – JP Morgan Securities, LLC

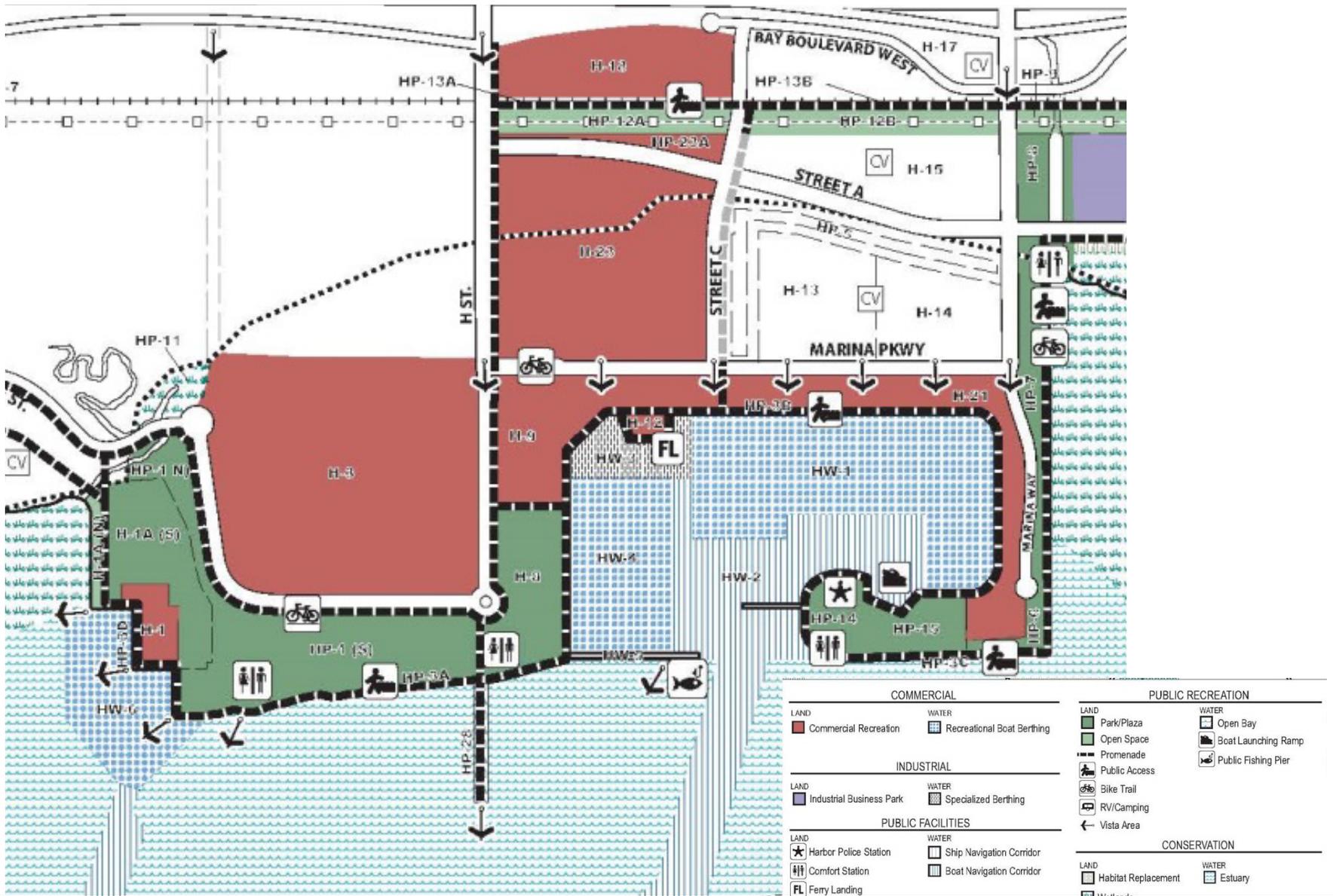
NOI – Net Operating Income

ROI – Return on Investment

O&M – Operations and Maintenance

# Chula Vista Bayfront Historic Timeline

	1980's	1990-95	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017				
<b>RV Park</b>		* Lease													*Buyout										*Buyout Amendment			
																					*S1 Negotiation				*RFP/Select			
<b>MOU</b>				* W/ Chula Vista (Phase 2 Convention Center)																								
<b>South Bay Power Plant</b>					*Asset Sale Agreement															* Must Run Status								
						*Lease Agreement															*Settlement Agreement							
					*Contract & Permit Rights Assignment/ Assumptions																							
					*Environmental Remediation Agreement																							
					*Guaranty of Contract and Permit Rights Assignment and Property Escrow Agreement																							
					*Property Escrow Agreement																							
<b>Rohr Land Transfer</b>					*CAO												*Implementation Ag. 1 (H Street Demo)											
					*Relocation Agreement												*Implementation Ag. 2 (L-Ditch)											
					*Land Transfer Agreement												*2nd Amend. (Pacifica)			*Pacifica Soil Closure								
					*Exchange Agreement												*Cooperative Remediation Agreement											
<b>CVBMP</b>						*Joint Planning Agreement												*Settlement Agreement										
																			*EIR		*CCC Approval				*H3 RFQ			
<b>Pacifica</b>																			*Exchange Agreement & State Lands Approval									
																									*Amended and Restated Exchange Agreement			
																									*Closed Land Exchange			
<b>South Bay Sub Station</b>																			*Exchange Agreement					*Sub Station Relocated				
																									*CDP Approved			
<b>Financing</b>																					*Financing Agreement					*Amended and Restated Financing Agreement		
																									*JPA			



<p>ENVIRONMENTAL AND LAND USE MANAGEMENT</p>	<p><b>PLANNING DISTRICT 7 - CHULA VISTA BAYFRONT</b></p>	<p>TITLE: <b>PRECISE PLAN</b></p>	DATE	DWG. NO.	DRWN / CHK	BASE NO.
			071812	FIGURE 19	TO/LN	

<p>LAND</p> <ul style="list-style-type: none"> <li>Commercial Recreation</li> <li>Industrial Business Park</li> <li>Harbor Police Station</li> <li>Comfort Station</li> <li>Ferry Landing</li> </ul>	<p>WATER</p> <ul style="list-style-type: none"> <li>Recreational Boat Berthing</li> <li>Specialized Berthing</li> <li>Ship Navigation Corridor</li> <li>Boat Navigation Corridor</li> </ul>	<p>LAND</p> <ul style="list-style-type: none"> <li>Park/Plaza</li> <li>Open Space</li> <li>Promenade</li> <li>Public Access</li> <li>Bike Trail</li> <li>RV/Camping</li> <li>Vista Area</li> </ul>	<p>WATER</p> <ul style="list-style-type: none"> <li>Open Bay</li> <li>Boat Launching Ramp</li> <li>Public Fishing Pier</li> </ul>	<p>CONSERVATION</p> <ul style="list-style-type: none"> <li>Habitat Replacement</li> <li>Estuary</li> </ul>
--	---	--	---	--

Sent via email to: ameyer@portofsandiego.com  
No hard copy to follow

October 4, 2016

Mr. Adam Meyer  
Real Estate Development  
Port of San Diego  
3165 Pacific Coast Highway  
San Diego, California 92101

Dear Mr. Meyer:

Pursuant to your request, we have drafted this brief letter summarizing our consultation with you to date in your negotiations with RIDA Development Corporation (RIDA) relative to their proposed Chula Vista Bayfront Resort Hotel and Convention Center. As directed by you, we have completed a review of RIDA's most recent September 2016 proforma. Our review and analysis was focused on the reasonability of RIDA's revenue per available room (RevPAR) projections considering their current development program which assumes an increase to 1,450 available guest rooms from a previous count of 1,000 rooms. On a stabilized basis, RIDA has projected that the proposed larger hotel would stabilize at an occupancy of 77 percent and at a rate of \$215, stated in current 2016 dollars.

It should be noted that we were not provided with a new detailed facilities program but have assumed that the proposed public facilities (meeting space, food and beverage outlets, etc.) have increased proportionally with the rooms expansion. If this proves to be untrue we reserve the right to amend our findings. The following paragraphs set forth our analysis relative to reasonableness of RIDA's RevPAR projections based on the three points of comparison: historical and forecasted performance of the San Diego hotel market as a whole, historical performance of the larger group and convention oriented hotels in the City of San Diego, and the recent performance of a collection of many of the largest hotels in the United States (excluding Las Vegas, Nevada).

### **San Diego County Hotel Market**

The following discussion is taken from CBRE Hotels, Americas Research's *Hotel Horizons*<sup>®</sup>, September – November 2016 Edition for all hotels in the San Diego market. The historical data (2011 through 2015) is provided by Smith Travel Research, while the projections were developed by CBRE Hotels, Americas Research.

In 2015, San Diego Hotels finished the year with a RevPAR gain of 8.6 percent. This was the result of an increase in occupancy of 2.4 percent and a 6.1 percent gain in average daily room rates (ADR). The 8.6 percent boost in San Diego RevPAR was better than the national average of 6.2 percent.

San Diego's lower-priced properties finished 2015 ahead of its upper-priced properties in terms of RevPAR growth. The properties in this category achieved a 6.6 percent gain in ADR and saw a 3.4 percent increase in occupancy. Upper-priced hotels experienced an ADR growth rate of 6.4 percent along with a 1.7 percent gain in occupancy.

By year-end 2016, San Diego hotels are forecast to see a RevPAR increase of 2.2 percent. This is the result of an estimated minor decline in occupancy of 0.1 percent and a 2.2 percent gain in ADR. The 2.2 percent advance in San Diego RevPAR is less than the national projection of a 3.6 percent increase.

Leading the way in 2016 RevPAR growth is the lower-priced segment of San Diego. The properties in this category are forecast to attain a 4.6 percent gain in ADR and see a 0.7 percent increase in occupancy, resulting in a 5.3 percent RevPAR increase. Upper-priced hotels are projected to experience an ADR growth rate of 1.0 percent, along with a 0.8 percent loss in occupancy, resulting in a 0.2 percent RevPAR increase.

Looking towards 2017, San Diego RevPAR is expected to grow 5.9 percent. This is better than the rate of growth in 2016. Unlike 2016, prospects for RevPAR growth in the upper-priced segment (positive 6.0 percent) are better than in the lower-priced segment (positive 5.0 percent). San Diego market occupancy levels are expected to range from 75.8 percent to 76.8 percent during the five-year forecast period.

### San Diego Forecast Summary

YEAR	OCC	Δ OCC	ADR	Δ ADR	REVPAR	Δ REVPAR
2011	68.5%	3.5%	\$126.37	3.6%	\$86.60	7.2%
2012	70.5%	2.8%	\$132.01	4.5%	\$93.01	7.4%
2013	71.5%	1.5%	\$135.61	2.7%	\$97.00	4.3%
2014	74.6%	4.2%	\$142.01	4.7%	\$105.88	9.2%
2015	76.3%	2.4%	\$150.69	6.1%	\$115.03	8.6%
2016F	76.3%	-0.1%	\$154.08	2.2%	\$117.51	2.2%
2017F	76.7%	0.6%	\$162.24	5.3%	\$124.46	5.9%
2018F	76.8%	0.1%	\$170.54	5.1%	\$130.92	5.2%
2019F	76.4%	-0.5%	\$177.07	3.8%	\$135.29	3.3%
2020F	75.8%	-0.8%	\$181.35	2.4%	\$137.46	1.6%

Source: CBRE Hotels' Americas Research, STR, Q2 2016

### City of San Diego Convention Hotels

While the above discussion presents a good overall picture of the health of the local market we also explored the recent historical performance of a collection of larger convention and meeting oriented hotels, including the following four hotels:

- Sheraton San Diego Hotel & Marina - 1,053 rooms
- Hilton San Diego Bayfront - 1,190 rooms
- Marriott San Diego Marina - 1,360 rooms
- Manchester Grand Hyatt San Diego - 1,628 rooms

The aggregate average annual available and occupied rooms, resulting occupancy levels, average daily rate (ADR), and revenue per available room (RevPAR) for this sample set between 2011 and 2015 and year-to-date (YTD) through August 2015 and 2016 are presented in the following table.

Historical Market Performance of the Competitive Supply									
Year	Annual Supply	Percent Change	Occupied Rooms	Percent Change	Market Occupancy	Average Daily Rate	Percent Change	REVPAR	Percent Change
2011	1,909,315	N/A	1,442,977	N/A	75.6%	\$177.31	N/A	\$134.00	N/A
2012	1,909,315	0.0%	1,494,495	3.6%	78.3%	182.45	2.9%	142.81	6.6%
2013	1,909,315	0.0%	1,521,033	1.8%	79.7%	188.96	3.6%	150.53	5.4%
2014	1,909,315	0.0%	1,552,380	2.1%	81.3%	199.32	5.5%	162.06	7.7%
2015	1,909,315	0.0%	1,573,445	1.4%	82.4%	211.58	6.1%	174.36	7.6%
CAAG	0.0%		2.2%			4.5%		6.8%	
8/15 ytd	1,909,315	N/A	1,629,313	N/A	85.3%	\$216.80	N/A	\$185.00	N/A
8/16 ytd	1,909,315	0.0%	1,638,976	0.6%	85.8%	221.45	2.1%	190.10	2.8%

Source: CBRE Hotels

Supply for the identified competitive market remained consistent over the course of the historical period with the most recent hotel opening being the Hilton San Diego Bayfront, in December 2008. Demand as measured by occupied room nights for the competitive market has increased at a compound annual growth rate ("CAGR") of 2.2 percent over the past five years. The competitive market experienced demand growth over each year of the historical period. Similarly, ADR has shown increases in each year of the historical period. Over the five-year historical period ADR has increased at an annual average rate of 4.5 percent and increased at its strongest level in 2015, increasing by 6.1 percent from year-end 2014. Thus over the historical period RevPAR increased at a CAGR of 6.8 percent. As of YTD August 2016 occupancy is up slightly as compared with YTD August 2015, and the market has likely been operating at its peak level in terms of accommodated demand. ADR increased by 2.1 percent during the YTD period surveyed, leading to a RevPAR increase of 2.8 percent.

### Large U.S. Meeting and Convention Hotels

Lastly as a check of reasonableness we also researched the recent occupancy and average daily rate levels of large hotels throughout the United States to further determine if the room count of a hotel was potentially a detriment to achievable occupancy and rate levels. As shown in the previous City of San Diego specific analysis this did not prove to be the case, but nonetheless we were interested in how large hotels performed. To do so we were able to survey 75 individual hotels on a national basis with 1,000 or more guestrooms for calendar year 2015. As noted in the introduction our survey sample excluded large hotels located in Las Vegas, for which there is not data available. The hotels

ranged in size from exactly 1,000 rooms to a high of 2,882 rooms for an average of 1,367 available rooms. Occupancy levels for this collection of large hotels ranged from the mid-60's to the mid-90's, with an average of 78.1 percent. Given the wide geographical sample it is not surprising that average daily rates also exhibited a wide range, from lows of approximately \$120 to a peak of roughly \$300, for an average of \$193.74.

### Conclusion

Based on the analysis presented herein, we are of the opinion that RIDA's estimates of occupancy and average daily rate in a stabilized year are reasonable given the data surveyed. All three methodologies utilized point to occupancy levels in the mid-70's to low 80's. Further the number of guestrooms does not appear to be a hindrance to achieving occupancy levels well above the national average based on our review of comparable data for the City of San Diego and the larger nation as a whole. Lastly the projected average daily rate falls within the admittedly wide range of the national comparables, but also more importantly the much tighter range of the four local San Diego hotels.

It is a pleasure to continue to work with you and all parties involved on this most interesting assignment. If we can be of any further assistance in the interpretation of our findings, please feel free to contact us.

Sincerely,

*CBRE Hotels, Consulting*



Bruce Baltin  
Managing Director

## TERMS AND CONDITIONS

1. The Terms and Conditions herein are part of an agreement for consulting services (the "Agreement" ) between CBRE, Inc. (the "Appraiser") and the client signing this Agreement, and for whom the consulting services will be performed (the "Client"), and shall be deemed a part of such Agreement as though set forth in full therein. The Agreement shall be governed by the laws of the state where the consulting office is located for the Appraiser executing this Agreement.
2. Client shall be responsible for the payment of all fees stipulated in the Agreement. Payment of the consulting fee and preparation of an consulting report (the "Appraisal Report, or the "report") are not contingent upon any predetermined value or on an action or event resulting from the analyses, opinions, conclusions, or use of the Appraisal Report. Final payment is due as provided in the Proposal Specifications Section of this Agreement. If a draft report is requested, the fee is considered earned upon delivery of the draft report. It is understood that the Client may cancel this assignment in writing at any time prior to delivery of the completed report. In such event, the Client is obligated only for the prorated share of the fee based upon the work completed and expenses incurred (including travel expenses to and from the job site), with a minimum charge of \$500. Additional copies of the Appraisal Reports are available at a cost of \$250 per original color copy and \$100 per photocopy (black and white), plus shipping fees of \$30 per report.
3. If Appraiser is subpoenaed or ordered to give testimony, produce documents or information, or otherwise required or requested by Client or a third party to participate in meetings, phone calls, conferences, litigation or other legal proceedings (including preparation for such proceedings) because of, connected with or in any way pertaining to this engagement, the Appraisal Report, the Appraiser's expertise, or the Property, Client shall pay Appraiser's additional costs and expenses, including but not limited to Appraiser's attorneys' fees, and additional time incurred by Appraiser based on Appraiser's then-prevailing hourly rates and related fees. Such charges include and pertain to, but are not limited to, time spent in preparing for and providing court room testimony, depositions, travel time, mileage and related travel expenses, waiting time, document review and production, and preparation time (excluding preparation of the Appraisal Report), meeting participation, and Appraiser's other related commitment of time and expertise. Hourly charges and other fees for such participation will be provided upon request. In the event Client requests additional consulting services beyond the scope and purpose stated in the Agreement, Client agrees to pay additional fees for such services and to reimburse related expenses, whether or not the completed report has been delivered to Client at the time of such request.
4. Appraiser shall have the right to terminate this Agreement at any time for cause effective immediately upon written notice to Client on the occurrence of fraud or the willful misconduct of Client, its employees or agents, or without cause upon 30 days written notice.
5. In the event Client fails to make payments when due then, from the date due until paid, the amount due and payable shall bear interest at the maximum rate permitted in the state where the office is located for the Appraiser executing the Agreement. In the event either party institutes legal action against the other to enforce its rights under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and expenses. Each party waives the right to a trial by jury in any action arising under this Agreement.
6. Appraiser assumes there are no major or significant items or issues affecting the Property that would require the expertise of a professional building contractor, engineer, or environmental consultant for Appraiser to prepare a valid report. Client acknowledges that such additional expertise is not covered in the Appraisal fee and agrees that, if such additional expertise is required, it shall be provided by others at the discretion and direction of the Client, and solely at Client's additional cost and expense.
7. In the event of any dispute between Client and Appraiser relating to this Agreement, or Appraiser's or Client's performance hereunder, Appraiser and Client agree that such dispute shall be resolved by means of binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association, and judgment upon the award rendered by an arbitrator may be entered in any court of competent jurisdiction. Depositions may be taken and other discovery obtained during such arbitration proceedings to the same extent as authorized in civil judicial proceedings in the state where the office of the Appraiser executing this Agreement is located. The arbitrator shall be limited to awarding compensatory damages and shall have no authority to award punitive, exemplary or similar damages. The prevailing party in the arbitration proceeding shall be entitled to recover its expenses from the losing party, including costs of the arbitration proceeding, and reasonable attorney's fees. Client acknowledges that Appraiser is being retained hereunder as an independent contractor to perform the services described herein and nothing in this Agreement shall be deemed to create any other relationship between Client and Appraiser. This engagement shall be deemed concluded and the services hereunder completed upon delivery to Client of the Appraisal Report discussed herein.
8. All statements of fact in the report which are used as the basis of the Appraiser's analyses, opinions, and conclusions will be true and correct to Appraiser's actual knowledge and belief. Appraiser does not make any representation or warranty, express or implied, as to the accuracy or completeness of the information or the condition of the Property furnished to Appraiser by Client or others. TO THE FULLEST EXTENT PERMITTED BY LAW, APPRAISER DISCLAIMS ANY GUARANTEE OR WARRANTY AS TO THE OPINIONS AND CONCLUSIONS PRESENTED ORALLY OR IN ANY APPRAISAL REPORT, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE EVEN IF KNOWN TO APPRAISER. Furthermore, the conclusions and any permitted reliance on and use of the Appraisal Report shall be subject to the assumptions, limitations, and qualifying statements contained in the report.

## Attachment B to Agenda File No. 2018-0070

9. Appraiser shall have no responsibility for legal matters, including zoning, or questions of survey or title, soil or subsoil conditions, engineering, or other similar technical matters. The report will not constitute a survey of the Property analyzed.
10. Client shall provide Appraiser with such materials with respect to the assignment as are requested by Appraiser and in the possession or under the control of Client. Client shall provide Appraiser with sufficient access to the Property to be analyzed, and hereby grants permission for entry unless discussed in advance to the contrary.
11. The data gathered in the course of the assignment (except data furnished by Client) and the report prepared pursuant to the Agreement are, and will remain, the property of Appraiser. With respect to data provided by Client, Appraiser shall not violate the confidential nature of the Appraiser-Client relationship by improperly disclosing any proprietary information furnished to Appraiser. Notwithstanding the foregoing, Appraiser is authorized by Client to disclose all or any portion of the report and related data as may be required by statute, government regulation, legal process, or judicial decree, including to appropriate representatives of the Appraisal Institute if such disclosure is required to enable Appraiser to comply with the Bylaws and Regulations of such Institute as now or hereafter in effect.
12. Unless specifically noted, in preparing the Appraisal Report the Appraiser will not be considering the possible existence of asbestos, PCB transformers, or other toxic, hazardous, or contaminated substances and/or underground storage tanks (collectively, "Hazardous Material") on or affecting the Property, or the cost of encapsulation or removal thereof. Further, Client represents that there is no major or significant deferred maintenance of the Property that would require the expertise of a professional cost estimator or contractor. If such repairs are needed, the estimates are to be prepared by others, at Client's discretion and direction, and are not covered as part of the Appraisal fee.
13. In the event Client intends to use the Appraisal Report in connection with a tax matter, Client acknowledges that Appraiser provides no warranty, representation or prediction as to the outcome of such tax matter. Client understands and acknowledges that any relevant taxing authority (whether the Internal Revenue Service or any other federal, state or local taxing authority) may disagree with or reject the Appraisal Report or otherwise disagree with Client's tax position, and further understands and acknowledges that the taxing authority may seek to collect additional taxes, interest, penalties or fees from Client beyond what may be suggested by the Appraisal Report. Client agrees that Appraiser shall have no responsibility or liability to Client or any other party for any such taxes, interest, penalties or fees and that Client will not seek damages or other compensation from Appraiser relating to any such taxes, interest, penalties or fees imposed on Client, or for any attorneys' fees, costs or other expenses relating to Client's tax matters.
14. Appraiser shall have no liability with respect to any loss, damage, claim or expense incurred by or asserted against Client arising out of, based upon or resulting from Client's failure to provide accurate or complete information or documentation pertaining to an assignment ordered under or in connection with this Agreement, including Client's failure, or the failure of any of Client's agents, to provide a complete copy of the Appraisal Report to any third party.
15. LIMITATION OF LIABILITY. EXCEPT TO THE EXTENT ARISING FROM SECTION 16 BELOW, OR SECTION 17 IF APPLICABLE, IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS AFFILIATE, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR CONTRACTORS BE LIABLE TO THE OTHER, WHETHER BASED IN CONTRACT, WARRANTY, INDEMNITY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT OR OTHERWISE, FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, INCIDENTAL OR INDIRECT DAMAGES, AND AGGREGATE DAMAGES IN CONNECTION WITH THIS AGREEMENT FOR EITHER PARTY (EXCLUDING THE OBLIGATION TO PAY THE FEES REQUIRED HEREUNDER) SHALL NOT EXCEED THE GREATER OF THE TOTAL FEES PAYABLE TO APPRAISER UNDER THIS AGREEMENT OR TEN THOUSAND DOLLARS (\$10,000). THIS LIABILITY LIMITATION SHALL NOT APPLY IN THE EVENT OF A FINAL FINDING BY AN ARBITRATOR OR A COURT OF COMPETENT JURISDICTION THAT SUCH LIABILITY IS THE RESULT OF A PARTY'S FRAUD OR WILLFUL MISCONDUCT.
16. Client shall not disseminate, distribute, make available or otherwise provide any Appraisal Report prepared hereunder to any third party (including without limitation, incorporating or referencing the Appraisal Report, in whole or in part, in any offering or other material intended for review by other parties) except to (i) any third party expressly acknowledged in a signed writing by Appraiser as an "Intended User" of the Appraisal Report provided that either Appraiser has received an acceptable release from such third party with respect to such Appraisal Report or Client provides acceptable indemnity protections to Appraiser against any claims resulting from the distribution of the Appraisal Report to such third party, (ii) any third party service provider (including rating agencies and auditors) using the Appraisal Report in the course of providing services for the sole benefit of an Intended User, or (iii) as required by statute, government regulation, legal process, or judicial decree. In the event Appraiser consents, in writing, to Client incorporating or referencing the Appraisal Report in any offering or other materials intended for review by other parties, Client shall not distribute, file, or otherwise make such materials available to any such parties unless and until Client has provided Appraiser with complete copies of such materials and Appraiser has approved all such materials in writing. Client shall not modify any such materials once approved by Appraiser. In the absence of satisfying the conditions of this paragraph with respect to a party who is not designated as an Intended User, in no event shall the receipt of an Appraisal Report by such party extend any right to the party to use and rely on such report, and Appraiser shall have no liability for such unauthorized use and reliance on any Appraisal Report. In the event Client breaches the provisions of this paragraph, Client shall indemnify, defend and hold Appraiser, and its affiliates and their officers, directors, employees, contractors, agents and other representatives (Appraiser and each of the foregoing an "Indemnified Party"

and collectively the "Indemnified Parties"), fully harmless from and against all losses, liabilities, damages and expenses (collectively, "Damages") claimed against, sustained or incurred by any Indemnified Party arising out of or in connection with such breach, regardless of any negligence on the part of any Indemnified Party in preparing the Appraisal Report.

17. In the event an Intended User incorporates or references the Appraisal Report, in whole or in part, in any offering or other material intended for review by other parties, Client shall indemnify, defend and hold each of the Indemnified Parties harmless from and against any Damages in connection with (i) any transaction contemplated by this Agreement or in connection with the consulting or the engagement of or performance of services by any Indemnified Party hereunder, (ii) any actual or alleged untrue statement of a material fact, or the actual or alleged failure to state a material fact necessary to make a statement not misleading in light of the circumstances under which it was made with respect to all information furnished to any Indemnified Party or made available to a prospective party to a transaction, or (iii) an actual or alleged violation of applicable law by an Intended User (including, without limitation, securities laws) or the negligent or intentional acts or omissions of an Intended User (including the failure to perform any duty imposed by law); and will reimburse each Indemnified Party for all reasonable fees and expenses (including fees and expenses of counsel) (collectively, "Expenses") as incurred in connection with investigating, preparing, pursuing or defending any threatened or pending claim, action, proceeding or investigation (collectively, "Proceedings") arising therefrom, and regardless of whether such Indemnified Party is a formal party to such Proceeding. Client agrees not to enter into any waiver, release or settlement of any Proceeding (whether or not any Indemnified Party is a formal party to such Proceeding) without the prior written consent of Appraiser (which consent will not be unreasonably withheld or delayed) unless such waiver, release or settlement includes an unconditional release of each Indemnified Party from all liability arising out of such Proceeding.
18. Time Period for Legal Action. Unless the time period is shorter under applicable law, except in connection with paragraphs 16 and 17 above, Appraiser and Client agree that any legal action or lawsuit by one party against the other party or its affiliates, officers, directors, employees, contractors, agents, or other representatives, whether based in contract, warranty, indemnity, negligence, strict liability or other tort or otherwise, relating to (a) this Agreement or the Appraisal Report, (b) any services or consulting under this Agreement or (c) any acts or conduct relating to such services or consulting, shall be filed within two (2) years from the date of delivery to Client of the Appraisal Report to which the claims or causes of action in the legal action or lawsuit relate. The time period stated in this section shall not be extended by any incapacity of a party or any delay in the discovery or accrual of the underlying claims, causes of action or damages.



# PROPOSED CHULA VISTA RESORT HOTEL AND CONVENTION CENTER DEVELOPMENT

RIDA Development Cost Review for *San Diego Unified Port District*

March 30, 2017



March 30, 2017

Adam Meyer  
San Diego Unified Port District  
3165 Pacific Highway  
San Diego, California 92101

**Re: RIDA Development Cost Review and Commentary**

Dear Adam:

JLL was engaged by the Port of San Diego ("Port") to review the latest Development Budget, submitted by RIDA, for the Chula Vista Bayfront Hotel and Conference Center. RIDA provided the Port limited information related to the Development Budget. RIDA provided the Port with an overall development budget that totalled \$727 million. The development budget included the following costs:

Cost Summary	
Item	Costs
Site Costs	\$80M
Parking	\$71.6M
Conference Center	\$227.3M
Hotel	\$347.7M

With regards to development costs, we would like to highlight the following comparable hotels built over past several years at a development costs range of \$312,000 to \$697,000 per guestroom. Particularly, most recent developments such as Marriott Marquis in Washington DC, the Fairmont Austin and the JW Marriott Austin were costs were kept at or below \$517 Million.

Development Costs of U.S. Convention Hotels						
Hotel	City, State	Year Opened	Rooms	Development Cost	Cost per Key	Notes
<b>Recent Openings</b>						
Hilton San Diego Bayfront	San Diego, CA	2008	1,190	\$348,000,000	\$292,437	Leasehold
Gaylord National Resort & Convention Center	National Harbor, MD	2008	2,000	\$870,000,000	\$435,000	Excluding Land
Hilton Baltimore	Baltimore, MD	2008	750	\$300,000,000	\$400,000	Excluding Land
JW Marriott and Ritz Carlton (L.A. Live)	Los Angeles, CA	2010	1,225	\$854,419,000	\$697,485	Excluding Land
Omni Dallas	Dallas, TX	2011	1,001	\$500,000,000	\$499,500	Including Land
Omni Nashville	Nashville, TN	2013	800	\$250,000,000	\$312,500	Including Land
Marriott Marquis	Washington, D.C.	2014	1,175	\$517,000,000	\$440,000	Leasehold
Fairmont Austin	Austin, TX	2015	1,000	\$350,000,000	\$350,000	Excluding Land
JW Marriott	Austin, TX	2015	1,012	\$300,000,000	\$296,443	Excluding Land

Source: Various PR releases, Jones Lang LaSalle Hotels

JLL engaged AECOM to review the most recent construction budget and project scope which has increased significantly over prior estimates as shown below. The costs and program are conceptual estimates per developer.

Scope & Cost Changes				
	15-Feb	15-Jul	16-Apr	17-Jan
SF (000's)	1,257	1,207	1,097	2,248
Dev Cost (\$M)	\$288	\$358	\$358	\$727

The key reasons for the increase to the development budget are summarized below.

Cost Drivers	Notes
1 Gross Floor Area	New development scope presented by RIDA is substantially larger than April 2016
2 Project duration	\$850K per month for General Conditions and \$470K per month for General Requirements needs cost breakdown.
3 Millwork Allowance	\$11M allowance for millwork needs further review
4 Finishes Allowance	\$25M allowance with no back-up or design needs further study.
5 Theming Allowance	\$20M for theming allowance with no back-up or design needs further study
6 Structure	The larger development with more rooms which also increased the height of the tower and load capacity for foundation. As design develops, it would require further review
7 Parking Structure	April 2016 estimate parking was not included in overall cost and in this version a budget of \$71M was included driving costs

In addition, AECOM performed an order of magnitude review to compare RIDA's cost with that of a standard hotel based on RS Means and historical data. As shown below, RIDA's costs are 42% or \$213M higher.

Order of Magnitude Costs			
	AECOM	RIDA	Delta
Hotel & Conference Costs	\$411,033,000	\$575,014,000	\$163,981,000
Total Parking & Site Costs	<u>\$102,527,000</u>	<u>\$151,706,000</u>	<u>\$49,179,000</u>
Total Construction Costs	\$513,560,000	\$726,720,000	\$213,160,000
			42%

The program and scope has changed significantly since last submission. An order of magnitude test was prepared by AECOM for a standard hotel where this may not apply due to the updated scope and program. Although there is a large delta of approximately \$213M between RIDA and AECOM, RIDA's costs were based on conceptual designs and preliminary at this stage. During this early stage of programming and cost estimates, the large costs delta is not unusual given the cost drivers shown above and the higher than normal theming and finishes proposed by developer. Given the preliminary nature of the design, there wasn't enough detailed information to validate the cost assumptions and therefore the order of magnitude prepared by AECOM relied on standard hotel benchmarks to prepare their estimates. Per the unique program themes and other cost drivers, it is not unusual for there to be a large cost delta against a more traditional hotel benchmark. Additional cost reviews and checks will ensure better cost refinements as the development program evolves along with better cost benchmarks.

Though, these two projects and designs are different, by carrying out this comparison it gives a greater insight into where the key changes have occurred and need further analysis. Key areas the Port will want to have further discussions with RIDA are:

1. **Millwork** - Further clarification will need to be sought on this item. RIDA has included \$11m for millwork. It is a significant cost however there is no detail to determine whether or not it is excessive.
2. **Finishes** - An allowance of \$25m has been included in the overall costs pertaining to internal finishes. There is \$80m in measure finishes with the additional included. This is a large sum of money to be included with no detail / scope of work. RIDA have suggested this allowance is for building out of theming areas. This allowance may potentially reduce as the design develops.
3. **Theming** - A further allowance of \$15m has been included in the overall costs for 'Theming' of areas. This cost is additional to the \$80m included for measured finishes and the \$25m allowance included. Therefore a RIDA have included an overall budget of \$120m for finishes and theming alone.
4. **Program** - There has been a 33 month program included for the construction works and this forms the basis of the General Conditions and Requirements however AECOM have not received this breakdown to review.

Respectfully submitted,

Bob Hunt  
Managing Director  
Public Institutions  
JONES LANG LASALLE AMERICAS, INC.

cc: Conceptual Development Budget Report & Order of Magnitude February 28, 2017

## 1.1 Assumptions and Limiting Conditions

The report was completed with the following general assumptions and limiting conditions:

1. As in all studies of this type, the estimated results are based upon competent and efficient management and presume no significant changes in the economic environment from that as set forth in this report. Since our forecasts are based on estimates and assumptions which are subject to uncertainty and variation, we do not represent them as results which will actually be achieved.
2. Responsible ownership and competent property management are assumed.
3. The information furnished by others is believed to be reliable, but no warranty is given for its accuracy.
4. It is assumed that there are no hidden or unapparent conditions of the property, subsoil or structures.
5. It is assumed that the property will be in full compliance with all applicable federal, state, and local environmental regulations and laws unless the lack of compliance is stated, described, and considered in the report.
6. It is assumed that the property will conform to all applicable zoning and use regulations and restrictions.
8. Possession of this report, or a copy thereof, does not carry with it the right of publication.
9. The consultant, by reason of this report, is not required to give further consultation or testimony or to be in attendance in court with reference to the property in question unless arrangements have been previously made.
10. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the consultant, or the firm with which the consultant is connected) shall be disseminated to the public through advertising, public relations, news, sales, or other media without the prior written consent and approval of the consultant.

**Bob Hunt**

Managing Director  
Public Institutions  
+1 206 607 1754  
Bob.Hunt@am.jll.com

**Greg Hartmann, MAI, MRICS, CHA**

Executive Vice President  
Hotels & Hospitality  
+1 303 390 5249  
greg.hartmann@am.jll.com

**Andrea Grigg**

Senior Vice President  
Hotels & Hospitality  
+1 415 395 4977  
andrea.grigg@am.jll.com

**Andrew Phillips**

Vice President  
Public Institutions  
+1 858.410.6390  
andy.phillips@am.jll.com

---

COPYRIGHT © JONES LANG LASALLE IP, INC. 2017.

This publication is the sole property of Jones Lang LaSalle IP, Inc. and must not be copied, reproduced or transmitted in any form or by any means, either in whole or in part, without the prior written consent of Jones Lang LaSalle IP, Inc.

The information contained in this publication has been obtained from sources generally regarded to be reliable. However, no representation is made, or warranty given, in respect of the accuracy of this information. We would like to be informed of any inaccuracies so that we may correct them.

Jones Lang LaSalle does not accept any liability in negligence or otherwise for any loss or damage suffered by any party resulting from reliance on this publication.

# CHULA VISTA BAYFRONT HOTEL & CONFERENCE CENTER

## Development Budget Report

For

**Jones Lang LaSalle**

**February 28, 2017**

# Chula Vista Hotel & Convention Center Development Budget Report

Prepared for:

Jones Lang LaSalle  
4747 Executive Drive  
Suite 400  
San Diego CA 92121

Prepared by:

AECOM  
300 California Street  
Suite 400  
San Francisco CA 94104  
(415) 796-8100

# Chula Vista Hotel & Convention Center Development Budget Report

## Contents

### Section 1

Executive Summary	1
Overall Summary	2
Cost Tracking Summary	3
Cost Drivers	4
Detailed Cost Summary	5
Hotel Budget Estimate Summary	6
Conference Center Budget Estimate Summary	7
Site Development Budget Estimate	8
Parking Garage Budget Summary	9

### Section 2

Executive Summary	11
Guestroom Component	12
Food & Beverage Component	13
Conference Facilities component	14
Recreational Component	15
Food Service Component	16
Lobby & Retail Component	17
Front Desk Reception/Office Component	18
Back of the House Component	19
Administration Office Component	20
Circulation	21
Receiving & Storage Component	22
Engineering Component	23
Parking Garage	24
Site Development	25

### Section 3

Appendix	
----------	--

# Chula Vista Hotel & Convention Center Development Budget Report

## Executive Summary

### Project and Cost Overview

The following report was undertaken by AECOM in order to review the construction budget estimates prepared for the proposed Chula Vista Hotel & Conference Center project by RIDA Development Corporation and Balfour Beatty respectively.

### Cost and Gross Floor Area Commentary

AECOM have undertaken an analysis of the estimate prepared by RIDA which was presented in January 2017.

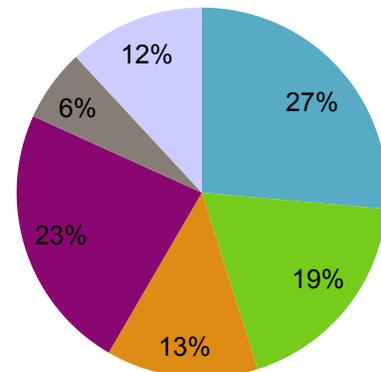
The key cost drivers as identified by AECOM are highlighted on page 4 of this report and relate to costs for additional Gross Floor Area, Program, Allowances including Millwork, Finishes and Theming, Structure and the added costs of a Parking Structure

The gross floor area is in the amount of 2,247,521 SF with a Site area of 1,161,634 SF.

Cost Status	\$/SF	Total x \$1,000
April 16 Estimate	295.30	323,872
December 16 Estimate	323.34	726,720
Delta from previous	28.04	402,848

### Key Focus Areas

1. Millwork - Further clarification will need to be sought on this item. RIDA have included c. \$11m for millwork. It is a significant cost however there is no detail to determine whether or not it is excessive.
2. Finishes - An allowance of \$25m has been included in the overall costs pertaining to internal finishes. There is c. \$80m in measure finishes with the additional included. This is a large sum of money to be included with no detail / scope of work. RIDA have suggested this allowance is for building out of theming areas. This allowance may potentially reduce as the design develops.
3. Theming - A further allowance of \$15m has been included in the overall costs for 'Theming' of areas. This cost is additional to the \$80m included for measured finishes and the \$25m allowance included. Therefore a RIDA have included an over all budget of c. \$120m for finishes and theming alone.
4. Program - There has been a 33 month program included for the construction works and this forms the basis of the General Conditions and Requirements however AECOM have not recieved this breakdown to review.



- Shell \$183m
- Interiors \$129m
- Equipment & Transportation \$92m
- Mechanical & Electrical \$162m
- Site Construction \$43m
- General Requirements \$82m

### Report Summary

The structure of the report is as follows: The overall cost summary is followed by a breakdown of the overall cost budgets presented by RIDA and Balfour Beatty. It details where the key cost drivers are and highlights areas of concern regarding allowances / costs drivers and also identifies the key areas in the budget which will need to be investigated further. Further to this a narrative has been provided on the key areas that have been identified as the main force in driving the cost.

### Elemental Comparisons

The Estimate prepared by RIDA in January 2017 was provided in a \$/SF and Trade Breakdown format and as such we have readjusting in order to make a detailed comparison between this and the April 2016 estimate. It should be noted that these two designs are different however by carrying out this comparison it gives a greater insight into where the key changes have occurred. This being the case, the elemental breakdowns provided in this report should not be relied upon as a true reflection of the apportionment of costs between elements.

## Chula Vista Hotel & Convention Center Development Budget Report

### Overall Summary

	SF	\$/SF	TOTAL
B1 Hotel Tower Budget	1,005,352	345.86	347,716
B5 Conference Center Budget	637,774	356.39	227,299
B6 Parking Garage Budget	604,395	118.49	71,612
<b>TOTAL BUILDING CONSTRUCTION</b>	<b>2,247,521</b>	<b>287.71</b>	<b>646,627</b>
B2 Site Development Budget	1,161,364	68.96	80,093
<b>TOTAL SITEWORK</b>	<b>1,161,364</b>	<b>68.96</b>	<b>80,093</b>
<b>TOTAL BUILDING AND SITEWORK</b>			<b>726,720</b>
<b>CONSTRUCTION BUDGET TOTAL</b>			<b>726,720</b>

# Chula Vista Hotel & Convention Center Development Budget Report

Cost Tracking Summary		Construction Budget April 16			Construction Budget January 17			Delta			Comments
		%	\$/SF	TOTAL	%	\$/SF	TOTAL	\$/SF	TOTAL	% Markup	
		Gross Floor Area: Gross Area: 1,096,738 SF			Gross Area: 2,247,521 SF			1,150,783 SF			
01	Foundations	 15%	43.86	48,107	 12%	39.76	89,354	(4.10)	41,247	 10%	
02	Vertical Structure	 5%	16.00	17,546	 4%	13.56	30,470	(2.44)	12,924	 3%	Includes structural steel for tower
03	Floor and Roof Structure	 2%	6.30	6,913	0%		INCL			0%	Included in Foundations
04	External Cladding	 10%	28.83	31,614	 7%	21.34	47,953	(7.49)	16,340	 4%	
05	Roofing and Waterproofing	 4%	10.64	11,673	 2%	6.84	15,383	(3.80)	3,710	 1%	
1	Shell	36%	105.63	115,852	25%	81.49	183,160	(0.11)	67,308	17%	
06	Interior Partitions	 2%	7.27	7,976	 8%	24.85	55,854	17.58	47,878	 12%	Includes operable partitions
07	Interior Finishes	 18%	53.05	58,178	 10%	32.95	74,061	(20.10)	15,883	 4%	Includes \$25m allowance for finishes
2	Interiors	20%	60.32	66,155	18%	57.80	129,916	(0.03)	63,761	16%	
08	Equipment and Specialties	 4%	12.37	13,569	 8%	25.69	57,739	13.32	44,170	 11%	Includes terraces & pools with an additional \$20m for theming
09	Vertical Transportation	 4%	10.38	11,389	 5%	15.25	34,273	4.87	22,884	 6%	
3	Equipment & Vertical Transportation	8%	22.76	24,958	13%	40.94	92,012	0.05	67,054	17%	
10	Plumbing	 5%	16.02	17,566	 5%	17.01	38,236	0.99	20,670	 5%	
11	HVAC	 10%	30.71	33,683	 9%	28.81	64,747	(1.90)	31,064	 8%	
12	Electrical	 12%	34.38	37,705	 7%	23.30	52,369	(11.08)	14,664	 4%	
13	Fire Protection	 2%	5.91	6,482	 1%	3.07	6,900	(2.84)	418	 0%	
4	Mechanical & Electrical	29%	87.02	95,436	22%	72.19	162,251	(0.07)	66,816	17%	
BUILDING ELEMENTAL BEFORE SITE		93%	275.73	302,401	78%	252.43	567,339	(0.15)	264,939	66%	
14	Site Preparation & Demolition	 1%	2.52	2,769	 3%	8.47	19,037	5.95	16,267	 4%	Includes pile excavation
15	Site Paving, Structure & Landscaping	 4%	12.11	13,286	 3%	9.42	21,169	(2.69)	7,883	 2%	
16	Site Utilities	 2%	4.94	5,416	 1%	1.65	3,709	(3.29)	(1,707)	 -0.42%	
6	Site Construction	7%	19.57	21,471	6%	19.54	43,915	(0.01)	22,444	6%	
BUILDING AND SITE CONSTRUCTION		100%	295.30	323,872	84%	271.97	611,254	(0.16)	287,382	71%	
17	General Conditions			Incl Above	 4%	13.16	29,572	13.16	29,572	 7%	Based on 33 month program
18	General Requirements			Incl Above	 2%	7.82	17,580	7.82	17,580	 4%	Based on 33 month program
19	Insurances			Incl Above	 1%	3.46	7,779	3.46	7,779	 2%	
20	Bonds			Incl Above			INCL			0%	
21	Contractor's Fee, Overhead & Profit			Incl Above	 4%	12.29	27,615	12.29	27,615	 7%	
CONSTRUCTION COST BEFORE ESCALATION		100%	295.30	323,872	95%	308.70	693,800	(0.05)	369,928	92%	
22	Contingency for Development of Design				 5%	14.65	32,920	14.65	32,920	 8%	
CONSTRUCTION BUDGET TOTALS		100%	295.30	323,872	95%	323.34	726,720	(0.05)	402,848	100%	

# Chula Vista Hotel & Convention Center Development Budget Report

## Cost Drivers

The following items have been identified as the main drivers for the increased cost of this project:

### **COST DRIVERS & CONSTRUCTION COSTS**

- 1 **Gross Floor Area** - The scheme presented by RIDA is a much larger project than those previously presented in April 2016. It appears the current design and scheme is double the size of the previous. This is the main contributor to the construction costs being much higher than those previously presented. The new development incorporates an additional 450 hotel rooms and a large outdoor amenity and pool areas with associated Conference Center.
- 2 **Project Duration** - RIDA have presented a total project duration of circa 33 months with General Conditions at \$850k per month and General Requirements at \$470k per month. These costs are associated with RIDA/Balfour Beatty site offices, head office overheads and running costs etc. for the duration of the project. AECOM would require the full breakdown for this to determine where the major cost allocations are and to determine value.
- 3 **Allowances** - Within the breakdown of costs provided by RIDA there is a number of allowances included such as an \$11m allowance for millwork. As the design is still at concept stage it is difficult to determine whether this allowance is excessive or not. As the design develops it would be prudent to test this allowance to ensure is not over and above.
- 4 **Allowances** - Within the breakdown of costs RIDA have included a \$25m allowance for finishes. This is an extra over allowance included for unknowns. RIDA have quantified finishes in the amount of circa \$80m and have included the additional \$25m with no back-up or design. AECOM feel that this allowance is excessive as there is no design to determine this figure.
- 5 **Allowances** - RIDA have also included a further \$20m allowance for 'Theming'. This is an extra over allowance included for additional finishes and aesthetics between the indoor and outdoor spaces. Again this is an additional allowance with no back-up or design. AECOM feel that this allowance presents a significant increase in cost where there is no design to determine this figure.
- 6 **Structure** - The development presented by RIDA appears to be a larger development with increased number of hotel rooms etc. As a result, this has driven increases in costs pertaining to both the foundation and vertical structure. As the hotel contains an additional 450 rooms this has increased the height of the tower and therefore the load capacity of the foundation. However, there is no structural design and these costs are based on square foot rates and assumptions made by RIDA. As the design develops it would be prudent to test these costs to ensure they are in line with current market conditions.
- 7 **Parking Structure** - In the April 2016 estimate the parking Structure was not included in the overall cost and as such a reduction was shown in the budget. The budget presented in January 2017 includes this element in the amount of circa \$71m, which is another cost driver and should be noted in the over all budget.

## Chula Vista Hotel & Convention Center Development Budget Report

Detailed Cost Summary	1		1		2		3		4	
	Total Construction Costs		Hotel Tower Budget		Conference Center Budget		Site Development Budget		Parking Garage Budget	
	\$/SF	TOTAL	\$/SF	TOTAL	\$/SF	TOTAL	\$/SF	TOTAL	\$/SF	TOTAL
Gross Areas:	<b>2,247,521 SF</b>		1,005,352 SF		637,774 SF		1,161,364 SF		604,395 SF	
Hoist Equipment	3.53	7,925	7.22	7,254	1.05	671	-	-	-	-
Indirect Expenses	1.09	2,444	1.34	1,352	0.63	403	0	465	0	225
Preconstruction Services	0.90	2,019	0.98	983	1.01	646	0	213	0	177
Existing Conditions	0.00		0.00	-	-	-	-	-	-	-
Concrete	39.76	89,354	39.47	39,683	41.53	26,487	0	5	38	23,179
Masonry	0.13	296	0.00	-	-	-	-	-	0	296
Metals	12.05	27,078	3.88	3,903	34.71	22,140	1	851	0	184
Wood & Plastics	6.54	14,695	10.22	10,273	6.10	3,893	-	-	1	530
Thermal and Moisture Protection	6.84	15,383	2.06	2,070	15.18	9,683	1	1,264	4	2,366
Openings	23.89	53,689	41.99	42,213	16.97	10,825	0	458	0	192
Finishes	46.56	104,656	54.27	54,563	54.82	34,961	1	871	24	14,260
Specialities	3.86	8,674	2.38	2,390	9.80	6,253	0	15	0	16
Equipment	0.46	1,034	0.38	379	0.01	5	-	-	1	650
Furnishings	0.24	542	0.12	123	-	-	0	381	0	38
Special Construction	21.13	47,489	15.32	15,400	0.40	254	27	31,594	0	241
Conveying Equipment	15.25	34,273	20.98	21,089	16.37	10,438	-	-	5	2,746
Fire Supresseion	3.07	6,900	4.04	4,064	3.28	2,094	-	-	1	742
Plumbing	17.01	38,236	33.42	33,595	5.96	3,803	0	64	1	774
HVAC	28.81	64,747	26.04	26,182	48.23	30,757	-	-	13	7,807
Electrical	23.30	52,369	22.03	22,147	39.23	25,020	2	2,532	4	2,670
Earthwork	8.07	18,129	5.57	5,599	4.24	2,705	5	5,733	7	4,092
Exterior Improvements	9.42	21,169	0.18	181	1.02	651	17	20,010	1	328
Utilities	1.65	3,709	0.00	-	-	-	3	3,709	-	-
<b>BUILDING AND SITEWORK</b>	<b>273.55</b>	<b>614,809</b>	<b>291.88</b>	<b>293,443</b>	<b>300.56</b>	<b>191,690</b>	<b>58.69</b>	<b>68,164</b>	<b>101.77</b>	<b>61,511</b>
General Conditions	12.47	28,036	13.58	13,656	14.07	8,971	3	2,955	4	2,454
General Requirements	6.92	15,561	7.54	7,580	7.81	4,979	1	1,640	2	1,362
Insurance, Bond, Taxes	3.46	7,779	3.77	3,789	3.90	2,489	1	820	1	681
Contingencies	14.65	32,920	15.95	16,035	16.52	10,533	3	3,470	5	2,882
Contractor's Fee, Overhead & Profit	12.29	27,615	13.14	13,213	13.54	8,637	3	3,043	5	2,721
<b>CONSTRUCTION BUDGET TOTALS</b>	<b>323.34</b>	<b>726,720</b>	<b>345.86</b>	<b>347,716</b>	<b>356.39</b>	<b>227,299</b>	<b>68.96</b>	<b>80,093</b>	<b>118.49</b>	<b>71,612</b>

# Chula Vista Hotel & Convention Center Development Budget Report

## Hotel Tower Budget Summary

	%	\$/SF	TOTAL
Gross Area: 1,005,352 SF			
1 Hoist Equipment	2%	7.22	7,254
2 Indirect Expenses	0%	1.34	1,352
3 Preconstruction Services	0%	0.98	983
4 Existing Conditions	0%	0.00	0
5 Concrete	11%	39.47	39,683
6 Masonry	0%	0.00	0
7 Metals	1%	3.88	3,903
8 Wood & Plastics	3%	10.22	10,273
9 Thermal and Moisture Protection	1%	2.06	2,070
10 Openings	12%	41.99	42,213
11 Finishes	16%	54.27	54,563
12 Specialities	1%	2.38	2,390
13 Equipment	0%	0.38	379
14 Furnishings	0%	0.12	123
15 Special Construction	4%	15.32	15,400
16 Conveying Equipment	6%	20.98	21,089
17 Fire Supresseion	1%	4.04	4,064
18 Plumbing	10%	33.42	33,595
19 HVAC	8%	26.04	26,182
20 Electrical	6%	22.03	22,147
21 Earthwork	2%	5.57	5,599
22 Exterior Improvements	0%	0.18	181
23 Utilities	0%	0.00	0
<b>BUILDING CONSTRUCTION</b>	<b>84%</b>	<b>291.88</b>	<b>293,443</b>
24 General Conditions	4%	13.58	13,656
25 General Requirements	2%	7.54	7,580
26 Insurance, Bond, Taxes	1%	3.77	3,789
27 Contingencies	5%	15.95	16,035
28 Contractor's Fee, Overhead & Profit	4%	13.14	13,213
<b>CONSTRUCTION BUDGET TOTALS</b>	<b>100%</b>	<b>345.86</b>	<b>347,716</b>

# Chula Vista Hotel & Convention Center Development Budget Report

## Conference Center Budget Summary

	%	\$/SF	TOTAL
	Gross Area:	637,774 SF	
1 Hoist Equipment	0%	1.05	671
2 Indirect Expenses	0%	0.63	403
3 Preconstruction Services	0%	1.01	646
4 Existing Conditions	0%	0.00	0
5 Concrete	12%	41.53	26,487
6 Masonry	0%	0.00	0
7 Metals	10%	34.71	22,140
8 Wood & Plastics	2%	6.10	3,893
9 Thermal and Moisture Protection	4%	15.18	9,683
10 Openings	5%	16.97	10,825
11 Finishes	15%	54.82	34,961
12 Specialities	3%	9.80	6,253
13 Equipment	0%	0.01	5
14 Furnishings	0%	0.00	0
15 Special Construction	0%	0.40	254
16 Conveying Equipment	5%	16.37	10,438
17 Fire Supresseion	1%	3.28	2,094
18 Plumbing	2%	5.96	3,803
19 HVAC	14%	48.23	30,757
20 Electrical	11%	39.23	25,020
21 Earthwork	1%	4.24	2,705
22 Exterior Improvements	0%	1.02	651
23 Utilities	0%	0.00	0
<b>BUILDING CONSTRUCTION</b>	<b>84%</b>	<b>300.56</b>	<b>191,690</b>
24 General Conditions	4%	14.07	8,971
25 General Requirements	2%	7.81	4,979
26 Insurance, Bond, Taxes	1%	3.90	2,489
27 Contingencies	5%	16.52	10,533
28 Contractor's Fee, Overhead & Profit	4%	13.54	8,637
<b>CONSTRUCTION BUDGET TOTALS</b>	<b>100%</b>	<b>356.39</b>	<b>227,299</b>

# Chula Vista Hotel & Convention Center Development Budget Report

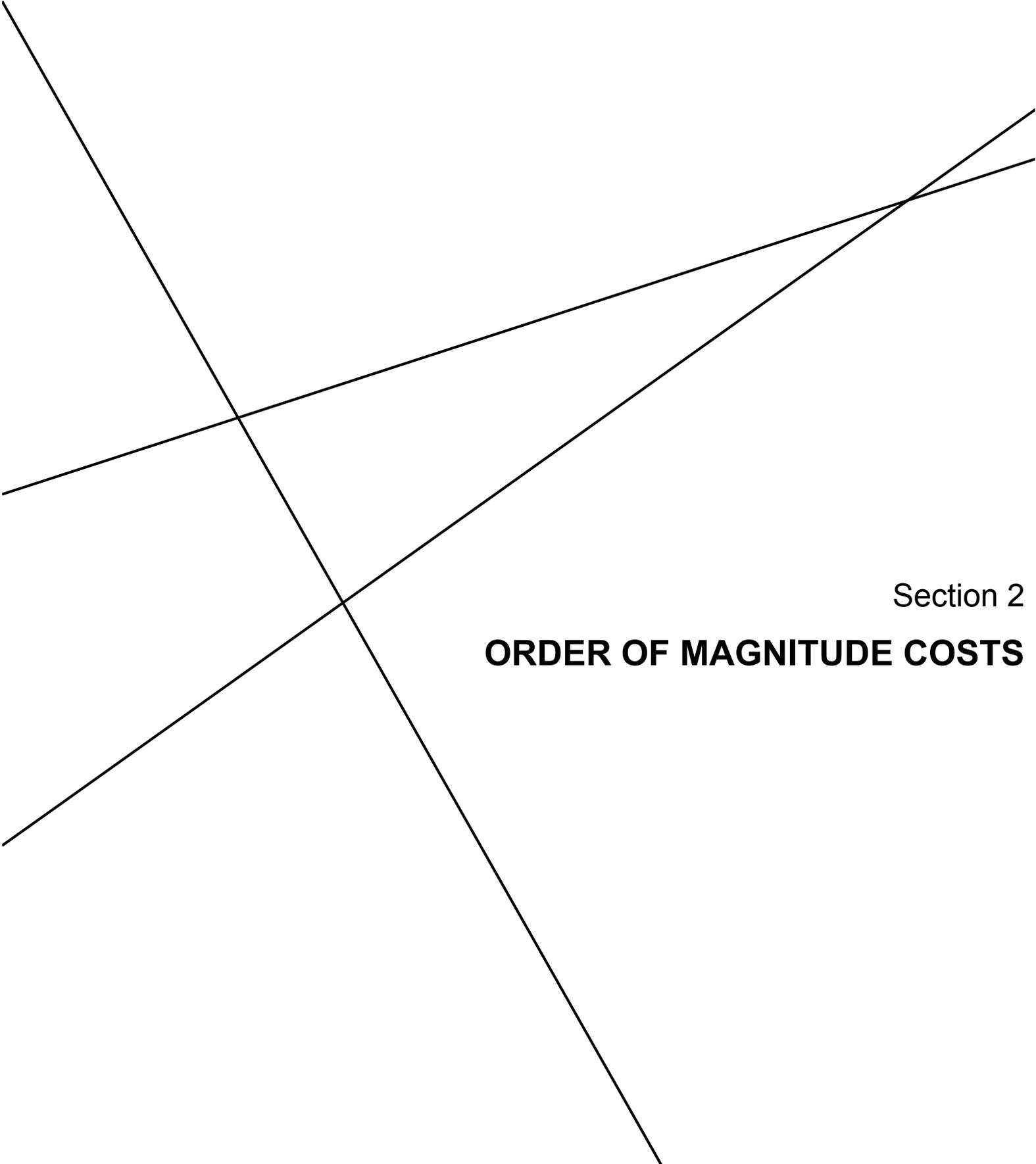
## Site Development Budget Summary

	%	\$/SF	TOTAL
Gross Area: 1,161,364 SF			
1 Hoist Equipment	0%	0.00	0
2 Indirect Expenses	1%	0.40	465
3 Preconstruction Services	0%	0.18	213
4 Existing Conditions	0%	0.00	0
5 Concrete	0%	0.00	5
6 Masonry	0%	0.00	0
7 Metals	1%	0.73	851
8 Wood & Plastics	0%	0.00	0
9 Thermal and Moisture Protection	2%	1.09	1,264
10 Openings	1%	0.39	458
11 Finishes	1%	0.75	871
12 Specialities	0%	0.01	15
13 Equipment	0%	0.00	0
14 Furnishings	0%	0.33	381
15 Special Construction	39%	27.20	31,594
16 Conveying Equipment	0%	0.00	0
17 Fire Supresseion	0%	0.00	0
18 Plumbing	0%	0.05	64
19 HVAC	0%	0.00	0
20 Electrical	3%	2.18	2,532
21 Earthwork	7%	4.94	5,733
22 Exterior Improvements	25%	17.23	20,010
23 Utilities	5%	3.19	3,709
<b>BUILDING CONSTRUCTION</b>	<b>85%</b>	<b>58.69</b>	<b>68,164</b>
24 General Conditions	4%	2.54	2,955
25 General Requirements	2%	1.41	1,640
26 Insurance, Bond, Taxes	1%	0.71	820
27 Contingencies	4%	2.99	3,470
28 Contractor's Fee, Overhead & Profit	4%	2.62	3,043
<b>CONSTRUCTION BUDGET TOTALS</b>	<b>100%</b>	<b>68.96</b>	<b>80,093</b>

# Chula Vista Hotel & Convention Center Development Budget Report

## Parking Garage Budget Summary

	%	\$/SF	TOTAL
	Gross Area:	604,395 SF	
1 Hoist Equipment	0%	0.00	0
2 Indirect Expenses	0%	0.37	225
3 Preconstruction Services	0%	0.29	177
4 Existing Conditions	0%	0.00	0
5 Concrete	32%	38.35	23,179
6 Masonry	0%	0.49	296
7 Metals	0%	0.30	184
8 Wood & Plastics	1%	0.88	530
9 Thermal and Moisture Protection	3%	3.91	2,366
10 Openings	0%	0.32	192
11 Finishes	20%	23.59	14,260
12 Specialities	0%	0.03	16
13 Equipment	1%	1.08	650
14 Furnishings	0%	0.06	38
15 Special Construction	0%	0.40	241
16 Conveying Equipment	4%	4.54	2,746
17 Fire Supresseion	1%	1.23	742
18 Plumbing	1%	1.28	774
19 HVAC	11%	12.92	7,807
20 Electrical	4%	4.42	2,670
21 Earthwork	6%	6.77	4,092
22 Exterior Improvements	0%	0.54	328
23 Utilities	0%	0.00	0
<b>BUILDING CONSTRUCTION</b>	<b>86%</b>	<b>101.77</b>	<b>61,511</b>
24 General Conditions	3%	4.06	2,454
25 General Requirements	2%	2.25	1,362
26 Insurance, Bond, Taxes	1%	1.13	681
27 Contingencies	4%	4.77	2,882
28 Contractor's Fee, Overhead & Profit	4%	4.50	2,721
<b>CONSTRUCTION BUDGET TOTALS</b>	<b>100%</b>	<b>118.49</b>	<b>71,612</b>



Section 2

**ORDER OF MAGNITUDE COSTS**

## Chula Vista Hotel & Convention Center Development Budget Report

### Executive Summary

	AECOM GFA (SF)	AECOM UNIT COST	AECOM TOTAL	RIDA UNIT COST	RIDA TOTAL	DELTA (RIDA-AECOM)
Guestroom Component	645,840	\$275	\$177,329,400	\$350	\$226,012,758	\$48,683,358
Food and Beverage Component	39,562	\$322	\$12,725,680	\$350	\$13,844,786	\$1,119,106
Conference Facilities Component	299,195	\$284	\$85,100,650	\$350	\$104,703,776	\$19,603,126
Recreational Component	13,968	\$496	\$6,924,900	\$683	\$9,545,743	\$2,620,843
Food Service Component	60,208	\$195	\$11,744,900	\$350	\$21,069,887	\$9,324,987
Lobby & Retail Component	74,841	\$332	\$24,879,190	\$350	\$26,190,730	\$1,311,540
Front Desk Reception/Office Component	10,336	\$203	\$2,096,010	\$350	\$3,617,100	\$1,521,090
Back of the House Component	26,285	\$175	\$4,594,470	\$350	\$9,198,478	\$4,604,008
Administration Office Component	4,184	\$200	\$834,960	\$350	\$1,464,198	\$629,238
Circulation	329,939	\$206	\$68,040,590	\$350	\$115,462,689	\$47,422,099
Receiving & Storage Component	44,212	\$140	\$6,195,040	\$350	\$15,472,061	\$9,277,021
Engineering Component	81,247	\$130	\$10,567,110	\$350	\$28,432,408	\$17,865,298
<b>Total: Hotel &amp; Conference</b>	<b>1,629,817</b>	<b>\$252</b>	<b>\$411,032,900</b>	<b>\$353</b>	<b>\$575,014,615</b>	<b>\$163,981,715</b>
Parking Garage	604,395	\$120	\$72,527,400	\$118	\$71,612,226	(\$915,174)
Site Development	1,161,364	\$26	\$30,000,000	\$69	\$80,093,359	\$50,093,359
<b>Total: Parking &amp; Site</b>	<b>1,765,759</b>	<b>\$58</b>	<b>102,527,400</b>	<b>\$86</b>	<b>\$151,705,585</b>	<b>\$49,178,185</b>
<b>Total Development Construction Cost:</b>	<b>3,395,576</b>	<b>\$151</b>	<b>\$513,560,300</b>	<b>\$214</b>	<b>\$726,720,200</b>	<b>\$213,159,900</b>

#### Inclusions and Exclusions:

Construction start date is mid 2017 with a 24 month duration

All soft costs which include design fees, permits, CA fees, owners construction contingency, etc. are excluded

Environmental surveys and 3rd party quality assurance agency costs are excluded

Supply or install of loose furniture (FF&E) and all operating supplies and equipment (OS&E) are excluded

Construction markups (General conditions, bonds, insurance, overhead and profit, escalation and design contingency) are included

Restaurant units are priced based on shell and core only based on the assumption that future tenants will complete the interior fit outs

Site development includes fine grading, sit structures, paving and site utilities

#### Analysis:

The analysis above considers the construction of a new hotel in Southern California, the rates used have been extracted from a combination of resource which include RS Means and historical cost data

Note that an allowance for infrastructure has been included under the Engineering component in the AECOM analysis, but from the information provided, the scope cannot be defined for this component.

#### Conclusion:

The analysis shows that the RIDA budget of \$726.7 Million is approximately \$213 Million over what AECOM would consider a median budget for a project of this size and scope. However, it is prudent to note that although there is a large delta between RIDA and AECOM, at this time RIDA's costs are based in a conceptual design and are preliminary at this stage.

In preparing the conceptual design and estimate, RIDA have allowed for and included where possible allowances for a number of extraordinary items. These items include but are not limited to unique design features, theming, additional millwork, special features/metalwork to lobby areas etc. These additional allowances contribute to the delta shown between RIDA and AECOM's Development Construction Costs presented above.

In order to understand the elevated budget, a further study would be required with access to unit rates, quantities and specifications used in the RIDA budget.

# Chula Vista Hotel & Convention Center Development Budget Report

## Guest Room Component

### Guest Room Component

#### Construction Costs

Single Module [1,342 keys]	523,380	SF	\$270.00	\$141,312,600
1.5 Module [24 keys]	19,080	SF	\$270.00	\$5,151,600
Double/Double [72 keys]	65,952	SF	\$270.00	\$17,807,040
Triple/Luxury Suite [12 keys]	15,804	SF	\$320.00	\$5,057,280
Quad/Presidential Suite [12 keys]	21,624	SF	\$370.00	\$8,000,880
Circulation		SF	\$210.00	M.E.

Total Construction Cost	645,840	SF	\$274.57	\$177,329,400
-------------------------	---------	----	----------	---------------

#### The above \$ include the following markups

General Conditions	10.00%
Contractor's Bonds	1.00%
General Liability Insurance	1.00%
Contractor's OH&P	4.50%
Design Contingency	10.00%
Escalation - 3% per year	3.00%

# Chula Vista Hotel & Convention Center Development Budget Report

## Food & Beverage Component

### Food & Beverage Component

#### Construction Costs

Primary Restaurant-Dual Theme	10,769	SF	\$320.00	\$3,446,080
Specialty Restaurant	5,886	SF	\$320.00	\$1,883,520
Pool Bar & Grill	5,577	SF	\$340.00	\$1,896,180
Sports Bar	10,705	SF	\$320.00	\$3,425,600
Lobby Bar	5,711	SF	\$320.00	\$1,827,520
Men's Restroom	501	SF	\$270.00	\$135,270
Women's Restroom	413	SF	\$270.00	\$111,510
Circulation		SF	\$210.00	M.E.

Total Construction Cost	39,562	SF	\$321.66	\$12,725,680
-------------------------	--------	----	----------	--------------

#### The above \$ include the following markups

General Conditions	10.00%
Contractor's Bonds	1.00%
General Liability Insurance	1.00%
Contractor's OH&P	4.50%
Design Contingency	10.00%
Escalation - 3% per year	3.00%

# Chula Vista Hotel & Convention Center Development Budget Report

## Conference Facilities

### Conference Facilities Component

#### Construction Costs

Exhibit Hall	145,294	SF	\$290.00	\$42,135,260
Exhibit Hall Foyer	-	SF	\$290.00	INCL
Exhibit Hall Storage	6,972	SF	\$130.00	\$906,360
Junior Ballroom No. 1	29,336	SF	\$290.00	\$8,507,440
Junior Ballroom Foyer		SF	\$290.00	INCL
Junior Ballroom Storage		SF	\$130.00	INCL
Junior Ballroom No. 2	29,336	SF	\$290.00	\$8,507,440
Junior Ballroom Foyer		SF	\$290.00	INCL
Junior Ballroom Storage		SF	\$130.00	INCL
Social Ballroom	9,972	SF	\$290.00	\$2,891,880
Social Ballroom Foyer		SF	\$290.00	INCL
Social Ballroom Storage		SF	\$130.00	INCL
Function Rooms 4k	11,817	SF	\$290.00	\$3,426,930
Function Rooms 2k	41,964	SF	\$290.00	\$12,169,560
Function Room	5,910	SF	\$290.00	\$1,713,900
Board Rooms [small]	5,382	SF	\$290.00	\$1,560,780
Board Rooms [large]	1,843	SF	\$290.00	\$534,470
Function Room Storage		SF	\$130.00	INCL
Function Room Foyer		SF	\$130.00	INCL
Business Center		SF	\$190.00	INCL
Coat Room		SF	\$130.00	INCL
Sound Room/AV Storage		SF	\$160.00	INCL
Convention Registration	3,775	SF	\$250.00	\$943,750
Convention Coordinator Office	492	SF	\$200.00	\$98,400
Men's Toilet Rooms	3,520	SF	\$240.00	\$844,800
Women's Toilet Rooms	3,582	SF	\$240.00	\$859,680
Circulation		SF	\$250.00	M.E.

<b>Total Construction Cost</b>	<b>299,195</b>	<b>SF</b>	<b>\$284.43</b>	<b>\$85,100,650</b>
--------------------------------	----------------	-----------	-----------------	---------------------

#### The above \$ include the following markups

General Conditions	10.00%
Contractor's Bonds	1.00%
General Liability Insurance	1.00%
Contractor's OH&P	4.50%
Design Contingency	10.00%
Escalation - 3% per year	3.00%

# Chula Vista Hotel & Convention Center Development Budget Report

## Recreational

### Recreational Component

#### Construction Costs

Swimming Pool and Deck	1	LS	\$2,100,000.00	\$2,100,000
Fitness Center and Spa	13,463	SF	\$290.00	\$3,904,270
Wading Pool	1	LS	\$433,130.00	\$433,130
Tennis Courts	1	LS	\$78,750.00	\$78,750
Children's Area	1	LS	\$131,250.00	\$131,250
Game Room	1	LS	\$157,500.00	\$157,500
Women's Pool Toilets and Lockers	250	SF	\$240.00	\$60,000
Men's Pool Toilets and Lockers	250	SF	\$240.00	\$60,000
Circulation		SF	\$200.00	M.E.

<b>Total Construction Cost</b>	<b>13,968</b>	<b>SF</b>	<b>\$495.77</b>	<b>\$6,924,900</b>
--------------------------------	---------------	-----------	-----------------	--------------------

#### The above \$ include the following markups

<i>General Conditions</i>	10.00%
<i>Contractor's Bonds</i>	1.00%
<i>General Liability Insurance</i>	1.00%
<i>Contractor's OH&amp;P</i>	4.50%
<i>Design Contingency</i>	10.00%
<i>Escalation - 3% per year</i>	3.00%

# Chula Vista Hotel & Convention Center Development Budget Report

## Food Service

### Food Service Component

#### Construction Costs

Primary Restaurant Kitchen	10,391	SF	\$210.00	\$2,182,110
Specialty Restaurant Kitchen	3,690	SF	\$210.00	\$774,900
Sports Bar Restaurant Kitchen	6,741	SF	\$210.00	\$1,415,610
Banquet Kitchen Area	28,930	SF	\$190.00	\$5,496,700
Pool Bar Kitchen	1,500	SF	\$190.00	\$285,000
Pastry/Bake Shop		SF	\$240.00	INCL
Coffee Market	5,254	SF	\$190.00	\$998,260
Function Room Pantry	3,702	SF	\$160.00	\$592,320
Associate Cafeteria		SF	\$240.00	\$0
Circulation		SF	\$190.00	M.E.

Total Construction Cost	60,208	SF	\$195.07	\$11,744,900
-------------------------	--------	----	----------	--------------

#### The above \$ include the following markups

General Conditions	10.00%
Contractor's Bonds	1.00%
General Liability Insurance	1.00%
Contractor's OH&P	4.50%
Design Contingency	10.00%
Escalation - 3% per year	3.00%

# Chula Vista Hotel & Convention Center Development Budget Report

## Lobby & Retail

### Lobby and Retail Component

#### Construction Costs

Main Lobby + Great Living Room	33,625	SF	\$350.00	\$11,768,750
Lobby Seating Area	28,405	SF	\$350.00	\$9,941,750
Gift Shop and Retail	10,190	SF	\$240.00	\$2,445,600
Coffee and Sundry Shop	1,881	SF	\$290.00	\$545,490
Lobby Restrooms	740	SF	\$240.00	\$177,600
Circulation		SF	\$250.00	M.E.

Total Construction Cost	74,841	SF	\$332.43	\$24,879,190
-------------------------	--------	----	----------	--------------

#### The above \$ include the following markups

General Conditions	10.00%
Contractor's Bonds	1.00%
General Liability Insurance	1.00%
Contractor's OH&P	4.50%
Design Contingency	10.00%
Escalation - 3% per year	3.00%

# Chula Vista Hotel & Convention Center Development Budget Report

## Front Desk Reception/Office

### Front Desk Reception/Office Component

#### Construction Costs

Front Desk Reception	1,347	SF	\$240.00	\$323,280
VIP Check-In	2,177	SF	\$240.00	\$522,480
Concierge/valet	543	SF	\$240.00	\$130,320
Safety Deposit Box Viewing	735	SF	\$200.00	\$147,000
Administration Office Component	4,761	SF	\$180.00	\$856,980
Front Office Manager Office		SF	\$180.00	INCL
Reservations Manager Office		SF	\$170.00	INCL
Reservations Office		SF	\$170.00	INCL
Switchboard/Tel Operators		SF	\$150.00	INCL
General Cashiers Room	125	SF	\$150.00	\$18,750
Counting Room		SF	\$150.00	INCL
Copy/Coffee/File Room		SF	\$150.00	INCL
Luggage Storage Room	648	SF	\$150.00	\$97,200
Circulation		SF	\$160.00	M.E.

Total Construction Cost	10,336	SF	\$202.79	\$2,096,010
-------------------------	--------	----	----------	-------------

#### The above \$ include the following markups

General Conditions	10.00%
Contractor's Bonds	1.00%
General Liability Insurance	1.00%
Contractor's OH&P	4.50%
Design Contingency	10.00%
Escalation - 3% per year	3.00%

# Chula Vista Hotel & Convention Center Development Budget Report

## Back of House

### Back of House Component

#### Construction Costs

House Laundry	3,880	SF	\$190.00	\$737,200
Uniform Issue and Storage	1,820	SF	\$140.00	\$254,800
Executive Housekeepers Office	150	SF	\$180.00	\$27,000
Assistant Housekeepers Office	150	SF	\$180.00	\$27,000
Head Houseman's storage	1,782	SF	\$180.00	\$320,760
Active Linen Storage Room	4,535	SF	\$130.00	\$589,550
Soiled Linen Room	2,860	SF	\$130.00	\$371,800
Lost and Found	150	SF	\$140.00	\$21,000
Female Associate Locker and Toilet Room	3,256	SF	\$240.00	\$781,440
Male Associate Locker and Toilet Room	4,006	SF	\$240.00	\$961,440
Security/Timekeeper Office	125	SF	\$150.00	\$18,750
Director of Personnel Office	175	SF	\$150.00	\$26,250
Interview Office	125	SF	\$150.00	\$18,750
Reception/Application Area	150	SF	\$150.00	\$22,500
Assistant Personnel Office	125	SF	\$150.00	\$18,750
Computer Room	150	SF	\$150.00	\$22,500
In-Room Movie Equipment Room	100	SF	\$150.00	\$15,000
Telephone Equipment Room	150	SF	\$150.00	\$22,500
Baggage/package Room	150	SF	\$130.00	\$19,500
China, Glass and Silver Storage	2,446	SF	\$130.00	\$317,980
Circulation		SF	\$130.00	M.E.

Total Construction Cost	26,285	SF	\$174.79	\$4,594,470
-------------------------	--------	----	----------	-------------

#### The above \$ include the following markups

General Conditions	10.00%
Contractor's Bonds	1.00%
General Liability Insurance	1.00%
Contractor's OH&P	4.50%
Design Contingency	10.00%
Escalation - 3% per year	3.00%

# Chula Vista Hotel & Convention Center Development Budget Report

## Administration Office

### Administration Component

#### Construction Costs

Executive Reception Area	150	SF	\$240.00	\$36,000
General Managers Office	150	SF	\$240.00	\$36,000
Operations Director Office	125	SF	\$240.00	\$30,000
Sales Director Office	1,217	SF	\$190.00	\$231,230
Sales Rep Office	750	SF	\$190.00	\$142,500
Convention Services	125	SF	\$190.00	\$23,750
Banquet Manager's Office	125	SF	\$190.00	\$23,750
Food and Beverage Manager's Office	150	SF	\$190.00	\$28,500
Controller's Office	125	SF	\$190.00	\$23,750
Assistant Controller's Office	492	SF	\$190.00	\$93,480
General Accounting Office	125	SF	\$190.00	\$23,750
Men's Toilet Room	125	SF	\$240.00	\$30,000
Women's Toilet Room	400	SF	\$240.00	\$96,000
Storage	125	SF	\$130.00	\$16,250
Circulation		SF	\$150.00	M.E.

Total Construction Cost	4,184	SF	\$199.56	\$834,960
-------------------------	-------	----	----------	-----------

#### The above \$ include the following markups

General Conditions	10.00%
Contractor's Bonds	1.00%
General Liability Insurance	1.00%
Contractor's OH&P	4.50%
Design Contingency	10.00%
Escalation - 3% per year	3.00%

# Chula Vista Hotel & Convention Center Development Budget Report

## Circulation

### Engineering Component

#### Construction Costs

##### Pre-Function:

Exhibit Hall [Level 01]	69,506	SF	\$250.00	\$17,376,500
Arrival Floor [Level 02]	25,590	SF	\$140.00	\$3,582,600
Ballroom Level 2 [Level 03]	25,516	SF	\$250.00	\$6,379,000

##### Service Corridor:

Exhibit Hall [Level 01]	31,932	SF	\$180.00	\$5,747,760
Arrival Floor [Level 02]	22,061	SF	\$180.00	\$3,970,980
Ballroom Level 2 [Level 03]	17,101	SF	\$180.00	\$3,078,180
Basement [Level B1]	14,042	SF	\$130.00	\$1,825,460

##### Corridor:

Spa Level - Hotel 01 [Level 04]	7,792	SF	\$210.00	\$1,636,320
Hotel - 02 [Level 05]	6,847	SF	\$210.00	\$1,437,870
Hotel - 03 [Level 06]	6,847	SF	\$210.00	\$1,437,870
Hotel - 04 [Level 07]	6,847	SF	\$210.00	\$1,437,870
Hotel - 05 [Level 08]	6,847	SF	\$210.00	\$1,437,870
Hotel - 06 [Level 07]	6,847	SF	\$210.00	\$1,437,870
Hotel - 07 [Level 08]	6,847	SF	\$210.00	\$1,437,870
Hotel - 08 [Level 09]	6,847	SF	\$210.00	\$1,437,870
Hotel - 09 [Level 10]	6,847	SF	\$210.00	\$1,437,870
Hotel - 10 [Level 11]	6,847	SF	\$210.00	\$1,437,870
Hotel - 11 [Level 12]	6,847	SF	\$210.00	\$1,437,870
Hotel - 12 [Level 13]	6,847	SF	\$210.00	\$1,437,870
Hotel - 13 [Level 14]	6,847	SF	\$210.00	\$1,437,870
Hotel - 14 [Level 15]	6,847	SF	\$210.00	\$1,437,870
Hotel - 15 [Level 16]	6,847	SF	\$210.00	\$1,437,870
Hotel- 16 [Level 17]	6,847	SF	\$210.00	\$1,437,870
Hotel - 17 [Level 18]	6,847	SF	\$210.00	\$1,437,870
Hotel - 18 [Level 19 PENTHOUSE]	6,847	SF	\$210.00	\$1,437,870

<b>Total Construction Cost</b>	<b>329,939</b>	<b>SF</b>	<b>\$206.22</b>	<b>\$68,040,590</b>
--------------------------------	----------------	-----------	-----------------	---------------------

#### The above \$ include the following markups

General Conditions	10.00%
Contractor's Bonds	1.00%
General Liability Insurance	1.00%
Contractor's OH&P	4.50%
Design Contingency	10.00%
Escalation - 3% per year	3.00%

# Chula Vista Hotel & Convention Center Development Budget Report

## Receiving & Storage

### Receiving & Storage Component

#### Construction Costs

Loading Dock	12,560	SF	\$130.00	\$1,632,800
Receiving Areas	2,238	SF	\$130.00	\$290,940
Receiving Office/Storage Room	493	SF	\$150.00	\$73,950
HR Office	1,771	SF	\$150.00	\$265,650
Food & Beverage Office	492	SF	\$150.00	\$73,800
General & Bulk Storage	4,416	SF	\$130.00	\$574,080
Dry Food Storage	3,882	SF	\$130.00	\$504,660
Refrigerated Food Storage	3,964	SF	\$170.00	\$673,880
Refrigerated Beverage Storage	3,596	SF	\$170.00	\$611,320
Active Linen Storage	4,498	SF	\$150.00	\$674,700
House Laundry	3,675	SF	\$130.00	\$477,750
House Keeping	2,055	SF	\$130.00	\$267,150
Trash Room	572	SF	\$130.00	\$74,360
Circulation		SF	\$130.00	M.E.

Total Construction Cost	44,212	SF	\$140.12	\$6,195,040
-------------------------	--------	----	----------	-------------

#### The above \$ include the following markups

General Conditions	10.00%
Contractor's Bonds	1.00%
General Liability Insurance	1.00%
Contractor's OH&P	4.50%
Design Contingency	10.00%
Escalation - 3% per year	3.00%

# Chula Vista Hotel & Convention Center Development Budget Report

## Engineering

### Engineering Component

#### Construction Costs

Boiler Room	7,760	SF	\$130.00	\$1,008,800
Mechanical Equipment	10,846	SF	\$130.00	\$1,409,980
Switchgear Room	1,552	SF	\$130.00	\$201,760
Air Handling	4,656	SF	\$130.00	\$605,280
Penthouse Equipment	3,129	SF	\$130.00	\$406,770
Transformer Room	750	SF	\$130.00	\$97,500
Pool Equipment	250	SF	\$130.00	\$32,500
Director of Engineering Office	150	SF	\$150.00	\$22,500
Assistant Engineer's Office	100	SF	\$150.00	\$15,000
General Maintenance Shop	3,104	SF	\$130.00	\$403,520
Paint Shop	200	SF	\$130.00	\$26,000
Carpentry Shop	250	SF	\$130.00	\$32,500
Electrical and Plumbing Shop	250	SF	\$130.00	\$32,500
TV Repair Shop	250	SF	\$130.00	\$32,500
Circulation		SF	\$130.00	M.E.
Infrastructure (allowance)	48,000	SF	\$130.00	\$6,240,000

Total Construction Cost	81,247	SF	\$130.06	\$10,567,110
-------------------------	--------	----	----------	--------------

#### The above \$ include the following markups

General Conditions	10.00%
Contractor's Bonds	1.00%
General Liability Insurance	1.00%
Contractor's OH&P	4.50%
Design Contingency	10.00%
Escalation - 3% per year	3.00%

# Chula Vista Hotel & Convention Center Development Budget Report

## Parking Garage

### Parking Garage Component

#### Construction Costs

Parking Spaces	604,395	SF	\$120.00	\$72,527,400
----------------	---------	----	----------	--------------

Total Construction Cost	604,395	SF	\$120.00	\$72,527,400
-------------------------	---------	----	----------	--------------

#### The above \$ include the following markups

<i>General Conditions</i>	10.00%
<i>Contractor's Bonds</i>	1.00%
<i>General Liability Insurance</i>	1.00%
<i>Contractor's OH&amp;P</i>	4.50%
<i>Design Contingency</i>	10.00%
<i>Escalation - 4% per year</i>	4.00%

# Chula Vista Hotel & Convention Center Development Budget Report

## Site Development

### Site Development Component

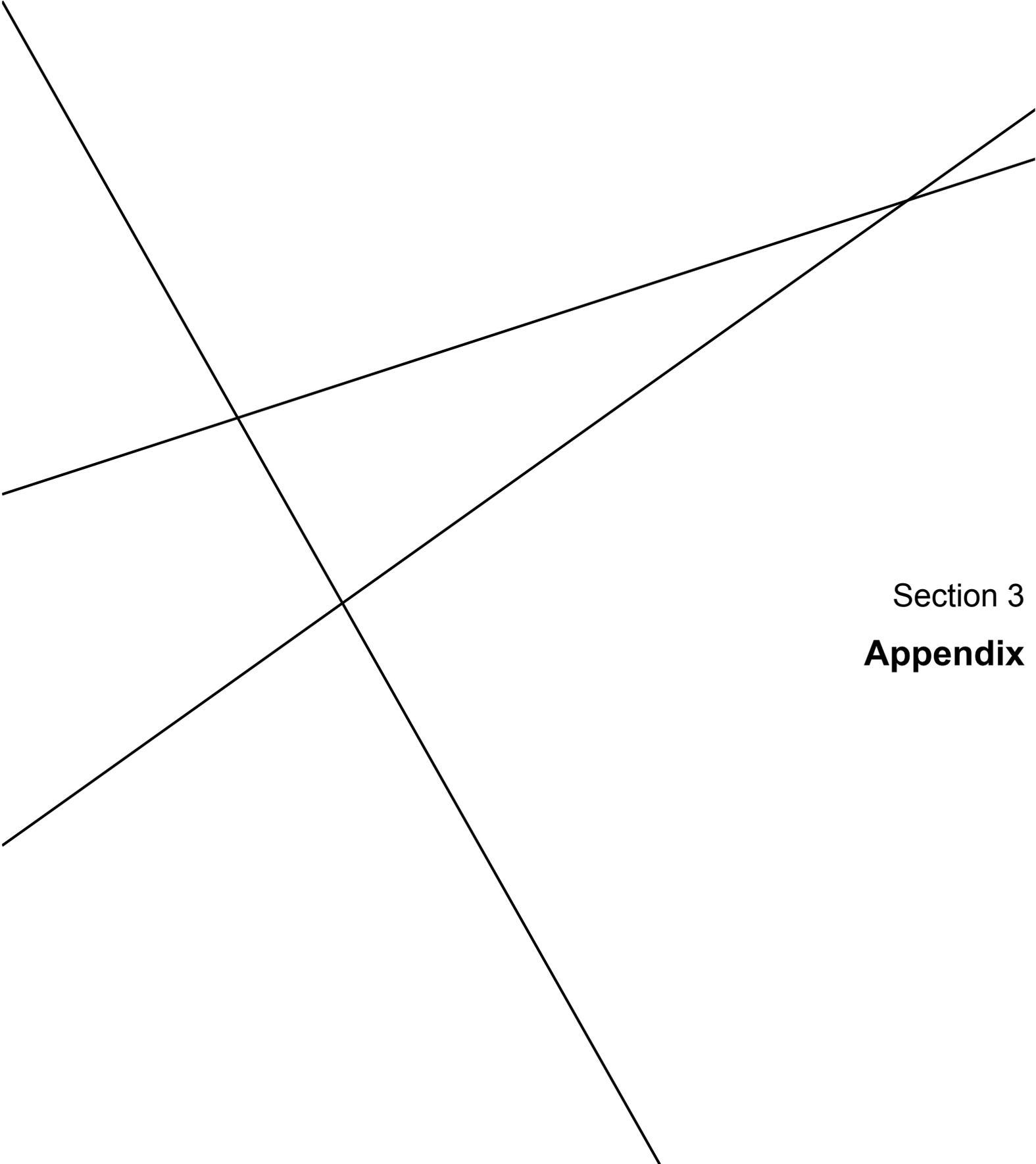
#### Construction Costs

Site Development	1	LS	\$30,000,000.00	\$30,000,000
------------------	---	----	-----------------	--------------

Total Construction Cost	1	SF	\$30,000,000.00	\$30,000,000
-------------------------	---	----	-----------------	--------------

#### The above \$ include the following markups

General Conditions	10.00%
Contractor's Bonds	1.00%
General Liability Insurance	1.00%
Contractor's OH&P	4.50%
Design Contingency	10.00%
Escalation - 3% per year	3.00%



Section 3  
**Appendix**

CHULA VISTA		BALFOUR BEATTY		BALFOUR BEATTY		BALFOUR BEATTY		BALFOUR BEATTY		BALFOUR BEATTY	
		2,247,521 gsf		1,161,364 gsf		604,395 gsf		637,774 gsf		1,005,352 gsf	
DIVISION	DESCRIPTION	TOTAL		1- SITE		1- PARKING		1- CONFERENCE		1- HOTEL	
010100	GENERAL CONDITIONS	\$28,036,291	\$12.47	\$2,955,225	\$2.54	\$2,454,458	\$4.06	\$8,970,554	\$14.07	\$13,656,054	\$13.58
010200	GENERAL REQUIREMENTS	\$15,561,120	\$6.92	\$1,640,253	\$1.41	\$1,362,310	\$2.25	\$4,978,971	\$7.81	\$7,579,587	\$7.54
010300	HOIST EQUIPMENT	\$7,925,261	\$3.53	\$0	\$0.00	\$0	\$0.00	\$670,791	\$1.05	\$7,254,470	\$7.22
010400	INDIRECT EXPENSES	\$2,443,512	\$1.09	\$464,546	\$0.40	\$224,664	\$0.37	\$402,665	\$0.63	\$1,351,638	\$1.34
010500	PRECONSTRUCTION SERVICES	\$2,018,728	\$0.90	\$212,788	\$0.18	\$176,731	\$0.29	\$645,917	\$1.01	\$983,292	\$0.98
020000	EXISTING CONDITIONS	\$0	\$0.00	\$0	\$0.00	\$0	\$0.00	\$0	\$0.00	\$0	\$0.00
030000	CONCRETE	\$89,353,739	\$39.76	\$4,691	\$0.00	\$23,178,742	\$38.35	\$26,487,461	\$41.53	\$39,682,844	\$39.47
040000	MASONRY	\$296,351	\$0.13	\$0	\$0.00	\$296,351	\$0.49	\$0	\$0.00	\$0	\$0.00
050000	METALS	\$27,078,046	\$12.05	\$851,246	\$0.73	\$183,500	\$0.30	\$22,140,100	\$34.71	\$3,903,200	\$3.88
060000	WOOD & PLASTICS	\$14,695,364	\$6.54	\$0	\$0.00	\$529,780	\$0.88	\$3,893,063	\$6.10	\$10,272,520	\$10.22
070000	THERMAL AND MOISTURE PROTECTION	\$15,383,150	\$6.84	\$1,264,105	\$1.09	\$2,365,654	\$3.91	\$9,683,223	\$15.18	\$2,070,168	\$2.06
080000	OPENINGS	\$53,688,608	\$23.89	\$458,485	\$0.39	\$192,194	\$0.32	\$10,825,380	\$16.97	\$42,212,549	\$41.99
090000	FINISHES	\$104,655,519	\$46.56	\$871,023	\$0.75	\$14,260,442	\$23.59	\$34,961,317	\$54.82	\$54,562,737	\$54.27
100000	SPECIALTIES	\$8,674,483	\$3.86	\$15,000	\$0.01	\$16,117	\$0.03	\$6,253,007	\$9.80	\$2,390,359	\$2.38
110000	EQUIPMENT	\$1,033,980	\$0.46	\$0	\$0.00	\$650,000	\$1.08	\$4,500	\$0.01	\$379,480	\$0.38
120000	FURNISHINGS	\$541,788	\$0.24	\$381,000	\$0.33	\$37,500	\$0.06	\$0	\$0.00	\$123,288	\$0.12
130000	SPECIAL CONSTRUCTION	\$47,488,699	\$21.13	\$31,594,150	\$27.20	\$240,559	\$0.40	\$253,844	\$0.40	\$15,400,146	\$15.32
140000	CONVEYING EQUIPMENT	\$34,273,000	\$15.25	\$0	\$0.00	\$2,746,000	\$4.54	\$10,438,000	\$16.37	\$21,089,000	\$20.98
210000	FIRE SUPPRESSION	\$6,900,161	\$3.07	\$0	\$0.00	\$742,333	\$1.23	\$2,093,933	\$3.28	\$4,063,895	\$4.04
220000	PLUMBING	\$38,235,616	\$17.01	\$63,653	\$0.05	\$774,047	\$1.28	\$3,803,389	\$5.96	\$33,594,528	\$33.42
230000	HVAC	\$64,746,869	\$28.81	\$0	\$0.00	\$7,807,076	\$12.92	\$30,757,416	\$48.23	\$26,182,377	\$26.04
260000	ELECTRICAL	\$52,368,854	\$23.30	\$2,531,774	\$2.18	\$2,670,048	\$4.42	\$25,019,597	\$39.23	\$22,147,436	\$22.03
310000	EARTHWORK	\$18,128,679	\$8.07	\$5,732,765	\$4.94	\$4,091,760	\$6.77	\$2,705,299	\$4.24	\$5,598,855	\$5.57
320000	EXTERIOR IMPROVEMENTS	\$21,168,959	\$9.42	\$20,009,956	\$17.23	\$327,692	\$0.54	\$650,678	\$1.02	\$180,633	\$0.18
330000	UTILITIES	\$3,709,206	\$1.65	\$3,709,206	\$3.19	\$0	\$0.00	\$0	\$0.00	\$0	\$0.00
950000	INSURANCE, BONDS, TAXES	\$7,779,249	\$3.46	\$819,988	\$0.71	\$681,040	\$1.13	\$2,489,066	\$3.90	\$3,789,155	\$3.77
960000	CONTINGENCIES	\$32,920,299	\$14.65	\$3,470,034	\$2.99	\$2,882,032	\$4.77	\$10,533,252	\$16.52	\$16,034,981	\$15.95
	SUBTOTAL	\$699,105,531	\$311.06	\$77,049,888	\$66.34	\$68,891,030	\$113.98	\$218,661,423	\$342.85	\$334,503,192	\$332.72
	FEE	\$27,614,668	\$12.29	\$3,043,471	\$2.62	\$2,721,196	\$4.50	\$8,637,126	\$13.54	\$13,212,876	\$13.14
	TOTAL	\$726,720,199	\$323.34	\$80,093,359	\$68.96	\$71,612,226	\$118.49	\$227,298,549	\$356.39	\$347,716,068	\$345.86
	COST PER UNIT										
	5.0% ESCALATION ALLOWANCE to mid 2018	#####	\$339.51	\$84,098,026.95	\$72.41	\$75,192,837.30	\$124.41	#####	\$374.21	#####	\$363.16
	2.5% ESCALATION ALLOWANCE to end 2018	#####	\$348.00	\$86,200,477.62	\$74.22	\$77,072,658.23	\$127.52	#####	\$383.57	#####	\$372.24
	2.5% ESCALATION ALLOWANCE to mid 2019	#####	\$356.70	\$88,355,489.56	\$76.08	\$78,999,474.69	\$130.71	#####	\$393.16	#####	\$381.54
<b>COST DELTA - APRIL 2016 TO CURRENT COSTS</b>											

RIDA/Balfour Beatty Cost Breakdown							
Division	Code	ID	Description	Quantity	Total Cost/Uni	Total Amount	Notes
010100			<b>GENERAL CONDITIONS</b>	<b>33.00</b>	<b>MO</b>	<b>849,584.58</b>	<b>28,036,291</b>
			General Conditions	33.00	mos	849,584.58	28,036,291
			010100 General Conditions	33.00	mos	849,584.58	28,036,291
			<b>010200 GENERAL CONDITIONS</b>	<b>33.00</b>	<b>MO</b>	<b>849,584.58</b>	<b>28,036,291</b>
010200			<b>GENERAL REQUIREMENTS</b>	<b>33.00</b>	<b>MO</b>	<b>471,549.00</b>	<b>15,561,120.00</b>
			General Requirements	33.00	mos	471,549.00	15,561,120.00
			010100 General Conditions	33.00	mos	471,549.00	15,561,120.00
			<b>010200 GENERAL REQUIREMENTS</b>	<b>33.00</b>	<b>MO</b>	<b>471,549.00</b>	<b>15,561,120.00</b>
010300			<b>HOIST EQUIPMENT</b>	<b>33.00</b>	<b>MO</b>	<b>-</b>	<b>7,925,260.94</b>
	010320		<b>Tower Cranes</b>				
			4 Tower Cranes; Hotel	13.00	mos	246,429.38	3,203,582
			4 Tower Cranes; Anti-collision & proximity limits; Hotel	2.00	ea	60,000.00	120,000.00
			4 Tower Cranes; City Permits, Hotel	2.00	ea	5,000.00	10,000.00
			4 Tower Crane; Insurance; Hotel	2.00	ea	15,000.00	30,000.00
			4 Tower Crane; Foundations; Hotel	444.00	cy	380.00	168,720.00
			4 Demo Tower Crane Foundations; Hotel	2.00	ea	15,000.00	30,000.00
			4 Tower Crane Foundation; Engineering; Hotel	2.00	ea	-	-
			010330 Tower Cranes	33.00	mos	107,948.54	3,562,302
	10340		<b>Mobile Cranes</b>				
			3 Mobile Cranes; Conference	-	mos	-	-
			010330 Mobile Cranes	33.00	mos	-	-
	10340		<b>Personnel &amp; Material Hoists</b>				
			3 Dual Hoists, 1 ea Conference	6.00	mos	77,410.83	464,465
			4 Dual Hoists, 2 ea Hotel	14.00	mos	164,128.43	2,297,798
			3 Inside Elevator Operators, Conference (2ea)	1,819.00	hrs	103.12	187,576
			4 Inside Elevator Operators, Conference (4 ea)	13,337.00	hrs	103.14	1,375,620.00
			3 Hoist Insurance, Conference	1.00	ea	5,000.00	5,000.00
			4 Hoist Insurance, Hotel	2.00	ea	5,000.00	10,000.00
			3 Hoist Platforms, Conference	1.00	ea	7,500.00	7,500.00
			4 Hoist Platforms, Hotel	2.00	ea	7,500.00	15,000.00
			010340 Personnel & Material Hoists	33.00	mos	132,210.88	4,362,959
			<b>010300 HOIST EQUIPMENT</b>	<b>33.00</b>	<b>MO</b>	<b>240,159.42</b>	<b>7,925,261</b>
010400			<b>INDIRECT EXPENSES</b>	<b>33.00</b>	<b>MO</b>	<b>1.09</b>	<b>2,443,512</b>
	010000		<b>Survey</b>				
			1 Survey, Site	1,161,364.00	sf	0.35	406,477
			2 Survey, AG Parking	315,425.00	sf	0.15	47,314
			2 Survey, GB Parking	288,969.58	sf	0.15	43,345
			3 Survey, Conferences	637,774.49	sf	0.25	159,444
			4 Survey, Hotel	1,005,351.93	key	0.25	251,338
			010000 Survey	2,247,521.00	mos	0.40	907,918
	010410		<b>Final Clean-Up</b>				
			1 Final Clean, Site	1,161,364.00	sf	0.05	58,068
			2 Final Clean, AG Parking	315,425.00	sf	0.15	47,314
			2 Final Clean, GB Parking	288,969.58	sf	0.15	43,345
			3 Final Clean, Conferences	637,774.49	sf	0.15	95,666
			4 Final Clean, Hotel	1,462.00	key	350.00	511,700
			4 Common Area Final Clean, Hotel	20.00	fl	1,000.00	20,000
			3 Interior Pre-Punch Rough Clean, Conference	637,774.49	sf	0.10	63,777
			4 Interior Pre-Punch Rough Clean, Hotel	1,462.00	key	200.00	292,400
			3 Interior Fluff Clean, Conference	637,774.49	sf	0.10	63,777
			4 Interior Fluff Clean, Hotel	1,462.00	key	100.00	146,200
			3 Exterior Window Wash, Conference	1.00	ls	20,000.00	20,000
			4 Exterior Window Wash, Hotel	1.00	ls	130,000.00	130,000
			2 Garage Final Clean	288,969.58	sf	0.15	43,345
			010410 Final Clean-Up	2,247,521.00	SF	0.68	1,535,594
			<b>010400 INDIRECT EXPENSES</b>	<b>4,495,042.00</b>	<b>SF</b>	<b>1.09</b>	<b>2,443,512.09</b>
010500			<b>PRECONSTRUCTION SERVICES</b>	<b>1.00</b>	<b>LS</b>	<b>2,018,728.04</b>	<b>2,018,728.04</b>
	010501		<b>Pre-Construction Services</b>				
			Pre-Construction Services	14.00	mos	131,934.68	1,847,086
			Reimbursables	14.00	mos	12,260.18	171,643
			010501 Pre-Construction Services	1.00	ls	2,018,728.04	2,018,728
			<b>010501 PRECONSTRUCTION SERVICES</b>	<b>1.00</b>	<b>LS</b>	<b>2,018,728.04</b>	<b>2,018,728</b>
020000			<b>EXISTING CONDITIONS</b>	<b>2,247,521.00</b>	<b>SF</b>	<b>-</b>	<b>-</b>

AECOM Analysis		
Total Cost/Unit	Total Amount	Notes
<b>849,584.58</b>	<b>28,036,291.14</b>	
849,584.58	28,036,291.14	Please provided a breakdown of time and fixed related costs to back up costs per month.
849,584.58	28,036,291.14	
<b>849,584.58</b>	<b>28,036,291.14</b>	
<b>471,549.00</b>	<b>15,561,117.00</b>	
471,549.00	15,561,117.00	Please provided a breakdown of time and fixed related costs to back up costs per month.
471,549.00	15,561,117.00	
<b>471,549.00</b>	<b>15,561,117.00</b>	
<b>107,948.54</b>	<b>7,925,218.40</b>	
246,429.38	3,203,581.94	
60,000.00	120,000.00	
5,000.00	10,000.00	
15,000.00	30,000.00	
380.00	168,720.00	
15,000.00	30,000.00	
-	-	
107,948.54	3,562,301.94	
-	-	
-	-	
77,410.83	464,464.98	77k p/mos excessive
164,128.43	2,297,798.02	164k p/mos excessive
103.12	187,575.28	Elevators running 6 days a week for 12hours p/day as above?
103.14	1,375,578.18	
5,000.00	5,000.00	
5,000.00	10,000.00	
7,500.00	7,500.00	
7,500.00	15,000.00	
132,209.59	4,362,916.46	
<b>240,158.13</b>	<b>7,925,218.40</b>	
<b>1.09</b>	<b>2,443,512.09</b>	
0.35	406,477.40	
0.15	47,313.75	
0.15	43,345.44	
0.25	159,443.62	
0.25	251,337.98	
0.40	907,918.19	
0.05	58,068.20	
0.15	47,313.75	
0.15	43,345.44	
0.15	95,666.17	
350.00	511,700.00	
1,000.00	20,000.00	
0.10	63,777.45	
200.00	292,400.00	
0.10	63,777.45	
100.00	146,200.00	
20,000.00	20,000.00	
130,000.00	130,000.00	
0.15	43,345.44	
0.68	1,535,593.90	Final Clean included in General Conditions??
<b>1.09</b>	<b>2,443,512.09</b>	
<b>2,018,728.04</b>	<b>2,018,728.04</b>	
131,934.68	1,847,085.52	
12,260.18	171,642.52	
2,018,728.04	2,018,728.04	Please provide more detail to what this is pertaining to?
<b>2,018,728.04</b>	<b>2,018,728.04</b>	
-	-	



RIDA/Balfour Beatty Cost Breakdown							
Division	Code	ID	Description	Quantity	Total Cost/Uni	Total Amount	Notes
			4 Hotel CMU	-	-	-	NIC, excluded
			042000 Concrete Unit Masonry	2,247,521.00	0.13	296,351	
			<b>040000 MASONRY</b>	<b>2,247,521.00</b>	<b>0.13</b>	<b>296,351</b>	
<b>050000</b>			<b>METALS</b>	<b>2,247,521.00</b>	<b>12.05</b>	<b>27,078,046</b>	
	055000		<b>Structural Steel</b>				
			3 Structural Steel, Conference Exhibit Hall	1,980.00	5,560.61	11,010,000	
			3 Structural Steel, Conference Space	2,694.00	3,900.00	10,506,600	
			4 Structural Steel, Interior Living Room	112.00	6,000.00	672,000	
			4 Structural Steel, Porte Cochere	1.00	60,000.00	60,000	
			042000 Concrete Unit Masonry	2,247,521.00	9.90	22,248,600	
	055003		<b>Miscellaneous Metals</b>				
			1 Ornamental Fence, Site Perimeter (includes Gates)	2,578.00	150.00	386,700	
			1 Misc Metals, Site	1,161,364.00	0.40	464,546	
			2 Misc Metals, AG Parking	6.00	-	-	included in turnkey parking structure
			2 Misc Metals, BG Parking	1.00	80,000.00	80,000	
			3 Misc Metals, Conference	3.00	80,000.00	240,000	
			3 Elevator divider screens for construction use, Conference	3.00	2,500.00	7,500	Allowance
			4 Misc Metals, Hotel	20.00	22,000.00	440,000	
			3 Elevator divider screens for construction use, Hotel	20.00	5,000.00	100,000	Allowance
			3 Roof Doghouses, Conference	1.00	-	-	Included in Building Steel Pricing
			4 Roof Doghouses, Hotel	1.00	-	-	Included in Building Steel Pricing
			4 Mechanical Screen Supports, Hotel	1,536.00	450.00	691,200	
			042000 Concrete Unit Masonry	2,247,521.00	1.07	2,409,946	
	055100		<b>Stairs &amp; Stair Railings</b>				
			2 Stairs & Railings, AG Parking	6.00	-	-	Included in Turnkey Parking Structure
			2 Stairs & Railings, BG Parking	3.00	34,500.00	103,500	
			3 Stairs & Railings, Conference	6.00	34,500.00	207,000	
			3 Stairs & Railings, Conference to Roof	2.00	34,500.00	69,000	
			4 Stairs & Railings, Hotel	85.00	20,000.00	1,700,000	
			4 Stairs & Railings, Hotel Lobby Living Room	2.00	150,000.00	300,000	Allowance
			4 Stairs & Railings, Hotel to Roof	2.00	20,000.00	40,000	
			042000 Stair & Stair Railings	2,247,521.00	1.08	2,419,500	
			<b>050000 METALS</b>	<b>2,247,521.00</b>	<b>12.05</b>	<b>27,078,046</b>	
<b>060000</b>			<b>WOOD &amp; PLASTICS</b>	<b>2,247,521.00</b>	<b>6.54</b>	<b>14,695,364.00</b>	
	061000		<b>Rough Carpentry</b>				
			2 Rough Carpentry, AG Parking	315,425.00	0.77	241,824	
			2 Rough Carpentry, BG Parking	288,969.58	0.77	221,541	
			3 Rough Carpentry, Conference	637,774.49	0.77	488,956	
			4 Rough Carpentry, Hotel	1,005,351.93	0.77	770,763	
			042000 Stair & Stair Railings	2,247,521.00	0.77	1,723,084	
	062200		<b>Finish Carpentry</b>				
			4 Cabinets, Hotel Bath Vanities (NIC, OFOI)	-	-	-	
			4 Cabinets, Wet Bar Luxury Suites (Built-In)	12.00	4,000.00	48,000	
			4 Cabinets, Kitchen Presidential Suites (Built-In)	12.00	10,000.00	120,000	
			3 Wood Base, Conference Exhibit	45,759.62	7.00	320,317	
			3 Wood Base, Conference Circulation	29,652.23	7.00	207,566	
			4 Wood Base, Hotel Rooms	102,371.55	7.00	716,601	
			4 Wood Base, Hotel Corridors	14,108.10	7.00	98,757	
			4 Wood Base, Hotel Lobby, Amenity, Board Rooms	22,031.07	7.00	154,217	
			3 Millwork Package, Convention Registration	1,161.72	100.00	116,172	
			3 Millwork Package, Convention BOH Misc.	1.00	100,000.00	100,000	
			3 Millwork Package, Conference Prefunction	129,498.46	20.00	2,589,969	
			4 Millwork Package, Hotel Restaurant Primary Dual-Theme	11,562.44	60.00	693,746	
			4 Millwork Package, Hotel Restaurant Primary Specialty	6,319.67	60.00	379,180	
			4 Millwork Package, Hotel Restaurant Sports Bar	11,493.72	60.00	689,623	
			4 Millwork Package, Hotel Restaurant Pool Bar/Grill	5,987.90	60.00	359,274	
			4 Millwork Package, Hotel Restaurant Lobby Bar	4,759.61	60.00	285,577	
			4 Millwork Package, Hotel Gift Shop	10,940.78	60.00	656,447	
			4 Millwork Package, Hotel Coffee/Sundry	2,019.59	60.00	121,175	
			4 Millwork Package, Hotel Lobby/Great Living Room	69,486.30	60.00	4,169,178	
			4 Millwork Package, Hotel Fitness & Spa	14,991.77	60.00	899,506	
			2 Composite Crew & Cleanup, AG Parking	315,425.00	0.11	34,696.75	
			2 Composite Crew & Cleanup, BG Parking	288,969.58	0.11	31,786.65	
			3 Composite Crew & Cleanup, Conference	637,774.49	0.11	70,083	
			4 Composite Crew & Cleanup, Hotel	1,005,351.93	0.11	110,475	
			042000 Stair & Stair Railings	2,247,521.00	5.77	12,972,279	
			<b>060000 WOOD &amp; PLASTICS</b>	<b>2,247,521.00</b>	<b>6.54</b>	<b>14,695,364.00</b>	
<b>070000</b>			<b>THERMAL AND MOISTURE PROTECTION</b>	<b>2,247,521.00</b>	<b>6.84</b>	<b>15,383,150</b>	
	071000		<b>Waterproofing &amp; Dampproofing</b>				
			1 WP @ South Side Retaining wall, Raised Hotel Drive Entrance	5,500.00	7.00	38,500	
			1 Foundation Drain @ South Side Retaining Wall	275.00	18.00	4,950	
			1 WP @ Faux Rock Retaining Wall, 3' High, Site	723.00	7.00	5,061	
			1 WP @ Faux Rock Retaining Wall, 11' High, Site	47,671.00	7.00	333,697	

AECOM Analysis		
Total Cost/Unit	Total Amount	Notes
-	-	
0.13	296,350.88	
<b>0.13</b>	<b>296,350.88</b>	
<b>12.05</b>	<b>27,078,053.40</b>	
5,560.61	11,010,007.80	Cost per ton high
3,900.00	10,506,600.00	
6,000.00	672,000.00	Cost per ton high
60,000.00	60,000.00	
9.90	22,248,607.80	
150.00	386,700.00	
0.40	464,545.60	
-	-	
80,000.00	80,000.00	What is the basis of these allowances?
80,000.00	240,000.00	What is the basis of these allowances?
2,500.00	7,500.00	What is the basis of these allowances?
22,000.00	440,000.00	What is the basis of these allowances?
5,000.00	100,000.00	What is the basis of these allowances?
-	-	
-	-	
450.00	691,200.00	
1.07	2,409,945.60	
-	-	
34,500.00	103,500.00	
34,500.00	207,000.00	
34,500.00	69,000.00	
20,000.00	1,700,000.00	
150,000.00	300,000.00	
20,000.00	40,000.00	
1.08	2,419,500.00	
<b>12.05</b>	<b>27,078,053.40</b>	
<b>6.54</b>	<b>14,703,124.47</b>	
0.77	242,877.25	
0.77	222,506.58	
0.77	491,086.38	
0.77	774,120.99	
0.77	1,730,591.17	
-	-	
4,000.00	48,000.00	
10,000.00	120,000.00	
7.00	320,317.34	
7.00	207,565.61	
7.00	716,600.85	
7.00	98,756.70	
7.00	154,217.49	
100.00	116,172.00	What is the basis of these allowances?
100,000.00	100,000.00	What is the basis of these allowances?
20.00	2,589,969.20	What is the basis of these allowances?
60.00	693,746.40	What is the basis of these allowances?
60.00	379,180.20	What is the basis of these allowances?
60.00	689,623.20	What is the basis of these allowances?
60.00	359,274.00	What is the basis of these allowances?
60.00	285,576.60	What is the basis of these allowances?
60.00	656,446.80	What is the basis of these allowances?
60.00	121,175.40	What is the basis of these allowances?
60.00	4,169,178.00	What is the basis of these allowances?
60.00	899,506.20	What is the basis of these allowances?
0.11	34,696.75	
0.11	31,786.65	
0.11	70,083.00	
0.11	110,475.00	
5.77	12,972,533.30	
<b>6.54</b>	<b>14,703,124.47</b>	
<b>6.84</b>	<b>15,383,149.70</b>	
7.00	38,500.00	
18.00	4,950.00	
7.00	5,061.00	
7.00	333,697.00	

RIDA/Balfour Beatty Cost Breakdown							
Division	Code	ID	Description	Quantity	Total Cost/Uni	Total Amount	Notes
			1 Foundation Drain @ Faux Rock Retaining Wall	4,574.00	18.00	82,332	
			2 Waterproofing @ BG Parking Mat Horizontal	288,969.58	8.00	2,311,757	
			3 Waterproofing @ Conference Outside BG Parking	173,650.00	8.00	1,389,200	
			4 Waterproofing @ Hotel Mat	45,918.00	8.00	367,344	
			4 Waterproofing @ Pool Bar/Grill	6,969.24	8.00	55,754	
			1 Fluid Applied Membrane, Site over BG Parking	63,653.00	8.00	509,224	
			3 Fluid Applied Membrane, Conference L03 Terrace	15,881.00	8.00	127,048	
			3 Fluid Applied Membrane, Conference L03 Gardens	26,469.00	8.00	211,752	
			4 Fluid Applied Membrane, Hotel L02 Terrace	3,934.00	8.00	31,472	
			4 Fluid Applied Membrane, Hotel L04 Terrace	7,232.00	8.00	57,856	
			4 Fluid Applied Membrane, Hotel Unit Balconies	30,719.00	8.00	245,752	
			4 Fire Water Storage Tank - Hotel	1,600.00	14.00	22,400	
			<b>071000 Waterproofing &amp; Damproofing</b>	<b>2,247,521.00</b>	<b>2.58</b>	<b>5,794,099</b>	
			<b>Thermal Insulation</b>				
			3 Thermal Insulation, Conference	174,243.00	1.02	177,728	
			4 Thermal Insulation, Hotel	18,000.00	1.03	18,540	
			3 Fire Safing, Conference	174,243.00	0.65	113,258	
			4 Fire Safing, Hotel	18,000.00	0.65	11,700	
			<b>072100 Thermal Insulation</b>	<b>2,247,521.00</b>	<b>0.14</b>	<b>321,226</b>	
			<b>Air &amp; Moisture Barrier</b>				
			2 Air & Moisture Barrier, AG Parking	-	-	-	
			2 Air & Moisture Barrier, BG Parking	-	-	-	
			3 Air & Moisture Barrier, Conference	174,243.00	0.65	113,258	
			4 Air & Moisture Barrier, Hotel	-	-	-	
			<b>072726 Air &amp; Moisture Barrier</b>	<b>2,247,521.00</b>	<b>0.05</b>	<b>113,258</b>	
			<b>Membrane Roofing</b>				
			3 Single-Ply Membrane Roofing, Conference Docks	12,040.00	12.00	144,480	
			3 Single-Ply Membrane Roofing, Conference Mechanical	37,049.00	12.00	444,588	
			3 Single-Ply Membrane Roofing, Conference L04	288,101.00	15.00	4,321,515	
			3 Single-Ply Membrane Roofing, Conference L05	32,887.00	15.00	493,305	
			4 Single-Ply Membrane Roofing & Insulation, Hotel	45,918.00	15.00	688,770	
			4 Temp. Roof, Hotel	1.00	50,000.00	50,000	
			3 Roof Walk Pads, Conference	1,500.00	30.00	45,000	
			4 Roof Walk Pads, Hotel	1,500.00	30.00	45,000	
			<b>075000 Membrane Roofing</b>	<b>2,247,521.00</b>	<b>2.77</b>	<b>6,232,658</b>	
			<b>Flashing &amp; Sheet Metal</b>				
			2 Flashing & Sheetmetal, AG Parking	6.00	-	-	
			2 Flashing & Sheetmetal, BG Parking	1.00	20,000.00	20,000	
			3 Flashing & Sheetmetal, Conference	3.00	100,000.00	300,000	
			4 Flashing & Sheetmetal, Hotel	20.00	15,000.00	300,000	
			3 Expansion Joints, Conference Terrace Deck	129.00	100.00	12,900	Allowance
			3 Expansion Joints, Conference/Hotel Roof	624.00	90.00	56,160	Allowance
			3 Expansion Joints, Conference/Hotel Walls, Exterior	136.00	90.00	12,240	Allowance
			3 Expansion Joints, Conference/Hotel Walls, Floors, Ceiling Interior	362.00	100.00	36,200	Allowance
			4 Expansion Joints, Living Room/Hotel Roof and Walls Exterior	466.00	90.00	41,940	Allowance
			4 Expansion Joints, Living Room/Hotel Interior	466.00	100.00	46,600	Allowance
			4 Flashing & Sheetmetal, Hotel Deck Edge Cap Flashing	32,400.00	-	-	Excluded
			<b>072100 Thermal Insulation</b>	<b>2,247,521.00</b>	<b>0.37</b>	<b>826,040</b>	
			<b>Fireproofing</b>				
			3 Fireproofing, Conference	637,774.49	2.61	1,664,591	
			4 Fireproofing, Hotel Interior Living Room Intumescent	112.00	420.00	47,040	
			<b>076000 Flashing &amp; Sheet Metal</b>	<b>2,247,521.00</b>	<b>0.76</b>	<b>1,711,631</b>	
			<b>Joint Sealants</b>				
			1 Misc. Joint Sealants, Site	1,161,364.00	0.25	290,341	
			2 Misc. Joint Sealants, AG Parking	1.00	5,000.00	5,000	
			2 Misc. Joint Sealants, BG Parking	288,969.58	0.10	28,897	
			3 Misc. Joint Sealants, Conference	1.00	20,000.00	20,000	
			4 Misc. Joint Sealants, Hotel	1.00	40,000.00	40,000	
			<b>079201 Joint Sealants</b>	<b>2,247,521.00</b>	<b>0.17</b>	<b>384,238</b>	
			<b>070000 THERMAL AND MOISTURE PROTECTION</b>	<b>2,247,521.00</b>	<b>SF 6.84</b>	<b>15,383,150</b>	
			<b>080000 OPENINGS</b>	<b>2,247,521.00</b>	<b>SF 23.89</b>	<b>53,688,608</b>	
			<b>Doors, Frames &amp; Hardware</b>				
			1 Garage Doors, AG Parking	25.00	-	-	
			1 Garage Doors, BG Parking	20.00	1,250.00	25,000	
			1 Common Doors, Conference	600.00	1,650.00	990,000	
			1 Common Doors, Hotel	500.00	1,650.00	825,000	
			1 Room Entry Doors, Hotel	1,462.00	1,200.00	1,754,400	
			2 Room Entry Door Electronic Entry Lock, Hotel	1,462.00	-	-	
			3 Interior Doors, Hotel	1,642.00	600.00	985,200	
			4 Fire Smoke Doors Conference	12.00	3,800.00	45,600	
			4 Fire Smoke Doors Hotel	80.00	3,800.00	304,000	
			1 Protection of Doors, Conference	300.00	150.00	45,000	
			3 Protection of Doors, Hotel	2,000.00	150.00	300,000	
			3 Composite Crew & Cleanup, AG Parking	315,425.00	0.04	14,192	
			4 Composite Crew & Cleanup, BG Parking	288,969.58	0.04	13,002	

AECOM Analysis		
Total Cost/Unit	Total Amount	Notes
18.00	82,332.00	
8.00	2,311,756.64	
8.00	1,389,200.00	
8.00	367,344.00	
8.00	55,753.92	
8.00	509,224.00	
8.00	127,048.00	
8.00	211,752.00	
8.00	31,472.00	
8.00	57,856.00	
8.00	245,752.00	
14.00	22,400.00	
<b>2.58</b>	<b>5,794,098.58</b>	
1.02	177,727.86	
1.03	18,540.00	
0.65	113,257.95	
0.65	11,700.00	
<b>0.14</b>	<b>321,225.81</b>	
-	-	
-	-	
0.65	113,257.95	
-	-	
<b>0.05</b>	<b>113,257.95</b>	
12.00	144,480.00	
12.00	444,588.00	
15.00	4,321,515.00	
15.00	493,305.00	
15.00	688,770.00	
50,000.00	50,000.00	
30.00	45,000.00	
30.00	45,000.00	
<b>2.77</b>	<b>6,232,658.00</b>	
-	-	
20,000.00	20,000.00	
100,000.00	300,000.00	
15,000.00	300,000.00	
100.00	12,900.00	
90.00	56,160.00	
90.00	12,240.00	
100.00	36,200.00	
90.00	41,940.00	
100.00	46,600.00	
-	-	
<b>0.37</b>	<b>826,040.00</b>	
2.61	1,664,591.42	
420.00	47,040.00	
<b>0.76</b>	<b>1,711,631.42</b>	
0.25	290,341.00	
5,000.00	5,000.00	
0.10	28,896.96	
20,000.00	20,000.00	
40,000.00	40,000.00	
<b>0.17</b>	<b>384,237.96</b>	
<b>6.84</b>	<b>15,383,149.70</b>	
<b>23.88</b>	<b>53,677,385.84</b>	
-	-	
1,250.00	25,000.00	
1,650.00	990,000.00	
1,650.00	825,000.00	
1,200.00	1,754,400.00	
-	-	
600.00	985,200.00	
3,800.00	45,600.00	
3,800.00	304,000.00	
150.00	45,000.00	
150.00	300,000.00	
0.04	12,617.00	
0.04	11,558.78	

RIDA/Balfour Beatty Cost Breakdown								
Division	Code	ID	Description	Quantity	Total Cost/Uni	Total Amount	Notes	
			4 Composite Crew & Cleanup, Conference	637,774.49	ivs	0.04	28,695	
			4 Composite Crew & Cleanup, Hotel	1,005,351.93	sf	0.04	45,234	
			081105 DF&H Labor	2,247,521.00	sf	2.39	5,375,323	
	083323		<b>Overhead Coiling Doors</b>					
			2 Parking Gates, AG	2.00	ea	20,000.00	40,000	Parking Control Systems NIC
			2 Parking Gates, BG	4.00	ea	20,000.00	80,000	Parking Control Systems NIC
			3 Loading Dock Garage Doors	6.00	ea	20,000.00	120,000	
			083323 Overhead Coiling Doors	2,247,521.00	sf	0.11	240,000	
	084400		<b>Curtain Wall &amp; Glazed Assemblies</b>					
			4 Storefront, Hotel Restaurant / Retail	8,460.00	sf	100.00	846,000	
			4 Window Wall System, Hotel	148,044.00	sf	95.00	14,064,180	
			3 Curtainwall, Conference Exhibit Entry	25,480.00	sf	140.00	3,567,200	
			3 Curtainwall, Conference Ballroom Prefunction Entry	32,235.00	sf	135.00	4,351,725	
			4 Curtainwall, Hotel Lobby Concourse	12,088.00	sf	120.00	1,450,560	
			4 Aluminum Panels, Hotel Skin	29,520.00	sf	70.00	2,066,400	
			4 Aluminum Panels, Hotel Mechanical Screen	15,360.00	sf	60.00	921,600	
			4 Interior Living Room Curtainwall Enclosure, Hotel	43,441.00	sf	155.00	6,733,355	
			4 Interior Living Room Oversized Glass Doors, Hotel	1.00	set	600,000.00	600,000	
			3 Lobby Entry Doors, Bi-Parting Conference	8.00	ea	20,000.00	160,000	
			3 Swing Doors, Conference Entry	4.00	pairs	16,000.00	64,000	
			3 Swing Doors, Conference Ballroom Prefunction	6.00	pairs	16,000.00	96,000	
			3 Glazed Vertical Lift Doors, Conference Ballroom Prefunction	15.00	ea	80,000.00	1,200,000	
			4 Glazed Vertical Lift Doors, Hotel Restaurant / Retail	4.00	ea	80,000.00	320,000	
			4 Aluminum Swing Doors, Hotel Restaurant / Retail	9.00	pr	16,000.00	144,000	
			4 All Balance Glass Doors, Hotel Lobby	2.00	pr	24,000.00	48,000	
			4 Sliding Glass Doors, Hotel Rooms	71,136.00	sf	105.00	7,469,280	
			4 Bi-Folding Doors, Hotel Restaurant / Retail	10.00	ea	60,000.00	600,000	
			4 Visual Mockup Allowance	1.00	ls	60,000.00	60,000	
			4 Testing Allowance	1.00	ls	360,000.00	360,000	
			1 Glass Handrail, Around Pools	-	lf	-	-	
			1 Glass Handrail, Site Retaining Walls	1,951.00	lf	235.00	458,485	
			3 Glass Handrail, Conference Terraces	456.00	lf	235.00	107,160	
			4 Glass Handrail, Hotel Lobby Concourse & Grand Stairs	450.00	lf	235.00	105,750	
			4 Glass Handrail, Hotel Terraces	523.00	lf	235.00	122,905	
			4 Glass Handrail, Hotel Room Balconies	17.00	firs	119,805.00	2,036,685	
			084400 Curtain Wall & Glazed Assemblies	2,247,521.00	sf	21.34	47,953,285	
	089000		<b>Louvers &amp; vents</b>					
			2 Misc. Louvers & Vents, AG Parking	1.00	ls	-	-	Elevator vent included in turnkey Parking structure
			2 Misc. Louvers & Vents, BG Parking	1.00	ls	20,000.00	20,000	
			3 Misc. Louvers & Vents, Conference	1.00	ls	50,000.00	50,000	
			4 Misc. Louvers & Vents, Hotel	1.00	ls	50,000.00	50,000	
			089000 Louvers & Vents	2,247,521.00	sf	0.05	120,000	
			<b>080000 OPENINGS</b>	<b>2,247,521.00</b>	<b>SF</b>	<b>23.89</b>	<b>53,688,608</b>	
090000			<b>FINISHES</b>	<b>2,247,521.00</b>	<b>SF</b>	<b>46.56</b>	<b>104,655,519</b>	
	092400		<b>Portland Cement Plaster</b>					
			3 Lath & Plaster, Conference	174,243.00	sf	27.00	4,704,561	
			4 Lath & Plaster, Hotel	-	lf	-	-	
			5 Scaffold	174,243.00	sf	3.50	609,851	
			092400 Portland Cement Plaster	2,247,521.00	sf	2.36	5,314,412	
	092900		<b>Gypsum Board</b>					
			1 Drywall, BG Parking	288,969.58	sf	0.35	101,139	
			1 Drywall & Acoustical Insulation, Conference	595,424.49	sf	28.77	17,130,640	
			1 Drywall & Acoustical Insulation, Hotel	1,462.00	keys	16,818.84	24,589,140	
			1 Wall Protection, Conference	637,774.49	sf	0.25	159,444	
			1 Wall Protection, Hotel	1,005,351.93	sf	0.25	251,338	
			2 Blocking, AG Parking	315,425.00	sf	0.77	2,418,244	
			3 Blocking, BG Parking	288,969.58	sf	0.77	221,541	
			4 Blocking, Conference	637,774.49	sf	0.77	488,956	
			4 Blocking, Hotel	1,005,351.93	sf	0.77	770,763	
			1 Composite Crew & Cleanup, AG Parking	315,425.00	sf	0.38	119,275	
			3 Composite Crew & Cleanup, BG Parking	288,969.58	sf	0.38	109,271	
			3 Composite Crew & Cleanup, Conference	637,774.49	sf	0.38	241,169	
			4 Composite Crew & Cleanup, Hotel	1,005,351.93	sf	0.38	380,165	
			092900 Gypsum Board	2,247,521.00	sf	19.94	44,804,665	
	093033		<b>Stone &amp; Tile</b>					
			1 Commercial Kitchen Floor Tile, Conference	34,290.06	sf	40.00	1,371,602	
			1 Commercial Kitchen Floor Tile, Hotel	22,356.12	sf	40.00	894,245	
			1 Lobby/Amenity Stone, Allowance	46,779.08	keys	40.00	1,871,163	
			1 Public Restroom Floor Tile, Conference	2,878.53	sf	35.00	100,749	
			1 Public Restroom Floor Tile, Hotel	1,786.60	sf	35.00	62,531	
			2 Public Restroom Wall Tile, Conference	1,737.91	sf	35.00	60,827	
			3 Public Restroom Wall Tile, Hotel	8,872.18	sf	35.00	310,526	
			4 Unit Bath Wall Tile, Hotel	131,583.00	sf	35.00	4,605,405	
			4 Unit Shower Pans Tile, Hotel	1,327.80	sf	1,000.00	1,327,800	Includes 1/4" acoustic cork underlayment
			1 Unit Bath Floor Tile & Base, Hotel	205,463.10	sf	35.00	7,191,209	Includes 1/4" acoustic cork underlayment
			3 Countertops, Public Restrooms Conference	22.00	sf	600.00	13,200	Quartz

AECOM Analysis		
Total Cost/Unit	Total Amount	Notes
0.04	25,510.98	
0.04	40,214.08	
2.39	5,364,100.84	
20,000.00	40,000.00	Cost per door seems high
20,000.00	80,000.00	Cost per door seems high
20,000.00	120,000.00	Cost per door seems high
0.11	240,000.00	
100.00	846,000.00	
95.00	14,064,180.00	
140.00	3,567,200.00	
135.00	4,351,725.00	
120.00	1,450,560.00	
70.00	2,066,400.00	
60.00	921,600.00	
155.00	6,733,355.00	
600,000.00	600,000.00	Cost seems high
20,000.00	160,000.00	
16,000.00	64,000.00	
16,000.00	96,000.00	
80,000.00	1,200,000.00	
80,000.00	320,000.00	
16,000.00	144,000.00	
24,000.00	48,000.00	
105.00	7,469,280.00	
60,000.00	600,000.00	
60,000.00	60,000.00	
360,000.00	360,000.00	
-	-	
235.00	458,485.00	
235.00	107,160.00	
235.00	105,750.00	
235.00	122,905.00	
119,805.00	2,036,685.00	
21.34	47,953,285.00	
-	-	
20,000.00	20,000.00	
50,000.00	50,000.00	
50,000.00	50,000.00	
0.05	120,000.00	
<b>23.88</b>	<b>53,677,385.84</b>	
<b>46.57</b>	<b>104,666,928.97</b>	
27.00	4,704,561.00	
-	-	
3.50	609,850.50	
2.36	5,314,411.50	
0.35	101,139.35	
28.77	17,130,362.58	
16,818.84	24,589,144.08	
0.25	159,443.62	
0.25	251,337.98	
0.77	242,877.25	
0.77	222,506.58	
0.77	491,086.36	
0.77	774,120.99	
0.38	119,861.50	
0.38	109,808.44	
0.38	242,354.31	
0.38	382,033.73	
19.94	44,816,076.77	Cost per sf seems high for gypsum works
40.00	1,371,602.40	Cost per sf seems high for tile / stone tiling
40.00	894,244.80	Cost per sf seems high for tile / stone tiling
40.00	1,871,163.20	Cost per sf seems high for tile / stone tiling
35.00	100,748.55	Cost per sf seems high for tile / stone tiling
35.00	62,531.00	Cost per sf seems high for tile / stone tiling
35.00	60,826.85	Cost per sf seems high for tile / stone tiling
35.00	310,526.30	Cost per sf seems high for tile / stone tiling
35.00	4,605,405.00	
1,000.00	1,327,800.00	
35.00	7,191,208.50	
600.00	13,200.00	

RIDA/Balfour Beatty Cost Breakdown							
Division	Code	ID	Description	Quantity	Total Cost/Uni	Total Amount	Notes
			4 Countertops, Public Restrooms Hotel	6.00	ea	600.00	3,600 Quartz
			4 Countertops, Luxury Units Wet Bar Hotel	150.00	sf	25.00	3,750 Quartz
			4 Countertops, Presidential Units Kitchen Hotel	300.00	sf	25.00	7,500 Quartz
			4 Countertops, Hotel Baths (NIC, OFOI)	1,486.00	ea	-	- NIC
			4 Backsplash, Luxury Units Wet Bar Hotel	90.00	lf	12.00	1,080
			4 Backsplash, Presidential Units Kitchen Hotel	90.00	lf	12.00	1,080
			4 Stone Thresholds, Conference	-	ea	-	- NIC
			4 Stone Thresholds, Units Hotel	1,462.00	ea	150.00	219,300
			092900 Gypsum Board	2,247,521.00	sf	8.03	18,045,567
	096340		<b>Wood Flooring</b>				
			4 Engineered Wood Floor, Hotel Fitness	14,454.93	sf	18.00	260,189 Furnish & Install
			4 Engineered Wood Floor, Hotel Amenity Space	40,316.61	sf	18.00	725,699 Furnish & Install
			4 Engineered Wood Floor, Hotel Luxury & Presidential Suites	24,675.74	sf	18.00	444,163 Furnish & Install
			4 Floor Prep, Hotel	79,447.28	sf	0.50	39,724
			4 Wood Floor Base	1,200.00	lf	7.00	8,400
			096340 Wood Flooring	2,247,521.00	sf	0.66	1,478,175
	096513		<b>Resilient Flooring &amp; Base</b>				
			4 Vinyl Floor, AG Parking Vestibules	1,404.00	sf	5.00	7,020
			4 Vinyl Floor, BG Parking Corridor	15,076.59	sf	5.00	75,383
			4 Vinyl Floor, Conference	53,149.21	sf	5.00	265,746
			4 Vinyl Floor, Hotel	429.47	sf	5.00	2,147
			Rubber Base, AG Parking Vestibules	372.00	lf	2.50	930
			Rubber Base, BG Parking Corridor	2,261.49	lf	2.50	5,654
			Rubber Base, Conference	7,972.38	lf	2.50	19,931
			Rubber Base, Hotel	64.42	lf	2.50	161
			096513 Resilient Base & Accessories	2,247,521.00	sf	0.17	376,972
	096800		<b>Carpeting</b>				
			3 Carpet, Conference	55,660.09	sf	20.00	1,113,202 OFCI
			4 Carpet, Hotel Public Spaces	16,278.72	sf	20.00	325,574 OFCI
			4 Carpet, Hotel Keys	48,181.24	sf	15.00	722,719 OFCI
			3 Carpet Protection, Conference	500,940.82	sf	0.25	125,235
			4 Carpet Protection, Hotel	580,139.69	sf	0.25	145,035
			096800 Carpeting	2,247,521.00	sf	1.08	2,431,765
	099101		<b>Acoustic insulation</b>				
			3 Acoustical Insulation, Conference	637,774.49	sf	-	- included in Drywall
			4 Acoustical Insulation, Hotel	1,462.00	keys	-	- included in Drywall
			098100 Acoustic Insulation	2,247,521.00	sf	-	-
	099101		<b>Painting &amp; Wallcovering</b>				
			1 Paint, Site	1,161,364.00	sf	0.75	871,023
			2 Paint, AG Garage	315,425.00	sf	0.10	31,543
			2 Paint, BG Garage	288,969.58	sf	0.60	173,382
			3 Paint & Wallcovering, Conference	637,774.49	sf	-	-
			4 Paint & Wallcovering, Hotel	1,005,351.93	sf	5.10	5,127,295
			2 Touch-up, AG Garage	315,425.00	sf	0.02	6,309
			2 Touch-up, BG Garage	288,969.58	sf	0.02	5,779
			3 Touch-Up, Conference	637,774.49	sf	0.02	12,755
			4 Touch-Up, Hotel	1,005,351.93	sf	0.08	80,428
			096800 Carpeting	2,247,521.00	sf	2.81	6,308,514
	099102		<b>Finish Allowances</b>				
			3 Finish Allowance, Conference Prefunction	129,498.46	sf	20.00	2,589,969 Allowance, reduced because covered in theming allowance carried in Div 13
			2 Finish Allowance, Hotel Restaurant Primary Dual-Theme	11,562.44	sf	340.00	3,931,229 Allowance
			3 Finish Allowance, Hotel Restaurant Primary Specialty	6,319.67	sf	440.00	2,780,654 Allowance
			4 Finish Allowance, Hotel Restaurant Sports Bar	11,493.72	sf	340.00	3,907,866 Allowance
			2 Finish Allowance, Hotel Restaurant Pool Bar/Grill	5,987.90	sf	290.00	1,736,492 Allowance
			2 Finish Allowance, Hotel Restaurant Lobby Bar	4,759.61	sf	390.00	1,856,250 Allowance
			3 Finish Allowance, Hotel Gift Shop	10,940.78	sf	290.00	3,172,826 Allowance
			4 Finish Allowance, Hotel Coffee/Sundry	2,019.59	sf	140.00	282,742 Allowance
			1 Finish Allowance, Hotel Lobby/Great Living Room	69,486.30	sf	-	- Included in theming Allowance Div 13
			2 Finish Allowance, Hotel Fitness & Spa	14,454.93	sf	390.00	5,637,422
			099101 Painting & Wallcovering	2,247,521.00	sf	11.52	25,895,450
			<b>080000 OPENINGS</b>	<b>2,247,521.00</b>	<b>SF</b>	<b>46.56</b>	<b>104,655,519</b>
<b>100000</b>			<b>SPECIALTIES</b>	<b>2,247,521.00</b>	<b>SF</b>	<b>3.86</b>	<b>8,674,483</b>
	101400		<b>Interior Signage</b>				
			2 Code Signage, AG Parking	6.00	fir	-	- NIC, by Owner
			2 Code Signage, BG Parking	1.00	fir	-	- NIC, by Owner
			3 Code Signage, Conference	3.00	fir	-	- NIC, by Owner
			4 Code Signage, Hotel	20.00	fir	-	- NIC, by Owner
			4 Door Numbers, Hotel	1,462.00	ea	-	- NIC, by Owner
			101400 Interior Signage	2,247,521.00	sf	-	-
	101436		<b>Exterior Signage &amp; Graphics</b>				
			3 Exterior Signage & Graphics, Conference	1.00	ls	-	- NIC, by Owner
			4 Exterior Signage & Graphics, Hotel	1.00	ls	-	- NIC, by Owner

AECOM Analysis		
Total Cost/Unit	Total Amount	Notes
600.00	3,600.00	
25.00	3,750.00	
25.00	7,500.00	
-	-	
12.00	1,080.00	
12.00	1,080.00	
-	-	
150.00	219,300.00	
8.03	18,045,566.60	
18.00	260,188.74	
18.00	725,698.98	
18.00	444,163.32	
0.50	39,723.64	
7.00	8,400.00	
0.66	1,478,174.68	
5.00	7,020.00	
5.00	75,382.95	
5.00	265,746.05	
5.00	2,147.35	
2.50	930.00	
2.50	5,653.73	
2.50	19,930.95	
2.50	161.05	
0.17	376,972.08	
20.00	1,113,201.80	
20.00	325,574.40	
15.00	722,718.60	
0.25	125,235.21	
0.25	145,034.92	
1.08	2,431,764.93	
-	-	
-	-	
-	-	
0.75	871,023.00	
0.10	31,542.50	
0.60	173,381.75	
-	-	
5.10	5,127,294.84	
0.02	6,308.50	
0.02	5,779.39	
0.02	12,755.49	
0.08	80,428.15	
2.81	6,308,513.63	
20.00	2,589,969.20	
340.00	3,931,229.60	
440.00	2,780,654.80	
340.00	3,907,864.80	
290.00	1,736,491.00	
390.00	1,856,247.90	
290.00	3,172,826.20	
140.00	282,742.60	
-	-	
390.00	5,637,422.70	
11.52	25,895,448.80	Additional \$25m in allowances for finishes? Please provide further back up.
<b>46.57</b>	<b>104,666,928.97</b>	
<b>3.86</b>	<b>8,674,485.00</b>	

RIDA/Balfour Beatty Cost Breakdown							
Division	Code	ID	Description	Quantity	Total Cost/Uni	Total Amount	Notes
			101400 Interior Signage	2,247,521.00	sf	-	-
	102213		Lockers				
			3 BOH Lockers, Conference	100.00	ea	600.00	60,000
			4 BOH Lockers, Hotel	100.00	ea	600.00	60,000
			4 Fitness/Spa Lockers, Hotel	50.00	ea	1,000.00	50,000
			102213 Lockers	2,247,521.00	sf	0.08	170,000
	102226		Operable Partitions				
			3 Operable Partitions	1.00	ls	6,000,000.00	6,000,000
			102226 Operable Partitions	2,247,521.00	sf	2.67	6,000,000
	102613		Toilet & Bath Accessories				
			3 Toilet & Bath Accessories, Conference	22.00	bath	7,000.00	154,000
			4 Hotel Toilet & Bath Accessories, Hotel Public	6.00	bath	7,000.00	42,000
			4 Hotel Toilet & Bath Accessories, Hotel Rooms	1,486.00	bath	600.00	891,600
			3 Mirrors, Conference	22.00	bath	500.00	11,000
			4 Mirrors, Hotel Public	6.00	bath	500.00	3,000
			4 Mirrors, Hotel Rooms	1,486.00	bath	150.00	222,900
			102613 Toilet & Bath Accessories	2,247,521.00	sf	0.59	1,324,500
	102819		Tub and Shower Doors				
			3 Glass Shower Enclosures, Hotel	1,327.80	ea	800.00	1,062,240
			4 Tub Curtains, Hotel (OFOI)	158.20	ea	-	-
			102819 Tub and Shower Doors	2,247,521.00	sf	0.47	1,062,240
	104413		Fire Extinguishers				
			1 Fire Extinguishers & Cabinets, Site	50.00	ea	300.00	15,000
			2 Fire Extinguishers & Cabinets, AG Parking	28.04	ea	300.00	8,411
			2 Fire Extinguishers & Cabinets, BG Parking	25.69	ea	300.00	7,706
			3 Fire Extinguishers & Cabinets, Conference	56.69	ea	300.00	17,007
			4 Fire Extinguishers & Cabinets, Hotel	178.73	ea	300.00	53,619
			102613 Toilet & Bath Accessories	2,247,521.00	sf	0.05	101,743
	105500		Postal Specialties				
			3 Mail System, Conference	1.00	ls	5,000.00	5,000
			4 Mail System, Hotel	1.00	ls	5,000.00	5,000
			105500 Postal Specialties	2,247,521.00	sf	0.00	10,000
	105700		Wardrobe and Closet Specialties				
			3 Uniform Closet System, Conference	1.00	ls	6,000.00	6,000
			4 Wardrobe Closet Systems, Hotel	1,462.00	keys	-	-
			105500 Postal Specialties	2,247,521.00	sf	0.00	6,000
	108100		Pest Control Devices				
			3 Bird Spikes, Site	-	ls	-	-
			2 Bird Barriers, AG Parking	-	ls	-	-
			3 Bird Barriers, Conference	-	ls	-	-
			4 Bird Barriers, Hotel	-	ls	-	-
			108100 Pest Control Devices	2,247,521.00	sf	-	-
			<b>100000 SPECIALTIES</b>	<b>2,247,521.00</b>	<b>SF</b>	<b>3.86</b>	<b>8,674,483</b>
<b>110000</b>			<b>EQUIPMENT</b>	<b>2,247,521.00</b>	<b>SF</b>	<b>0.46</b>	<b>1,033,980</b>
	111200		Parking Control Equipment				
			2 Smart Parking System, AG Parking	1.00	ls	650,000.00	650,000
			2 Parking Control Equipment, AG Parking (OFOI)	1.00	ls	-	-
			2 Parking Control Equipment, BG Parking (OFOI)	1.00	ls	-	-
			111200 Parking Control Equipment	2,247,521.00	sf	0.29	650,000
	111313		Loading Dock Bumpers				
			3 Loading Dock Bumpers, Conference	9.00	ea	500.00	4,500
			111313 Loading Dock Bumpers	2,247,521.00	sf	0.00	4,500
	112300		Commercial Laundry Equipment				
			3 Commercial Laundry Equipment, Hotel (OFOI)	1.00	ls	-	-
			112300 Commercial Laundry Equipment	2,247,521.00	sf	-	-
	112423		Window Washing Systems				
			3 Window Washing Equipment, Conference	1.00	ls	-	-
			4 Window Washing Equipment, Hotel	1.00	ls	300,000.00	300,000
			3 Platform Stage, Conference	1.00	ls	-	-
			4 Platform Stage, Hotel	1.00	ls	40,000.00	40,000
			112423 Window Washing Systems	2,247,521.00	sf	0.15	340,000
	112423		Residential Kitchen Appliances				
			4 Electric Range, Presidential Hotel Room	12.00	ea	1,100.00	13,200
			4 Microwave / Exhaust Hood, Presidential Hotel Room	12.00	ea	500.00	6,000
			4 Refrigerator, Presidential Hotel Room	12.00	ea	1,100.00	13,200
			4 Dishwasher, Presidential Hotel Room	12.00	ea	500.00	6,000
			4 Disposer, Presidential Hotel Room	12.00	ea	90.00	1,080

AECOM Analysis		
Total Cost/Unit	Total Amount	Notes
-	-	
600.00	60,000.00	
600.00	60,000.00	
1,000.00	50,000.00	
0.08	170,000.00	
6,000,000.00	6,000,000.00	Allowance of \$6m appears excessive - Please provide further detail.
2.67	6,000,000.00	
7,000.00	154,000.00	High rate - Please provide further detail.
7,000.00	42,000.00	High rate - Please provide further detail.
600.00	891,600.00	
500.00	11,000.00	
500.00	3,000.00	
150.00	222,900.00	
0.59	1,324,500.00	
800.00	1,062,240.00	
-	-	NIC, Shower Rod included with accessories
0.47	1,062,240.00	
300.00	15,000.00	
300.00	8,412.00	
300.00	7,707.00	
300.00	17,007.00	
300.00	53,619.00	
0.05	101,745.00	
5,000.00	5,000.00	
5,000.00	5,000.00	
0.00	10,000.00	
6,000.00	6,000.00	
-	-	Included in Millwork
0.00	6,000.00	
-	-	NIC
-	-	
3.86	8,674,485.00	
0.46	1,033,980.00	
650,000.00	650,000.00	Allowance
-	-	NIC, by Owner
-	-	NIC, by Owner
0.29	650,000.00	
500.00	4,500.00	Assume trcuks have lift gates
0.00	4,500.00	
-	-	NIC, by Owner
-	-	
-	-	NIC, not required
300,000.00	300,000.00	Sockets & Davit arms
-	-	NIC, not required
40,000.00	40,000.00	Roof Mounted platform stage
0.15	340,000.00	
1,100.00	13,200.00	GE, Whirlpool or equal. Stainless Steel
500.00	6,000.00	GE, Whirlpool or equal. Stainless Steel
1,100.00	13,200.00	GE, Whirlpool or equal. Stainless Steel
500.00	6,000.00	GE, Whirlpool or equal. Stainless Steel
90.00	1,080.00	GE, Whirlpool or equal. Stainless Steel

RIDA/Balfour Beatty Cost Breakdown								
Division	Code	ID	Description	Quantity	Total Cost/Uni	Total Amount	Notes	
	115200		113113 Residential Kitchen Appliances	2,247,521.00	sf	0.02	39,480	
			Audio-Visual Equipment					
			3 Audio Visual Equipment Allowance, Conference (OFOI)	1.00	ls	-	-	NIC, by Owner
			4 Audio Visual Equipment Allowance, Hotel (OFOI)	1.00	ls	-	-	NIC, by Owner
			115200 Audio-Visual Equipment	2,247,521.00	sf	-	-	
			<b>110000 EQUIPMENT</b>	<b>2,247,521.00</b>	<b>SF</b>	<b>0.46</b>	<b>1,033,980</b>	
120000	122100		<b>FURNISHINGS</b>	<b>2,247,521.00</b>	<b>SF</b>	<b>0.24</b>	<b>541,788</b>	
			Window Blinds					
			3 Manual Roller Shades, Conference	-	sf	-	-	NIC, excluded
			4 Manual Roller Shades, Hotel Public Spaces	20,548.00	sf	6.00	123,288	Allowance for Misc. Areas
			4 Manual Vertical Blinds, Hotel Rooms	1,462.00	key	-	-	NIC, by Owner
			122100 Window Blinds	2,247,521.00	sf	0.05	123,288	
	129300		Site Furnishings					
			1 Wood Trellis Structures, Site	3.00	ea	15,000.00	45,000	
			1 Wood Cabanas, Site	18.00	ea	12,000.00	216,000	
			1 Canvas Sails, Site	4.00	ea	30,000.00	120,000	
			129300 Site Furnishings	2,247,521.00	sf	0.17	381,000	
	112300		Commercial Laundry Equipment					
			3 Commercial Laundry Equipment, Hotel (OFOI)	1.00	ls	-	-	
			112300 Commercial Laundry Equipment	2,247,521.00	sf	-	-	
	129313		Bicycle Racks					
			3 Bike Racks, Parking Structures	50.00	ea	750.00	37,500	
			129313 Bicycle Racks	2,247,521.00	sf	0.02	37,500	
	129325		FFE Coordination & Installation					
			4 FFE Coordination & Installation, Hotel	1,462.00	key	-	-	NIC, by Owner
			129325 FFE Coordination & Installation	2,247,521.00	sf	-	-	
			<b>120000 FURNISHINGS</b>	<b>2,247,521.00</b>	<b>SF</b>	<b>0.24</b>	<b>541,788</b>	
130000	131700		<b>SPECIAL CONSTRUCION</b>	<b>2,247,521.00</b>	<b>SF</b>	<b>21.13</b>	<b>47,488,699</b>	
			Pools, Spas & Water Features					
			1 Theming Allowance - Site	1.00	ls	5,000,000.00	5,000,000	Allowance
			4 Theming Allowance - Hotel Lobby & Living Room	1.00	ls	15,000,000.00	15,000,000	Allowance
			1 Design & Engineering, Water Features	1.00	ls	-	-	Included in line items
			1 Wave Pool	16,082.00	sf	343.38	5,522,300	
			1 Lazy River	28,916.00	sf	261.58	7,563,920	
			1 Family Pool & Spa	14,153.00	sf	339.83	4,809,575	
			1 Water Slides, Family Pool & Spa	2.00	ea	-	-	Included in pool pricing
			1 Adult Pool & Spa	9,009.00	sf	350.94	3,161,645	
			1 Water Feature, Lagoon/River	8,175.00	sf	243.46	1,990,250	
			1 Water Feature North Elevation/Drop Off Area	727.00	sf	872.86	634,570	
			1 Water Feature South Entrance	2,850.00	sf	458.47	1,306,650	
			1 Water Feature East Outdoor Living Room	575.00	sf	1,096.07	630,240	
			1 Water Features, Water Toys & Features	1.00	ls	750,000.00	750,000	Allowance
			1 Wave Pool BOH Building	1,000.00	sf	225.000	225,000	
			1 Water Costs to Fill the Pools	-	ls	-	-	NIC, by Owner
			2 Composite Crew & Cleanup, AG Parking	315,425.00	sf	0.40	125,544	
			2 Composite Crew & Cleanup, BG Parking	288,969.58	sf	0.40	115,015	
			3 Composite Crew & Cleanup, Conference	637,774.49	sf	0.40	253,844	
			4 Composite Crew & Cleanup, Hotel	1,005,351.93	sf	0.40	400,146	
			131700 Tubs & Pools	2,247,521.00	sf	21.13	47,488,699	
	132000		Radio Repeater System					
			4 Hotel Tower Radio Repeater System	20.00	ftr	-	-	NIC, excluded
			132000 Radio Repeater System	2,247,521.00	sf	-	-	
	133423		Accelerograph Systems					
			4 Hotel Tower Accelerograph System	1.00	ls	-	-	NIC, excluded
			133423 Accelerograph Systems	2,247,521.00	sf	-	-	
			<b>130000 SPECIAL CONSTRUCTION</b>	<b>2,247,521.00</b>	<b>SF</b>	<b>21.13</b>	<b>47,488,699</b>	
140000	142000		<b>CONVEYING EQUIPMENT</b>	<b>2,247,521.00</b>	<b>SF</b>	<b>15.25</b>	<b>34,273,000</b>	
			Elevators					
			2 Passenger Elevators, AG Parking	12.00	stop	-	-	Included in turnkey parking garage pricing
			2 Passenger Elevators, BG Parking to Conference	4.00	stop	87,500.00	350,000	Budgeted as MRL
			2 Passenger Elevators, BG Parking to Hotel	12.00	stop	35,000.00	420,000	Budgeted as MRL
			3 Passenger Elevators, Conference	26.00	stop	87,500.00	2,275,000	Budgeted as MRL
			4 Passenger Elevators, Hotel	240.00	stop	35,000.00	8,400,000	Budgeted as MRL
			4 Revise Elevators from MRL to HR Gearless, Hotel	16.00	ea	500,000.00	8,000,000	Added per Gaylord Standards
			4 Destination Dispatch Control, Hotel	1.00	ls	400,000.00	400,000	Added per Gaylord Standards. Excluded for conference center
			2 Freight Elevators, BG Parking to Conference	2.00	stop	200,000.00	400,000	Budgeted as MRL
			3 Freight Elevators, Conference	6.00	stop	200,000.00	1,200,000	Budgeted as MRL

AECOM Analysis		
Total Cost/Unit	Total Amount	Notes
0.02	39,480.00	
-	-	
-	-	
-	-	
0.46	1,033,980.00	
0.24	541,788.00	
-	-	
6.00	123,288.00	
-	-	
0.05	123,288.00	
15,000.00	45,000.00	
12,000.00	216,000.00	
30,000.00	120,000.00	
0.17	381,000.00	
-	-	
-	-	
0.24	541,788.00	
21.13	47,493,059.76	
5,000,000.00	5,000,000.00	
15,000,000.00	15,000,000.00	\$15m allowance for theming appears high? Please provide further back up.
-	-	
343.38	5,522,371.16	
261.58	7,563,847.28	
339.83	4,809,613.99	
-	-	
350.94	3,161,618.46	
243.46	1,990,285.50	
872.86	634,569.22	
458.47	1,306,639.50	
1,096.07	630,240.25	
750,000.00	750,000.00	
225.000	225,000.00	
-	-	
0.40	126,170.00	
0.40	115,587.83	
0.40	255,109.80	
0.40	402,140.77	
21.13	47,493,059.76	
15.25	34,273,000.00	
-	-	
87,500.00	350,000.00	
35,000.00	420,000.00	
87,500.00	2,275,000.00	
35,000.00	8,400,000.00	
500,000.00	8,000,000.00	
400,000.00	400,000.00	
200,000.00	400,000.00	
200,000.00	1,200,000.00	

RIDA/Balfour Beatty Cost Breakdown								
Division	Code	ID	Description	Quantity	Total Cost/Uni	Total Amount	Notes	
			2 Service Elevators, BG Parking to Hotel	4.00	stop	38,000.00	152,000	Budgeted as MRL
			2 Service Elevators, BG Parking to Conference	2.00	stop	90,000.00	180,000	Budgeted as MRL
			3 Service Elevators, Conference	6.00	stop	90,000.00	540,000	Budgeted as MRL
			4 Service Elevators, Hotel	80.00	stop	38,000.00	3,040,000	Budgeted as MRL
			4 Restaurant Elevator, Hotel	2.00	stop	125,000.00	250,000	Budgeted as MRL
			2 Elevator Hoistway Temporary Protection, AG Parking	12.00	stop	-	-	Included in turnkey parking garage pricing
			2 Elevator Hoistway Temporary Protection, BG Parking	28.00	stop	500.00	14,000	
			3 Elevator Hoistway Temporary Protection, Conference	58.00	stop	500.00	29,000	
			4 Elevator Hoistway Temporary Protection, Hotel	322.00	stop	500.00	161,000	
			3 Schedule acceleration for construction use elevators, conference	2.00	ea	40,000.00	80,000	Allowance
			3 Schedule acceleration for construction use elevators, hotel	4.00	ea	40,000.00	160,000	Allowance
			3 Construction Use Elevator Protection, Conference	2.00	ea	3,000.00	6,000	Includes OT
			3 Construction Use Elevator Protection, Hotel	4.00	ea	3,000.00	12,000	Includes OT
			3 Temp. Use & Refurbish of Construction Elevators, Conference	2.00	ea	19,000.00	38,000	2 elevators, 3 months
			3 Temp. Use & Refurbish of Construction Elevators, Hotel	4.00	ea	43,000.00	172,000	4 elevators, 11 months
			2 Escalator Stops, BG Parking	4.00	ea	300,000.00	1,200,000	
			3 Escalator Stops, Conference	20.00	ea	300,000.00	6,000,000	
			131700 Tubs & Pools	2,247,521.00	sf	14.90	33,479,000	
	142050		Elevator Cab Upgrades					
			2 Passenger Elevator Cab Finishes, AG Parking	2.00	ea	15,000.00	30,000	Floor, Walls, Ceiling. Service/Freight Elevators Standard Cab, excludes Bronze finishes
			3 Passenger Elevator Cab Finishes, Conference	8.00	ea	30,000.00	240,000	Floor, Walls, Ceiling. Service/Freight Elevators Standard Cab, excludes Bronze finishes
			4 Passenger Elevator Cab Finishes, Hotel	14.00	ea	30,000.00	420,000	Floor, Walls, Ceiling. Service/Freight Elevators Standard Cab, excludes Bronze finishes
			142050 Elevator Cab Upgrades	2,247,521.00	sf	0.31	690,000	
	149100		Facility Chutes					
			3 Waste Handling Equipment, Conference	1.00	ls	30,000.00	30,000	Allowance for trash compactor
			4 Linen & Trash Chutes, Hotel	20.00	ftr	3,700.00	74,000	
			149100 Facility Chutes	2,247,521.00	sf	0.05	104,000	
			<b>CONVEYING EQUIPMENT</b>	<b>2,247,521.00</b>	<b>SF</b>	<b>15.25</b>	<b>34,273,000</b>	
210000	211300		<b>FIRE SUPPRESSION</b>	<b>2,247,521.00</b>	<b>SF</b>	<b>3.07</b>	<b>6,900,161</b>	
			Fire-Suppression Sprinkler Systems					
			2 Fire Protection, AG Parking	315,425.00	sf	-	-	Included in turnkey parking structure
			2 Fire Protection, BG Parking	288,969.58	sf	2.57	742,333	includes Exhibit Drop Off soffit fire protection
			2 Fire Protection, Conference	637,774.49	sf	3.01	1,917,333	Includes Porte Cochere soffit fire protection
			3 Fire Protection, Hotel	963,466.93	sf	4.17	4,017,333	Included in Hotel pricing
			4 Fire Protection, Hotel Balconies	7,232.00	sf	-	-	
			3 Fire Protection, Conference Terraces/Balconies	42,350.00	sf	4.17	176,600	
			4 Fire Protection, Hotel Terrace	11,166.00	sf	4.17	46,562	
			211300 Fire-Suppression Sprinkler Systems	2,247,521.00	sf	3.07	6,900,161	
			<b>210000 FIRE SUPPRESSION</b>	<b>2,247,521.00</b>	<b>SF</b>	<b>3.07</b>	<b>6,900,161</b>	
220000	220010		<b>PLUMBING</b>	<b>2,247,521.00</b>	<b>SF</b>	<b>17.01</b>	<b>38,235,616</b>	
			Plumbing					
			1 Drainage, Site on Structure	63,653.00	sf	1.00	63,653	Included in Turnkey Parking Structure
			2 Water & Drain Systems, AG Parking	315,425.00	sf	-	-	
			2 Water & Drain Systems, BG Parking	288,969.58	sf	2.00	577,939	
			3 Plumbing Systems, Conference	595,424.49	sf	6.04	3,596,450	
			4 Plumbing Systems, Hotel	1,005,351.93	sf	33.09	33,268,321	
			2 Composite Crew & Cleanup, AG Parking	315,425.00	sf	0.32	102,346	
			2 Composite Crew & Cleanup, BG Parking	288,969.58	sf	0.32	93,762	
			3 Composite Crew & Cleanup, Conference	637,774.49	sf	0.32	206,939	
			4 Composite Crew & Cleanup, Hotel	1,005,351.93	sf	0.32	326,207	
			211300 Fire-Suppression Sprinkler Systems	2,247,521.00	sf	17.01	38,235,616	
	226120		Rescue Air System					
			4 Rescue Air System, Hotel	20.00	ftr	-	-	NIC
			226120 Rescue Air System	2,247,521.00	sf	-	-	
			<b>220000 PLUMBING</b>	<b>2,247,521.00</b>	<b>SF</b>	<b>17.01</b>	<b>38,235,616</b>	
230000	230010		<b>HVAC</b>	<b>2,247,521.00</b>	<b>SF</b>	<b>28.81</b>	<b>64,746,869</b>	
			Heating, Ventilation & Air-Conditioning					
			2 Ventilation/CO2 Systems, AG Parking	315,425.00	sf	-	-	Included in turkey parking structure, open ventilation
			2 Ventilation/CO2 Systems, BG Parking	288,969.58	sf	2.68	775,000	
			2 Central Plant, BG Parking	1.00	ls	6,600,000.00	6,600,000	Gaylord Standard Module 15A, Item B.9, page 6 excluded, N/A
			2 Module 15A, Chiller Heat Recovery	1.00	ls	-	-	
			2 Module 15A, Chiller Plant Optimization	1.00	ls	100,000.00	100,000	
			3 HVAC Systems, Conference Center	637,774.49	sf	47.68	30,407,000	
			3 Module 14 smoke exhaust system, Conference	1.00	ls	-	-	Excluded

AECOM Analysis		
Total Cost/Unit	Total Amount	Notes
38,000.00	152,000.00	
90,000.00	180,000.00	
90,000.00	540,000.00	
38,000.00	3,040,000.00	
125,000.00	250,000.00	
-	-	
500.00	14,000.00	
500.00	29,000.00	
500.00	161,000.00	
40,000.00	80,000.00	
40,000.00	160,000.00	
3,000.00	6,000.00	
3,000.00	12,000.00	
19,000.00	38,000.00	
43,000.00	172,000.00	
300,000.00	1,200,000.00	
300,000.00	6,000,000.00	
14.90	33,479,000.00	\$/sf rate appears high - Provide further back-up
15,000.00	30,000.00	
30,000.00	240,000.00	
30,000.00	420,000.00	
0.31	690,000.00	
30,000.00	30,000.00	
3,700.00	74,000.00	
0.05	104,000.00	
15.25	34,273,000.00	
3.07	6,903,171.85	
-	-	Included in turnkey parking structure
2.57	742,651.82	includes Exhibit Drop Off soffit fire protection
3.01	1,919,701.21	Includes Porte Cochere soffit fire protection
4.17	4,017,657.10	Included in Hotel pricing
-	-	
4.17	176,599.50	
4.17	46,562.22	
3.07	6,903,171.85	
3.07	6,903,171.85	
17.01	38,224,258.16	
1.00	63,653.00	
-	-	
2.00	577,939.16	
6.04	3,596,363.92	
33.09	33,267,095.36	Rate per sf seems high
0.32	100,936.00	
0.32	93,762.00	
0.32	206,939.00	
0.32	321,712.62	
17.01	38,224,258.16	
-	-	
-	-	
17.01	38,224,258.16	
28.81	64,746,388.30	
-	-	
2.68	774,438.47	
6,600,000.00	6,600,000.00	Provid back up
-	-	
100,000.00	100,000.00	
47.68	30,409,087.68	Provid back up
-	-	

RIDA/Balfour Beatty Cost Breakdown							
Division	Code	ID	Description	Quantity	Total Cost/Uni	Total Amount	Notes
			4 HVAC Systems, Hotel	1,005,351.93	sf 21.81	21,930,000	
			4 Module 15A, Aldes dampers for outside air/exhaust, Hotel	1.00	ls 650,000.00	650,000	Added per Gaylord Standards
			4 Module 15A, Static pressure control of unit exhaust & OA, Hotel	1.00	ls 250,000.00	250,000	Added per Gaylord Standards
			4 Module 14 smoke exhaust system upgrade, Hotel	1.00	ls 2,800,000.00	2,800,000	Added scope beyond code per Gaylord Standards per Module 14, page 15, item G only. Smoke control ducted exhaust of Ballrooms, Meeting Room and the Exhibit Hall excluded
			2 Composite Crew & Cleanup, AG Parking	315,425.00	sf 0.55	173,306	
			2 Composite Crew & Cleanup, BG Parking	288,969.58	sf 0.55	158,770	
			3 Composite Crew & Cleanup, Conference	637,774.49	sf 0.55	350,416	
			4 Composite Crew & Cleanup, Hotel	1,005,351.93	sf 0.55	552,377	
			230010 Heating, Ventilating & Air-Conditioning	2,247,521.00	sf 28.81	64,746,869	
	230800		Alternate Energy Systems				
			2 Solar Hot Water or Photovoltaic System, Parking	-	sf -	-	NIC
			3 Solar Hot Water or Photovoltaic System, Conference	-	sf -	-	NIC
			4 Solar Hot Water or Photovoltaic System, Hotel	-	ls -	-	NIC
			230800 Alternate Energy Systems	2,247,521.00	sf -	-	
			<b>230000 HVAC</b>	<b>2,247,521.00</b>	<b>SF 28.81</b>	<b>64,746,869</b>	
260000			<b>ELECTRICAL</b>	<b>2,247,521.00</b>	<b>SF 23.30</b>	<b>52,368,854</b>	
	260100		Electrical				Includes temp. power & lighting. Excludes low voltage systems. Lightning protection is excluded.
			1 Electrical Systems, Site	1,161,364.00	sf 2.18	2,531,774	
			2 Electrical Systems, AG Parking	315,425.00	sf -	-	Included in turnkey Parking Structure includes temp. power & lighting. Excludes low voltage systems. Lightning protection is excluded.
			2 Electrical Systems, BG Parking	288,969.58	ls 8.13	2,350,000	
			3 Electrical Systems, Conference	637,774.49	ls 38.70	24,681,873	
			4 Electrical Systems, Hotel	1,005,351.93	ls 21.50	21,615,066	Includes temp. power & lighting. Excludes low voltage systems. Lightning protection is excluded.
			2 Composite Crew & Cleanup, AG Parking	315,425.00	sf 0.53	167,029	
			2 Composite Crew & Cleanup, BG Parking	288,969.58	ls 0.53	153,020	
			3 Composite Crew & Cleanup, Conference	637,774.49	sf 0.53	337,724	
			4 Composite Crew & Cleanup, Hotel	1,005,351.93	ls 0.53	532,369	
			260100 Electrical	2,247,521.00	sf 23.30	52,368,854	
	262000		Low Voltage				
			1 Low Voltage (Security, TV, Telephone, Guestroom Automation, etc.), Site	1,161,364.00	sf -	-	NIC, by Owner
			Low Voltage (Security, TV, Telephone, Guestroom Automation, etc.), AG				
			2 Parking	315,425.00	sf -	-	NIC, by Owner
			Low Voltage (Security, TV, Telephone, Guestroom Automation, etc.), BG				
			2 Parking	288,969.58	sf -	-	NIC, by Owner
			Low Voltage (Security, TV, Telephone, Guestroom Automation, etc.),				
			3 Conference	637,774.49	sf -	-	NIC, by Owner
			4 Low Voltage (Security, TV, Telephone, Guestroom Automation, etc.), Hotel	1,005,351.93	sf -	-	NIC, by Owner
			26200 Low Voltage	2,247,521.00	sf -	-	
			<b>230000 HVAC</b>	<b>2,247,521.00</b>	<b>SF 23.30</b>	<b>52,368,854</b>	
310000			<b>EARTHWORK</b>	<b>2,247,521.00</b>	<b>SF 8.07</b>	<b>18,128,680</b>	
	312000		Earth Moving				
			1 Install & Remove Temporary Roads	5,540.00	lf 216.00	1,196,640	
			1 Additional Mobilizations	1.00	ls 10,000.00	10,000	
			1 Over-Excavate & Recompact	-	cy -	-	NIC, by Owner
			1 Rough Grade	1,663,821.00	sf 1.35	2,246,158	
			1 Excavate Pools	14,832.70	cy 12.25	181,701	
			1 Final Grade	1,663,821.00	sf 0.13	216,297	
			1 Ramp at Hotel 2nd Floor Drop-off	18,140.00	cy -	-	Included in rough grade
			1 Backfill at Site Retaining Walls	7,537.04	cy 6.00	45,222	
			1 Backfill at Pools	5,200.00	cy 6.00	31,200	
			1 Base rock under pools (12" base rock)	2,475.67	cy 40.00	99,027	
			1 SWPPP Install & Maintenance	30.00	mos 13,104.33	393,130	
			1 Haz Mat Handling & Disposal	-	ton -	-	NIC, assume clean
			312000 Earth Moving	2,247,521.00	sf 1.97	4,419,375	
	312319		Dewatering				
			1 Localized Temporary Dewatering Pumps as Needed, Site Allowance	1.00	ls 300,000.00	300,000	
			312319 Dewatering	2,247,521.00	sf 0.13	300,000	
	314000		Shoring				
			1 Shoring	1.00	ls -	-	NIC, not required
			314000 Shoring	2,247,521.00	sf -	-	
	316200		Pile Foundations				

AECOM Analysis		
Total Cost/Unit	Total Amount	Notes
21.81	21,926,725.59	Provid back up
650,000.00	650,000.00	
250,000.00	250,000.00	
2,800,000.00	2,800,000.00	
0.55	173,483.75	
0.55	158,933.27	
0.55	350,775.97	
0.55	552,943.56	
28.81	64,746,388.30	
-	-	
-	-	
-	-	
-	-	
28.81	64,746,388.30	
23.30	52,369,221.59	
2.18	2,531,773.52	
-	-	
8.13	2,349,322.69	
38.70	24,681,872.76	
21.50	21,615,066.50	
0.53	167,175.25	
0.53	153,153.88	
0.53	338,020.48	
0.53	532,836.52	
23.30	52,369,221.59	high rate per sq ft
-	-	
-	-	
-	-	
23.30	52,369,221.59	
8.07	18,127,725.89	
216.00	1,196,640.00	
10,000.00	10,000.00	
-	-	
1.35	2,246,158.35	
12.25	181,700.58	
0.13	216,296.73	
-	-	
6.00	45,222.24	
6.00	31,200.00	
40.00	99,026.80	
13,104.33	393,129.90	
-	-	
1.97	4,419,374.60	
300,000.00	300,000.00	
0.13	300,000.00	
-	-	
-	-	

RIDA/Balfour Beatty Cost Breakdown								
Division	Code	ID	Description	Quantity	Total Cost/Uni	Total Amount	Notes	
			1 Peer Review of Pile Design	1.00	10,000.00	10,000	Recommended Peer Review	
			1 Pile Test Program Mobilization	1.00	100,000.00	100,000		
			1 Pile Test Program	1.00	150,000.00	150,000		
			1 Production Mobilization	1.00	100,000.00	100,000		
			1 Pile Foundations, Pools	11,679.53	53.00	619,969		
			1 Chip Pile Foundations, Pools	334.22	100.00	33,422		
			1 Pile Foundations, AG Parking	21,780.00	-	-		
			1 Chip Pile Foundations, AG Parking	396.00	100.00	39,600		
			1 Pile Foundations, BG Parking	73,920.00	53.00	3,917,760		
			1 Chip Pile Foundations, BG Parking	1,344.00	100.00	134,400		
			1 Pile Foundations, Conference	49,350.40	53.00	2,615,571		
			Chip Pile Foundations, Conference	897.28	100.00	89,728		
			Pile Foundations, Hotel	100,155.00	53.00	5,308,215		
			Chip Pile Foundations, Hotel	1,821.00	100.00	182,100		
			Pile Foundations, Hotel Tower Cranes	1,980.00	53.00	104,940		
			Chip Pile Foundations, Hotel Tower Cranes	36.00	100.00	3,600		
			Pile Cathodic Protection, Typical	1.00	-	-		
			312000 Earth Moving	2,247,521.00	5.97	13,409,305		NIC, Excluded
			<b>310000 EARTHWORK</b>	<b>2,247,521.00</b>	<b>SF 8.07</b>	<b>18,128,680</b>		
<b>320000</b>			<b>EXTERIOR IMPROVEMENTS</b>	<b>2,247,521.00</b>	<b>SF 9.42</b>	<b>21,168,959.00</b>		
	321200		Site Flexible Paving					
			1 Surface Parking, Ice Event Space	20,604.00	sf 4.25	87,567		
			1 Vehicular Paving, Service/Bus	84,536.00	sf 5.50	464,948		
			1 Vehicular Paving, Standard Loading	60,810.00	sf 4.50	273,645		
			1 Repair Asphalt Streets	1.00	ls -	-	NIC, excluded	
			1 Surveying	1.00	ls 25,000.00	25,000		
			321200 Site Flexible Paving	2,247,521.00	sf 0.38	851,160		
	32130		Site Rigid Paving					
			1 Fieldstone Moss Boulders around pools, Site	1,914.00	tons 350.00	669,900	Recommended Peer Review	
			1 Faux Rock at Pool Island, Site	10,463.64	sf 80.00	837,091		
			1 Retaining wall at South Side of Raised Hotel Drive Entrance	5,500.00	sf 65.00	357,500		
			1 Stamped Concrete (Faux Rock) Retaining Wall, 3' High, Site	723.00	sf 60.00	43,380		
			1 Stamped Concrete (Faux Rock) Retaining Wall, 11' High, Site	47,671.00	sf 60.00	2,860,260		
			1 Pool Approach Paving, Wave Pool	4,813.00	sf 18.00	86,634		
			1 Pool Approach Paving, Family Pool	6,091.00	sf 18.00	109,638		
			1 Pool Approach Paving, Adult Pool	6,839.00	sf 18.00	123,102		
			1 Pool Deck Surround, Family & Wave Pool	26,362.00	sf 18.00	474,516		
			1 Site Paving, Pool Bar & Grill	10,117.00	sf 15.00	151,755		
			1 Site Paving, Lazy River Deck	33,364.00	sf 15.00	500,460		
			Site Paving, Perimeter Site Path	59,705.00	sf 15.00	895,575		
			Site Paving, Funnel-Shaped Paths West Elevation (DG?)	18,801.00	sf 15.00	282,015		
			Site Paving, Cobblestone Path	21,856.00	sf 18.00	393,408		
			Site Paving, Tunnel Entrance Paths	1,504.00	sf 15.00	22,560		
			Site Paving, Interior Living Room Sub Slab	22,323.00	sf 10.00	223,230		
			Site Paving, Interior Living Room	6,158.00	sf 10.00	61,580		
			Site Paving, Exterior Dining	42,835.00	sf 18.00	771,030		
			Site Paving, Porte Cochere	2,632.00	sf 18.00	47,376		
			Site Paving, Exhibit Drop Off	12,675.00	sf 18.00	228,150		
			Concrete Paving at Loading Dock	46,309.00	sf 12.00	555,708		
			Site Paving, Bus Sidewalk/Curbs	29,755.00	sf 12.00	357,060		
			Stamped Concrete at Drop-offs	30,917.00	sf 18.00	556,506		
			Site Paving, Border around Turf Event Lawns	2,192.00	lf 20.00	43,840		
			Curb & Gutter	12,225.00	lf 30.00	366,750		
			Truncated Domes	450.00	sf 55.00	24,750		
			Street Trees & Irrigation	-	ea -	-	NIC, excluded	
			Repair Asphalt Streets	-	ls -	-	NIC, excluded	
			Street Lights	-	ea -	-	NIC, excluded	
			Signalization	-	ls -	-	NIC, excluded	
			Surveying	-	ls -	-	NIC, excluded	
			Composite Crew & Cleanup, AG Parking	315,425.00	sf 0.18	56,673		
			Composite Crew & Cleanup, BG Parking	288,969.58	sf 0.18	51,919		
			Composite Crew & Cleanup, Conference	637,774.49	sf 0.18	114,590		
			Composite Crew & Cleanup, Hotel	1,005,351.93	sf 0.18	180,963		
			312000 Earth Moving	2,247,521.00	sf 5.09	11,447,589		
	323400		Fabricated Bridges					
			1 Bridges, Lazy River 70' long	2.00	ea 150,000.00	300,000		
			1 Bridges, :agoon 30' long	2.00	ea 75,000.00	150,000		
			321200 Site Flexible Paving	2,247,521.00	sf 0.20	450,000		
	329000		Landscape & Irrigation					
			1 Landscaping	474,646.00	sf 10.32	4,898,232		
			1 Turf at Event Lawns	77,009.00	sf 16.04	1,235,581		
			3 Roof Gardens, Conference	26,469.00	sf 20.25	536,088		
			1 Street Trees & Irrigation	1.00	ls -	-		
			1 Irrigation	474,646.00	sf 3.23	1,531,209	Includes booster pumps	
			329000 Landscape & Irrigation	2,247,521.00	sf 3.65	8,201,110		
	321723		Pavement & Markings					
			2 Car Stall Striping & Wheel Stops	1,841.00	stl 100.00	184,100		

AECOM Analysis		
Total Cost/Unit	Total Amount	Notes
10,000.00	10,000.00	
100,000.00	100,000.00	
150,000.00	150,000.00	
100,000.00	100,000.00	
53.00	619,015.09	
100.00	33,422.00	
-	-	
100.00	39,600.00	
53.00	3,917,760.00	Basis of Design?
100.00	134,400.00	
53.00	2,615,571.20	Basis of Design?
100.00	89,728.00	
53.00	5,308,215.00	Basis of Design?
100.00	182,100.00	
53.00	104,940.00	
100.00	3,600.00	
-	-	
5.97	13,408,351.29	
<b>8.07</b>	<b>18,127,725.89</b>	
<b>9.42</b>	<b>21,171,262.89</b>	
4.25	87,567.00	
5.50	464,948.00	
4.50	273,645.00	
-	-	
25,000.00	25,000.00	
0.38	851,160.00	
350.00	669,900.00	
80.00	837,091.20	
65.00	357,500.00	
60.00	43,380.00	
60.00	2,860,260.00	
18.00	86,634.00	
18.00	109,638.00	
18.00	123,102.00	
18.00	474,516.00	
15.00	151,755.00	
15.00	500,460.00	
15.00	895,575.00	
15.00	282,015.00	
18.00	393,408.00	
15.00	22,560.00	
10.00	223,230.00	
10.00	61,580.00	
18.00	771,030.00	
18.00	47,376.00	
18.00	228,150.00	
12.00	555,708.00	
12.00	357,060.00	
18.00	556,506.00	
20.00	43,840.00	
30.00	366,750.00	
55.00	24,750.00	
-	-	
-	-	
-	-	
-	-	
0.18	56,673.50	
0.18	52,014.52	
0.18	114,799.41	
0.18	180,963.35	
5.09	11,448,327.98	
150,000.00	300,000.00	
75,000.00	150,000.00	
0.20	450,000.00	
10.32	4,898,346.72	
16.04	1,235,224.36	
20.25	535,997.25	
-	-	
3.23	1,533,106.58	
3.65	8,202,674.91	
100.00	184,100.00	

RIDA/Balfour Beatty Cost Breakdown							
Division	Code	ID	Description	Quantity	Total Cost/Uni	Total Amount	Notes
			2 Direction Arrows & Signage	7.00	5,000.00	35,000	
	322000		321723 Pavement Markings	2,247,521.00	0.10	219,100	
			Offsite Improvements				
			1 Street Lights	-	-	-	NIC. Assume existing to remain
			1 Signalization	-	-	-	NIC. assume none required.
			321723 Pavement Markings	2,247,521.00	-	-	
			<b>320000 EXTERIOR IMPROVEMENTS</b>	<b>2,247,521.00</b>	<b>SF 9.42</b>	<b>21,168,959</b>	
330000	330001		<b>UTILITIES</b>	<b>2,247,521.00</b>	<b>SF 1.65</b>	<b>3,709,206.00</b>	Utility consultants NIC, by Owner
			Underground Utilities				
			1 Site Domestic Water	2,667.00	90.00	240,030.00	Allowance
			1 Site Sanitary Sewer	2,658.00	110.00	292,380.00	Allowance
			1 Site Fire Line Primary (Fire loop)	4,044.00	140.00	566,160.00	Allowance
			1 Site Fire Line Secondary	1,082.00	120.00	129,840.00	Allowance
			Site Natural Gas	839.00	100.00	83,900.00	Allowance
			Site Storm Sewer	2,658.00	105.00	279,090.00	Allowance
			Bio retention Basin	33,283.00	30.00	998,490.00	Allowance
			Linear Drain Basin (gravel + perf pipe)	1,179.00	220.00	259,380.00	Allowance
			Underdraining at Turf Event Lawns	77,009.00	2.00	154,018.00	Allowance
			Dry Utilities (Electrical)	1.00	480,918.00	480,918.00	Allowance
			Cathodic Protection	1.00	200,000.00	200,000.00	Allowance
			SDGE Electrical & Gas Permanent Service	-	-	-	NIC, by Owner
			SDGE Electrical Temporary Service	-	-	-	NIC, by Owner
			Relocation of Existing Utilities	-	-	-	NIC, excluded
			Surveying	1.00	25,000.00	25,000.00	
			321200 Site Flexible Paving	2,247,521.00	1.65	3,709,206.00	
			<b>330000 UTILITIES</b>	<b>2,247,521.00</b>	<b>SF 1.65</b>	<b>3,709,206.00</b>	
			<b>SUBTOTAL</b>			<b>658,405,982</b>	
950000	950020		<b>INSURANCE, BONDS, TAXES</b>	<b>2,247,521.00</b>	<b>SF 3.46</b>	<b>7,779,249</b>	
			OCIP/CCIP				
			OCIP Difference in Conditions	0.50%	3,292,030	3,292,030	
			OCIP Anticipated Subcontractor Insurance Pickup	-0.75%	(4,938,045)	(4,938,045)	Anticipated buyout savings
			950020 OCIP/CCIP	2,247,521.00	(0.73)	(1,646,015)	
	950022		Liability Insurance				
			Liability Insurance	0.00%	-	-	Excluded OCIP
			950022 Liability Insurance	2,247,521.00	-	-	
	950025		Builders Risk Insurance				
			Builders Risk Insurance	0.00%	-	-	NIC, by Owner
			950025 Builders Risk Insurance	2,247,521.00	-	-	
	950035		Sub Guard Insurance				
			Sub Guard Insurance	1.50%	9,425,264.00	9,425,264	Excluded OCIP
			950035 Sub Guard Insurance	2,247,521.00	4.19	9,425,264	
	950045		Prime Contract Bond				
			Prime Contract Bond	0.00%	-	-	NIC
			950045 Prime Contract Bond	2,247,521.00	-	-	
			<b>950000 INSURANCE, BONDS, TAXES</b>	<b>2,247,521.00</b>	<b>SF 3.46</b>	<b>7,779,249</b>	
960000	960005		<b>CONTINGENCIES</b>	<b>2,247,521.00</b>	<b>SF 14.65</b>	<b>32,920,300</b>	
			Design Contingency				
			Design Contingency	2.50%	658,405,982.04	16,460,150	
			960005 Design Contingency	2,247,521.00	7.32	16,460,150	
	960015		Construction Contingency				
			Construction Contingency	2.50%	16,460,150.00	16,460,150	
			960015 Construction Contingency	2,247,521.00	7.32	16,460,150	
			<b>960000 CONTINGENCIES</b>	<b>2,247,521.00</b>	<b>SF 14.65</b>	<b>32,920,300</b>	
			<b>SUB TOTAL</b>	<b>2,247,521.00</b>	<b>SF 18.11</b>	<b>699,105,530</b>	
			<b>CONTRACTOR FEE</b>	<b>3.95%</b>	<b>18.11</b>	<b>27,614,668</b>	
			<b>TOTAL</b>			<b>726,720,199</b>	

AECOM Analysis		
Total Cost/Unit	Total Amount	Notes
5,000.00	35,000.00	
0.10	219,100.00	
-	-	
-	-	
-	-	
9.42	21,171,262.89	
1.65	3,709,206.00	
90.00	240,030.00	
110.00	292,380.00	
140.00	566,160.00	
120.00	129,840.00	
100.00	83,900.00	
105.00	279,090.00	
30.00	998,490.00	
220.00	259,380.00	
2.00	154,018.00	
480,918.00	480,918.00	
200,000.00	200,000.00	
-	-	
-	-	
-	-	
25,000.00	25,000.00	
1.65	3,709,206.00	
1.65	3,709,206.00	
	<b>658,410,839.39</b>	
3.46	7,779,249.05	
3,292,030	3,292,030	
(4,938,045)	(4,938,045)	
(0.73)	(1,646,014.96)	
-	-	
-	-	
-	-	
-	-	
9,425,264.00	9,425,264.00	
4.19	9,425,264.00	
-	-	
-	-	
3.46	7,779,249.05	
14.65	32,920,299.55	
658,405,982.04	16,460,150	
7.32	16,460,150	
16,460,150.00	16,460,150	
7.32	16,460,150	
14.65	32,920,299.55	
18.11	699,110,387.99	
18.11	27,614,860.33	
	<b>726,725,248.31</b>	







---

**AMENDED AND RESTATED  
CHULA VISTA BAYFRONT MASTER PLAN FINANCING AGREEMENT**

**Dated \_\_\_\_\_, 2017**

**Between**

**City of Chula Vista**

**and**

**San Diego Unified Port District**

---

## TABLE OF CONTENTS

	Page
1. Definitions.....	3
2. Findings, Purpose, Acknowledgements of the Parties, Reservation of Discretion .....	10
2.1 Findings, Purpose and Intent .....	10
2.2 Reservation of Discretion Regarding Actions Subject to CEQA and Other Applicable Laws .....	10
2.3 Acknowledgements of the Parties .....	11
2.4 Termination of Original Agreement .....	12
3. CVBMP Master Calendar .....	12
4. Development of Plan of Finance; Acknowledgement of Factors Potentially Impacting Plan of Finance.....	12
4.1 Anticipated Sources of Funds; Plan of Finance.....	13
4.2 Sources of Funds .....	13
4.2.1 District Sources of Revenue.....	13
4.2.2 City Sources of Revenue.....	14
4.3 Revenue Bonds.....	16
4.3.1 Issuance of Revenue Bonds .....	16
4.3.2 Security and Sources of Payment for Revenue Bonds.....	16
4.4 Anticipated Application of Revenue Bond Proceeds; Flow of Funds; Release of Financing Revenues .....	17
4.4.1 Application of Revenue Bond Proceeds .....	17
4.4.2 Operations and Maintenance Costs.....	17
4.4.3 Release of Financing Revenues .....	17
5. Resort and Convention Center Project Leasing and Operations; Opportunity for Cultural/Retail Use on Parcel H-23.....	17
5.1 Lease of Resort and Convention Center Development Site .....	17
5.2 Resort and Convention Center Project .....	17
5.3 Review of Developer Proposal(s).....	18
5.4 Future District Projects within Chula Vista Bayfront Master Plan .....	18
5.5 Lease of Convention Center .....	18
5.6 Management Agreement.....	18
5.7 Opportunity for Cultural/Retail Use on Parcel H-23.....	19
6. Reimbursement Agreement for Oversizing .....	19
7. Miscellaneous RHCC Project Obligations.....	19
7.1 Fire Station .....	19
7.2 Transit Plan.....	19
7.3 [Intentionally left blank]	
7.4 Reimbursements for Remediation and Other Costs .....	19
7.4.1 Remediation Costs .....	19
7.4.2 Other Costs.....	20
7.4.3 Pacifica Insurance Commitment .....	20
7.5 Application of Unit Contribution .....	20

**TABLE OF CONTENTS**  
(continued)

		<b>Page</b>
8.	Modifications or Amendments; Waivers .....	20
9.	Additional Agreements, Actions; Further Assurances .....	20
10.	Authorized Representatives .....	20
11.	Dispute Resolution; Attorneys' Fees and Costs .....	21
	11.1 Dispute Resolution .....	21
	11.2 Attorneys' Fees and Costs .....	21
12.	Conditions Precedent to Performance of the Parties .....	21
13.	Termination; Consequences of Termination; Subsequent Action .....	21
14.	Proposition G .....	22
15.	General Provisions .....	22
	15.1 Prompt Performance .....	22
	15.2 Further Assurances .....	22
	15.3 Entire Agreement; Subsequent Agreements .....	22
	15.4 Captions .....	22
	15.5 Successors .....	22
	15.6 Notices .....	22
	15.7 Limitation of Rights; Third Party Rights .....	23
	15.8 Severability of Invalid Provisions .....	23
	15.9 Execution Authorized .....	23
	15.10 Governing Law .....	23
	15.11 Effective Date .....	23
	15.12 Execution in Counterparts .....	23
Exhibit A	Chula Vista Bayfront Master Plan Project Area .....	A-1
Exhibit B	San Diego Unified Port District Property .....	B-1
Exhibit C-1	RHCC Public Improvements .....	C-1
Exhibit C-2	CVBMP Public Improvements .....	C-2
Exhibit D	[Intentionally left blank] .....	D
Exhibit E-1	Public Sewer Facility Improvements- Phase 1A	E-1
Exhibit E-2	Public Sewer Facility Improvements- Ultimate Without Phase 1A	E-2
Exhibit F	Other Ground Leases	F

**AMENDED AND RESTATED  
CHULA VISTA BAYFRONT MASTER PLAN FINANCING AGREEMENT**

This AMENDED AND RESTATED CHULA VISTA BAYFRONT MASTER PLAN FINANCING AGREEMENT (hereinafter referred to as this “Agreement”), dated \_\_\_\_\_, 2017 (the “Effective Date”), is between the CITY OF CHULA VISTA, a charter city and municipal corporation (the “City”), and the SAN DIEGO UNIFIED PORT DISTRICT, a district formed pursuant to California Harbors and Navigation Code APPENDIX 1, Section 1 *et seq.*, and a public corporation (the “District”). This Agreement amends and restates that certain Chula Vista Bayfront Master Plan Financing Agreement dated May 8, 2012 (the “Original Agreement”) by and between the same parties. The City and the District are from time to time hereinafter referred to individually as a “Party” and collectively as the “Parties.”

**RECITALS**

**A. Development of Chula Vista Bayfront Master Plan.** In 2002, District, the City and the Redevelopment Agency of the City of Chula Vista, a redevelopment agency formed pursuant to California Health and Safety Code §§ 33000 *et seq.* (the “Agency”) began work to create a master plan for development of the approximately 535-acre Chula Vista Bayfront (the “Chula Vista Bayfront”) located on the southeastern edge of San Diego Bay in the City of Chula Vista. The purpose of the master plan was to reconfigure the 497 acres of land and 59 acres of water which comprise the Chula Vista Bayfront by connecting the land and water acres in a way that will promote public access to, and engagement with, the water while enhancing the quality and protection of key habitat areas, with the ultimate goal of creating a world-class bayfront through strong planning and design, economic feasibility and community outreach.

**B. Final Environmental Impact Report.** On May 18, 2010, the District, as Lead Agency of the project, as such term is defined in California Public Resources Code § 21067, certified a Final Environmental Impact Report for the Chula Vista Bayfront Master Plan and Port Master Plan Amendment (UPD # 83356-EIR-658; SCH # 2005081077) (the “FEIR”). City and Agency are Responsible Agencies as defined in California Public Resources Code § 21069. The project described in the FEIR is known as the Chula Vista Bayfront Master Plan (“CVBMP”). The area encompassed by the CVBMP is hereinafter referred to as the “CVBMP Project Area.” A map showing the CVBMP Project Area and its constituent parcels is attached hereto as Exhibit A. This Agreement is contemplated by the CVBMP as analyzed in the FEIR.

**C. Land Uses.** Key components of the CVBMP include: a signature park, open space areas and cultural use; improved visual corridors to San Diego Bay; a resort hotel and convention center (“RHCC”) and other hotels; residential and mixed-use office/commercial recreation uses; waterfront retail uses and public gathering spaces around the harbor; a new commercial harbor and improved navigation channel; a public promenade and bike trail through the entire bayfront; and large buffer zones to protect adjacent sensitive resources.

**D. Development of District Property in CVBMP Project Area.** Development of all of the real property located in the CVBMP Project Area indicated on Exhibit B attached hereto (“District Property”) shall be subject to the CVBMP.

**E. Residential Use.** The FEIR designates a portion of the District Property commonly known as Parcels HP-5, H-13 and H-14 for residential use, such residential use to consist of up to 1,500 multi-family units, and a portion of the District Property commonly known as Parcel H-15 for a mix of office and hotel uses. The foregoing parcels, Parcels HP-5, H-13, H-14 and H-15, are hereinafter referred to as the "Residential Property." Improvements to the Residential Property in accordance with the FEIR are hereinafter referred to as the "Residential Property Improvements." In order to implement the residential use component of the Residential Property Improvements, it was necessary that the District exchange the Residential Property, which as land owned by the District is subject to the Public Trust Doctrine which precludes residential use, for certain real property owned by North C.V. Waterfront L.P., a California limited partnership ("Owner"), comprised of Parcels S-1, S-2, S-3, SP-1, SP-2 and SP-3 (hereinafter referred to as the "Owner Property").

**F. Land Exchange.** The California State Lands Commission ("SLC") is authorized by Division 6 of the California Public Resources Code, including § 6307, to exchange interests in real property subject to the Public Trust Doctrine for interests in other non-trust lands of equal or greater value. Pursuant to this authority the District applied to SLC for approval to exchange the Residential Property for the Owner Property, subject to receipt of evidence to the satisfaction of District and SLC that the Owner Property is of equal or greater value than the Residential Property. The concurrent transfer of the Residential Property and Owner Property to Owner and SLC, respectively, is hereinafter referred to as the "Exchange." By reason of the completion of such Exchange pursuant to the Exchange Agreement described below, the Residential Property has been released from the use restrictions of the Public Trust Doctrine and the Owner Property has become subject to such restrictions. As part of the Exchange, SLC granted the District a 49 year lease for the Owner Property pending SLC and District obtaining necessary state legislation to authorize SLC to transfer the title and interests in the Owner Property to District.

**G. Exchange Agreement.** In order to document the terms and provisions applicable to the Exchange, District and Owner entered into that certain Exchange Agreement and Escrow Instructions, dated as of February 2, 2010, as amended and restated, pursuant to that certain Amended and Restated Exchange Agreement dated as of May 6, 2014 (as amended from time to time pursuant to its terms, the "Exchange Agreement"). Close of the escrow created by the Exchange Agreement was conditioned upon and subject to, among other things, various actions by the District, City, SLC, the California Coastal Commission ("CCC") and the execution and effectiveness of the Original Agreement. The exchange contemplated by the Exchange Agreement occurred on February 18, 2016 ("Exchange Close of Escrow").

**H. Unit Contribution.** In furtherance of the Exchange Agreement, the Participation Agreement dated as of December 8, 2015 by and between Owner and District requires Owner to pay an amount equal to one-half of one percent (0.5%) of the gross sales price upon the close of escrow for the initial sale of each market rate residential condominium unit (excluding broker's commissions and costs of sale) developed on the Residential Property (other than residential units designated as affordable), such contribution being hereinafter referred to as the "Unit Contribution," such Unit Contribution to be paid to a joint powers authority (to be established) and applied in accordance with the provisions of that certain Chula Vista Bayfront Master Plan Settlement Agreement, dated as of May 4, 2010 (as amended from time to time pursuant to its terms, the "Settlement Agreement"), entered into by the District, City and Agency with the member entities of the Bayfront Coalition identified therein

**I. Resort Hotel and Convention Center.** The CVBMP contemplates the development of a resort hotel and convention center (the “RHCC Project”), further described in Section 5, to serve as the anchor project of the CVBMP and to be located on the site described in the FEIR and commonly known as Parcel H-3. The Parties anticipate that the RHCC Project will generate substantial benefits to the local and regional community in the form of increased tax and lease revenues, permanent jobs, and the provision of significant public amenities and will be the development catalyst for the CVBMP Project Area. The RHCC Project is also expected to generate substantial direct and indirect benefits to the San Diego region, including permanent and temporary jobs, tax revenues and public infrastructure.

**J. Public Improvements Required for CVBMP.** Development of the CVBMP Project Area, which is currently largely vacant land lacking in required infrastructure improvements, will require the construction of substantial public improvements early in the development and construction process (“Phase 1A”). Such public improvements include, without limitation, those listed on Exhibit C-1 attached hereto related to development of the RHCC Project and other Phase 1A development (collectively, the “RHCC Public Improvements” ), and other public improvements required as part of the CVBMP Project Area, not for the RHCC Project, are generally and identified on Exhibit C-2 attached hereto.

**K. RIDA Selection.** On May 6, 2014, the District Board of Port Commissioners adopted a resolution authorizing the issuance of a Request for Qualifications (“RFQ”) for a resort hotel and convention center in the CVBMP Project Area. After considerable local, regional, national and international marketing efforts by District staff, City staff and District’s consultant Jones Lang LaSalle, RFQ 14-24 (District Clerk No. 62033) was issued on June 30, 2014. The responses to the RFQ were due on September 8, 2014. A response was received from RIDA Development Corporation (“RIDA”), with ARES Management, LLC as the financial partner, WELBRO Building Corporation as the general contractor and three well qualified architectural firms, as architects . On October 14, 2014, the District Board of Port Commissioners adopted a resolution selecting RIDA as the successful respondent to the RFQ.

**NOW, THEREFORE,** in consideration of the above promises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. Definitions.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Agreement have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined.

**AAA** means the American Automobile Association.

**Additional Occupancy-Based Revenues** means those revenues received by the District, the City or the JEPA more fully described in Section 4.2.2(d) hereof.

**Agency** means the Successor Agency to the Chula Vista Redevelopment Agency a legal entity created by the State of California that succeeded the Chula Vista Redevelopment Agency and which was vested with and has all the right and obligations of the former “Chula Vista Redevelopment Agency”.

**Agreement** means this Amended and Restated Chula Vista Bayfront Master Plan Financing Agreement, as modified, amended or supplemented from time to time pursuant to its terms.

**Authorized Representative of the City** means the City Manager of the City or the designee of the City Manager of the City.

**Authorized Representative of the District** means the President/CEO of the District, which is the executive director of the District as such term is used in the Port District Act, or the designee of the President/CEO of the District.

**CCC** means the California Coastal Commission or any successor thereto.

**CEQA** means the California Environmental Quality Act.

**City** means the City of Chula Vista, a charter city and municipal corporation.

**Calendar** means the dates for submittal and approval by the Parties of the Funding Sources Submittals under Section 4.1.2 of this Agreement.

**Convention Center Lease** means the lease of the Convention Center contemplated by Section 5.5 of this Agreement.

**Convention Center** means the development anticipated to consist of up to 415,000 net square feet of convention facilities to be located on the RHCC Development Site comprising a portion of the RHCC Project more fully described in the FEIR.

**CVBFFA** means the Chula Vista Bayfront Facilities Financing Authority, created by the Joint Exercise of Powers Agreement dated as of May 1, 2014, a joint exercise of powers entity having as members the City and the District pursuant to Section 6502 *et seq* of the California Government Code.

**CVBMP** means the Chula Vista Bayfront Master Plan described in the recitals hereof.

**CVBMP Ground Leases** means the future long-term ground leases, excluding the RHCC Ground Lease and Other Ground Leases, entered into by the District contemplated by Section 5.4 of this Agreement.

**CVBMP Master Calendar** means the calendar for significant actions and agreements required for the implementation of the financing and other undertakings contemplated pursuant to this Agreement, as amended from time to time pursuant to the provisions of this Agreement.

**CVBMP Project** means the development of the Chula Vista Bayfront in accordance with the CVBMP.

**CVBMP Project Area** means the area encompassed by the CVBMP.

**CVBMP Public Improvements** means those infrastructure improvements needed to foster development of the CVBMP Project Area, including, without limitation, the infrastructure improvements summarized on Exhibit C-2 attached hereto, which are more precisely described in Document 58519 (Chula Vista Bayfront Master Plan Opinion of Probable Cost (Class iii Estimate))

Final as of October 2009) on file in the office of the District Clerk, as updated from time to time as agreed to by the Parties, which do not include the items that are needed for the RHCC Public Improvements that are set forth on Exhibit C-1 attached hereto.

**Developer** means RIDA Chula Vista, LLC, a Delaware limited liability company, or other developer or developers selected by the District to ground lease and develop the RHCC Development Site.

**Discretionary Actions** shall have the meaning assigned to such term in Section 2.2 of this Agreement.

**District** means the San Diego Unified Port District, a district formed pursuant to California Harbors and Navigation Code Appendix A 1, §§ 1 *et seq.* and a public corporation.

**District Property** means the real property located in the CVBMP Project Area identified on Exhibit B attached hereto.

**Effective Date** means the date this Agreement shall become effective as provided in Section 15.11 hereof.

**EIFD** means an enhanced infrastructure financing district sponsored by the City for that portion of the CVBMP Project Area known as the Sweetwater and Harbor districts (as identified in the FEIR) created pursuant to Chapter 2.99 (commencing with Section 53398.50) of Part 1, Division 2, Title 5 of the California Government Code or similar law pursuant to which incremental property tax revenue derived from such portion of the CVBMP Project Area may be applied to fund costs of RHCC Public Improvements and RHCC Project Public Investment to the extent eligible for funding thereunder.

**EIFD Revenues** means incremental property tax revenue derived from the EIFD and legally available to fund costs of RHCC Public Improvements and RHCC Project Public Investment.

**Exchange Agreement** means that certain Exchange Agreements specified in Recital G.

**Excess Costs** shall have the meaning specified in Section 6 of this Agreement.

**Exchange** means the concurrent transfer of the Residential Property to the Owner and the Owner Property to the SLC contemplated by the Exchange Agreement.

**FEIR** means the Final Environmental Impact Report for the Chula Vista Bayfront Master Plan and Port Master Plan Amendment certified by the District on May 18, 2010 as further defined in Recital B.

**Financing Revenues** means the revenues described in Section 4.2 to be applied by the District and City to pay costs of the RHCC Public Improvements and the RHCC Project Public Investment and other costs pursuant to a Plan of Finance.

**Financing Sources Approval** shall have the meaning described in Section 4.1.2.

**Financing Sources Submittal** means the submittals of the respective Parties described in Section 4.1.2 regarding the availability of individual sources of Financing Revenues.

**Fire Station** means the fire station serving the CVBMP Project Area which will be required in connection with the development of the CVBMP Project Area.

**Force Majeure Event** means any of the following events which prevent a Party from performing any obligation or achieving any milestone described in the CVBMP Master Calendar, described in this Financing Agreement or in a Plan of Finance: (i) delays in the entitlement process arising from the filing and processing of legal or administrative appeals of entitlement approvals; (ii) unanticipated processing delays by the staffs or governing bodies of the SLC, the CCC and/or the RWQCB; (iii) litigation of entitlement approvals and other governmental actions necessary for the financing, construction and implementation of the CVBMP Public Improvements and RHCC Public Improvements and/or of the Residential Property Improvements; (iv) any act of God, strike, lockout or other industrial disturbance during the construction and development of the RHCC Public Improvements, the CVBMP Public Improvements and/or of the Residential Property Improvements; (v) act of public enemy, blockade, war, insurrection, civil disturbance, explosion or riot; epidemic; (vi) landslide, earthquake, fire, storm, flood, or washout; (vii) governmental restraint, action or inaction, either federal, state, county, civil or military, including the adoption of any new law materially affecting either the ability of the Parties to proceed with implementation of the CVBMP or substantially increasing the costs of proceeding with implementation of the CVBMP (but not including any City or District laws, ordinances or regulations not mandated by federal, state or county laws or regulations); (viii) any initiative or referendum (including any such action related to actions of any of the Parties hereunder); (ix) failure to obtain any necessary federal, state or county governmental approval, and (x) failure of Owner or Developer to timely enter into a requested agreement or take a requested action.

**Ground Lease Revenues** means the collective ground lease payments made under the RHCC Ground Lease and Other Ground Leases, howsoever identified, including base rental, percentage rent and other rent components or amounts paid under some other agreement other than a ground lease. District shall identify in a Plan of Finance those Ground Lease Revenues, if any, that are subject to the prior pledge securing bonds issued by the District pursuant to the Indenture, dated as of October 1, 2004, as supplemented or amended, between the District and U.S. Bank National Association, as trustee or are otherwise unavailable for purposes of this Agreement.

**JEPA** means the CVBFFA, or other entity or financing structure authorized by applicable law agreed to by the Parties to provide for or facilitate the financing of the RHCC Public Improvements and the RHCC Public Investment.

**JEPA Obligations** is defined in Section 4.2.1 of this Agreement.

**Lease Payments** means the rental payments made by the City pursuant to a Convention Center Lease (exclusive of any Developer component described in Section 5) or lease of other public facilities, such rental payments to be in an amount up to the fair-market rental value of the Convention Center and not greater than an amount equal to (i) the revenues generated by the TOT generated by the RHCC, but not any other hotel development within the CVBMP Project Area and the existing RV Park located therein and the replacement RV Park to be constructed; (ii) all Sales Tax derived from the RHCC Project, PMSA Revenues and Additional Occupancy-Based Revenues received by the City, if any, exclusive of any Developer rent payable pursuant to any Developer sublease of the Convention Center; and (iii) any other City revenues described in a Plan of Finance, as further described in a Plan of Finance, subject to the limits described in Section 5.5.

**Management Agreement** means an agreement with the Developer pursuant to which the Developer assumes responsibility for the operations, management and maintenance obligations relating to the Convention Center.

**O&M Costs** means all costs of operation and maintenance incurred by the District and City, respectively, to provide administrative support, public safety, environmental services, and other direct and indirect operations and maintenance services resulting from the development of the CVBMP Project Area and serving the CVBMP Project Area, including, without limitation, administration of the RHCC Ground Lease, Other Ground Leases and the CVBMP Ground Leases, as more fully addressed in a Plan of Finance.

**Other Ground Leases** means those existing ground leases, as may be renewed or replaced, for the properties set forth on Exhibit F attached hereto.

**Owner Property** means Parcels S-1, S-2, S-3, SP-1, SP-2 and SP-3.

**Owner** means North C.V. Waterfront L.P., a California limited partnership, party to the Exchange Agreement.

**Parcel H-3** shall have the meaning specified in Recital I of this Agreement.

**Park Agreement** means the agreement between the District and the City contemplated pursuant to Section 4.2.2(g) of this Agreement.

**Parties** means the City and the District.

**Party** means the City or the District, as applicable.

**Plan of Finance** shall mean one or more financings plans to be approved and entered into by the District and City setting forth, among other things, the means by which the Financing Revenues described in Section 4 shall be applied to pay the cost of the RHCC Public Improvements and the RHCC Project Public Investment. The City and District may enter into one or more plans of finance for the build-out of the CVBMP Project areas separate from the RHCC Development Site.

**PMSA** means that certain Agreement No. 88-2012 between the District and the City providing for Police, Fire and Emergency Medical Services.

**PMSA Revenues** means amounts payable by the District to the City pursuant to the PMSA, in an annual amount equal to the reimbursement received from the District in fiscal year 2016, plus three percent (3%) per annum increase each fiscal year thereafter.

**Port District Act** means the California Harbors and Navigation Code APPENDIX 1, Section 1 *et seq.* as amended from time to time.

**Port Land Exchange Payment** means that certain one-time payment in the amount of \$3,000,000 received by the District at the Exchange Close of Escrow pursuant to the Exchange Agreement.

**Proposition G** means Chapter 2.59 of the Chula Vista Municipal Code, approved by the voters of the City in June 2010.

**Public Trust Doctrine** means the concept that the property of the District is held by the District as trustee of a public trust for the benefit of the people.

**Reimbursement Agreement** means an agreement with a Subdivider and the City entered into in accordance with the provisions set forth in Section 6 of this Agreement.

**Reimbursement Obligation** shall have the meaning specified in Section 6 of this Agreement.

**Residential Property Improvements** means improvements to the Residential Property contemplated by Recital E of this Agreement.

**Residential Property** means Parcels HP-5, H-13 and H-14. In addition, although the Parties acknowledge that Parcel H-15 has not been designated for residential use in the FEIR, as more fully explained in Recital E to this Agreement, for purposes of this Agreement and certain other agreements entered into in connection with the CVBMP, Parcel H-15 has been included in the defined term Residential Property.

**Revenue Bonds** means tax-exempt and/or taxable revenue bonds anticipated to be issued in accordance with a Plan of Finance secured by and payable from the sources of funds described in this Agreement as more fully described in Section 4.3.

**RHCC** means the resort hotel and convention center contemplated by Recital C of this Agreement.

**RHCC Development Site** means the site selected for the RHCC Project.

**RHCC Ground Lease** means the long-term ground lease/sublease between the District and the Developer contemplated pursuant to Section 5.1 of this Agreement.

**RHCC Hotel** means a resort hotel meeting or exceeding the service quality standards of a four diamond, AAA standard hotel, to be located on the RHCC Development Site adjacent to the Convention Center.

**RHCC Project** means the Convention Center and RHCC Hotel contemplated by Recital I of this Agreement.

**RHCC Project Public Investment** means amounts agreed by the Parties to be contributed to the financing of the RHCC Project over and above amounts contributed for the RHCC Public Improvements, for the Convention Center or otherwise, as may be determined from time to time as part of a Finance Plan.

**RHCC Public Improvements** means those CVBMP Public Improvements to be constructed in connection with development of the RHCC Project, consisting generally of those Phase IA improvements described in Exhibit C-1 attached hereto and as may be more fully described in a Plan of Finance but specifically excluding the Convention Center.

**RWQCB** means the California Regional Water Quality Control Board.

**Sales Tax** means that portion of sales tax levied pursuant to the Bradley-Burns Uniform Local Use and Sales Tax Law (California Revenue and Taxation Code Section 7000, *et seq.*) and allocated to the City pursuant to applicable law attributable to the RHCC Project, exclusive of any amount so levied and allocated to the City pursuant to voter approval by the electors of the City.

**SDGE Relocation Fees** means fees received by the District from San Diego Gas & Electric pursuant to a Right of Entry Agreement between the District and San Diego Gas and Electric, filed in the office of the District Clerk on September 24, 2015 as Document No. 63983, in the amount of \$1,653,750.

**Settlement Agreement** means the Chula Vista Bayfront Master Plan Settlement Agreement, entered into as of May 4, 2010, by and among the Bayfront Coalition Member Organizations identified therein, the District, the City and the Agency, as amended from time to time pursuant to its terms.

**Sewer Facility Contribution** means the one-time contribution by the City to fund specific sewer facility improvements comprising part of the RHCC Public Improvements described in Exhibit E-1 attached hereto and as may be more fully described in a Plan of Finance.

**SLC** means the California State Lands Commission.

**Subdivider** means a developer or builder in the CVBMP Project Area (other than the Owner) which is required by the City to oversize or supplement the size, capacity, number or length of an improvement for the benefit of property(ies) in addition to the property owned or leased by such Subdivider.

**TOT** means transient occupancy tax attributable to the RHCC Project and the existing RV Park in the CVBMP Project Area and the replacement RV Park to be constructed; provided that TOT generated from other portions of the CVBMP Project Area may be included with respect to development of subsequent phases of the CVBMP Project Area to the extent described in Section 4.2.2(a).

## **2. Findings, Purpose, Acknowledgements of the Parties, Reservation of Discretion.**

**2.1 Findings, Purpose and Intent.** The Parties hereby find and determine that the recitals set forth above are true and correct. The purpose and intent of this Agreement is to provide for the obligations of each Party with respect to implementation of the financing, development and construction to support the build-out of the CVBMP Project Area in accordance with the FEIR and such other and further actions of the Parties as may be necessary and appropriate for the build-out of the CVBMP Project Area, including without limitation, the buildout of the RHCC Public Improvements related to the RHCC Project, subject in all cases to Section 2.2 and 2.3 of this Agreement. It is also the intent of the Parties that the requirements of the California Environmental Quality Act ("CEQA"), as certified in the FEIR, be fully complied with in the implementation of the matters set forth in this Agreement. The Parties intend that the planning, development and construction of the CVBMP Project Area be a cooperative, mutual endeavor in which the Parties actively participate and work together, in good faith and with due diligence.

**2.2 Reservation of Discretion Regarding Actions Subject to CEQA and Other Applicable Laws.** The Parties to this Agreement understand, acknowledge and agree that,

notwithstanding any other terms and conditions of this Agreement, (i) certain actions (collectively, "Discretionary Actions") incidental to matters described in this Agreement or required by this Agreement or a Plan of Finance may require the exercise of discretion by one or more of the Parties which may require review under and compliance with CEQA, other laws pertaining to the City's or District's commitment of the revenue sources described herein (including, without limitation, the Constitution of the State of California, the City Charter, the Port District Act, respectively, and other laws relating to the formation or implementation of the EIFD and (ii) such Discretionary Actions shall require CEQA review, or review under such other laws prior to the occurrence of said Discretionary Action and cannot lawfully be committed to by contract prior to compliance with CEQA and cases interpreting CEQA or such other laws, respectively. The Parties acknowledge that each of the matters set forth in this Agreement, are subject to future Discretionary Actions and other actions constituting conditions precedent; provided, however, this Agreement does not commit the Parties to a definite course of action, including, but not limited to, approval or commencement of a lease, permit or other agreement prior to CEQA review and review under such other laws being conducted. Rather, this Agreement sets forth the Parties' intent to further explore, design, and evaluate the CVBMP Project and RHCC Project. The FEIR has been certified for the CVBMP and the Parties don't anticipate the need for supplemental CEQA review. Nothing in this Agreement will be construed as circumscribing or limiting the District's or City's exercise of discretion with respect to all and any future Discretionary Actions in connection with the CVBMP or this Agreement, including without limitation, to the adoption of any and all feasible mitigation measures, alternatives to the CVBMP Project or RHCC Project, including a no project alternative, a statement of overriding consideration, (if applicable and subsequent CEQA review is required), approval of the CVBMP Project, RHCC Project, land use entitlements, the exercise of eminent domain, the implementation of code enforcement, commitment of Financing Revenues, entry into any leases or other agreements, and the making of findings and determinations required by law with respect to a Discretionary Action. Any and all Discretionary Actions may be exercised in the sole and absolute discretion of the Parties and the Parties assume the risk that a Discretionary Action may not be taken. The Parties do not represent by this Agreement or otherwise their legal capacity to provide the Financing Revenues or other undertakings contemplated herein, such matters to be the subject of future actions and agreements, including certain Discretionary Actions. Accordingly, each of District and City reserve their discretion to approve or disapprove such Discretionary Actions. Such reservation of discretion will apply to all future contemplated legislative and quasi-judicial actions, including, without limitation, approval of land use entitlements, CEQA compliance, EIFD formation, the exercise of eminent domain, the implementation of code enforcement, commitment of Financing Revenues and approval of any controls or other agreements related thereto, development of a Plan of Finance, entry into the Convention Center Lease or other leases, and the making of findings and determinations required by law with respect to a Discretionary Action, and the failure to take any such future Discretionary Action will not constitute a breach of such Party's obligations under this Agreement. The foregoing notwithstanding, nothing in this Section will be interpreted to impair or limit any Party's obligation to perform any action on its part to be performed under this Agreement with respect to which the requirements of CEQA or such other laws were satisfied prior to the Effective Date or which become satisfied after the Effective Date.

### **2.3 Acknowledgements of the Parties.**

**2.3.1** Due to the importance of developing residential uses on the Residential Property to accomplishing goals of the CVBMP identified in the FEIR, each of the Parties acknowledges that: (i) the District would not proceed with the undertaking of its obligations herein without the assurances from City contained in this Agreement that certain revenue streams

under the control of the City as set forth in Section 4.2.2 (together with certain revenue streams under control of District as set forth in Section 4.2.1 below, along with the contemplated Fire Station and Sewer Facility Contribution) will be available to pay for public infrastructure and long-term operations and maintenance for the CVBMP Project Area, the assurances from City that the Residential Property Improvements will be entitled and required to be developed and constructed by Owner in an expeditious manner, and other City undertakings hereunder, in each case subject to the provisions of this Agreement, including the conditions precedent set forth in this Agreement; and (ii) the City would not proceed with the undertaking of its obligations herein without the assurances of the District with respect to the development of the RHCC Project, the District commitment of Ground Lease Revenues, and other District undertakings hereunder, in each case subject to the provisions of this Agreement, including the conditions precedent set forth in this Agreement.

**2.3.2** Each of the Parties hereby further acknowledges that: (i) the ability of each Party to apply Financing Revenues under its control to the cost of RHCC Public Improvements, and the RHCC Project Public Investment, a Financing Sources Submittal and a Plan of Finance or otherwise under this Agreement are subject to all applicable laws and nothing in this Agreement shall be construed as a representation of any Party regarding the availability (legal or otherwise) of such Financing Revenues for the contemplated purpose; (ii) actions contemplated in a Plan of Finance described in Section 4 to be undertaken in connection with tax-exempt financing or other financing entitled to federal tax benefits are subject to compliance with the applicable federal requirements in effect at the time such financing is entered into; (iii) other actions contemplated by this Agreement may also require modification in order to comply with applicable federal requirements related to tax-exempt financing or other financing entitled to federal tax benefits; (iv) depending on the facts and circumstances, tax-exempt financing or other financing entitled to federal tax benefits may be unavailable for some or all RHCC Public Improvements, RHCC Project Public Investment or other CVBMP Project costs; (v) all actions contemplated to be taken subsequent to the Effective Date are subject to modification to comply with all applicable laws at the time such actions are undertaken; and (vi) actions contemplated by a Plan of Finance or a Financing Sources Submittal may be subject to certain Discretionary Actions.

**2.3.3** The Parties agree to cooperate in good faith to identify ways to minimize the publicly-funded cost of the RHCC Public Improvements, CVBMP Public Improvements and any other improvements to be funded from Financing Revenues, and to identify other sources of funding of the RHCC Public Improvements, CVBMP Public Improvements and any other improvements contemplated to be funded from Financing Revenues (including, without limitation, private sector, federal and other governmental sources) so as to minimize the required investment of Financing Revenues hereunder, provided in no event shall any Party be obligated to consider application of any of its general revenues or special revenues not specifically contemplated hereunder for such purpose.

**2.3.4** Each of the Parties hereby further acknowledges that there may be costs associated with the construction or acquisition of the RHCC Public Improvements, CVBMP Public Improvements and any other improvements to be funded from Financing Revenues which relate to certain costs of site preparation and/or site remediation not anticipated as of the Effective Date of this Agreement. The Parties agree that a Plan of Finance shall address this issue.

**2.4 Termination of Original Agreement.** Except as set forth in Section 3, the Original Agreement is hereby superseded and terminated as of the Effective Date and of no further force and effect.

**3. CVBMP Master Calendar.** A master calendar for significant actions and agreements currently known to the Parties required for the entitlement, design, financing, construction and implementation of the CVBMP was attached as an exhibit to the Original Agreement (“CVBMP Master Calendar”). The Parties agree, notwithstanding any master calendar maintained by the Parties for any other purpose, the CVBMP Master Calendar shall not be maintained by the Parties for purposes of this Agreement, however, subject to the Exchange Agreement, a calendar related to the implementation of a Plan of Finance and other undertakings of the Parties pursuant to this Agreement shall be developed and maintained as part of a Plan of Finance. To the extent required by the Exchange Agreement, Section 3 of the Original Agreement (and related provisions applicable to such section) is not terminated or modified in any way by reason of this Agreement.

**4. Development of Plan of Finance; Acknowledgement of Factors Potentially Impacting Plan of Finance.** The Parties will cooperate in good faith and use their respective best efforts to develop a binding Plan of Finance which (a) utilizes all of the Financing Revenues described in Section 4.2 to support financing of the construction of the RHCC Public Improvements and the financing of the RHCC Project Public Investment and such other elements of the CVBMP Public Improvements as may be addressed in a Plan of Finance, (b) identifies the specific legal mechanisms by which such utilization will be accomplished, (c) identifies O & M Costs of the parties related to the RHCC Project and, to the extent applicable, the CVBMP Project more generally, and allocates financial responsibility for such O & M Costs among the parties, and (d) identifies a calendar for the timely implementation of a Plan of Finance in light of the anticipated dates by which funds are needed to accomplish the RHCC Project.

The Parties currently anticipate that such Plan of Finance will involve as issuer the CVBFFA, but acknowledge that such Plan of Finance may involve amendments to the CVBFFA or the creation of an entity other than a joint powers authority and/or another type of financing structure authorized by applicable law. The Parties anticipate that: (i) the Parties will cause the execution and delivery of obligations, which may include the issuance of Revenue Bonds by the JEPA and/or other obligations to provide loan proceeds, the repayment of which will be secured by and payable from the Financing Revenues; and (ii) the District on one hand and the City on the other hand will have equal roles in the governance of the JEPA absent agreement by both Parties to a different governance arrangement.

The Parties acknowledge that the timing and structure of the issuance of Revenue Bonds and the commitment of the Parties’ respective funding sources to the payment of cost of CVBMP Public Improvements, RHCC Public Improvements or other RHCC Project Public Investment, and/or the payment of debt service with respect to Revenue Bonds and other obligations is subject to a number of legal requirements, some of which are Discretionary Actions, and other variables.

The Parties agree to proceed in good faith to approve a Plan of Finance prior to execution of the RHCC Ground Lease. The Parties also agree to proceed in good faith to approve any future plan(s) of finance related to any other CVBMP Public Improvements, not included in a Plan of Finance, which are contemplated by this Agreement.

#### **4.1 Anticipated Sources of Funds; Plan of Finance.**

**4.1.1** Subject to the further provisions of this Agreement, the Parties agree that a Plan of Finance will address the manner in which Financing Revenues will be used directly or indirectly to pay debt service on the Revenue Bonds or otherwise pay the cost of RHCC

Public Improvements or other RHCC Project Public Investment and shall also address the manner in which Financing Revenues not needed for such purposes shall be applied to or by the Parties.

**4.1.2** Evidence of availability of the funding sources described in Section 4.2 is referred to herein as a “Financing Sources Submittal” and the Parties shall agree on the dates by which each such submittal shall be made and approved by the other Party (the “Calendar”) so that a Plan of Finance may be developed and approved prior to the execution of the RHCC Ground Lease. As and to the extent applicable, the District and the City will approve the Financing Sources Submittal of the other Party (the “Financing Sources Approval”) prior to the execution of the RHCC Ground Lease. However, each of the Parties acknowledges that each of the Financing Sources Submittals may be subject to Discretionary Actions.

**4.1.3** To the extent described in a Plan of Finance, such amounts comprising Financing Revenues may be used to pay the CVBFFA, JEPa, or its designee: (a) debt service on JEPa Obligations ; and (b) other amounts pledged to the CVBFFA or JEPa to support payment on the Revenue Bonds. A Plan of Finance may identify other financing arrangements including Developer financing pursuant to which Financing Revenues may be applied to the cost of public improvements related to the RHCC Project or other RHCC Project Public Investment. Following approval of a Plan of Finance, the Parties will cooperate in good faith to implement a Plan of Finance.

## **4.2 Sources of Funds.**

### **4.2.1 District Sources of Revenue:**

**Ground Lease Revenues.** Ground lease payments under the RHCC Ground Lease and Other Ground Leases, which are a portion of the Ground Lease Revenues will be (i) pledged by the District to support debt service payments on obligations to be issued by the JEPa (hereinafter referred to as the “JEPa Obligations”) and sold to the JEPa, an underwriter, the Developer or others, or (ii) directly pledged to the JEPa, a trustee, the Developer or others to support debt service payments on Revenue Bonds, as determined by the District in its reasonable discretion in accordance with a Plan of Finance. The Parties acknowledge the Ground Lease Revenues may support separate JEPa Obligations. The District will submit evidence of the availability of the Ground Lease Revenues and of the method by which the JEPa Obligations is expected to support payment of debt service on the Revenue Bonds in accordance with the Financing Sources Submittal described in Section 4.1.2.

(a) **Port Land Exchange Payment.** The District is expected to contribute the Port Land Exchange Payment to the cost of RHCC Public Improvements or the CVBMP Public Improvements in accordance with a Plan of Finance.

(b) **SDGE Relocation Fee.** The District is expected to contribute the SDGE Relocation Fee to fund eligible elements of the RHCC Public Improvements or the CVBMP Public Improvements in accordance with a Plan of Finance.

### **4.2.2 City Sources of Revenue.**

(a) **TOT Revenues; Sales Tax Revenues.** The City is expected to provide an amount equivalent to the TOT and the Sales Tax generated from the RHCC Project and RV Parks, to support debt service payments on the Revenue Bonds. It is anticipated that such

amount will be provided in the form of Lease Payments or other arrangement the provision of which does not constitute a debt of the City within any constitutional debt limitation applicable to the City. The City will submit evidence of the availability of the Lease Payments (including the items described in Section 5.5) or other arrangement and of the method by which such payments will support payment of debt service on the Revenue Bonds in accordance with the Calendar described in Section 4.1.2.

(b) **Enhanced Infrastructure Financing District Revenues.**

The City agrees to consider in good faith sponsorship of the formation of an EIFD for the purpose of applying the incremental tax revenues payable to the EIFD under applicable law to the payment of the cost of RHCC Public Improvements or other RHCC Project Public Investment to the extent permitted by law. The Parties acknowledge that an EIFD, if formed, will be a separate legal entity from the City, and may not be controlled by the City. The City will consider causing the EIFD Revenues to include incremental tax revenues payable to the City, with respect to the City's share of the basic 1% ad valorem tax levy and property taxes paid in-lieu of motor vehicle license fees, and the County of San Diego and other taxing entities to the extent such other entities agree with respect thereto. The District agrees to pursue in good faith the participation of the County of San Diego in the formation of an EIFD. The Parties acknowledge that EIFD Revenues may be pledged to bonds of the EIFD on a separate, stand-alone basis as part of a Plan of Finance. The City will submit evidence of the availability of the EIFD Revenues, and of the method by which the EIFD Revenues will support payment of debt service on the Revenue Bonds or bonds of the EIFD, in accordance with the Calendar described in Section 4.1.2. The manner of the City's commitment under this Section is subject to Discretionary Actions and may be limited by applicable law as may be set forth in the Financing Sources Submittal. Nothing in this Section requires the City to form an EIFD if it determines it will be the only participant. Even if an EIFD is not formed, the City will treat as Financing Revenues available for application in accordance with a Plan of Finance an amount equivalent to the net amounts that would have been generated for use by an EIFD within the CVBMP Project by the RHCC Project should an EIFD have been formed including tax revenues of the City and no other taxing entities. The City will submit evidence of the availability of the EIFD Revenues or other arrangement and of the method by which such revenues will support payment of debt service on the Revenue Bonds in accordance with the Calendar described in Section 4.1.2

(c) **PMSA Revenues.** The City and the District expect to cause PMSA Revenues to be contributed to pay costs of financing the RHCC Public Improvements and/or the RHCC Project Public Investment whether as part of the Lease Payments or other payments described in Section 4 or otherwise. The City will submit evidence of the availability of the PMSA Revenues and of the method by which the PMSA Revenues will support payment of debt service on the Revenue Bonds in accordance with the Calendar described in Section 4.1.2.

(d) **Additional Occupancy-Based Revenues.** The Parties acknowledge a mutual desire to explore the creation of a vehicle by which Additional Occupancy-Based Revenues in an amount up to one-half of the currently projected revenue generated from the TOT revenues described in Section 4.2.2(a) above may be applied to the cost of the RHCC Public Improvements and/or the RHCC Project Public Investment. The Parties agree that the mechanism by which such revenues may be generated may include a public financing mechanism such as that provided under the Mello-Roos Community Facilities Act of 1982, as amended (California Government Code Section 53311 *et seq.*), applicable state or charter city assessment laws, District charges or surcharges related to the RHCC Ground Lease or other Developer-sponsored or imposed charges or surcharges with respect to hotel guests or RHCC Project users. The Parties agree to

consider in good faith the creation of such financing sources, subject to Discretionary Actions, and subject to existing law. To the extent any such Additional Occupancy-Based Revenues are created, the Parties agree to apply such revenues to the cost of RHCC Public Improvements and/or the RHCC Project Public Investment including to support payments with respect to Revenue Bonds.

(e) **Sewer Facility Contribution.** The City is expected to make the Sewer Facility Contribution available to fund the elements of the RHCC Public Improvements described in Exhibit E-1 attached hereto. The City will submit evidence of the availability of the Sewer Facility Contribution and of the method by which the Sewer Facility Contribution will support construction of the eligible RHCC Public Improvements in accordance with the Calendar described in Section 4.1.2. Other sewer facilities required as part of the CVBMP Project Area, not for the RHCC Project, are generally identified on Exhibit E-2 attached hereto.

(f) **Development Impact Fees.** The Parties acknowledge that all future tenants of District in the CVBMP Project Area will be required to comply with all requirements of the City relating to development impact fees assessed by the City, including, without limitation, a Public Facilities Development Impact Fee, a Transportation Development Impact Fee described in paragraph (h) below, and a Parkland Acquisition and Development Fee ("PAD Fees") described in paragraph (g) below, in each instance, as applicable, and subject to applicable law, as well as any future development impact fees as shall be authorized by City ordinance. Each of the Parties further acknowledges that the levy, maintenance, adjustment and expenditure of such development impact fees is regulated by State law.

(g) **Park Areas; Joint Use and Improvement Fees.** The District and City will cooperate in good faith and use their respective best efforts to negotiate an agreement (hereinafter referred to as the "Park Agreement") which grants the City a nonexclusive, joint-use right or other interest in the areas designated for public park use within the CVBMP Project Area (such areas being hereinafter referred to as the "Park Areas"). The Parties agree that such Park Agreement will provide that all maintenance obligations related to the Park shall be the sole responsibility of the District and will include the following terms: (i) a term of sixty-six (66) years; (ii) as and when City collects PAD Fees, or such other park related impact fees as may be adopted in the future, from developments in the CVBMP Project Area, the City will separately account for and pay the Acquisition Component of the PAD Fees to the District as rent under the Park Agreement; (iii) upon receipt by District, all rent or other payment comprised of the Acquisition Component of PAD Fees will be deposited into an interest bearing, restricted reserve controlled by the District to be used for any lawful purpose under California Government Code § 66477 or other applicable California Government Code provisions and upon the earlier of the end of the term of the Park Agreement or the date on which the Revenue Bonds, as they may be re-issued or refinanced from time to time, are paid in full and retired, any funds remaining in such restricted reserve will be returned to the City. The parties will approve the Park Agreement in accordance with a Plan of Finance. Should the City replace the PAD Fees with a similar fee mechanism in the future, City will contribute an amount equivalent to the amounts that would have been generated by the existing PAD Fees within the CVBMP Project as rent under the Park Agreement.

(h) **Transportation Development Impact Fees.** The City has enacted a separate Transportation Development Impact Fee ("TDIF") covering at least the CVBMP Project Area to fund transportation improvements, and such TDIF will be applied to the cost of transportation improvements to be identified in the proceedings enacting the TDIF.

**4.2.3 RIDA Support Payments.** The Parties shall agree to support the JEPAs Obligations in such time and amounts as set forth in the agreed upon a Plan of Finance.

#### **4.3 Revenue Bonds.**

**4.3.1 Issuance of Revenue Bonds.** As of the Effective Date, the Parties anticipate that the financing of the cost of the RHCC Public Improvements and other RHCC Project Public Investment will be provided through a combination of timely contributions of the Financing Revenues described in Section 4.2 to the payment of such costs, the issuance of Revenue Bonds to finance such amounts including, if applicable, periodic payments to the Developer or Developer designee, subject in all respects to a Plan of Finance. The Revenue Bonds may take a variety of forms, including variable rate obligations, senior/subordinate obligations, Developer-financed obligations or other arrangements to be described in a Plan of Finance. The Revenue Bonds may be issued as taxable bonds or tax-exempt bonds in such combinations as may be described in a Plan of Finance. The Parties will cooperate in good faith and use their best efforts to cause the JEPAs to issue Revenue Bonds in amounts sufficient, together with other Financing Revenues, to finance the RHCC Public Improvements and the RHCC Project Public Investment. The Parties acknowledge that issuance of Revenue Bonds will be subject in all respects to a Plan of Finance and other provisions of this Agreement.

**4.3.2 Security and Sources of Payment for Revenue Bonds.** The Revenue Bonds are expected to be secured by the Financing Revenues described in Sections 4.2.1 and 4.2.2 in substantially the manner described in the Financing Sources Approval as set forth in Section 4.1.2 above and a Plan of Finance described in Section 4. Any contribution of revenues not specifically contemplated in this Agreement by either Party, whether to address gaps in funding identified by the Developer or otherwise, and any discussions or negotiations with respect to such matters, are expressly outside the scope of this Agreement. However, the Parties may agree to sources of revenue not identified in this Agreement if agreed to in a Plan of Finance.

**4.3.3 Issuance of Revenue Bonds; CVBMP Public Improvements.** The Parties anticipate that the financing of the cost of the CVBMP Public Improvements may be provided through the issuance of Revenue Bonds, subject in all respects to a Plan of Finance.

#### **4.4 Anticipated Application of Revenue Bond Proceeds; Flow of Funds; Release of Financing Revenues.**

**4.4.1 Application of Revenue Bond Proceeds.** The Parties anticipate that proceeds from the Revenue Bonds issued by the JEPAs will be used to finance the costs of construction and related costs for the RHCC Public Improvements and RHCC Project Public Investment, either directly (by using Revenue Bond proceeds to pay such costs) or indirectly (by using the Revenue Bond proceeds to purchase obligations of the City or District, the proceeds of which are used to pay such costs), or both.

**4.4.2 Operations and Maintenance Costs (“O&M Costs”).** Subject to a Plan of Finance, the manner of payment, reimbursement and funding of District and City O&M Costs will be addressed in a Plan of Finance

**4.4.3 Release of Financing Revenues.** The Parties contemplate, subject to compliance with any financial covenants associated with the Revenue Bonds or other elements of

a Plan of Finance, amounts held by the JEPA in excess of amounts necessary to comply with such covenants shall be returned by the JEPA to the Parties, such return to be made on such basis as shall be set forth in a Plan of Finance.

**5. Resort Hotel and Convention Center Project Leasing and Operations; Opportunity for Cultural/Retail Use on Parcel H-23.**

**5.1 Lease of Resort Hotel and Convention Center Development Site.** The Parties anticipate that the Developer will lease the RHCC Development Site from the District pursuant to the terms of a long-term ground lease (the "RHCC Ground Lease").

**5.2 Resort Hotel and Convention Center Project.** The Parties anticipate that the RHCC Project will consist of an integrated project, comprised of a hotel (such hotel being hereinafter referred to as the "RHCC Hotel") meeting or exceeding the service quality standards of a four diamond, AAA standard, with up to 2,000 rooms (provided that the Parties acknowledge that any proposal to construct more than 1,600 rooms shall require evaluation of (i) impact areas to determine if additional analysis is needed and (ii) additional mitigation measures to reduce significant impacts, if any, associated with the increase in rooms above 1,600), and a Convention Center, and potential parking structure in the sole discretion of the District, each located adjacent to one another on the RHCC Development Site. The RHCC Ground Lease may consist of a ground lease of the RHCC site from the District or other leasing arrangement described in Section 5.5. below, or otherwise, all as may be identified in a Plan of Finance. Rent under the Convention Center Lease may consist of Lease Payments and amounts payable by the Developer under a sublease of the Convention Center, as determined by the District and the City.

**5.3 Review of Developer Proposal(s).** With respect to the District's processing of its transaction with Developer the District will: (i) utilize its usual and customary public process with respect to the design of the RHCC Project; and (ii) share with the City all financial terms of the RHCC Ground Lease to be entered into with the Developer or Developer(s), such financial information to be shared on a confidential basis, prior to submission of such proposed option to lease to the governing body of the District for approval and prior to submission of such terms to the governing body of the City, relative to their commitment of the Financing Revenues identified in Section 4.2 of this Agreement.

Each of the Parties acknowledges that it is such Party's expectation that approval of the any agreements by the governing body of the District and commitment of the Financing Revenues of City and District funds referred to above by the governing body of the City and District will occur substantially contemporaneously, taking into account differences in regularly scheduled meeting dates for the governing body of each of the Parties.

**5.4 Future District Projects within Chula Vista Bayfront Master Plan.** The Parties anticipate that various other developers, selected by District through RFQ/RFP processes and other methods, will lease other parcels of the District Property other than the RHCC Development Site pursuant to the terms of other future long-term ground leases and those revenues may be contributed, by the District, to development of subsequent phases of the CVBMP Project Area pursuant to a Plan of Finance.

**5.5 Lease of Convention Center.** The Parties anticipate that financing of all or part of the Convention Center as part of the RHCC Project Public Investment may involve a lease of

all or a portion of the Convention Center or other public asset by the City from the District or other lessor pursuant to the terms of a long-term lease (such lease being hereinafter referred to as the "Convention Center Lease"). If such financing method is utilized, the term of the Convention Center Lease will equal or exceed the maturity date of the Revenue Bonds and lease payments made pursuant to such Convention Center Lease will not be greater than the Lease Payments. The City and the District will submit evidence of the Convention Center Lease and the City will submit evidence of the availability of the Lease Payments and of the method by which the Lease Payments will support payment of debt service on the Revenue Bonds prior to the execution of the RHCC Ground Lease and such submittal will comprise a part of the Financing Sources Submittal required under Section 4.1.2.

**5.6 Management Agreement.** If a Convention Center Lease is utilized as part of a Plan of Finance, the Parties anticipate that the Developer will be responsible for all construction, operation, management, and maintenance obligations related to the Convention Center pursuant to a management agreement (a "Management Agreement") or sublease in a form approved by the City and the District, and as and to the extent, applicable, the JEPA. As between the Developer and the City, the Developer will assume all risks and obligations associated with constructing, operating, maintaining and managing the Convention Center. The Parties do not intend for a Management Agreement to restrict Developer's leasing or operation of the Convention Center, provided that all provisions of applicable anti-discrimination laws are satisfied and other applicable City, District or JEPA requirements are met. The parties will approve a Management Agreement at the times and in accordance with a Plan of Finance.

**5.7 Opportunity for Cultural/Retail Use on Parcel H-23.** Each of the Parties acknowledges that the project described in the FEIR provides for up to 200,000 square feet of cultural/retail use on Parcel H-23 in accordance with the Public Trust Doctrine and the Port District Act and each of the Parties agrees to preserve the opportunity to develop such cultural/retail use on Parcel H-23 notwithstanding other uses on Parcel H-23, including, without limitation, the development of a hotel or hotels on Parcel H-23.

**6. Reimbursement Agreement for Oversizing.** Separate from the RHCC Project, in the event that City requires Owner, Developer or other developer or builder (hereinafter referred to as a "Subdivider") in the CVBMP Project Area to oversize or supplement the size, capacity, number or length of an improvement for the benefit of property(ies) in addition to the property owned by the Subdivider, City agrees that City may enter into an agreement (hereinafter referred to as a "Reimbursement Agreement") with the Subdivider whereby the City agrees to reimburse the Subdivider from fees paid by subsequent developers for the portion of the cost of those improvements, including to the extent permitted by law an amount attributable to interest, in excess of the construction required solely to serve the property of the Subdivider (such costs being hereinafter referred to as "Excess Costs") by collecting from other persons or entities making use of such improvements for the benefit of real property not within the property owned, or formerly owned, by the Subdivider, an allocable portion of Excess Costs (such allocable portion of the Excess Costs being hereinafter referred to as a "Reimbursement Obligation") pursuant to applicable provisions of the Chula Vista Municipal Code. The Parties agree that any tenant of District Property in the CVBMP Project Area will be required to honor such Reimbursement Obligations pursuant to any Reimbursement Agreements entered into by City.

## 7. **Miscellaneous RHCC Project Obligations.**

**7.1 Fire Station.** Each of the Parties acknowledges that a fire station serving the CVBMP Project Area (the “Fire Station”) will be required in connection with the development of the CVBMP Project Area and that, as between the Parties, provision of the Fire Station will be the responsibility of the City. The City will submit evidence of the method and means by which it will cause the Fire Station to be constructed in the Financing Source Submittal.

**7.2 Transit Plan.** Each of the Parties acknowledges that the FEIR identifies the potential for a shuttle service that would link various destinations within the western portion of the City, including the CVBMP Project Area (the “Transit Plan”) and that, as between the Parties, funding for the Transit Plan will be the responsibility of the City. Each of the Parties acknowledges that it will cooperate to develop a Transit Plan consistent with the FEIR, including, without limitation, identification of funding sources for capital costs and operational costs and identification of operational responsibilities and further acknowledges that O&M Costs payable by the City are anticipated to include operational costs of shuttle services contemplated by the FEIR and provided within the CVBMP Project Area until such time as such operational costs are borne by other applicable transportation providers.

### **7.3 [Intentionally left blank]**

### **7.4 Reimbursements for Remediation and Other Costs.**

**7.4.1 Remediation Costs.** Each of the Parties acknowledges that some elements of the cost of RHCC Public Improvements and/or the Convention Center may involve costs of environmental remediation which costs may be the responsibility of third parties pursuant to applicable law or administrative order or other determination or agreement. Nothing in this Agreement is intended to diminish any such responsibility or impose such cost on any Party hereto solely by reason of its participation in this Agreement, it being intended that such costs will be borne by the responsible party in accordance with such law, order, other determination or agreement.

**7.4.2 Other Costs.** Each of the Parties acknowledges that if a Party advances funds to pay specific costs for a portion of the RHCC Public Improvements (e.g., if, for example, the District advances funds required to pay specific costs for a portion of the RHCC Public Improvements required to be completed prior to securing financing), reimbursement for such advances of funds may be provided for in a Plan of Finance on such basis as may be set forth in a Plan of Finance.

**7.4.3 Pacifica Insurance Commitment.** The Parties agree that there shall be paid from the Financing Revenues to the extent permitted by law, an amount not to exceed \$300,000 in total for a period not to exceed ten years from the close of escrow on the Exchange Parcel, to address insurance costs associated with certain soil conditions which Owner may encounter during its development of the Residential Property as follows: (a) \$200,000 to be used solely for any deductibles for the referenced insurance policy and (b) \$100,000 for the following three items only: (1) any environmental cleanup not covered by the insurance policy but required pursuant to the Regional Water Quality Control Board approved cleanup levels as detailed in the Final Cleanup and Abatement Completion Report, Soil Remediation, Exchange Parcel – Former South Campus, Chula Vista, California, prepared by Haley & Aldrich, Inc. and dated February 2015; (2) to pay for costs set forth in (1) above but only in the event that the insurance company goes out of business; or (3) to pay

for costs set forth in (1) above but only in the event the environmental cleanup exceeds the total amount covered by the insurance policy.

**7.5 Application of Unit Contribution.** The Parties agree that the Unit Contribution will be used in conformance with the terms of the Settlement Agreement.

**8. Modifications or Amendments; Waivers.** No modification, amendment, change, waiver, discharge or termination of this Agreement will be valid unless it is in writing and signed by each of the Parties hereto.

**9. Additional Agreements, Actions; Further Assurances.** Each of the Parties will cooperate with and provide reasonable assistance to the other to the extent necessary to implement and achieve the purposes and objectives of this Agreement.

**10. Authorized Representatives.** The Authorized Representative of the City is hereby designated to be the single point-of-contact with respect to such Party's obligations under this Agreement. The Authorized Representative of the District is hereby designated to be the single point-of-contact with respect to such Party's obligations under this Agreement.

**11. Dispute Resolution; Attorneys' Fees and Costs.**

**11.1 Dispute Resolution.** In the event of a dispute or disagreement between the Parties relating to the terms, conditions, interpretation, performance, default or any other aspect of this Agreement, each of the Parties will use its best efforts to resolve the dispute informally.

**11.2 Attorneys' Fees and Costs.** If any Party commences a lawsuit for the interpretation, reformation, enforcement or rescission of this Agreement, each Party shall bear its own costs resulting from such lawsuit.

**12. Conditions Precedent to Performance of the Parties.** Each of the Parties hereby acknowledges that (i) development of a Plan of Finance contemplated by Section 4 of this Agreement, including, without limitation, (x) identification of the Financing Revenues and the terms affecting application of those Financing Revenues to the purposes described in this Agreement, (y) identification of the issuer, or issuers, of the Revenue Bonds contemplated by this Agreement, and (z) the development of the Calendar which identifies a critical path under which sources of funds identified in Section 4 of this Agreement are committed and which takes into account performance of the Developer and Owner, and (ii) development of a RHCC Ground Lease acceptable to the District are conditions precedent to the performance of each Party's obligations under this Agreement.

Each of the Parties hereby further acknowledges that (i) satisfaction of each of the foregoing conditions precedent may result in identification of further conditions precedent to eventual performance (e.g., issuance of JEPA Revenue Bonds, Developer performance parameters), which shall also constitute conditions precedent to performance hereunder and (ii) the sole remedy of any party for failure of any condition precedent shall be termination of this Agreement.

**13. Termination; Consequences of Termination; Subsequent Action.** Unless the Parties mutually agree otherwise, this Agreement will terminate upon the earlier of: (i) failure of the City or District to provide the Financing Sources Submittal or Financing Sources Approval or of the Parties to approve a Plan of Finance, within the times set forth in this Agreement or, if applicable, the

CVBMP Master Calendar; (ii) the date that the Revenue Bonds, as they may be re-issued or refinanced from time to time or other binding financing commitments arising from a Plan of Finance, are paid in full and retired; (iii) the date the Parties execute a further agreement regarding the Revenue Bonds or other binding financing commitments arising from a Plan of Finance, provided such agreement expressly supersedes this Agreement; (iv) ten years from the Effective Date or such other date as shall be agreed to by the Authorized Representative of each Party if on such date neither an RHCC Ground Lease is in effect nor any Revenue Bonds shall have been issued; or (v) the date the Parties shall agree that this Agreement shall be terminated. Any such termination will not affect other legally binding obligations which may have been entered into by the Parties pursuant to other binding contracts with respect to the same or similar subject matter.

Each of the Parties hereby acknowledges that upon the termination of this Agreement, no Party to this Agreement shall incur any further financial liability to any other Party as a result of such termination nor will any Party be entitled to receive monetary damages as a result of the failure of any Party to perform its obligations under this Agreement.

In the event of termination of this Agreement pursuant to clause (iv) of this Section 13, the Parties will conduct a public outreach process to assist the Parties in formulating a revised land use plan for submission to the governing body of each of the Parties, which revised land use plan will be formulated and submitted in accordance with applicable law, including, without limitation, environmental and coastal analysis.

**14. Proposition G.** The Parties acknowledge that the obligations of the City hereunder shall be subject in all respects to the terms of Proposition G, to the full extent permitted by law. In no event shall the City be required to take any action under this Agreement which violates Proposition G.

**15. General Provisions.**

**15.1 Prompt Performance.** Time is of the essence with respect to the performance of each obligation, covenant and condition set forth in this Agreement.

**15.2 Further Assurances.** The Parties hereto agree to cooperate with each other and execute any documents reasonably necessary to carry out the intent and purpose of this Agreement.

**15.3 Entire Agreement; Subsequent Agreements.** This Agreement contains the entire agreement between the Parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into and superseded by this Agreement. To the extent the Parties enter into any agreement subsequent to this Agreement relating to the subject matter of this Agreement and there is a conflict between a provision set forth in this Agreement and in such subsequent agreement, the provision in such subsequent agreement shall control.

**15.4 Captions.** Captions in this Agreement are inserted for convenience of reference only and will not affect the construction or interpretation of this Agreement.

**15.5 Successors.** All terms of this Agreement will be binding upon, inure to the benefit of and be enforceable by, the Parties hereto and their respective successors and assigns.

**15.6 Notices.** Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder will be in writing and will be deemed to have been delivered upon (i) personal delivery to City or District or (ii) as of the second business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to District, to:           President/CEO  
San Diego Unified Port District  
P.O. Box 120488  
San Diego, California 92112-0488

with a copy to:           Port Attorney  
San Diego Unified Port District  
P.O. Box 120488  
San Diego, California 92112-0488

If to City, to:           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

or to such other address or to such other person as any Party will designate to the others for such purpose in the manner hereinabove set forth. Notices may also be provided by electronic means, receipt of which shall be confirmed by the Party delivering the Notice.

**15.7 Limitation of Rights; Third Party Rights.** Nothing in this Agreement, express or implied, is intended to confer upon any person other than the Parties any rights or remedies under or by reason of this Agreement. Without limiting the preceding sentence, in no event will the City or District incur any liability hereunder to any third party, including, without limitation, any potential developer, the Developer, the Owner or any Subdivider.

**15.8 Severability of Invalid Provisions.** If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provisions or provisions shall be deemed severable from the remaining provisions contained in this Agreement and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. .

**15.9 Execution Authorized.** Each Party hereto hereby warrants and represents to each of the other Parties hereto that it has legal authority to enter into this Agreement and that all resolutions or other actions necessary to enable it to enter into this Agreement have been taken.

**15.10 Governing Law.** This Agreement will be construed and enforced in accordance with the laws of the State of California.

**15.11 Effective Date.** This Agreement will be effective upon approval and execution by both the District and the City. The date so determined is indicated on Page 1 of this Agreement and is referred to herein as the “Effective Date.”

**15.12 Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and of which together will constitute one instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto and shall take effect on the Effective Date.

**CITY:**

CITY OF CHULA VISTA,  
a municipal corporation

By: Mary Casillas Salas  
Mary Casillas-Salas, Mayor

Attest:

Donna R. Norris  
Donna Norris, City Clerk

Approved as to form:

Glen R. Googins  
Glen R. Googins, City Attorney

**DISTRICT:**

SAN DIEGO UNIFIED PORT DISTRICT, a  
public corporation

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

Approved as to form and legality:

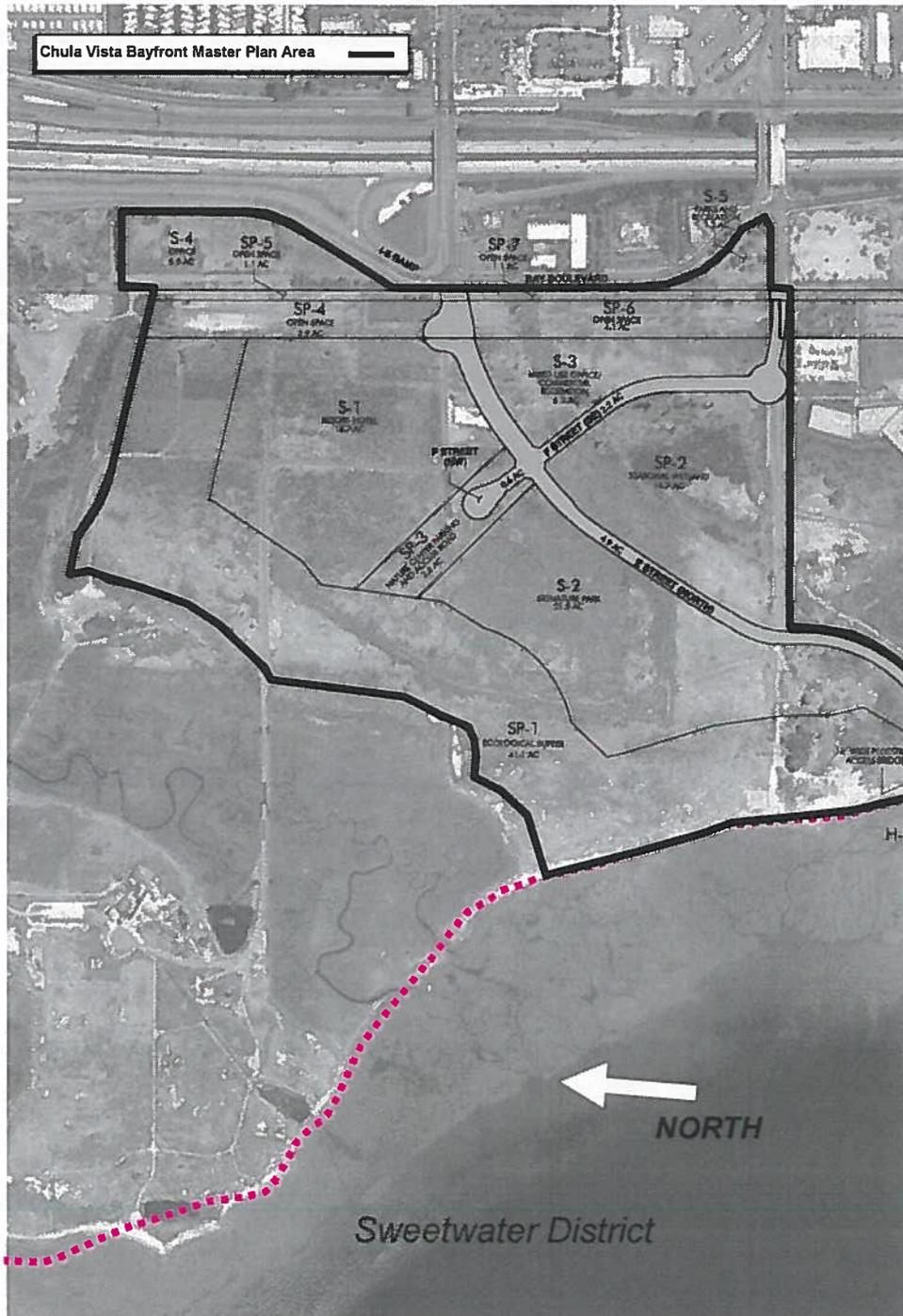
GENERAL COUNSEL

\_\_\_\_\_  
By: Assistant/Deputy

### EXHIBIT A CVBMP Project Area

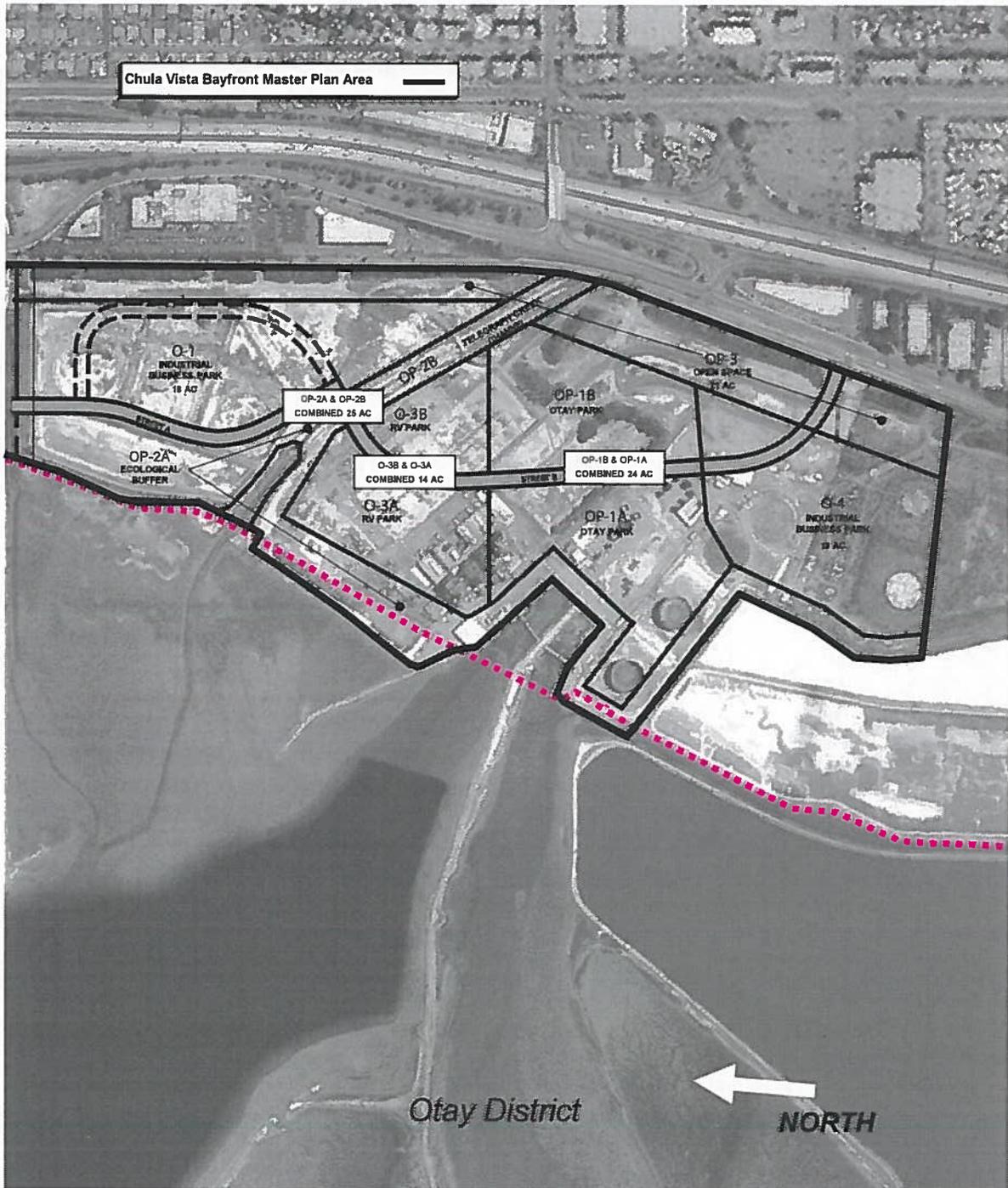


**EXHIBIT A**  
**CVBMP Project Area – Sweetwater District**





**EXHIBIT A**  
**CVBMP Project Area – Otoy District**



**EXHIBIT B**  
**CVBMP District Property**



**EXHIBIT C**  
**PUBLIC IMPROVEMENTS**

C

## EXHIBIT C-1

## PHASE 1A PUBLIC IMPROVEMENTS

	TYPE	LOCATION OR DESCRIPTION
1	Street & Utilities	E Street (I-5 Ramps to F Street)
2	Street & Utilities	E Street (Lagoon Drive to G Street) - Rehabilitation
3	Street & Utilities	F Street (Bay Blvd to E St) - Grading, drainage & utilities only
4	Street & Utilities	F Street (NW) and Gunpowder Point Drive Relocation to access Living Coast Discovery Center
5	Street & Utilities	E Street (G Street to H Street)
6	Street & Utilities	G Street Connection to UTAS Gate 66
7	Street & Utilities	H Street (Marina Parkway to E Street)
8	Street & Utilities	H Street (Bay Blvd to Marina Parkway, excluding 2014 street improvements)
9	Street & Utilities	H-3 Utility Corridor (existing Marina Parkway)
10	Parks & Open Space	S-2 Sweetwater Signature Park (partial)
11	Parks & Open Space	SP-3 Living Coast Discovery Center Parking Relocation
12	Parks & Open Space	SP-1 Sweetwater Buffer (partial)
13	Parks & Open Space	SP-2 Seasonal Wetland (bio-retention)
14	Parks & Open Space	HP-1/H-8 Harbor Park (partial)
15	Parks & Open Space	HP-3 Harbor District Baywalk (partial)
16	Misc.	Storm Drain Systems, in public parcels (additional improvements)
17	Misc.	Pedestrian access, in public parcels (additional improvements)
18	Misc.	Bayshore Bikeway Bayfront Loop (E Street to H Street)
19	Misc.	Parking, in public parcels (additional improvements)
20	Misc.	Fire Station
21	Misc.	Centralized facilities related to energy standards
22	Misc.	Adaptation improvements related to sea level rise
23	Misc.	Public facilities related to NRMP
24	Misc.	Mitigation for impacts from CVB projects
<p>Source Abbreviations</p> <p>CCDP: Coastal Commission Development Policies</p> <p>CCPAP: Coastal Commission Public Access Program</p> <p>MM: Mitigation Measure from Mitigation, Monitoring and Reporting Program</p> <p>NRMP: Natural Resource Management Plan</p> <p>PMP: Port Master Plan</p> <p>In accordance with Documents and laws and regulations in effect at the time of development.</p>		

## EXHIBIT C-2

## PUBLIC IMPROVEMENTS - ULTIMATE, EXCLUDING PHASE 1A

	TYPE	LOCATION OR DESCRIPTION
1	Street & Utilities	E Street (I-5 Ramps to H Street) (additional improvements)
2	Street & Utilities	F Street (Bay Blvd to E St)
3	Street & Utilities	H Street (I-5 Ramps to Street A, excluding 2014 street improvements)
4	Street & Utilities	Marina Parkway (H Street to J Street)
5	Street & Utilities	Street A (H Street to J Street)
6	Street & Utilities	Street C (Marina Parkway to H-18)
7	Street & Utilities	J Street (I-5 Ramps to Marina Parkway)
8	Street & Utilities	Marina Way Reconfiguration
9	Street & Utilities	Street A (Otay)
10	Street & Utilities	Street B (Otay)
11	Parks & Open Space	S-2 Sweetwater Signature Park (additional improvements)
12	Parks & Open Space	SP-1 Sweetwater Buffer (additional improvements)
13	Parks & Open Space	SP-2 Seasonal Wetland (additional improvements)
14	Parks & Open Space	HP-1/H-8/H-1A(N) Harbor Park (additional improvements)
15	Parks & Open Space	HP-3 Harbor District Baywalk (additional improvements)
16	Parks & Open Space	HP-12, HP-13, OP-3 Open Space (SDG&E and SD&AE)
17	Parks & Open Space	Bayfront Park (additional improvements)
18	Parks & Open Space	Marina View Park (additional improvements)
19	Parks & Open Space	OP-1 Otay Park
20	Parks & Open Space	OP-2 Otay Buffer
21	Misc.	Storm Drain Systems, in public parcels (additional improvements)
22	Misc.	Pedestrian access, in public parcels (additional improvements)
23	Misc.	Bayshore Bikeway Bayfront Loop (additional improvements)
24	Misc.	Parking, in public parcels (additional improvements)
25	Misc.	H-18 Collector Parking
26	Misc.	H Street Pier
27	Misc.	Navigation channel realignment
28	Misc.	HW-3 Harbor improvements
29	Misc.	HW-1 and HW-4 Marina redevelopment
30	Misc.	Centralized facilities related to energy standards
31	Misc.	Adaptation improvements related to sea level rise
32	Misc.	Public facilities related to NRMP
33	Misc.	Mitigation for impacts from CVB projects
34	Misc.	J Street & I-5 Northbound Ramp
35	Misc.	J Street and Bay Boulevard
36	Misc.	H Street (I-5 Ramps to Broadway)
37	Misc.	H Street at Woodlawn Avenue

## EXHIBIT C-2

## PUBLIC IMPROVEMENTS - ULTIMATE, EXCLUDING PHASE 1A

	TYPE	LOCATION OR DESCRIPTION
38	BFDIF	I-5-1: I-5/ E Street NB off-ramp restriping add lane
39	BFDIF	I-5-2: I-5/ E Street/ Bay Blvd SD off-ramp restriping add lane
40	BFDIF	I-5-4: E Street bridge widening over I-5
41	BFDIF	I-5-5: F Street bridge widening over I-5
42	BFDIF	I-5-6: I-5/ H Street NB off-ramp restriping add lane
43	BFDIF	I-5-7: I-5/ H Street SB off-ramp restriping add lane
44	BFDIF	I-5-8: H Street bridge widening over I-5
45	BFDIF	I-5-9: I-5/ J Street NB off-ramp restriping add lane
46	BFDIF	I-5-11: L Street bridge widening over I-5
47	BFDIF	I-5-12: I-5/ Bay Blvd (south of L St.) SB on/off ramps traffic signal
48	BFDIF	I-5-13: I-5/ Industrial Blvd NB on/off ramps traffic signal
49	BFDIF	I-5-14: I-5/ Palomar Street bridge widening
50	BFDIF	I-5-16: I-5/ Main Street bridge widening
51	BFDIF	I-5-17: I-5 HOV & Managed Lanes from SR-905 to SR-54
52	BFDIF	RAS-5: E Street LRT grade separation (underpass LRT option)
53	BFDIF	RAS-6: H Street LRT grade separation (underpass LRT option)
54	BFDIF	RAS-9: H Street widening to 6-lanes from I-5 to Broadway
55	BFDIF	BP-1: Bayshore Bikeway (bike path) between E & F Streets
56	BFDIF	BP-9: Bayshore Bikeway (bike path) between F & H Streets
<p>Source Abbreviations</p> <p>BFDIF: Bayfront Transportation Development Impact Fee</p> <p>CCDP: Coastal Commission Development Policies</p> <p>CCPAP: Coastal Commission Public Access Program</p> <p>MM: Mitigation Measure from Mitigation, Monitoring and Reporting Program</p> <p>NRMP: Natural Resource Management Plan</p> <p>PMP: Port Master Plan</p> <p>In accordance with Documents and laws and regulations in effect at the time of development.</p>		

**EXHIBIT D**

**[Intentionally left blank]**

D

**EXHIBIT E-1****PUBLIC SEWER IMPROVEMENTS - PHASE 1A**

	LOCATION	DESCRIPTION
1	F Street	Sweetwater District sewer pump station and sewer lines. New meter to South Metro Interceptor.
2	E Street	Sewer lines
3	G Street Connection	Sewer lines
4	H Street	Sewer lines
5	H-3 Utility Corridor	Sewer lines
6	G Street Sewer Pump Station	Upgrade and improvements, including force main and emergency storage

**EXHIBIT E-2****PUBLIC SEWER IMPROVEMENTS - ULTIMATE, WITHOUT PHASE 1A**

	LOCATION	DESCRIPTION
1	Marina Parkway	Extend sewer line in H-3 utility corridor across H Street. Relocate and upgrade pump station #11 and sewer lines.
2	Street A	Sewer lines
3	J Street	Sewer lines, junction structure and upgrade
4	Marina Way	Upgrade pump station #12 and relocate sewer lines
5	Street A (Otay)	Sewer line
6	Street B (Otay)	Sewer lines, pump station and connection to South

**EXHIBIT F**

**OTHER GROUND LEASES**

1. Amended and Restated and Combined Lease between the San Diego Unified Port District and The Marine Group, LLC for property at the North Side of G St. 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 San Diego Unified Port District and Chula Vista Marina/RV Park, LTD., dba Chula Vista RV Park for property located at 460 Sand Piper Way in Chula Vista which lease is on file in the Office of the District Clerk as Document No. 14243, as amended and may be amended from time to time
3. Lease between the San Diego Unified Port District and Chula Vista Marina/RV Park, LTD., 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
4. Lease between the San Diego Unified Port District and California Yacht Marina, Inc. 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

**FINANCIAL FEASIBILITY ANALYSIS  
RESORT HOTEL AND CONVENTION CENTER  
CHULA VISTA BAYFRONT**

**Prepared for:**

**San Diego Unified Port District**

**Prepared by:**

**Keyser Marston Associates, Inc.**

**April 2018**

## TABLE OF CONTENTS

I.	Introduction.....	1
II.	Key Findings.....	3
III.	Background.....	6
IV.	Proposed Business Terms.....	7
V.	Proposed Method of Financing .....	11
VI.	Financial Feasibility Analysis.....	17
VII.	Projected Net Revenues to District/City.....	22
VIII.	Limiting Conditions.....	24

## APPENDIX

Table 1 – Committed Revenues - District

Table 2 – Committed Revenues - City

Table 3 – Developer Return on Investment – No Public Fund Contribution

Table 4 – Developer Return on Investment – With Public Fund Contribution

Table 5 – Developer Internal Rate of Return

Table 6 – JPA Residual Revenues Analysis

## I. Introduction

### A. Objective

Keyser Marston Associates, Inc. (KMA) was requested to undertake a review of the financial feasibility of the Resort Hotel and Convention Center project (RHCC Project) proposed by RIDA Chula Vista, LLC (Developer). The Developer intends to develop a 1,570-1,600-room resort hotel and approximately 275,000 net usable square feet (SF) of convention space on a 36.5-acre site (Project Site) within the Chula Vista Bayfront (CVB). The Project Site is currently held in trust by the San Diego Unified Port District (District).

As background, in May 2012 the District and the City of Chula Vista (City) entered into a Financing Agreement for the Chula Vista Bayfront Master Plan. The Financing Agreement outlined the financial relationship between the District and the City with respect to build-out of the CVB. The Chula Vista City Council subsequently adopted an Amended and Restated Financing Agreement in November 2016. The Amended Financing Agreement identified specific revenue sources that each public agency intends to contribute toward public infrastructure required for the initial phase of development on the CVB and possibly future development. The Amended Financing Agreement, and a non-binding Letter of Intent (LOI) between the District, the City, and the Developer was adopted by the Board of Port Commissioners on June 20, 2017. The District, City, and the Developer currently propose to enter into a Disposition and Development Agreement (Agreement) for development of the RHCC Project. The Agreement specifies the financial contributions that might be made by the District and the City toward the design, development, and construction of the RHCC Project (Public Fund Contribution). The District and Developer will also enter into a 66-year ground lease (Ground Lease) for the Project Site at the close of escrow contemplated in the Agreement.

In response to the District's objectives for this assignment, KMA prepared a financial feasibility analysis to evaluate the feasibility of the RHCC Project proposed by the Developer and the economic justification for the District's and City's proposed Public Fund Contribution pursuant to the proposed Agreement.

In undertaking this financial feasibility analysis of the RHCC Project, KMA did not evaluate the feasibility of the proposed method of financing for the Public Fund Contribution. The District and City have prepared a Conceptual Outline of Joint Exercise of Powers Authority (JEPA) Plan of Finance (Plan of Finance) contained in Attachment 4 of the Agreement. In connection with the Plan of Finance, the District and City engaged independent Financial Advisors (Harrell & Company Advisors on behalf of the City, and Hutchinson Shockey Erley & Co. on behalf of the District) to review the Plan of Finance. Additionally, the Plan of Finance includes estimated financing costs based on certain bond underwriting assumptions prepared by J.P. Morgan Securities LLC (J.P. Morgan), as underwriter to the City, for inclusion in the Plan of Finance. Reference is made to the Plan of Finance for all assumptions and limitations.

# Attachment C to Agenda File No. 2018-0070

## **B. Methodology**

In completing this feasibility analysis, KMA performed the following key work tasks:

- Reviewed background documentation and historical data relevant to the CVB.
- Reviewed development cost estimates and cash flow projections prepared by the Developer and District consultants.
- Participated in meetings and teleconferences with the District, City, and Developer to understand project parameters, anticipated market performance, and other financial factors.
- Prepared financial models to measure economic returns to the Developer of the RHCC Project with and without the proposed Public Fund Contribution.

## **C. Report Organization**

This financial feasibility analysis has been organized as follows:

- Following this introduction, Section II presents the KMA key findings.
- Section III presents an overview of the RHCC Project.
- Section IV outlines the key business terms contained in the proposed Agreement.
- Section V reviews the proposed method of financing for the RHCC Project.
- Section VI presents the KMA financial feasibility analysis of the RHCC Project.
- Section VII presents the KMA estimate of projected net revenues to the District and City from residual revenues after bond debt service.
- Limiting conditions pertaining to this financial feasibility analysis are presented in Section VIII.

## **II. Key Findings**

### **A. Financial Feasibility of the RHCC Project without the Proposed Public Fund Contribution**

KMA prepared a financial feasibility analysis for the proposed RHCC Project to determine the economic return to the Developer with and without the proposed Public Fund Contribution. Specifically, KMA analyzed the Developer's return both in terms of Return on Investment (ROI) and Leveraged Internal Rate of Return (IRR) in order to determine if the proposed Public Fund Contribution is justified.

Absent the proposed Public Fund Contribution, the Developer would be responsible for the cost of H-3 site preparation, Public Improvements, the Parking Improvements, and the proposed Project Public Investment toward the Convention Center, in addition to the entire cost of the RHCC Project. The current estimated grand total budget for all of these items is \$1.1 billion. KMA concludes that this "No Public Fund Contribution" scenario is estimated to generate an ROI to the Developer in the fourth year of operations (Lease Year 8) of just 6.2%.

### **B. Financial Feasibility of the RHCC Project with the Proposed Public Fund Contribution**

Assuming the District's and City's Public Fund Contributions toward H-3 site preparation, Public Improvements, the Parking Improvements, and the proposed Project Public Investment toward the Convention Center, the Developer would be responsible for an estimated capital investment of \$785 million. At this level of capital investment, the Proposed Public Fund Contribution scenario is estimated to generate an ROI to the Developer of 10.9% in Lease Year 8, which is within the acceptable industry standard ROI range for similar projects as further defined below in Section II.F.

### **C. Overall Feasibility of the RHCC Project**

Industry standard ROI targets for developers of large-scale, new resort hotel/convention centers are estimated to range between 10.0% and 11.0% (unleveraged ROI in stabilized year of operations). Given the level of risk associated with undertaking such a major new investment on the relatively undeveloped CVB in a single phase, as well as the extensive public benefits outlined in Section II.F., KMA finds that the upper end of this range is warranted for the proposed RHCC Project.

As indicated above, without the proposed Public Fund Contribution, the Developer's ROI falls well below a target ROI of 11.0%. The KMA financial analysis projects that the Developer will achieve an ROI in the "With Proposed Public Fund Contribution" scenario of 10.9% at Lease Year 8 (Operating Year 4).

To that end, the Developer projected return after the Public Fund Contribution and ground rent structure indicates that the proposed financial contribution is justified. It is the KMA conclusion that but for the District's and City's financial contribution, the RHCC Project would be infeasible and the

## Attachment C to Agenda File No. 2018-0070

Developer would be unlikely to proceed. The District's and City's proposed Public Fund Contribution will enhance the RHCC Project's feasibility, but will not generate an excessive return for the Developer.

### **D. Leveraged IRR to the Developer with Public Fund Contribution**

KMA also prepared projections of NOI and cash flow for the RHCC Project for the duration of the proposed 66-year Ground Lease. The KMA projections estimate that the Developer will achieve a Leveraged IRR of approximately 13.8%. A Leveraged IRR is used as a metric to determine the annualized effective compounded return rate to the Developer, after taking into consideration all of the Developer's financial obligations including debt service on the permanent loan. KMA finds that the appropriate industry standard target for Leveraged IRR for a resort hotel/convention center of this type is in the range of 16% to 17%. In other words, under current projections, inclusive of the City and District Public Fund Contribution, the Developer is not projected to achieve an industry standard return on a long-term basis. This finding indicates that the District and City contributions and rent structure are warranted, that the Developer return is not excessive, and ultimately that the Developer will need to control development costs and/or improve operating performance in order to achieve a satisfactory long-term return. At the same time, the Agreement contains an Additional Rent provision, which enables the District and City to receive a portion of the RHCC Project NOI after the Developer achieves an 11.0% ROI. By this means, the Additional Rent provision allows the District and City to participate in the success of the RHCC Project as well.

### **E. Projected Revenues to District/City**

The District and City are contemplating a bond issuance by the JEPA to finance the proposed Public Fund Contribution. If the debt service described in the Plan of Finance is deducted from the projected District and City funding contributions, residual revenues would be available. The District and City propose to enter into a Revenue Sharing Agreement to allocate these funds through a "waterfall". The "waterfall" provides for a specified series of priority payments to the District and City, enabling each agency to receive partial repayment of its respective investment of committed revenues. It is important to note that the ultimate bond financing may require various reserves and holdbacks of the District's and City's committed revenues not currently anticipated in the KMA financial projections. In such event, the distributions to the District and City may be substantially reduced and/or delayed.

Additionally, if the District elects to construct the Parking Improvements, the District will also receive percentage parking rent from the Developer throughout the term of the Ground Lease.

### **F. Public Benefits**

The operation of the RHCC Project will serve the City and the surrounding community by providing commercial facilities that are not currently available in the community. No luxury, AAA Four Diamond

## Attachment C to Agenda File No. 2018-0070

(or similar) hotel currently operates in the City. Further, the City currently lacks large, luxury conference facilities similar to the Convention Center component of the proposed Project that will accommodate community events and gatherings such as high school dances, meetings of local trade organizations, fundraisers, and other community events. The nature of the RHCC Project as a high-end, luxury resort is expected to bring a demand for additional luxury facilities and services in the community, encouraging related investment and development in the City and surrounding areas. The development, opening, and operation of the RHCC Project will be of material benefit to the City and to the citizens of, and property owners in, the City and surrounding areas because construction and operation of the Project will encourage and foster the economic revitalization of the City for the people in the area and the general public as a whole; provide commercial facilities and services not currently available in the City; increase property tax revenues available to the City and other taxing agencies; increase sales tax revenues available to the City; increase Transient Occupancy Tax revenues available to the City; generate Additional Rent to the City; and create jobs within the City.

### **III. Background**

#### **A. Description of Site and Environs**

Development of the CVB is guided by the Chula Vista Bayfront Master Plan (CVBMP). The CVBMP calls for the development of 535.5 acres of the CVB over the next 20 years to include parks, open space areas, a resort hotel, convention center, other hotels, mixed-use office/commercial space, industrial business park, and public facilities, in three separate planning districts.

#### **B. Proposed Development**

The proposed RHCC Project is planned for development on CVBMP Parcel H-3. Parcel H-3 consists of 36.5 acres and is currently partially occupied by an existing recreational vehicle (RV) park. The RHCC Project will serve as the anchor project for the CVB. It is planned to include: a 20-story, 1,570-1,600-room resort hotel, branded by Gaylord Hotels; 275,000 SF of net usable convention and meeting space; associated retail and related development; and resort level amenities. The RHCC Project will be served by Parking Improvements proposed to be financed and owned by the District. The construction of the RHCC Project is anticipated to occur over a 48-month construction period.

## IV. Proposed Business Terms

This section summarizes the salient aspects of the business terms contained in the draft Agreement under review as of April 19, 2018, the draft Ground Lease under review as of April 16, 2018, and the draft Plan of Finance under review as of April 18, 2018.

### A. Overview of Agreement

#### Developer Responsibilities

- The Developer will construct a resort hotel with no less than 1,570 rooms and no more than 1,600 rooms under the Gaylord Hotels brand and Attach net useable SF of convention and meeting space.
- The Developer will construct a portion of the infrastructure improvements including E Street (G Street to H Street), G Street connection, H Street (Bay Boulevard to Street A), H Street (Marina Parkway to E Street), and Harbor Park (initial).
- The Developer will provide \$785 million in private investment (debt and equity) toward the RHCC Project (Developer's Contribution).
- The Developer will be responsible for all operating and maintenance costs incurred with respect to the RHCC Project.

#### District and City Responsibilities

- The District and City will contribute \$63.23 million toward infrastructure costs including streets, parks, building pads, and utilities (Phase 1A Infrastructure Costs). Of this total \$6 million is allocated for Parcel H-3 site preparation costs.
- The District and City will be responsible for all operating and maintenance costs incurred with respect to off-site infrastructure.
- The District and City will contribute \$240 million (Project Public Investment) toward development of the Convention Center improvements.
- The District will provide an annual contribution toward bond debt service to support its portion of the Project Public Investment. As presented in Table IV-1, the District contribution for this purpose will not exceed the following schedule of amounts during Lease Years 5 through 38.

## Attachment C to Agenda File No. 2018-0070

<b>Table IV-1: District Annual Support Payments</b>	
<b>Lease Year</b>	<b>Annual Support Payments</b>
Years 1-4	\$0
Years 5-14	\$5.0 M
Years 15-19	\$6.0 M
Years 20-24	\$3.0 M
Years 25-38	\$3.5 M

- The City will pay for the construction of the required sewer and fire service improvements to enable development of the RHCC Project.
- The District will enter into a lease for the development of a new RV Park on Parcel S-1. The new RV Park will replace the existing RV Park, currently located on a portion of the Project Site.
- The Agreement will have a term of up to four (4) years with up to three (3) one-year extensions. In total, the Developer will have a maximum of seven (7) years to close escrow and commence construction of the RHCC Project.
- If there is a close of escrow, the District and City will reimburse the Developer for any funds actually expended prior to the close of escrow for pre-development design, architecture, engineering, and other professional services attributed to the Developer’s portion of Phase 1A Infrastructure Costs.
- The District and City will be responsible for the cost of completing Schematic Plans for the Phase 1A Infrastructure Improvements.
- Prior to the close of escrow, the District may elect to perform site preparation as it relates to the import of soil to the Project Site in an amount not to exceed \$10 million. If the District provides less than 130,000 cubic yards of imported soil to the Project Site, the estimated cost will be decreased equal to the difference of: (1) \$10 million minus (2) \$30.77 per cubic yard of soil delivered by the District.
- The District will provide, on a temporary basis, and at no cost to the Developer, up to 15 acres of land on Parcel H-23 to house construction trailers, construction materials, equipment staging, and parking during construction of the RHCC Project.
- Concurrent with the execution of the Agreement, the District will enter in an exclusive negotiation agreement with the Developer for a term of one (1) year for a definitive agreement to lease up to 10 acres of Parcel H-23 (closest to Parcel H-3) for the development of up to 550 hotel rooms.

# Attachment C to Agenda File No. 2018-0070

## B. Construction and Operation of Parking Improvements

- A portion of Parcel H-3 will be reserved by the District for the construction of a parking garage and related parking improvements (Parking Improvements).
- The cost of the Parking Improvements will be financed by the District in an amount not to exceed \$40 million.
- The District will own the Parking Improvements.
- The Developer will operate the Parking Improvements and be responsible for all maintenance and repair except for non-routine repair or replacement.
- The Developer will pay percentage parking rent to the District during Lease Years 1-66 as shown in Table IV-2.

<b>Table IV-2: Developer Annual Parking Rent Payments – Years 1-66</b>		
<b>Lease Year</b>	<b>Years 1-38</b>	<b>Years 39-66</b>
% of Gross Parking Revenues	12.5%	15.0%

- If there is a sale or assignment of the lease, parking rent will increase to 15.0% during Lease Years 1-38 and to 20.0% during Lease Years 39-66.
- The Developer and District will enter into an Offsite Parking Land Lease to allow for the Developer's use of Surface Parking Improvements at a percentage rent payable to the District of 3.0% of gross surface parking revenues.

## C. Proposed Ground Lease

- The District and the Developer will enter into a 66-year Ground Lease agreement.
- The Developer will pay ground lease payments to the District during Lease Years 1-38 as shown in Table IV-3.

## Attachment C to Agenda File No. 2018-0070

<b>Table IV-3: Developer Annual Ground Lease Payments – Years 1-38</b>			
<b>Lease Year</b>	<b>Years 1-19</b>	<b>Years 20-24</b>	<b>Years 25-38</b>
Annual Ground Lease Payment	\$0	\$3.0 M	\$3.5 M

Beginning in Year 39, the proposed rent structure for the RHCC Project will be in line with the District’s standard percentage rent categories, as shown in Table IV-4 below.

<b>Table IV-4: Developer Annual Ground Lease Payments – Years 39-66</b>		
<b>Lease Year</b>	<b>Years 39-48</b>	<b>Years 49-66</b>
Room Revenue	8%	9%
Banquet Revenue	6%	7%
Food Revenue	4%	5%
Beverage Revenue	6%	7%
Gift Shop	5%	5%
Health Club	5%	5%
Recreation Center	10%	10%
Various Other Revenues (1)	0.5% - 20%	0.5% - 20%
(1) Reflects additional categories itemized in proposed Ground Lease.		

- The Developer will pay Additional Rent to the District/City during Lease Years 1-38 equal to annual NOI in excess of 11.0% of the Developer’s Contribution, as shown in Table IV-5. The Developer’s Contribution is \$785 million; therefore, the 11% threshold translates to \$86.4 million.

<b>Table IV-5: Allocation of NOI after Developer Target Return of 11.0% on Developer’s Contribution</b>	
<b>Lease Year</b>	
Years 1-38	80% to Developer / 20% to District/City
Years 39-66	100% to Developer

**V. Proposed Method of Financing**

**A. Sources and Uses of Funds**

Total project costs, including both public infrastructure and private development, are estimated to be \$1.1 billion. Of this total, the Developer will be responsible for an investment, including private debt and equity, of \$785 million. The District and City will be responsible for the cost of completing the Schematic Plans for development of the Phase 1A Infrastructure Costs, currently estimated at \$1.7 million, up to \$10 million for Parcel H-3 site preparation, \$240 million toward the Convention Center, and an estimated \$57.2 million for public infrastructure (net of the Parcel H-3 site preparation costs). The District will also provide \$40 million toward the Parking Improvements. These cost estimates, and respective responsibilities, are summarized in Table V-1 below.

	<b>Developer Private Investment</b>	<b>District/City Public Investment</b>	<b>Total</b>
A. Infrastructure Design Costs (1)	----	\$1.7 M	\$1.7 M
B. Parcel H-3 Site Preparation Costs (2)	----	\$6.0 M	\$6.0 M
C. Hotel/Convention Center	\$785.0 M	\$240.0 M	\$1,025.0 M
D. Infrastructure	----	\$57.2 M	\$57.2 M
E. Parking Improvements	----	\$40.0 M	\$40.0 M
<b>F. Total</b>	<b>\$785.0 M</b>	<b>\$344.9 M</b>	<b>\$1,129.9 M</b>
(1) Preliminary estimate, subject to change. (2) Maximum contribution not to exceed \$10.0 M. KMA assumes Parcel H-3 site preparation costs of \$6.0 M, reflecting 130,000 cubic yards of soils imported to the Project Site prior to the close of escrow. If less than 130,000 cubic yards are imported, the cost will be reduced to the difference of: (1) \$10 million minus (2) \$30.77 per cubic yard of soil delivered to the Project Site..			

**B. Private Investment**

*Developer Equity and Permanent Loan*

As noted above, the Developer will be responsible for a private investment in the RHCC Project of \$785 million. This investment is expected to take the form of a combination of debt and equity. Using the Developer’s Contribution as a measure of anticipated value upon completion, the KMA analysis assumes a maximum Loan-to-Value (LTV) of 65%, resulting in an achievable loan of \$510 million. The balance of

## Attachment C to Agenda File No. 2018-0070

the investment, \$275 million, will be comprised of equity investment by the Developer and/or other investors. Table V-2 summarizes the required private investment in the RHCC Project.

<b>Table V-2: Required Private Investment</b>		
	<b>Factor (Loan to Value)</b>	<b>Amount</b>
<b>A.</b> Maximum Debt	65% LTV	\$510.0 M
<b>B.</b> Minimum Equity	35% LTV	\$275.0 M
<b>C. Total Private Investment</b>		<b>\$785.0 M</b>

### Ground Lease Payments

Under the terms of the Ground Lease, the Developer will pay a fixed ground rent schedule for the RHCC Project during Lease Years 1-38. The fixed ground rent schedule for this period is itemized in Section IV, Table IV-3. The District will contribute these ground lease payments toward the bond debt service used to fund the Project Public Investment and Phase 1A Infrastructure Costs.

### District/City Participation in NOI

In addition to ground rent paid to the District, the Developer will pay the District and City an annual participation payment based on surplus Net Operating Income (NOI) from the RHCC Project (Additional Rent). Specifically, during Lease Years 5-38, the District and City will receive 20% of surplus NOI above an 11% ROI threshold on the Developer's Contribution. KMA has prepared a preliminary projection of this potential future revenue stream, which is summarized for selected lease years in Table V-3.

<b>Table V-3: Projected Annual NOI Participation Payments to the District/City</b>	
<b>Representative Lease Years</b>	<b>Estimated Annual NOI Participation Payment to District and City</b>
Years 1-4 – Construction	N/A
Years 5-8	\$0
Year 9	\$170 K
Year 20	\$3.7 M
Year 30	\$10.2 M
Year 38	\$17.1 M

# Attachment C to Agenda File No. 2018-0070

## C. Public Investment

### Pre-Close Design Costs and H-3 Site Preparation Costs

The District and City will be responsible for the cost of completing the Schematic Plans for development of the Phase 1A Infrastructure Costs, currently estimated at \$1.7 million. The City and District also will provide \$10.0 million toward Parcel H-3 site preparation costs. The estimated cost for Parcel H-3 site preparation will be decreased to \$6.0 million if the District is able to provide at least 130,000 cubic yards of imported soil to the Project Site. If the District provides less than 130,000 cubic yards, the cost will be reduced to the difference of: (1) \$10 million minus (2) \$30.77 per cubic yard of soil delivered to the Project Site. For purposes of this analysis, KMA has assumed Parcel H-3 site preparation costs of \$6.0 million.

### Infrastructure Improvements and Convention Center

As indicated above, the City and District will contribute an estimated \$57.2 million toward infrastructure and \$240.0 million toward the Convention Center. The District and City anticipate using one or more bond financings through the JEPA to fund these contributions concurrent with the close of escrow of the Ground Lease for the Project Site.

- *Committed Revenues – District:* The District will contribute: (1) existing lease revenues from the Chula Vista Marina, Chula Vista RV Park, the Marine Group, and the California Yacht Marina, as well as any rent credits used to pay for the prior RV park lease buyout; and (2) ground rent from the RHCC Project and new RV Park. Additionally, the District will make one-time contributions toward the infrastructure costs using the previously received SDG&E Relocation Fee of \$1.7 million and the Pacifica Land Exchange Payment of \$3 million. The District will also be responsible for annual support payments toward bond debt service to support the Public Fund Contribution not to exceed the schedule of amounts during Lease Years 5 through 38 as presented in Section IV, Table IV-1.
- *Committed Revenues – City:* The City will contribute: (1) existing Police, Fire, and Medical Municipal Services Agreement (PMSA) reimbursements that it receives annually from the District; and (2) Transient Occupancy Tax (TOT) revenues from the existing and new RV Parks. In addition, the City will provide a one-time contribution of sewer fund revenue of \$4.0 million, Transportation and Park Development Impact Fees (DIFs)/Fees (estimated at \$31.6 million), the costs associated with development of a fire station (estimated at \$13.4 million), and the annual expenditure for fire services. The City will also contribute RHCC Project-generated revenues, to include: (a) TOT; (b) Communities Facilities District (CFD) funding generated from a proposed 5% Special Tax on room revenue; (c) incremental property tax and property tax in-lieu of Vehicle License Fees (VLF) through the possible formation of an Enhanced Infrastructure Financing District (EIFD); and (d) sales tax revenues.

## Attachment C to Agenda File No. 2018-0070

Table V-4 provides a summary of the one-time contributions provided by the District and City.

Table V-4: District and City One-Time Contributions			
San Diego Unified Port District		City of Chula Vista	
<b><u>One-Time Contributions</u></b>		<b><u>One-Time Contributions</u></b>	
SDG&E Relocation Fee	\$1.7 M	Sewer Fund Revenue	\$4.0 M
Pacifica Land Exchange Payment	\$3.0 M	Transportation and Park DIFs/Fees	\$31.6 M (1)
Parking Improvements	\$40.0 M	Fire Station	\$13.4 M (1)
Infrastructure Design Costs	\$1.7 M		
<b>Total One-Time Contributions</b>	<b>\$46.4 M</b>	<b>Total One-Time Contributions</b>	<b>\$49.0 M</b>
(1) Preliminary estimate, subject to change.			

As indicated above, the District and City will also provide annual contributions toward bond debt service, limited to specific sources, to fund the Public Fund Contribution. Table V-5 summarizes the District and City estimated annual revenue contributions. As an illustrative example, the figures shown in the table reflect Lease Year 9, i.e., the projected stabilized year of RHCC Project operations. As shown, most of the financial contributions will be funded through Project-generated revenues.

Attachment C to Agenda File No. 2018-0070

<b>Table V-5: District and City Annual Contributions at Stabilization (Lease Year 9)</b>			
<b>San Diego Unified Port District</b>		<b>City of Chula Vista</b>	
<b>A. Existing Revenues</b>		<b>A. Existing Revenues</b>	
Existing Lease Revenues (1)	\$3.6 M	RV Park TOT (1)	\$0.6 M
		MSA Reimbursements	<u>\$1.4 M</u>
		Subtotal Existing Revenues	\$2.0 M
<b>B. Project-Generated Revenues</b>		<b>B. Project-Generated Revenues</b>	
Project Lease Revenues (2)	\$0.0 M	Project TOT Revenues	\$13.8 M
		CFD Special Tax Revenues	\$6.9 M
		Project Tax Increment (3)	\$1.8 M
		Project Sales Tax Revenues	<u>\$1.3 M</u>
		Subtotal Project-Generated Revenues	\$23.8 M
<b>C. Support Payments</b>			
Support Payments	\$5.0 M		
<b>D. Total District Annual Contributions</b>	<b>\$8.6 M</b>	<b>C. Total City Annual Contributions</b>	<b>\$25.8 M</b>
(1) Includes projected increase from development of new RV park. (2) The District will forego ground lease payments from the RHCC Project during Lease Years 1-19 and receive a stipulated ground rent during Lease Years 20-38. Total foregone ground lease revenues during Lease Years 1-38 are estimated at \$245.0 M (net present value of foregone payments less ground lease revenues received by the District, assuming a discount rate of 8.0%). (3) Reflects the City's share of Project-generated incremental property tax and property tax in-lieu of Vehicle License Fee (VLF). Excludes potential County contribution of Project-generated incremental property tax and property tax in-lieu of VLF.			

Tables 1 and 2 in the Appendix provide detailed estimates of the District's and City's committed revenues during Lease Years 1-38.

Proposed Method of Financing the Public Fund Contribution

Attachment 4 of the Agreement presents the Plan of Finance. The ability to finance the Public Fund Contribution as contemplated in the Plan of Finance is dependent on the realization of a number of assumptions relating to any such financing. The assumptions for the financing and the anticipated outcome based on those assumptions are described in the Plan of Finance, but the outcome is limited as described in Section 2 of the Plan of Finance. The debt service included in the Plan of Finance for the purpose of determining the feasibility of the proposed method of financing the Public Fund Contribution is based on the information contained in the Plan of Finance and reference is made to the entire Plan of Finance for detailed assumptions and further information relating to the financing.

## Attachment C to Agenda File No. 2018-0070

The District engaged Hutchinson Shockey Erley & Co. (HSE) to review the Plan of Finance. The HSE review identified factors and opportunities for District consideration with respect to the Plan of Finance. In undertaking their review, HSE also prepared preliminary bond sizing and cash flows based on the financing criteria presented in the Plan of Finance.

### Parking Contribution

The District may also finance the Parking Improvements (if it elects to construct them) to serve the RHCC Project. The Developer will assume all operating and maintenance expenses for parking for the duration of the Ground Lease. Parking gross revenues will be allocated 87.5% to the Developer and 12.5% to the District during Lease Years 1-38 and 85% to the Developer and 15% to the District during Lease Years 39-66. The District's share will increase to 15% of gross revenue during Lease Years 1-38 and 20% of gross revenues during Lease Years 39-66 if the Developer sells, on a cumulative basis, 51% or more of the RHCC Project.

## VI. Financial Feasibility Analysis

KMA prepared a financial feasibility analysis for the proposed RHCC Project to determine the economic return to the Developer with and without the proposed Public Fund Contribution. Specifically, KMA analyzed the Developer’s return both in terms of stabilized ROI and Leveraged Internal Rate of Return (IRR) in order to determine if the proposed Public Fund Contribution is justified.

### A. Developer Return on Investment – No Public Fund Contribution

This section estimates the Developer ROI if there were no Public Fund Contribution from the District or City. Without a Public Fund Contribution, the Developer would have to fund the Parcel H-3 Site Preparation Costs, Public Improvements, Parking Improvements, and the Convention Center using private debt and equity investment.

#### Total Development Costs – No Public Fund Contribution

As summarized in Table VI-1, the Developer’s cost to develop the RHCC Project absent any public contribution by the City and District is estimated at \$1.1 billion. This would include: the Parcel H-3 site preparation costs, infrastructure costs, cost of the Parking Improvements, and the entire cost of the RHCC Project.

<b>Table VI-1: Developer Investment – No Public Fund Contribution</b>	
A. Parcel H-3 Site Preparation Costs <sup>(1)</sup>	\$9.5 M
B. Public Improvements	\$50.8 M
C. Parking Improvements <sup>(1)</sup>	\$38.0 M
D. Resort Hotel / Convention Center <sup>(1)</sup>	\$977.0 M
<b>E. Total Developer Investment</b>	<b>\$1,075.3 M</b>
<sup>(1)</sup> Cost estimates adjusted to exclude the payment of prevailing wages.	

#### Net Operating Income – No Public Fund Contribution

Table VI-2 presents illustrative gross income figures for Operating Year 4, as most hotel developers/investors would target stabilization no later than Operating Years 3 or 4. In the case of the RHCC Project, the Developer projects stabilized operations in Operating Year 5. As shown, the RHCC Project is projected to generate \$306.4 million in Effective Gross Income (EGI) in Operating Year 4 (Lease Year 8). This EGI estimate includes both room revenues and other income such as food and beverage revenues, banquet sales, gift shop and spa revenues, and parking revenue.

## Attachment C to Agenda File No. 2018-0070

Table VI-2: Effective Gross Income – No Public Fund Contribution (Lease Year 8)	
A. Number of Hotel Rooms	1,600 Rooms
B. Average Daily Rate (ADR)	\$286
C. Occupancy	78%
D. Total Room Revenue	\$130.4 M
E. Total Other Income	\$176.0 M
<b>F. Total Effective Gross Income (EGI)</b>	<b>\$306.4 M</b>

As presented in Table VI-3, the RHCC Project’s Effective Gross Income, less parking revenues to the parking operator, operating expenses, and ground rent, is projected to generate NOI of \$66.8 million during Lease Year 8.

Table VI-3: Net Operating Income – No Public Fund Contribution (Lease Year 8)	
A. Total Effective Gross Income (1)	\$306.4 M
B. (Less) Parking Revenues to Operator (1)	(\$3.2) M
C. (Less) Operating Expenses (1)	<u>(\$216.5) M</u>
D. Net Operating Income (NOI) (1)	\$86.7 M
E. (Less) Ground Rent (2)	(\$19.9) M
<b>F. Net Operating Income after Ground Rent</b>	<b>\$66.8 M</b>
(1) Source: RIDA, November 21, 2017. (2) Estimated as 6.5% of EGI, reflecting a blended rate based on rooms at 8%, food and beverage sales at 4%, banquet and alcohol sales at 6%, spa services at 5%, retail sales at 5%, and miscellaneous sales at 10%.	

### Developer Return on Investment – No Public Fund Contribution

The Developer’s ROI is estimated as Lease Year 8 NOI (\$66.8 million) divided by the Developer’s total capital investment. As indicated above, absent the Proposed Public Fund Contribution, the Developer would be responsible for the cost of H-3 site preparation, Public Improvements, the Parking Improvements, and the proposed Project Public Investment toward the Convention Center, in addition to the entire cost of the RHCC Project, i.e., a total capital investment of \$1.1 billion. As shown in Table VI-4, this “No Public Fund Contribution” scenario is estimated to generate an ROI to the Developer of 6.2%.

## Attachment C to Agenda File No. 2018-0070

<b>Table VI-4: Developer Return on Investment – No Public Fund Contribution (Lease Year 8)</b>		
A.	Grand Total Development Costs – RHCC Project	\$1,075.3 M
B.	Net Operating Income after Ground Rent	\$66.8 M
<b>C.</b>	<b>Developer Return on Investment (ROI)</b>	<b>6.2%</b>

Table 3 in the Appendix provides an estimate of the Developer’s ROI without the Public Fund Contribution during Operating Years 1-10. As shown, the Developer is not anticipated to surpass an 11% ROI by Lease Year 14 (Operating Year 10).

### **B. Developer Return on Investment – with Proposed Public Fund Contribution**

This section estimates the Developer ROI with the proposed Public Fund Contribution from the District and City, whereby the Developer provides private debt and equity solely for the Resort Hotel.

#### Total Development Costs – with Proposed Public Fund Contribution

The proposed Agreement identifies the District’s and City’s contributions toward Parcel H-3 site preparation costs, Parking Improvements, and the Convention Center in the amount of \$290 million. In addition, the District is providing the Project Site with a “soft” ground rent structure that allows the Developer to begin making rent payments, at a reduced level, in Lease Year 20. As shown in Table VI-5, the District and City contributions reduce the required capital investment from the Developer to \$785 million, compared to the required Developer investment of \$1.1 billion noted in the “No Public Fund Contribution” scenario, above.

<b>Table VI-5: Developer Investment – with Proposed Public Fund Contribution</b>		
A.	Parcel H-3 Site Preparation Costs	\$0.0 M
B.	Public Improvements	\$0.0 M
C.	Parking Improvements	\$0.0 M
D.	Resort Hotel	\$785.0 M
<b>E.</b>	<b>Total Developer Investment</b>	<b>\$785.0 M</b>

#### Net Operating Income – with Proposed Public Fund Contribution

As presented in Table VI-6, the RHCC Project’s EGI, less parking revenues to the parking operator and to the District, and less operating expenses, is projected to generate NOI of \$85.8 million in Operating Year 4 (Lease Year 8).

## Attachment C to Agenda File No. 2018-0070

<b>Table VI-6: Net Operating Income with Proposed Public Fund Contribution (Lease Year 8) <sup>(1)</sup></b>	
A. Total Effective Gross Income	\$306.4 M
B. (Less) Parking Revenues to District	(\$0.9) M
C. (Less) Parking Revenues to Operator	(\$3.2) M
D. (Less) Operating Expenses	<u>(\$216.5) M</u>
E. Net Operating Income (NOI)	\$85.8 M
F. (Less) Ground Rent	(\$0.0) M
<b>G. Net Operating Income</b>	<b>\$85.8 M</b>
(1) Source: RIDA, November 21, 2017.	

### Developer Return on Investment – with Proposed Public Fund Contribution

The Developer's ROI is estimated as stabilized year NOI (\$85.8 million) divided by the Developer's Contribution. Assuming the District's and City's Public Fund Contributions toward Public Improvements, parking, and the proposed Convention Center, the Developer would be responsible for an estimated maximum capital investment of \$785 million. As shown in Table VI-7, at this level of capital investment, the Proposed Public Fund Contribution scenario is estimated to generate an ROI to the Developer of 10.9% in Lease Year 8.

<b>Table VI-7: Developer Return on Investment with Proposed Public Fund Contribution (Lease Year 8)</b>	
A. Total Development Costs – RHCC Project	\$785.0 M
B. Net Operating Income	\$85.8 M
<b>C. Developer Return on Investment (ROI)</b>	<b>10.9%</b>

Table 4 in the Appendix provides an estimate of the Developer's ROI with the proposed public fund contribution during Operating Years 1-10.

### Overall Feasibility of RHCC Project

Industry standard ROI targets for developers of large-scale, new resort hotel/convention centers are estimated to range between 10.0% and 11.0% (unleveraged ROI in stabilized year of operations). Given the level of risk associated with undertaking such a major new investment on the relatively undeveloped CVB in a single phase, KMA finds that the upper end of this range is warranted for the proposed RHCC Project.

## Attachment C to Agenda File No. 2018-0070

As indicated above, without the proposed Public Fund Contribution, the Developer's ROI falls well below a target ROI 11%. The KMA financial analysis projects that the Developer will achieve an ROI in the "With Proposed Public Fund Contribution" scenario of 10.9% at Lease Year 8 (Operating Year 4).

To that end, the Developer projected return after the Public Fund Contribution and ground rent structure indicates that the proposed financial contribution is justified. It is the KMA conclusion that but for the District's and City's financial contribution, the RHCC Project would be infeasible and the Developer would be unlikely to proceed. The District's and City's financial contribution as proposed will enhance the RHCC Project's feasibility, but will not generate an excessive return for the Developer.

### **C. Leveraged IRR to the Developer with Public Fund Contribution**

KMA also prepared projections of NOI and cash flow for the RHCC Project for the duration of the proposed 66-year Ground Lease. The KMA projections are presented in Table 5 in the Appendix. As shown, the KMA projections estimate that the Developer will achieve a Leveraged IRR of approximately 13.8%. A Leveraged IRR is used as a metric to determine the annualized effective compounded return rate to the Developer, after taking into consideration all of the Developer's financial obligations including debt service on the permanent loan. KMA finds that the appropriate industry standard target for Leveraged IRR for a resort hotel convention center of this type is in the range of 16% to 17%. In other words, under current projections, inclusive of the City and District financial contributions, the Developer does not achieve an industry standard return on a long-term basis. This finding indicates that the District and City contributions and rent structure are warranted, that the Developer return is not excessive, and ultimately that the Developer will need to control development costs and/or improve operating performance in order to achieve a satisfactory long-term return. At the same time, the District's and City's proposed participation in NOI after the Developer receives an 11% ROI provides for the District and City to participate in the success of the RHCC Project as well.

## VII. Projected Net Revenues to District/City

### A. District/City Participation in NOI

As indicated above, during Lease Years 5-38, the Developer will pay the City and District an annual participation payment based on 20% of surplus NOI above an 11% ROI threshold on the Developer's Contribution. A preliminary projection of this potential future revenue stream is summarized above in Table V-3.

### B. Proposed Distribution of Residual Revenues

The currently contemplated bond financing structure is projected to require approximately 60% of total contributed revenue and therefore residual revenues after debt service are projected. The District and City propose to enter into a Revenue Sharing Agreement to allocate these funds through a "waterfall", with the priority sequence shown in Table VII-1 below. As an illustrative example, the chart presents the projected figures at stabilization (Lease Year 9) and the 15<sup>th</sup> year of operations (Lease Year 19).

<b>Proposed Distribution of Residual Revenues</b>	<b>Lease Year 9 (5<sup>th</sup> year of operations)</b>	<b>Lease Year 19 (15<sup>th</sup> year of operations)</b>
• Residual Revenues after Bond Debt Service	\$16.0 M	\$23.8 M
• <i>Priority #1</i> – Repayment to District of its Annual Support Payments	(\$5.0) M	(\$6.0) M
• <i>Priority #2</i> – Repayment to City of its Fire Services Costs	(\$4.0) M	(\$5.3) M
• <i>Priority #3</i> – Repayment of General Fund Obligations <sup>(1)</sup>	(\$7.0) M	(\$7.6) M
• <i>Priority #4</i> – Set-aside for Additional Bond Debt Service Reserve (anticipated to be fully funded by Lease Year 19)	(\$0.0) M <sup>(2)</sup>	(\$0.6) M
• Remaining Residual Revenues Available for Distribution (allow for rounding error)	\$0.0 M	\$4.2 M
<p>(1) Includes repayment of existing lease revenues, the RV Park Buyout Lease Credit, and RV Park lease revenues for the District; and PMSA reimbursement revenues and existing and new RV Park TOT revenues for the City.</p> <p>(2) An insufficient amount of residual revenues is available at Lease Year 9 to fund Priority #4 of "waterfall".</p>		

As illustrated above, subject to actual cash flow and the ability to finance the Public Fund Contribution as described in the Plan of Finance, the District will receive a reimbursement of its annual support

## Attachment C to Agenda File No. 2018-0070

payments, the City will receive a reimbursement of its annual fire service costs, and the District and City will be able to reimburse themselves for their respective General Fund expenditures. The District and City also intend to deposit a portion of residual revenues into an additional debt service reserve account. After these priority distributions, the proposed Revenue Sharing Agreement calls for the remaining residual revenues to be distributed equally between the District and the City. Table 6 in the Appendix presents a detailed projection of potential distribution of residual revenues during Lease Years 1-38.

It is important to note that the ultimate bond financing structure for the Public Fund Contribution may require various reserves and holdbacks of the District's and City's committed revenues not currently anticipated in the KMA financial projections. In such event, the distributions to the District and City illustrated in Table VII-1 above may be substantially reduced and/or delayed.

### C. Parking Revenues to District

If the District elects to construct the Parking Improvements, the District will also receive percentage parking rent from the Developer during Lease Years 1-66. The Developer will pay 12.5% of gross parking revenues during Lease Years 1-38 and to 15% of gross parking revenues during Lease Years 39-66. Table VII-2 below presents the projected parking rent to the District for Lease Years 9 (stabilized operations), 14 (10<sup>th</sup> year of operations), and 39 (35<sup>th</sup> year of operations).

<b>Table VII-2: Parking Revenues to District</b>			
	<b>Lease Year 9 (5<sup>th</sup> year of operations)</b>	<b>Lease Year 14 (10<sup>th</sup> year of operations)</b>	<b>Lease Year 39 (35<sup>th</sup> year of operations)</b>
% of Gross Parking Revenues	12.5%	12.5%	15.0%
Estimated Parking Revenues to District	\$960 K	\$1.1 M	\$2.7 M

The Developer and District will also enter into an Offsite Parking Land Lease to allow for the Developer's use of Surface Parking Improvements at a percentage rent of 3.0% of gross surface parking revenues.

### VIII. Limiting Conditions

1. The KMA analysis is based, in part, on data provided by secondary sources such as state and local governments, planning agencies, real estate brokers, and other third parties. While KMA believes that these sources are reliable, we cannot guarantee their accuracy.
2. The accompanying projections and analyses are based on estimates and assumptions which were developed using currently available economic data, project-specific data and other relevant information. It is the nature of forecasting, however, that some assumptions may not materialize and unanticipated events and circumstances may occur. Such changes are likely to be material to the projections and conclusions herein and, if they occur, require review or revision of this document.
3. Any estimates of revenue or cost projections are based on the best project-specific and fiscal data available at this time as well as experience with comparable projects. They are not intended to be projections of actual future performance of any specific project. Any changes to costs, development program, or project performance may render the conclusions contained herein invalid.
4. KMA assumes that all applicable laws and governmental regulations in place as of the date of this document will remain unchanged throughout the projection period of our analysis. In the event that this does not hold true, i.e., if any tax rates change, the analysis would need to be revised.
5. The KMA analysis assumes that any necessary entitlements for the proposed development can be obtained in a reasonable time frame.
6. The KMA analysis assumes that property titles are good and marketable; no title search has been made, nor has KMA attempted to determine property ownership.
7. A projection of economic impacts is inherently based on judgment. The projections contained herein are based on the best information available at the time that this document was prepared. However, the actual impacts may vary.
8. Property tax projections reflect KMA's understanding of the assessment and tax apportionment procedures employed by the County. The County procedures are subject to change as a reflection of policy revisions or legislative mandate. While we believe our estimates to be reasonable, taxable values resulting from actual appraisals may vary from the amounts assumed in the projections.
9. No assurances are provided by KMA as to the certainty of the projected tax revenues shown in this document. Actual revenues may be higher or lower than what has been projected and are subject to valuation changes.

## Attachment C to Agenda File No. 2018-0070

10. All bond financing estimates referred to in this document are preliminary and subject to change and highly dependent on assumptions that may not develop.

## **APPENDIX**

### **Financial Feasibility Analysis Resort Hotel and Convention Center Chula Vista Bayfront**

# Attachment C to Agenda File No. 2018-0070

**TABLE 1**

**COMMITTED REVENUES - DISTRICT (\$000's)**  
**CHULA VISTA BAYFRONT**  
**SAN DIEGO UNIFIED PORT DISTRICT**

San Diego Unified Port District								
	A	B	C	D	E	F	G	
	Existing Lease Revenues	RV Park Lease Buyout Credit	New RV Park Lease Revenues	SDG&E Relocation Fee	Pacifica Land Exchange Payment	Annual Support Payment @ 100%	Total District Public Investment	
Year								
<b>Construction</b>	1	\$995	\$659	\$907	\$1,654	\$3,000	\$0	\$7,215
	2	\$1,025	\$679	\$1,014	\$0	\$0	\$0	\$2,718
	3	\$1,055	\$699	\$1,117	\$0	\$0	\$0	\$2,872
	4	\$1,087	\$720	\$1,223	\$0	\$0	\$0	\$3,030
<b>Operations per RIDA</b>	5	\$1,120	\$742	\$1,300	\$0	\$0	\$5,000	\$8,162
	6	\$1,153	\$764	\$1,353	\$0	\$0	\$5,000	\$8,270
	7	\$1,469	\$506	\$1,411	\$0	\$0	\$5,000	\$8,386
	8	\$2,034	\$0	\$1,465	\$0	\$0	\$5,000	\$8,499
	9	\$2,095	\$0	\$1,524	\$0	\$0	\$5,000	\$8,619
	10	\$2,158	\$0	\$1,586	\$0	\$0	\$5,000	\$8,744
	11	\$2,223	\$0	\$1,633	\$0	\$0	\$5,000	\$8,856
	12	\$2,290	\$0	\$1,682	\$0	\$0	\$5,000	\$8,972
	13	\$2,358	\$0	\$1,733	\$0	\$0	\$5,000	\$9,091
	14	\$2,429	\$0	\$1,785	\$0	\$0	\$5,000	\$9,213
<b>Operations per KMA</b>	15	\$2,502	\$0	\$1,838	\$0	\$0	\$6,000	\$10,340
	16	\$2,577	\$0	\$1,893	\$0	\$0	\$6,000	\$10,470
	17	\$2,654	\$0	\$1,950	\$0	\$0	\$6,000	\$10,604
	18	\$2,734	\$0	\$2,009	\$0	\$0	\$6,000	\$10,742
	19	\$2,816	\$0	\$2,069	\$0	\$0	\$6,000	\$10,885
	20	\$2,900	\$0	\$2,131	\$0	\$0	\$3,000	\$8,031
	21	\$2,987	\$0	\$2,195	\$0	\$0	\$3,000	\$8,182
	22	\$3,077	\$0	\$2,261	\$0	\$0	\$3,000	\$8,338
	23	\$3,169	\$0	\$2,328	\$0	\$0	\$3,000	\$8,498
	24	\$3,264	\$0	\$2,398	\$0	\$0	\$3,000	\$8,663
	25	\$3,362	\$0	\$2,470	\$0	\$0	\$3,500	\$9,332
	26	\$3,463	\$0	\$2,544	\$0	\$0	\$3,500	\$9,507
	27	\$3,567	\$0	\$2,621	\$0	\$0	\$3,500	\$9,688
	28	\$3,674	\$0	\$2,699	\$0	\$0	\$3,500	\$9,873
29	\$3,784	\$0	\$2,780	\$0	\$0	\$3,500	\$10,064	
30	\$3,898	\$0	\$2,864	\$0	\$0	\$3,500	\$10,261	
31	\$4,015	\$0	\$2,950	\$0	\$0	\$3,500	\$10,464	
32	\$4,135	\$0	\$3,038	\$0	\$0	\$3,500	\$10,673	
33	\$4,259	\$0	\$3,129	\$0	\$0	\$3,500	\$10,888	
34	\$4,387	\$0	\$3,223	\$0	\$0	\$3,500	\$11,110	
35	\$4,519	\$0	\$3,320	\$0	\$0	\$3,500	\$11,338	
36	\$4,654	\$0	\$3,419	\$0	\$0	\$3,500	\$11,573	
37	\$4,794	\$0	\$3,522	\$0	\$0	\$3,500	\$11,816	
38	\$4,938	\$0	\$3,628	\$0	\$0	\$3,500	\$12,065	

# Attachment C to Agenda File No. 2018-0070

TABLE 2

**COMMITTED REVENUES - CITY (\$000's)**  
**CHULA VISTA BAYFRONT**  
**SAN DIEGO UNIFIED PORT DISTRICT**

City of Chula Vista												
	A	B	C	D	E	F	G	H	I	J	K	
	Existing / Projected Revenues						Project Generated Revenues					
	Year	PMSA Reimbursement Revenues	New RV Park TOT	Sewer Fund Revenue	Transportation and Park DIFs/Fees <sup>(1)</sup>	Fire Station <sup>(2)</sup>	Fire Station Services <sup>(3)</sup>	Transient Occupancy Tax <sup>(4)</sup>	CFD Special Tax Revenues <sup>(4)</sup>	EIFD Tax Increment City <sup>(5)</sup>	City Sales Tax <sup>(6)</sup>	Total City Public Investment
Construction	1	\$1,091	\$497	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,588
	2	\$1,124	\$512	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,636
	3	\$1,157	\$527	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,685
	4	\$1,192	\$543	\$0	\$0	\$0	\$449	\$0	\$0	\$0	\$0	\$2,184
Operations per RIDA	5	\$1,228	\$559	\$4,030	\$0	\$0	\$2,439	\$9,594	\$4,797	\$1,667	\$919	\$25,233
	6	\$1,265	\$576	\$0	\$0	\$0	\$3,737	\$11,189	\$5,595	\$1,700	\$1,023	\$25,085
	7	\$1,303	\$593	\$0	\$0	\$0	\$3,735	\$12,174	\$6,087	\$1,734	\$1,114	\$26,741
	8	\$1,342	\$611	\$0	\$0	\$0	\$3,847	\$13,041	\$6,521	\$1,769	\$1,190	\$28,321
	9	\$1,382	\$630	\$0	\$0	\$0	\$3,963	\$13,777	\$6,888	\$1,804	\$1,254	\$29,698
	10	\$1,424	\$648	\$0	\$0	\$0	\$4,081	\$14,052	\$7,026	\$1,841	\$1,279	\$30,352
	11	\$1,466	\$668	\$0	\$0	\$0	\$4,204	\$14,333	\$7,167	\$1,877	\$1,305	\$31,020
	12	\$1,510	\$688	\$0	\$0	\$0	\$4,330	\$14,620	\$7,310	\$1,915	\$1,331	\$31,704
	13	\$1,556	\$709	\$0	\$0	\$0	\$4,460	\$14,912	\$7,456	\$1,953	\$1,358	\$32,403
	14	\$1,602	\$730	\$0	\$0	\$0	\$4,594	\$15,211	\$7,605	\$1,992	\$1,385	\$33,119
Operations per KMA	15	\$1,650	\$752	\$0	\$0	\$0	\$4,731	\$15,667	\$7,833	\$2,032	\$1,426	\$34,092
	16	\$1,700	\$774	\$0	\$0	\$0	\$4,873	\$16,137	\$8,068	\$2,073	\$1,469	\$35,095
	17	\$1,751	\$798	\$0	\$0	\$0	\$5,020	\$16,621	\$8,311	\$2,114	\$1,513	\$36,127
	18	\$1,803	\$821	\$0	\$0	\$0	\$5,170	\$17,120	\$8,560	\$2,156	\$1,559	\$37,189
	19	\$1,857	\$846	\$0	\$0	\$0	\$5,325	\$17,633	\$8,817	\$2,200	\$1,605	\$38,284
	20	\$1,913	\$871	\$0	\$0	\$0	\$5,485	\$18,162	\$9,081	\$2,244	\$1,654	\$39,410
	21	\$1,970	\$898	\$0	\$0	\$0	\$5,650	\$18,707	\$9,354	\$2,288	\$1,703	\$40,570
	22	\$2,030	\$925	\$0	\$0	\$0	\$5,819	\$19,268	\$9,634	\$2,334	\$1,754	\$41,764
	23	\$2,090	\$952	\$0	\$0	\$0	\$5,994	\$19,846	\$9,923	\$2,381	\$1,807	\$42,994
	24	\$2,153	\$981	\$0	\$0	\$0	\$6,173	\$20,442	\$10,221	\$2,429	\$1,861	\$44,260
	25	\$2,218	\$1,010	\$0	\$0	\$0	\$6,359	\$21,055	\$10,528	\$2,477	\$1,917	\$45,563
	26	\$2,284	\$1,041	\$0	\$0	\$0	\$6,549	\$21,687	\$10,843	\$2,527	\$1,974	\$46,905
	27	\$2,353	\$1,072	\$0	\$0	\$0	\$6,746	\$22,337	\$11,169	\$2,577	\$2,034	\$48,287
	28	\$2,423	\$1,104	\$0	\$0	\$0	\$6,948	\$23,007	\$11,504	\$2,629	\$2,095	\$49,710
29	\$2,496	\$1,137	\$0	\$0	\$0	\$7,157	\$23,698	\$11,849	\$2,681	\$2,157	\$51,175	
30	\$2,571	\$1,171	\$0	\$0	\$0	\$7,371	\$24,409	\$12,204	\$2,735	\$2,222	\$52,684	
31	\$2,648	\$1,206	\$0	\$0	\$0	\$7,593	\$25,141	\$12,570	\$2,790	\$2,289	\$54,237	
32	\$2,728	\$1,243	\$0	\$0	\$0	\$7,820	\$25,895	\$12,948	\$2,845	\$2,358	\$55,836	
33	\$2,809	\$1,280	\$0	\$0	\$0	\$8,055	\$26,672	\$13,336	\$2,902	\$2,428	\$57,483	
34	\$2,894	\$1,318	\$0	\$0	\$0	\$8,297	\$27,472	\$13,736	\$2,960	\$2,501	\$59,178	
35	\$2,981	\$1,358	\$0	\$0	\$0	\$8,546	\$28,296	\$14,148	\$3,020	\$2,576	\$60,924	
36	\$3,070	\$1,398	\$0	\$0	\$0	\$8,802	\$29,145	\$14,573	\$3,080	\$2,653	\$62,721	
37	\$3,162	\$1,440	\$0	\$0	\$0	\$9,066	\$30,019	\$15,010	\$3,142	\$2,733	\$64,572	
38	\$3,257	\$1,484	\$0	\$0	\$0	\$9,338	\$30,920	\$15,460	\$3,204	\$2,815	\$66,478	

(1) Final amount and timing of investment to be determined. Preliminary estimate at \$31.6 million.

(2) Final amount and timing of investment to be determined. Preliminary estimate at \$13.4 million.

(3) Source: City of Chula Vista, March 8, 2018.

(4) Assumes room revenue escalation factor of 3.0% beginning in Year 15.

(5) Assumes an escalation factor of 2.0% beginning in Year 6.

(6) Reflects sales tax from gift shop (80% taxable), food & beverage (80% taxable), spa (20% taxable), recreation center (20% taxable), other minor operating departments (20% taxable), and miscellaneous income (20% taxable). Assumes an escalation factor of 3.0% beginning in Year 15.

TABLE 3

**DEVELOPER RETURN ON INVESTMENT (\$000's)**  
**CHULA VISTA BAYFRONT**  
**SAN DIEGO UNIFIED PORT DISTRICT**

<b>RIDA Investment - No Public Contribution</b>											
Parcel H-3 Site Preparation (1)	\$9.5 M										
Public Improvements	\$50.8 M										
Parking Improvements (1)	\$38 M										
Resort Hotel and Convention Center (1)	\$977 M										
<b>Total RIDA Investment</b>	<b>\$1,075 M</b>										
	<b>Operating Year:</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>
<b>I. Gross Revenue</b>											
Occupancy		66.0%	71.0%	75.0%	78.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%
ADR		\$249	\$270	\$278	\$286	\$295	\$301	\$307	\$313	\$319	\$326
Room Revenue		\$95,935	\$111,893	\$121,743	\$130,411	\$137,767	\$140,523	\$143,333	\$146,200	\$149,124	\$152,106
Other Revenue		\$137,390	\$152,119	\$165,051	\$175,948	\$185,029	\$188,731	\$192,505	\$196,354	\$200,282	\$204,289
<b>Total Gross Revenue</b>		<b>\$233,325</b>	<b>\$264,012</b>	<b>\$286,794</b>	<b>\$306,359</b>	<b>\$322,796</b>	<b>\$329,254</b>	<b>\$335,838</b>	<b>\$342,554</b>	<b>\$349,406</b>	<b>\$356,395</b>
(Less) Parking Revenues to District		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
(Less) Parking Revenues to Parking Operator		<u>(\$2,560)</u>	<u>(\$2,809)</u>	<u>(\$3,027)</u>	<u>(\$3,211)</u>	<u>(\$3,359)</u>	<u>(\$3,495)</u>	<u>(\$3,564)</u>	<u>(\$3,636)</u>	<u>(\$3,708)</u>	<u>(\$3,820)</u>
<b>Effective Gross Income</b>		<b>\$230,765</b>	<b>\$261,203</b>	<b>\$283,768</b>	<b>\$303,148</b>	<b>\$319,438</b>	<b>\$325,759</b>	<b>\$332,273</b>	<b>\$338,919</b>	<b>\$345,697</b>	<b>\$352,575</b>
<b>II. Expenses</b>											
Room Expenses		(\$28,513)	(\$30,585)	(\$31,697)	(\$33,090)	(\$34,178)	(\$34,863)	(\$35,560)	(\$36,271)	(\$36,996)	(\$37,736)
Other Expenses		<u>(\$82,415)</u>	<u>(\$87,143)</u>	<u>(\$91,712)</u>	<u>(\$97,575)</u>	<u>(\$102,492)</u>	<u>(\$104,542)</u>	<u>(\$106,633)</u>	<u>(\$108,765)</u>	<u>(\$110,942)</u>	<u>(\$113,161)</u>
<b>Total Departmental Expenses</b>		<b>(\$110,928)</b>	<b>(\$117,728)</b>	<b>(\$123,409)</b>	<b>(\$130,665)</b>	<b>(\$136,670)</b>	<b>(\$139,405)</b>	<b>(\$142,193)</b>	<b>(\$145,036)</b>	<b>(\$147,938)</b>	<b>(\$150,897)</b>
(Less) Overhead Expenses		(\$54,817)	(\$56,842)	(\$58,610)	(\$60,280)	(\$61,831)	(\$63,067)	(\$64,329)	(\$65,615)	(\$66,928)	(\$68,266)
(Less) Base Fee		(\$6,912)	(\$7,824)	(\$8,500)	(\$9,081)	(\$9,569)	(\$9,760)	(\$9,955)	(\$10,154)	(\$10,358)	(\$10,565)
(Less) Total Fixed Charges		(\$6,743)	(\$6,973)	(\$7,177)	(\$7,371)	(\$7,556)	(\$7,707)	(\$7,861)	(\$8,018)	(\$8,179)	(\$8,342)
(Less) Reserve for Replacement		<u>(\$2,304)</u>	<u>(\$5,216)</u>	<u>(\$8,500)</u>	<u>(\$9,081)</u>	<u>(\$9,569)</u>	<u>(\$13,014)</u>	<u>(\$13,274)</u>	<u>(\$13,539)</u>	<u>(\$13,810)</u>	<u>(\$14,086)</u>
<b>Total Undistributed/Fixed Expenses</b>		<b>(\$70,776)</b>	<b>(\$76,855)</b>	<b>(\$82,786)</b>	<b>(\$85,813)</b>	<b>(\$88,525)</b>	<b>(\$93,549)</b>	<b>(\$95,419)</b>	<b>(\$97,327)</b>	<b>(\$99,274)</b>	<b>(\$101,260)</b>
<b>Total Expenses</b>		<b>(\$181,704)</b>	<b>(\$194,583)</b>	<b>(\$206,196)</b>	<b>(\$216,478)</b>	<b>(\$225,195)</b>	<b>(\$232,954)</b>	<b>(\$237,612)</b>	<b>(\$242,363)</b>	<b>(\$247,212)</b>	<b>(\$252,157)</b>
<b>III. Net Operating Income - Before Ground Rent</b>		<b>\$49,061</b>	<b>\$66,620</b>	<b>\$77,572</b>	<b>\$86,670</b>	<b>\$94,243</b>	<b>\$92,805</b>	<b>\$94,661</b>	<b>\$96,556</b>	<b>\$98,485</b>	<b>\$100,418</b>
<b>IV. (Less) Ground Lease Payments @</b>	6.5%	<u>(\$15,166)</u>	<u>(\$17,161)</u>	<u>(\$18,642)</u>	<u>(\$19,913)</u>	<u>(\$20,982)</u>	<u>(\$21,401)</u>	<u>(\$21,829)</u>	<u>(\$22,266)</u>	<u>(\$22,711)</u>	<u>(\$23,166)</u>
<b>V. Net Operating Income - After Ground Rent</b>		<b>\$33,895</b>	<b>\$49,459</b>	<b>\$58,930</b>	<b>\$66,757</b>	<b>\$73,261</b>	<b>\$71,404</b>	<b>\$72,832</b>	<b>\$74,290</b>	<b>\$75,774</b>	<b>\$77,253</b>
<b>VI. Return on Investment (ROI)</b>											
Investment @	\$1,075,290	3.2%	4.6%	5.5%	<b>6.2%</b>	6.8%	6.6%	6.8%	6.9%	7.0%	7.2%

(1) Adjusted by KMA to exclude the payment of prevailing wages.

# Attachment C to Agenda File No. 2018-0070

WITH PUBLIC FUND CONTRIBUTION

TABLE 4

**DEVELOPER RETURN ON INVESTMENT (\$000's)**  
**CHULA VISTA BAYFRONT**  
**SAN DIEGO UNIFIED PORT DISTRICT**

<b>RIDA Investment - with Public Contribution</b>	
Parcel H-3 Site Preparation	\$0 M
Public Improvements	\$0 M
Parking Improvements	\$0 M
Resort Hotel and Convention Center	<u>\$785.0</u> M
<b>Total Developer Investment</b>	<b>\$785.0 M</b>

Operating Year:	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>
<b>I. Gross Revenue</b>										
Occupancy	66.0%	71.0%	75.0%	78.0%	80.0%	80.0%	80.0%	80.0%	80.0%	80.0%
ADR	\$249	\$270	\$278	\$286	\$295	\$301	\$307	\$313	\$319	\$326
Room Revenue	\$95,935	\$111,893	\$121,743	\$130,411	\$137,767	\$140,523	\$143,333	\$146,200	\$149,124	\$152,106
Other Revenue	<u>\$137,390</u>	<u>\$152,119</u>	<u>\$165,051</u>	<u>\$175,948</u>	<u>\$185,029</u>	<u>\$188,731</u>	<u>\$192,505</u>	<u>\$196,354</u>	<u>\$200,282</u>	<u>\$204,289</u>
Total Gross Revenue	\$233,325	\$264,012	\$286,794	\$306,359	\$322,796	\$329,254	\$335,838	\$342,554	\$349,406	\$356,395
(Less) Parking Revenue to District	(\$731)	(\$803)	(\$865)	(\$917)	(\$960)	(\$979)	(\$1,018)	(\$1,039)	(\$1,060)	(\$1,091)
(Less) Parking Revenue to Parking Operator	<u>(\$2,560)</u>	<u>(\$2,809)</u>	<u>(\$3,027)</u>	<u>(\$3,211)</u>	<u>(\$3,359)</u>	<u>(\$3,495)</u>	<u>(\$3,564)</u>	<u>(\$3,636)</u>	<u>(\$3,708)</u>	<u>(\$3,820)</u>
Effective Gross Income	\$230,033	\$260,400	\$282,903	\$302,231	\$318,478	\$324,780	\$331,255	\$337,880	\$344,638	\$351,484
<b>II. Expenses</b>										
Room Expenses	(\$28,513)	(\$30,585)	(\$31,697)	(\$33,090)	(\$34,178)	(\$34,863)	(\$35,560)	(\$36,271)	(\$36,996)	(\$37,736)
Other Expenses	<u>(\$82,415)</u>	<u>(\$87,143)</u>	<u>(\$91,712)</u>	<u>(\$97,575)</u>	<u>(\$102,492)</u>	<u>(\$104,542)</u>	<u>(\$106,633)</u>	<u>(\$108,765)</u>	<u>(\$110,942)</u>	<u>(\$113,161)</u>
Total Departmental Expenses	(\$110,928)	(\$117,728)	(\$123,409)	(\$130,665)	(\$136,670)	(\$139,405)	(\$142,193)	(\$145,036)	(\$147,938)	(\$150,897)
(Less) Overhead Expenses	(\$54,817)	(\$56,842)	(\$58,610)	(\$60,280)	(\$61,831)	(\$63,067)	(\$64,329)	(\$65,615)	(\$66,928)	(\$68,266)
(Less) Base Fee	(\$6,912)	(\$7,824)	(\$8,500)	(\$9,081)	(\$9,569)	(\$9,760)	(\$9,955)	(\$10,154)	(\$10,358)	(\$10,565)
(Less) Total Fixed Charges	(\$6,743)	(\$6,973)	(\$7,177)	(\$7,371)	(\$7,556)	(\$7,707)	(\$7,861)	(\$8,018)	(\$8,179)	(\$8,342)
(Less) Reserve for Replacement	<u>(\$2,304)</u>	<u>(\$5,216)</u>	<u>(\$8,500)</u>	<u>(\$9,081)</u>	<u>(\$9,569)</u>	<u>(\$13,014)</u>	<u>(\$13,274)</u>	<u>(\$13,539)</u>	<u>(\$13,810)</u>	<u>(\$14,086)</u>
Total Undistributed/Fixed Expenses	(\$70,776)	(\$76,855)	(\$82,786)	(\$85,813)	(\$88,525)	(\$93,549)	(\$95,419)	(\$97,327)	(\$99,274)	(\$101,260)
Total Expenses	<u>(\$181,704)</u>	<u>(\$194,583)</u>	<u>(\$206,196)</u>	<u>(\$216,478)</u>	<u>(\$225,195)</u>	<u>(\$232,954)</u>	<u>(\$237,612)</u>	<u>(\$242,363)</u>	<u>(\$247,212)</u>	<u>(\$252,157)</u>
<b>III. Net Operating Income - Before Ground Rent</b>	\$48,329	\$65,817	\$76,707	\$85,753	\$93,283	\$91,827	\$93,643	\$95,517	\$97,426	\$99,327
<b>IV. (Less) Ground Lease Payments @</b>	<u>\$0</u>									
<b>V. Net Operating Income - After Ground Rent</b>	\$48,329	\$65,817	\$76,707	\$85,753	\$93,283	\$91,827	\$93,643	\$95,517	\$97,426	\$99,327
<b>VI. Return on Investment (ROI)</b>										
Investment @ \$785,000	6.2%	8.4%	9.8%	<b>10.9%</b>	11.9%	11.7%	11.9%	12.2%	12.4%	12.7%

TABLE 5

## Attachment C to Agenda File No. 2018-0070

DEVELOPER INTERNAL RATE OF RETURN (\$000s)  
 CHULA VISTA BAYFRONT  
 SAN DIEGO UNIFIED PORT DISTRICT

	Year	Developer	Effective	(Less)	NOI Before	(Less)	NOI After	(Less)	NOI	(Less)	Annual
		Equity	Gross	Operating	Ground	Ground	Ground	Additional	Before	Debt Service	Cash Flow
		Contribution	Income	Expenses	Rent	Rent Payment	Rent	Rent (2)	Debt Service	Debt Service	After Debt Service
Construction	1	(\$138,000) <sup>(1)</sup>	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	(\$138,000)
	2	(\$136,800) <sup>(1)</sup>	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	(\$136,800)
	3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	4	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Operations per RIDA	5	\$0	\$230,033	(\$181,705)	\$48,328	\$0	\$48,328	\$0	\$48,328	(\$38,705)	\$9,623
	6	\$0	\$260,400	(\$194,583)	\$65,817	\$0	\$65,817	\$0	\$65,817	(\$38,705)	\$27,112
	7	\$0	\$282,903	(\$206,196)	\$76,707	\$0	\$76,707	\$0	\$76,707	(\$38,705)	\$38,002
	8	\$0	\$302,231	(\$216,478)	\$85,753	\$0	\$85,753	\$0	\$85,753	(\$38,705)	\$47,048
	9	\$0	\$318,478	(\$225,196)	\$93,282	\$0	\$93,282	(\$170)	\$93,112	(\$38,705)	\$54,407
	10	\$0	\$324,849	(\$232,954)	\$91,895	\$0	\$91,895	\$0	\$91,895	(\$38,705)	\$53,190
	11	\$0	\$331,345	(\$237,613)	\$93,732	\$0	\$93,732	(\$224)	\$93,508	(\$38,705)	\$54,803
	12	\$0	\$337,972	(\$242,364)	\$95,608	\$0	\$95,608	(\$525)	\$95,083	(\$38,705)	\$56,378
	13	\$0	\$344,731	(\$247,213)	\$97,518	\$0	\$97,518	(\$832)	\$96,686	(\$38,705)	\$57,981
	14	\$0	\$351,627	(\$252,156)	\$99,471	\$0	\$99,471	(\$1,146)	\$98,325	(\$38,705)	\$59,620
Operations per KMA	15	\$0	\$362,175	(\$259,720)	\$102,455	\$0	\$102,455	(\$1,625)	\$100,830	(\$38,705)	\$62,125
	16	\$0	\$373,041	(\$267,512)	\$105,529	\$0	\$105,529	(\$2,119)	\$103,410	(\$38,705)	\$64,705
	17	\$0	\$384,232	(\$275,537)	\$108,695	\$0	\$108,695	(\$2,628)	\$106,067	(\$38,705)	\$67,362
	18	\$0	\$395,759	(\$283,803)	\$111,956	\$0	\$111,956	(\$3,152)	\$108,804	(\$38,705)	\$70,099
	19	\$0	\$407,632	(\$292,317)	\$115,314	\$0	\$115,314	(\$3,691)	\$111,623	(\$38,705)	\$72,918
	20	\$0	\$419,861	(\$301,087)	\$118,774	(\$3,000)	\$115,774	(\$3,747)	\$112,026	(\$38,705)	\$73,321
	21	\$0	\$432,456	(\$310,120)	\$122,337	(\$3,000)	\$119,337	(\$4,320)	\$115,017	(\$38,705)	\$76,312
	22	\$0	\$445,430	(\$319,423)	\$126,007	(\$3,000)	\$123,007	(\$4,909)	\$118,098	(\$38,705)	\$79,393
	23	\$0	\$458,793	(\$329,006)	\$129,787	(\$3,000)	\$126,787	(\$5,517)	\$121,270	(\$38,705)	\$82,565
	24	\$0	\$472,557	(\$338,876)	\$133,681	(\$3,000)	\$130,681	(\$6,142)	\$124,538	(\$38,705)	\$85,833
	25	\$0	\$486,734	(\$349,042)	\$137,691	(\$3,500)	\$134,191	(\$6,704)	\$127,488	(\$38,705)	\$88,783
	26	\$0	\$501,336	(\$359,514)	\$141,822	(\$3,500)	\$138,322	(\$7,367)	\$130,955	(\$38,705)	\$92,250
	27	\$0	\$516,376	(\$370,299)	\$146,077	(\$3,500)	\$142,577	(\$8,051)	\$134,526	(\$38,705)	\$95,821
	28	\$0	\$531,867	(\$381,408)	\$150,459	(\$3,500)	\$146,959	(\$8,755)	\$138,204	(\$38,705)	\$99,499
29	\$0	\$547,823	(\$392,850)	\$154,973	(\$3,500)	\$151,473	(\$9,480)	\$141,992	(\$38,705)	\$103,287	
30	\$0	\$564,258	(\$404,636)	\$159,622	(\$3,500)	\$156,122	(\$10,227)	\$145,895	(\$38,705)	\$107,190	
31	\$0	\$581,185	(\$416,775)	\$164,411	(\$3,500)	\$160,911	(\$10,997)	\$149,914	(\$38,705)	\$111,209	
32	\$0	\$598,621	(\$429,278)	\$169,343	(\$3,500)	\$165,843	(\$11,789)	\$154,054	(\$38,705)	\$115,349	
33	\$0	\$616,580	(\$442,156)	\$174,423	(\$3,500)	\$170,923	(\$12,606)	\$158,318	(\$38,705)	\$119,613	
34	\$0	\$635,077	(\$455,421)	\$179,656	(\$3,500)	\$176,156	(\$13,446)	\$162,709	(\$38,705)	\$124,004	
35	\$0	\$654,129	(\$469,084)	\$185,045	(\$3,500)	\$181,545	(\$14,312)	\$167,233	\$0	\$167,233	
36	\$0	\$673,753	(\$483,156)	\$190,597	(\$3,500)	\$187,097	(\$15,204)	\$171,892	\$0	\$171,892	
37	\$0	\$693,966	(\$497,651)	\$196,315	(\$3,500)	\$192,815	(\$16,123)	\$176,692	\$0	\$176,692	
38	\$0	\$714,785	(\$512,580)	\$202,204	(\$3,500)	\$198,704	(\$17,069)	\$181,635	\$0	\$181,635	

TABLE 5

## Attachment C to Agenda File No. 2018-0070

DEVELOPER INTERNAL RATE OF RETURN (\$000s)  
 CHULA VISTA BAYFRONT  
 SAN DIEGO UNIFIED PORT DISTRICT

Year	Developer	Effective	(Less)	NOI Before	(Less)	NOI After	(Less)	NOI	(Less)	Annual
	Equity	Gross	Operating	Ground	Ground	Ground	Additional	Before	Debt Service	Cash Flow
	Contribution	Income	Expenses	Rent	Rent Payment	Rent	Rent (2)	Debt Service	Debt Service	After Debt Service
39	\$0	\$736,006	(\$527,958)	\$208,048	(\$51,091)	\$156,958	\$0	\$156,958	\$0	\$156,958
40	\$0	\$758,087	(\$543,797)	\$214,290	(\$52,623)	\$161,667	\$0	\$161,667	\$0	\$161,667
41	\$0	\$780,829	(\$560,110)	\$220,719	(\$54,202)	\$166,517	\$0	\$166,517	\$0	\$166,517
42	\$0	\$804,254	(\$576,914)	\$227,340	(\$55,828)	\$171,512	\$0	\$171,512	\$0	\$171,512
43	\$0	\$828,382	(\$594,221)	\$234,160	(\$57,503)	\$176,657	\$0	\$176,657	\$0	\$176,657
44	\$0	\$853,233	(\$612,048)	\$241,185	(\$59,228)	\$181,957	\$0	\$181,957	\$0	\$181,957
45	\$0	\$878,830	(\$630,409)	\$248,421	(\$61,005)	\$187,416	\$0	\$187,416	\$0	\$187,416
46	\$0	\$905,195	(\$649,322)	\$255,873	(\$62,835)	\$193,038	\$0	\$193,038	\$0	\$193,038
47	\$0	\$932,351	(\$668,801)	\$263,550	(\$64,720)	\$198,829	\$0	\$198,829	\$0	\$198,829
48	\$0	\$960,321	(\$688,865)	\$271,456	(\$66,662)	\$204,794	\$0	\$204,794	\$0	\$204,794
49	\$0	\$989,131	(\$709,531)	\$279,600	(\$77,565)	\$202,035	\$0	\$202,035	\$0	\$202,035
50	\$0	\$1,018,805	(\$730,817)	\$287,988	(\$79,892)	\$208,096	\$0	\$208,096	\$0	\$208,096
51	\$0	\$1,049,369	(\$752,742)	\$296,627	(\$82,288)	\$214,339	\$0	\$214,339	\$0	\$214,339
52	\$0	\$1,080,850	(\$775,324)	\$305,526	(\$84,757)	\$220,769	\$0	\$220,769	\$0	\$220,769
53	\$0	\$1,113,276	(\$798,584)	\$314,692	(\$87,300)	\$227,392	\$0	\$227,392	\$0	\$227,392
54	\$0	\$1,146,674	(\$822,541)	\$324,133	(\$89,919)	\$234,214	\$0	\$234,214	\$0	\$234,214
55	\$0	\$1,181,074	(\$847,217)	\$333,857	(\$92,616)	\$241,240	\$0	\$241,240	\$0	\$241,240
56	\$0	\$1,216,506	(\$872,634)	\$343,872	(\$95,395)	\$248,478	\$0	\$248,478	\$0	\$248,478
57	\$0	\$1,253,002	(\$898,813)	\$354,189	(\$98,257)	\$255,932	\$0	\$255,932	\$0	\$255,932
58	\$0	\$1,290,592	(\$925,777)	\$364,814	(\$101,204)	\$263,610	\$0	\$263,610	\$0	\$263,610
59	\$0	\$1,329,309	(\$953,551)	\$375,759	(\$104,240)	\$271,518	\$0	\$271,518	\$0	\$271,518
60	\$0	\$1,369,189	(\$982,157)	\$387,031	(\$107,368)	\$279,664	\$0	\$279,664	\$0	\$279,664
61	\$0	\$1,410,264	(\$1,011,622)	\$398,642	(\$110,589)	\$288,054	\$0	\$288,054	\$0	\$288,054
62	\$0	\$1,452,572	(\$1,041,971)	\$410,602	(\$113,906)	\$296,695	\$0	\$296,695	\$0	\$296,695
63	\$0	\$1,496,149	(\$1,073,230)	\$422,920	(\$117,323)	\$305,596	\$0	\$305,596	\$0	\$305,596
64	\$0	\$1,541,034	(\$1,105,427)	\$435,607	(\$120,843)	\$314,764	\$0	\$314,764	\$0	\$314,764
65	\$0	\$1,587,265	(\$1,138,589)	\$448,676	(\$124,468)	\$324,207	\$0	\$324,207	\$0	\$324,207
66	\$0	\$1,634,883	(\$1,172,747)	\$462,136	(\$128,203)	\$333,933	\$0	\$333,933	\$0	\$333,933

Developer Leveraged Internal Rate of Return (IRR)	13.8%
---	-------

(1) Assumes JPA investment is contributed pari passu with Developer equity investment before debt has been funded to Project.

(2) Reflects JPA participation in 20% of revenue above a target 11.0% return threshold on \$785 M.

# Attachment C to Agenda File No. 2018-0070

TABLE 6

**JPA RESIDUAL REVENUES ANALYSIS (\$000's)**  
**CHULA VISTA BAYFRONT**  
**PORT OF SAN DIEGO**

		A	B	C	D	E	F	G	H	I	J	K	L	
		Residual Revenues After Debt Service							Tier 1:	Tier 2:	Tier 3:	Tier 4:	Tier 5:	
		District Annual Support Payments	Other Project Generated and Existing Revenues (1)	Grand Total Revenues Available for Debt Service	(Less) Bond Debt Service	Residual Revenues	Additional Rent (2)	Residual Revenues After Additional Rent	Reimbursement of District Annual Support Payments	City Fire O&M Reimbursements	Payback of General Fund Obligations	Deposit to Debt Service Reserves	Net Residual Revenues	
Year														
Construction	1	\$0	\$3,490	\$3,490	\$0	\$3,490	\$0	\$3,490	\$0	\$0	(\$3,490)	\$0	\$0	
	2	\$0	\$3,675	\$3,675	\$0	\$3,675	\$0	\$3,675	\$0	\$0	(\$3,675)	\$0	\$0	
	3	\$0	\$3,857	\$3,857	\$0	\$3,857	\$0	\$3,857	\$0	\$0	(\$3,857)	\$0	\$0	
	4	\$0	\$4,045	\$4,045	\$0	\$4,045	\$0	\$4,045	\$0	(\$449)	(\$3,596)	\$0	\$0	
Operations per RIDA	5	\$5,000	\$23,381	\$28,381	(\$16,197)	\$12,184	\$0	\$12,184	(\$5,000)	(\$2,439)	(\$4,745)	\$0	\$0	
	6	\$5,000	\$26,095	\$31,095	(\$17,741)	\$13,354	\$0	\$13,354	(\$5,000)	(\$3,737)	(\$4,617)	\$0	\$0	
	7	\$5,000	\$28,171	\$33,171	(\$18,942)	\$14,229	\$0	\$14,229	(\$5,000)	(\$3,735)	(\$5,494)	\$0	\$0	
	8	\$5,000	\$30,305	\$35,305	(\$20,141)	\$15,164	\$0	\$15,164	(\$5,000)	(\$3,847)	(\$6,316)	\$0	\$0	
	9	\$5,000	\$31,733	\$36,733	(\$20,953)	\$15,779	\$170	\$15,950	(\$5,000)	(\$3,963)	(\$6,987)	\$0	\$0	
	10	\$5,000	\$32,440	\$37,440	(\$21,355)	\$16,085	\$0	\$16,085	(\$5,000)	(\$4,081)	(\$7,003)	\$0	\$0	
	11	\$5,000	\$33,146	\$38,146	(\$21,761)	\$16,386	\$224	\$16,609	(\$5,000)	(\$4,204)	(\$6,275)	(\$1,130)	\$0	
	12	\$5,000	\$33,869	\$38,869	(\$22,169)	\$16,701	\$525	\$17,225	(\$5,000)	(\$4,330)	(\$6,170)	(\$1,726)	\$0	
	13	\$5,000	\$34,608	\$39,608	(\$22,592)	\$17,016	\$832	\$17,848	(\$5,000)	(\$4,460)	(\$6,355)	(\$2,034)	\$0	
	14	\$5,000	\$35,364	\$40,364	(\$23,024)	\$17,340	\$1,146	\$18,486	(\$5,000)	(\$4,594)	(\$6,546)	(\$2,347)	\$0	
	Operations per KMA	15	\$6,000	\$36,379	\$42,379	(\$24,172)	\$18,207	\$1,625	\$19,832	(\$6,000)	(\$4,731)	(\$6,742)	(\$2,359)	\$0
		16	\$6,000	\$37,423	\$43,423	(\$24,768)	\$18,655	\$2,119	\$20,774	(\$6,000)	(\$4,873)	(\$6,944)	(\$2,957)	\$0
		17	\$6,000	\$38,498	\$44,498	(\$25,383)	\$19,114	\$2,628	\$21,742	(\$6,000)	(\$5,020)	(\$7,152)	(\$3,570)	\$0
		18	\$6,000	\$39,604	\$45,604	(\$26,014)	\$19,590	\$3,152	\$22,742	(\$6,000)	(\$5,170)	(\$7,367)	(\$4,204)	\$0
19		\$6,000	\$40,742	\$46,742	(\$26,661)	\$20,081	\$3,691	\$23,772	(\$6,000)	(\$5,325)	(\$7,588)	(\$627)	\$4,232	
20		\$3,000	\$44,913	\$47,913	(\$27,332)	\$20,581	\$3,747	\$24,328	(\$3,000)	(\$5,485)	(\$7,816)	\$0	\$8,028	
21		\$3,000	\$46,118	\$49,118	(\$28,017)	\$21,101	\$4,320	\$25,421	(\$3,000)	(\$5,650)	(\$8,050)	\$0	\$8,721	
22		\$3,000	\$47,359	\$50,359	(\$28,724)	\$21,635	\$4,909	\$26,545	(\$3,000)	(\$5,819)	(\$8,292)	\$0	\$9,434	
23		\$3,000	\$48,636	\$51,636	(\$29,452)	\$22,184	\$5,517	\$27,701	(\$3,000)	(\$5,994)	(\$8,540)	\$0	\$10,166	
24		\$3,000	\$49,949	\$52,949	(\$30,203)	\$22,747	\$6,142	\$28,889	(\$3,000)	(\$6,173)	(\$8,797)	\$0	\$10,919	
25		\$3,500	\$51,802	\$55,302	(\$31,542)	\$23,760	\$6,704	\$30,463	(\$3,500)	(\$6,359)	(\$9,061)	\$0	\$11,544	
26		\$3,500	\$53,193	\$56,693	(\$32,340)	\$24,354	\$7,367	\$31,721	(\$3,500)	(\$6,549)	(\$9,332)	\$0	\$12,339	
27		\$3,500	\$54,626	\$58,126	(\$33,154)	\$24,971	\$8,051	\$33,022	(\$3,500)	(\$6,746)	(\$9,612)	\$0	\$13,164	
28		\$3,500	\$56,100	\$59,600	(\$33,996)	\$25,604	\$8,755	\$34,359	(\$3,500)	(\$6,948)	(\$9,901)	\$0	\$14,010	
29	\$3,500	\$57,617	\$61,117	(\$34,863)	\$26,254	\$9,480	\$35,734	(\$3,500)	(\$7,157)	(\$10,198)	\$0	\$14,880		
30	\$3,500	\$59,178	\$62,678	(\$35,753)	\$26,925	\$10,227	\$37,152	(\$3,500)	(\$7,371)	(\$10,504)	\$0	\$15,777		
31	\$3,500	\$60,785	\$64,285	(\$36,666)	\$27,619	\$10,997	\$38,616	(\$3,500)	(\$7,593)	(\$10,819)	\$0	\$16,704		
32	\$3,500	\$62,439	\$65,939	(\$37,613)	\$28,325	\$11,789	\$40,115	(\$3,500)	(\$7,820)	(\$11,143)	\$0	\$17,651		
33	\$3,500	\$64,141	\$67,641	(\$38,582)	\$29,059	\$12,606	\$41,664	(\$3,500)	(\$8,055)	(\$11,478)	\$0	\$18,632		
34	\$3,500	\$65,893	\$69,393	(\$39,580)	\$29,813	\$13,446	\$43,260	(\$3,500)	(\$8,297)	(\$11,822)	\$0	\$19,641		
35	\$3,500	\$67,696	\$71,196	(\$40,612)	\$30,584	\$14,312	\$44,896	(\$3,500)	(\$8,546)	(\$12,177)	\$0	\$20,674		
36	\$3,500	\$69,552	\$73,052	\$0	\$73,052	\$15,204	\$88,256	(\$3,500)	(\$8,802)	(\$12,542)	\$0	\$63,413		
37	\$3,500	\$71,462	\$74,962	\$0	\$74,962	\$16,123	\$91,085	(\$3,500)	(\$9,066)	(\$12,918)	\$0	\$65,601		
38	\$3,500	\$73,428	\$76,928	\$0	\$76,928	\$17,069	\$93,998	(\$3,500)	(\$9,338)	(\$13,306)	\$0	\$67,854		
<b>Total Cumulative Cash Flow</b>												<b>\$423,000</b>		

(1) Based on Developer pro forma (November 2017). Includes revenues from Transient Occupancy Tax, CFD Special Tax Revenues, Enhanced Infrastructure Financing District (City and County), City Sales Tax, Existing Lease Revenues, Existing RV Park TOT, and PMSA Reimbursement Revenues.

(2) JPA participation in 20% of revenue after Developer achieves target 11.0% return.

Note: The ultimate bond financing structure may require various reserves and holdbacks of the District's and City's committed revenues not currently anticipated in the KMA financial projections. In such event, the distributions to the District and City shown above may be substantially reduced and/or delayed.

**REVENUE SHARING AGREEMENT**  
**By and Between**  
**CITY OF CHULA VISTA AND SAN DIEGO UNIFIED PORT DISTRICT**  
**(Chula Vista Bayfront Resort Hotel and Convention Center and Related Public Infrastructure)**

This Revenue Sharing Agreement (“Agreement”), dated April 24, 2018, is entered into by and between the City of Chula Vista, a municipal corporation (“City”) and the San Diego Unified Port District, a public corporation (“District”). The City and District may be individually referred to herein as, a “Party”, and collectively as, the “Parties”.

**RECITALS**

WHEREAS, the City and District are parties to that certain Amended and Restated Chula Vista Bayfront Master Plan Financing Agreement dated June 20, 2017, by and between the City and the District and filed in the Office of the District Clerk as Document No. 67068 (the “Financing Agreement”); and

WHEREAS, all initially capitalized terms used herein without definition have the meanings set forth in the Financing Agreement; and

WHEREAS, the Parties are entering into a Disposition and Development Agreement (the “DDA”) of even date herewith with RIDA Chula Vista, LLC, a Delaware limited liability company (“RIDA”) which contemplates the development of a resort hotel and convention center (the “RHCC Project”) and related public infrastructure improvements; and

WHEREAS, it is expected that as part of the closing of the obligations contemplated under the DDA (“Close of Escrow”), the City and the District, through a JEPA, will issue the Revenue Bonds to support the financing of the Convention Center and the Phase 1A; and

WHEREAS, it is expected that the City and the District will be contributing the Financing Revenues pursuant to a Plan of Finance to support the Revenue Bonds; and

WHEREAS, it is expected that the RHCC Project will generate certain revenues from the operation of the RHCC Project that the Developer will share with the Parties; and

WHEREAS, this Agreement and the Financing Agreement assume the participation of County of San Diego in an Enhanced Infrastructure Financing District (EIFD) to fund a portion of the Revenue Bonds supporting Phase 1A.

NOW THEREFORE, in consideration of One Dollar and the mutual promises set forth herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1. Recitals.** The Recitals are incorporated herein by reference.
- 2. Term.** The term of the Agreement shall commence on the later to occur of (a) the date first set forth above or (b) the date the DDA is effective. This Agreement shall terminate concurrent with the DDA if the DDA is terminated prior to Close of Escrow. If Close of Escrow occurs, this Agreement shall terminate on the later to occur of: (i) full reimbursement to the Parties

of any and all amounts provided under Section 3.3, paragraphs 1-4 and 6 below; or (iii) thirty-eight (38) years. Notwithstanding the foregoing, Section 3.4 shall remain in effect in accordance with its terms.

**3. Agreements.** The Parties hereby agree as follows:

**3.1 Revenues and Existing Revenues**

“Revenues” means, collectively, moneys in an amount equivalent to each of the following sources of revenue actually received by the City or the District on a yearly basis:

A. District

(i) all Ground Lease Revenues derived from the Other Ground Leases, a replacement RV Park on parcel S1, and the RHCC Ground Lease, less a credit equal to: (1) the actual amount of the existing RV Park lease buyout payment to be paid solely by the District to Chula Vista Marina/RV Park, Ltd. (the existing RV Park lessee), in an amount not to exceed \$4,929,614; less (2) any reduction in this payment negotiated by District in consideration for District’s release of Chula Vista Marina/RV Park, Ltd. from its obligation to complete all or a portion of the demolition work at the existing RV Park site that would otherwise be required under the RV Park lease (District Clerk Document No. 14243) (the “Net RV Park Buyout Credit”);

(ii) the annual payments to be made by the District (the “District Support Payments”) for repayment of the Revenue Bonds according to the schedule set forth in Section 4 of the Conceptual Outline of Joint Exercise of Powers Authority Plan of Finance attached to the DDA as Attachment No. 8 (the “Conceptual Plan of Finance”).

B. City

(i) the TOT attributable to the RHCC Project and the existing RV Park in the CVBMP Project Area and the replacement RV Park to be constructed;

(ii) the Sales Tax;

(iii) incremental property tax (including EIFD Revenues) generated by the RHCC Project;

(iv) PMSA Revenues; and

(v) new Special Tax Revenues levied in a future Community Facilities District, equal to a 5% room revenue tax on the RHCC Project.

As used herein, “Existing Revenues” means, collectively, moneys in an amount equivalent to each of the following sources of revenue actually received by the City or the District prior to the Close of Escrow:

(i) all Ground Lease Revenues derived from the Other Ground Leases and a Replacement RV Park on parcel S1, less a credit equal to the Net RV Park Buyout Credit;

(ii) the TOT attributable to the existing RV Park in the CVBMP Project Area and the replacement RV Park to be constructed; and

(iii) the PMSA Revenues.

**3.2 Use of Existing Revenues at Close of Escrow**

Within a reasonable time prior to the Close of Escrow (not to exceed 30 days), each of the Parties shall contribute an amount of money equal to the Existing Revenues generated and actually received by each Party from and after July 1, 2018. Such Existing Revenues shall be applied at the Close of Escrow to pay financing and/or construction contingencies.

**3.3 Use of Revenues Post Close of Escrow**

For each bond year of the Revenue Bonds, after the Revenues have been applied to the payment of debt service that is due and payable on the Revenue Bonds and any required debt service reserve of the Revenue Bonds, any Revenues remaining shall be applied in the following order of priority:

1. To reimburse the District for the cumulative amount of District Support Payments actually contributed by the District and not previously reimbursed to the District; then

2. To reimburse the City for 73.6% of the cumulative actual, direct costs incurred by the City to provide fire service within the CVBMP Project Area, which is the proportionate share of such costs attributable to the RHCC Project and not previously reimbursed to the City (provided that such 73.6% reflects amounts for which the City is entitled to reimbursement *in addition to* any payments the City receives under the PMSA for fire services, as the PMSA may be amended by the Parties; reimbursement to the City under this paragraph shall not be reduced by the amount of PMSA Revenues received by the City); then

3. To reimburse the City and the District on a proportionate, pro-rata basis, for each Party's contribution of Revenues not generated by the RHCC Project, including Other Ground Leases and a Replacement RV Park on Parcel S1 less the Net RV Park Buyout Credit, TOT attributable to the existing RV Park in the CVBMP Project Area and the replacement RV Park to be constructed, and PMSA Revenues ("Existing Revenues"), as of Close of Escrow; then

4. To reimburse the City and the District on a proportionate, pro-rata basis, for each Party's contribution of Existing Revenues after Close of Escrow, continuing for thirty eight (38) years.

5. To fund an additional reserve fund or reserve fund insurance policy in the amount of one year's debt service for the Revenue Bonds; and finally

6. Any Revenues remaining after the payments described in Items (1) through (4) above will be equally distributed between the City and the District.

No interest will accrue with respect to unreimbursed Revenues contributed by the City or the District.

**3.4 Additional Rent** Pursuant to Section 5.5 of the form of RHCC Ground Lease attached to the DDA as Attachment No. 9, the Developer is required to pay to the District 20% of the Net Operating Income above an eleven percent (11%) Return on Investment (the “Additional Rent”) for Lease Year 1 through Lease Year 37 (as such terms are defined in the RHCC Ground Lease) (the “NOI Split Period”). The District will pay one half of all Additional Rent amounts actually received by the District from the Developer during the NOI Split Period to the City within thirty (30) days following the District’s receipt of such Additional Rent amounts. This obligation shall continue for so long as the District receives Additional Rent, and shall survive the earlier termination of other provisions of this Agreement.

**3.5 Operations & Maintenance Costs** The City and District agree to generally split the operation and maintenance costs (“O&M Costs”) for the RHCC Public Improvements to be paid by each Party. The District will be responsible for the O&M of the parks and all related public infrastructure located within the parks. The City will be responsible for the maintenance of streets and sanitary sewers. The City and District will split the O&M costs payable pursuant to that certain Natural Resources Management Plan by and between District and City dated June 6, 2016 filed in the Office of the District Clerk as Document No. 65065 (the “NRMP”) that are not the responsibility of a third party. The City will be responsible for funding the Transit Plan and operational costs of shuttle services as set forth in Section 7.2 of the Financing Agreement.

**3.6 EIFD Formation** District agrees to use its best efforts to secure the participation of the County of San Diego in the planned EIFD.

**4. Binding Agreement.** The Parties agree that this Agreement is a binding agreement between the Parties. Notwithstanding the binding nature of this Agreement, the Parties contemplate that future implementing agreements may be needed to implement or clarify the terms of this Agreement. To that end, the Parties agree to meet and confer in good faith in response to a request by either party regarding the implementation or clarification of this Agreement.

**5. Event of Default.** An “Event of Default” will occur under this Agreement when: (a) there is a material breach of any material condition, covenant or promise set forth herein; (b) written notice thereof has been given to the party in breach; and (c) such breach has not been cured within ten (10) business days after such notice was given to the party in breach. In the event the breach cannot reasonably be cured within such ten (10) business day period, the party in breach must commence cure of the breach within such ten (10) business day period and thereafter diligently proceed to cure such breach. A waiver by either party of any such breach shall not be construed as a waiver of any succeeding breach of the same or other condition, covenant or promise.

**6. Remedies.** The occurrence of an Event of Default shall give the non-defaulting party the right to proceed with any and all remedies available at law or equity. Such remedies may include an action for damages, an action or proceeding for specific performance, and an action or proceeding for injunctive relief. No right, power, or remedy given to the City or District by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City or District by the terms of any such instrument, or by any statute or otherwise against any other person.

**7. Notices.** The notice addresses shall be the same as those set forth in the Financing Agreement and shall be sent by certified U.S. Mail (return receipt requested) and shall be deemed delivered three days after deposit in the U.S. Mail.

**8. Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the Parties with regard to the collection and priority of the Revenue sharing between the City and the District, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties or their predecessors in interest with respect to the priority of the collection and priority of Revenue sharing between the City and the District, but shall not supersede, modify or amend the Financing Agreement.

**9. Drafting Presumption; Review Standard.** The Parties acknowledge that this Agreement has been agreed to by both the Parties, that both City and District 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 City and District 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.

**10. Governing Law.** This Agreement and all of the rights and obligations of the Parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of California.

[Signatures appear on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and the year first set forth above.

CITY:

CITY OF CHULA VISTA

By: \_\_\_\_\_  
Gary Halbert, City Manager

ATTEST:

\_\_\_\_\_  
Kerry K. Bigelow, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Glen R. Googins, City Attorney

DISTRICT:

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

SAN DIEGO UNIFIED PORT DISTRICT  
a public corporation

By: \_\_\_\_\_  
Assistant/Deputy

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

April 5, 2018

Ms. Stephanie Shook  
Project Manager  
Real Estate Portfolio Management  
Port of San Diego  
3165 Pacific Coast Highway  
San Diego, California 92101

Dear Ms. Shook:

Pursuant to your request, we have drafted this letter summarizing our consultation relative to the proposed 1,600-room Chula Vista Bayfront Resort Hotel and Convention Center (RHCC) As directed by you, we have completed a review of RIDA's most recent November 2017 projections outlining its draft development budget and proforma for the proposed RHCC project.

After reviewing the recent RIDA submittal in detail, our primary focus was an analysis of the presented proforma. Based on our estimated operating results for the subject hotel communicated to Port staff in prior reports, we evaluated the presented revenue and expense line items identified by RIDA and compared these estimates to both prior submittals by RIDA, as well as our own aforementioned estimates. This letter is intended to comment on the revised projections provided to us by RIDA.

In summary, it is our opinion that the most recent projections provided by RIDA can be considered reasonable, though slightly conservative. As demonstrated herein, RIDA's revised projections are relatively in line with our estimated operating results with the notable exception of property taxes. Our projections of property taxes are based on a capitalization rate applied to projected cash flows to derive a market value for the proposed project; For the purposes of our projections, we have used 1.1 percent of the estimated market value of the development. All things considered and given our long involvement with this project and RIDA in particular, it is worthwhile to note that the most recent projections provided by RIDA are more in line with our estimated performance of the RHCC than ever before.

## **BACKGROUND**

Previously, CBRE Hotels interacted directly with RIDA officials for an approximately five-month period, beginning in April 2015. During that time, we reviewed information provided by RIDA

relative to the development costs to construct the proposed project and the estimated operating results for a projected ten-year operational period. Through the exchange of additional documents and telephone calls, CBRE Hotels and RIDA worked together at the Port's request to further refine the projected operating results of the proposed hotel in order to better reflect actual revenue and expense levels and the resulting profitability figures achieved by comparable hotels that were selected primarily based on their size, location, and market positioning and orientation.

Negotiations between the Port and RIDA slowed as both sides continued to evaluate their options and refine their analysis to secure a development and financing agreement that would be mutually agreeable to all parties involved. Following months of refining their proposal, RIDA effectively "returned to the negotiating table" in a April 2016 presentation, which was the primary subject of a revised letter provided by us in 2016, and the analysis contained therein. In the 44-page presentation submittal made to the Port in April, RIDA outlined their understanding of the economics required for the proposed project to proceed forward.

In July of 2016, CBRE Hotels performed an analysis and review of RIDA's development submittal for a revised 1,450 room hotel. The 2016 analysis included a review of the operating performance of comparable hotels on a local and regional basis to determine the anticipated operating performance of RIDA's proposed hotel.

During the course of our 2016 analysis relative to the stated direction, we reviewed the following materials provided in detail:

- ✓ RIDA's space allocation by hotel component and construction costs relative to the proposed project, dated April 2016, showing a hard construction cost total of approximately \$325 million.
- ✓ RIDA's FF&E, OS&E, and related budget for the proposed 1,450-room hotel, dated April 2016, estimating these costs to be \$55.0 million.
- ✓ RIDA's 10-year pro forma analysis of the anticipated operating results (with and without ground lease payments) of the proposed hotel on a calendar year basis from 2021 to 2030 dated September 8, 2016.
- ✓ Renderings provided by RIDA and prepared by HKS Hospitality Group and dated March 25, 2016.
- ✓ A March 2016 presentation by RIDA outlining the public private partnership deal points, revised development budget, revised proforma, HKS concept package, and a revised space plan.
- ✓ Updated construction costs provided by RIDA and dated April 2016 showing the total project cost to be approximately \$510 million.

## **CURRENT REVISED ANALYSIS**

The purpose of our current revised analysis has been to project operating results for a now revised 1,600 room resort development. We were provided with updated plans, an operating

pro-forma, and a development budget for the revised project. We reviewed the following materials provided, in detail:

- ✓ RIDA's estimated total construction cost of the proposed project, including financing costs, to be approximately \$1.1 billion.
- ✓ RIDA's 10-year pro forma analysis of the anticipated operating results of the proposed hotel on a calendar year basis from January 1, 2022 to December 31, 2031, noting an approximately \$86.2 million NOI in year four of operations (2025).
- ✓ Developer's revised space allocation program.

To facilitate your understanding and internal evaluation of the proposed project we have presented the following items herein, and applicable commentary as it relates to our understanding of the planned 1,600-room Chula Vista Bayfront Resort Hotel and Convention Center. This analysis is intended to serve as a basis for you to engage in internal underwriting of the proposed project that accurately reflects the stated goals and objectives of the Port. We have provided the following:

- ✓ RIDA's current, revised projections for the subject in a stabilized year, as stated in 2018 dollars. To determine the subject's financial performance as if open and stabilized in current value dollars we discounted RIDA's 2031 calendar year at a rate of 3.0 percent annually on an unrounded basis.
- ✓ In aggregate, the historical performance of the subject's competitive set from 2013 to 2017. Since we have received these properties' performance statistics in confidence, we cannot reveal their performance on an individual basis.
- ✓ Our projected performance of the subject's anticipated revenues and expenses on a line item basis in a stabilized year. Our estimates were derived from a review of convention center and resort hotels considered to be comparable to the proposed subject based on their location, size, and market orientation. The individual tables provided compare our estimates to that of RIDA in a stabilized year.
- ✓ A ten-year pro forma outlining our estimates of operating revenues, expenses and net operating income for the proposed 1,600-room Chula Vista Bayfront Resort Hotel and Convention Center for the period from January 1, 2022 to December 31, 2031, as well as a stabilized year estimate in current value dollars.

The following page sets forth RIDA's estimated performance of the proposed subject hotel, followed by our updated and revised detailed analysis based on our understanding of the project and the historical operations of comparable convention center and resort hotels. It should be noted that given the uncertainty as to what the actual ground lease terms will be, we have not included a ground rent in the presentation of RIDA's stabilized year of operation or in our estimated operating performance of the subject hotel.

**RIDA STABILIZED YEAR ESTIMATE****RIDA Chula Vista Resort**  
RIDA Pro-Forma Representative Year of Operation

Number of Units:
Number of Annual Rooms Available:
Number of Rooms Occupied:
Annual Occupancy:
Average Daily Rate:
Revenue Per Available Room:

Stated in 2018 Dollars			
	1,600		
	584,000		
	467,800		
	80.1%		
	\$221.00		
	\$177.03		

Revenues
Rooms
Food & Beverage
Spa
Other Operated Departments
Total Revenues

Amount	Ratio	Per Room	P.O.R.
\$103,576,785	43.3%	\$64,735	\$221.41
111,876,900	46.8%	69,923	239.16
2,098,692	0.9%	1,312	4.49
21,408,429	9.0%	13,380	45.76
238,960,806	100.0%	149,351	510.82

Departmental Expenses
Rooms
Food & Beverage
Spa
Other Operated Departments
Total Departmental Expenses

25,696,380	24.8%	16,060	54.93
67,769,639	60.6%	42,356	144.87
1,595,469	76.0%	997	3.41
7,188,122	33.6%	4,493	15.37
102,249,610	42.8%	63,906	218.58

Departmental Profit
---------------------

136,711,196	57.2%	85,444	292.24
-------------	-------	--------	--------

Undistributed Expenses
Administrative & General
Information and Telecommunication Systems
Marketing
Property Operation and Maintenance
Utility Costs
Total Undistributed Operating Expenses

12,374,929	5.2%	7,734	26.45
5,999,181	2.5%	3,749	12.82
13,954,736	5.8%	8,722	29.83
8,851,686	3.7%	5,532	18.92
5,305,292	2.2%	3,316	11.34
46,485,824	19.5%	29,054	99.37

Gross Operating Profit
------------------------

90,225,372	37.8%	56,391	192.87
------------	-------	--------	--------

Base Management Fee
---------------------

7,410,078	3.1%	4,631	15.84
-----------	------	-------	-------

Fixed Expenses
Property Taxes
Insurance
Total Fixed Expenses

3,301,933	1.4%	2,064	7.06
2,253,268	0.9%	1,408	4.82
5,555,201	2.3%	3,472	11.88

Net Operating Income Before Reserve
-------------------------------------

77,260,092	32.3%	48,288	165.16
------------	-------	--------	--------

FF&E Reserve
--------------

9,558,432	4.0%	5,974	20.43
-----------	------	-------	-------

Net Operating Income After Reserve
------------------------------------

\$67,701,660	28.3%	\$42,314	\$144.72
--------------	-------	----------	----------

Source: RIDA

Attachment E to Agenda File No. 2018-0070

As discussed, the subject will be classified as a high-quality, full-service hotel. Since no comparable products currently exist in Chula Vista, our competitive set for the hotel consists of the similar hotels in the nearby cities of Coronado and San Diego. We have summarized these properties in the table below.

Competitive Lodging Market			
Hotel	Location	Rooms	Year Opened
Manchester Grand Hyatt	San Diego	1,628	1992
San Diego Marriott Marquis Marina	San Diego	1,360	1984
Sheraton San Diego Hotel & Marina	San Diego	1,053	1972
Hilton San Diego Bayfront	San Diego	1,190	2008
Hotel Del Coronado	Coronado	757	1888
Loews Coronado Bay Hotel	Coronado	439	1991
Coronado Island Marriott Resort & Spa	Coronado	300	1988
<b>Total</b>	-	<b>6,727</b>	-

A summary of historical performance for these properties since 2013 is presented in the following table.

Proposed Chula Vista Bayfront Resort Hotel and Convention Center Historical Performance of the Competitive Market									
Year	Annual Supply	Percent Change	Occupied Rooms	Percent Change	Market Occupancy	ADR	Percent Change	RevPAR	Percent Change
2013	2,455,355	N/A	1,905,991	N/A	77.6%	\$209.59	N/A	\$162.70	N/A
2014	2,455,355	0.0%	1,932,680	1.4%	78.7	219.56	4.8%	172.82	6.2%
2015	2,455,355	0.0	1,975,947	2.2	80.5	232.62	5.9	187.20	8.3
2016	2,455,355	0.0	2,001,333	1.3	81.5	237.39	2.1	193.50	3.4
2017	2,455,355	0.0	1,983,497	-0.9	80.8	246.59	3.9	199.20	2.9
CAAG	0.0%		1.0%			4.1%		5.2%	

Source: CBRE Hotels

Coming out of the recession the competitive set has experienced an increase in the number of occupied rooms in each year of the historical period, which translates to an increase in aggregate market occupancy from 77.6 percent in 2013 to 80.8 percent last year. Over the five-year historical period average daily rate has increased at an annual average rate of 4.1 percent.

To prepare estimates of future operating results for the subject, the starting point or basis is the best estimate of results that could be achieved with good management in a representative year or stabilized market, calculated in 2018 dollars.

Based on the preceding analysis of regional trends and the local competitive market, we estimate that during a representative year, the subject property could achieve a stabilized occupancy of 80 percent at an average daily room rate of \$225.00 stated in 2018 dollars. From this base, we considered the effects of inflation, additional development and occupancy levels for a ten-year operating period, from January 1, 2022 to December 31, 2031.

Our estimate of the subject's performance in a stabilized year is in line with the occupancy projected by RIDA and approximately \$4.00 greater than projected by RIDA in terms of average daily rate. Additionally, we anticipate that through strategically coordinated and robust preselling efforts the subject will ramp up and reach a stabilized level of operations faster than anticipated by RIDA. As can be seen from our estimated operating results for the subject, we are of the

opinion that RIDA's projections are generally reasonable, though as evidenced below our projections do differ in certain areas.

The estimates of revenues, costs and expenses are based on the facilities, services, and the operational characteristics of the subject based on its anticipated positioning and performance. It is our understanding that the proposed development is slated to be branded a Gaylord Hotel by Marriott. As a basis for our projections we have also considered the operating results of hotel properties with similar characteristics that are believed to operate with efficient management and proper control over costs and expenses.

We have used information on the operating performance of five other comparable facilities, with a particular focus on Gaylord-branded hotels. This information was obtained from confidential financial statements submitted in compilation of CBRE Hotels' publication *Trends in the Hotel Industry*. An analysis was performed on the operating results of four comparable Gaylord hotels across the nation as well as one local comparable hotel. All of these hotels are comparable in terms of facilities, positioning, and performance. The hotels are generally comparable due to their brand, size, operating concept, and market orientation. Given that the information is provided to us on a confidential basis, we cannot disclose the identity of the comparable hotels.

For comparison purposes to the most recent revised RIDA submission, we have presented the estimated operating performance of the subject hotel in a representative year of operation, and our operating estimates for the ten-year holding period.

## CBRE STABILIZED YEAR ESTIMATE

### RIDA Chula Vista Resort Representative Year of Operation

Number of Units:  
Number of Annual Rooms Available:  
Number of Rooms Occupied:  
Annual Occupancy:  
Average Daily Rate:  
Revenue Per Available Room:

#### Stated in 2018 Dollars

1,600  
584,000  
467,200  
80.0%  
\$225.00  
\$180.00

Revenues
Rooms
Food & Beverage
Spa
Other Operated Departments
Total Revenues

Amount	Ratio	Per Room	P.O.R.
\$105,120,000	42.9%	\$65,700	\$225.00
114,464,000	46.7%	71,540	245.00
2,336,000	1.0%	1,460	5.00
23,360,000	9.5%	14,600	50.00
245,280,000	100.0%	153,300	525.00

Departmental Expenses
Rooms
Food & Beverage
Spa
Other Operated Departments
Total Departmental Expenses

25,229,000	24.0%	15,768	54.00
68,678,000	60.0%	42,924	147.00
1,752,000	75.0%	1,095	3.75
8,176,000	35.0%	5,110	17.50
103,835,000	42.3%	64,897	222.25

Departmental Profit
---------------------

141,445,000	57.7%	88,403	302.75
-------------	-------	--------	--------

Undistributed Expenses
Administrative & General
Information and Telecommunication Systems
Marketing
Property Operation and Maintenance
Utility Costs
Total Undistributed Operating Expenses

12,800,000	5.2%	8,000	27.40
5,600,000	2.3%	3,500	11.99
13,600,000	5.5%	8,500	29.11
8,000,000	3.3%	5,000	17.12
5,120,000	2.1%	3,200	10.96
45,120,000	18.4%	28,200	96.58

Gross Operating Profit
------------------------

96,325,000	39.3%	60,203	206.18
------------	-------	--------	--------

Base Management Fee
---------------------

7,358,000	3.0%	4,599	15.75
-----------	------	-------	-------

Fixed Expenses
Property Taxes <sup>1</sup>
Insurance
Total Fixed Expenses

9,956,000	4.1%	6,223	21.31
2,080,000	0.8%	1,300	4.45
12,036,000	4.9%	7,523	25.76

Net Operating Income Before Reserve
-------------------------------------

76,931,000	31.4%	48,082	164.66
------------	-------	--------	--------

FF&E Reserve
--------------

9,811,000	4.0%	6,132	21.00
-----------	------	-------	-------

Net Operating Income After Reserve
------------------------------------

\$67,120,000	27.4%	\$41,950	\$143.66
--------------	-------	----------	----------

Source: *CBRE Hotels*

<sup>1</sup>Property Taxes calculated on estimated market value

## **ESTIMATED ANNUAL OPERATING RESULTS FOR THE HOLDING PERIOD**

The previous analysis provided for the income and expenses incurred in the operation of the subject property in the base year of operation. In the following analysis, we provide estimated income and expenses for the subject property during each year of the holding period anticipated by a typical investor. The estimate of the performance for the subject property in the base year is used as a basis for our analysis, adjusted to reflect the effects of inflation, business development, and variations in occupancy.

### **Holding Period**

For our analysis, we have used a holding period of ten years, representing the period from January 1, 2022 to December 31, 2031.

### **Inflation**

To portray price level changes during the holding period, we have assumed an inflation rate of 3.0 percent throughout the projection period. This rate reflects the consensus of several well-recognized economists for the current long-term outlook for the future movement of prices and is consistent with historical inflation rates. All expenses, save for property taxes, are projected to increase at 3.0 percent annually throughout the holding period. Property taxes are assumed to inflate at 2.0 percent annually in accordance with California's Proposition 13.

It should be noted that inflation is caused by many factors and unanticipated events and circumstances can affect the forecasted rate. Therefore, the estimated operating results computed over the projection period can vary from the actual operating results, and the variations may be material.

### **Operating Revenues and Expenses during the Holding Period**

Operating revenues and expenses for the subject are projected using a computer model developed by CBRE Hotels especially for use in hotel feasibility studies. The estimated operating revenues and expenses are based on the same assumptions used to develop our stabilized year projection. Each item, however, is adjusted to reflect the varying impact of the fixed and variable component of each, i.e., the proportion of each that is affected by variations in occupancy. In addition, each item is adjusted for inflation.

### **Estimated Annual Operating Results during the Holding Period**

The estimated annual operating results for the proposed subject beginning January 1, 2022 to December 31, 2031, are presented on the following pages.

Attachment E to Agenda File No. 2018-0070

<b>RIDA Chula Vista Resort</b> Projected Operating Results Calendar Years		<b>2022</b>		<b>2023</b>		<b>2024</b>		<b>2025</b>		<b>2026</b>	
Number of Units:		1,600		1,600		1,600		1,600		1,600	
Number of Annual Rooms Available:		584,000		584,000		584,000		584,000		584,000	
Number of Rooms Occupied:		379,600		420,480		455,520		467,200		467,200	
Annual Occupancy:		65.0%		72.0%		78.0%		80.0%		80.0%	
Average Daily Rate:		\$253.00		\$261.00		\$269.00		\$277.00		\$285.00	
Revenue Per Available Room:		\$164.45		\$187.92		\$209.82		\$221.60		\$228.00	
		Amount	Ratio	Amount	Ratio	Amount	Ratio	Amount	Ratio	Amount	Ratio
<b>Revenues</b>											
Rooms		\$96,039,000	42.8%	\$109,745,000	42.9%	\$122,535,000	42.9%	\$129,414,000	42.9%	\$133,152,000	42.9%
Food & Beverage		104,675,000	46.7%	119,426,000	46.7%	133,259,000	46.6%	140,776,000	46.6%	145,000,000	46.7%
Spa		2,136,000	1.0%	2,437,000	1.0%	2,720,000	1.0%	2,873,000	1.0%	2,959,000	1.0%
Other Operated Departments		21,362,000	9.5%	24,373,000	9.5%	27,196,000	9.5%	28,730,000	9.5%	29,592,000	9.5%
Total Revenues		224,212,000	100.0%	255,981,000	100.0%	285,710,000	100.0%	301,793,000	100.0%	310,703,000	100.0%
<b>Departmental Expenses</b>											
Rooms		25,733,000	26.8%	27,785,000	25.3%	29,748,000	24.3%	31,028,000	24.0%	31,959,000	24.0%
Food & Beverage		68,602,000	65.5%	74,840,000	62.7%	80,776,000	60.6%	84,466,000	60.0%	87,000,000	60.0%
Spa		1,602,000	75.0%	1,828,000	75.0%	2,040,000	75.0%	2,155,000	75.0%	2,219,000	75.0%
Other Operated Departments		7,477,000	35.0%	8,530,000	35.0%	9,519,000	35.0%	10,055,000	35.0%	10,357,000	35.0%
Total Departmental Expenses		103,414,000	46.1%	112,983,000	44.1%	122,083,000	42.7%	127,704,000	42.3%	131,535,000	42.3%
<b>Departmental Profit</b>		120,798,000	53.9%	142,998,000	55.9%	163,627,000	57.3%	174,089,000	57.7%	179,168,000	57.7%
<b>Undistributed Expenses</b>											
Administrative & General		14,407,000	6.4%	14,839,000	5.8%	15,284,000	5.3%	15,742,000	5.2%	16,215,000	5.2%
Information and Telecommunication Systems		6,303,000	2.8%	6,492,000	2.5%	6,687,000	2.3%	6,887,000	2.3%	7,094,000	2.3%
Marketing		15,307,000	6.8%	15,766,000	6.2%	16,239,000	5.7%	16,726,000	5.5%	17,228,000	5.5%
Property Operation and Maintenance		9,004,000	4.0%	9,274,000	3.6%	9,552,000	3.3%	9,839,000	3.3%	10,134,000	3.3%
Utility Costs		5,763,000	2.6%	5,935,000	2.3%	6,114,000	2.1%	6,297,000	2.1%	6,486,000	2.1%
Total Undistributed Operating Expenses		50,784,000	22.6%	52,306,000	20.4%	53,876,000	18.9%	55,491,000	18.4%	57,157,000	18.4%
<b>Gross Operating Profit</b>		70,014,000	31.2%	90,692,000	35.4%	109,751,000	38.4%	118,598,000	39.3%	122,011,000	39.3%
<b>Base Management Fee</b>		6,726,000	3.0%	7,679,000	3.0%	8,571,000	3.0%	9,054,000	3.0%	9,321,000	3.0%
<b>Fixed Expenses</b>											
Property Taxes		10,777,000	4.8%	10,992,000	4.3%	11,212,000	3.9%	11,436,000	3.8%	11,665,000	3.8%
Insurance		2,341,000	1.0%	2,411,000	0.9%	2,484,000	0.9%	2,558,000	0.8%	2,635,000	0.8%
Total Fixed Expenses		13,118,000	5.9%	13,403,000	5.2%	13,696,000	4.8%	13,994,000	4.6%	14,300,000	4.6%
<b>Net Operating Income Before Reserve</b>		50,170,000	22.4%	69,610,000	27.2%	87,484,000	30.6%	95,550,000	31.7%	98,390,000	31.7%
<b>FF&amp;E Reserve</b>		2,242,000	1.0%	5,120,000	2.0%	8,571,000	3.0%	9,054,000	3.0%	9,321,000	3.0%
<b>Net Operating Income After Reserve</b>		\$47,928,000	21.4%	\$64,490,000	25.2%	\$78,913,000	27.6%	\$86,496,000	28.7%	\$89,069,000	28.7%
<b>Source: CBRE Hotels</b>		Full Year of Operation									

Attachment E to Agenda File No. 2018-0070

**RIDA Chula Vista Resort**  
Projected Operating Results  
Calendar Years

	2027		2028		2029		2030		2031	
Number of Units:	1,600		1,600		1,600		1,600		1,600	
Number of Annual Rooms Available:	584,000		584,000		584,000		584,000		584,000	
Number of Rooms Occupied:	467,200		467,200		467,200		467,200		467,200	
Annual Occupancy:	80.0%		80.0%		80.0%		80.0%		80.0%	
Average Daily Rate:	\$294.00		\$302.00		\$311.00		\$321.00		\$330.00	
Revenue Per Available Room:	\$235.20		\$241.60		\$248.80		\$256.80		\$264.00	
	Amount	Ratio								
<b>Revenues</b>										
Rooms	\$137,357,000	42.9%	\$141,094,000	42.8%	\$145,299,000	42.8%	\$149,971,000	42.9%	\$154,176,000	42.8%
Food & Beverage	149,350,000	46.6%	153,830,000	46.7%	158,445,000	46.7%	163,198,000	46.7%	168,094,000	46.7%
Spa	3,048,000	1.0%	3,139,000	1.0%	3,234,000	1.0%	3,331,000	1.0%	3,430,000	1.0%
Other Operated Departments	30,480,000	9.5%	31,394,000	9.5%	32,336,000	9.5%	33,306,000	9.5%	34,305,000	9.5%
Total Revenues	320,235,000	100.0%	329,457,000	100.0%	339,314,000	100.0%	349,806,000	100.0%	360,005,000	100.0%
<b>Departmental Expenses</b>										
Rooms	32,918,000	24.0%	33,905,000	24.0%	34,923,000	24.0%	35,970,000	24.0%	37,049,000	24.0%
Food & Beverage	89,610,000	60.0%	92,298,000	60.0%	95,067,000	60.0%	97,919,000	60.0%	100,857,000	60.0%
Spa	2,286,000	75.0%	2,355,000	75.0%	2,425,000	75.0%	2,498,000	75.0%	2,573,000	75.0%
Other Operated Departments	10,668,000	35.0%	10,988,000	35.0%	11,317,000	35.0%	11,657,000	35.0%	12,007,000	35.0%
Total Departmental Expenses	135,482,000	42.3%	139,546,000	42.4%	143,732,000	42.4%	148,044,000	42.3%	152,486,000	42.4%
<b>Departmental Profit</b>	184,753,000	57.7%	189,911,000	57.6%	195,582,000	57.6%	201,762,000	57.7%	207,519,000	57.6%
<b>Undistributed Expenses</b>										
Administrative & General	16,701,000	5.2%	17,202,000	5.2%	17,718,000	5.2%	18,250,000	5.2%	18,797,000	5.2%
Information and Telecommunication Systems	7,307,000	2.3%	7,526,000	2.3%	7,752,000	2.3%	7,984,000	2.3%	8,224,000	2.3%
Marketing	17,745,000	5.5%	18,277,000	5.5%	18,826,000	5.5%	19,390,000	5.5%	19,972,000	5.5%
Property Operation and Maintenance	10,438,000	3.3%	10,751,000	3.3%	11,074,000	3.3%	11,406,000	3.3%	11,748,000	3.3%
Utility Costs	6,680,000	2.1%	6,881,000	2.1%	7,087,000	2.1%	7,300,000	2.1%	7,519,000	2.1%
Total Undistributed Operating Expenses	58,871,000	18.4%	60,637,000	18.4%	62,457,000	18.4%	64,330,000	18.4%	66,260,000	18.4%
<b>Gross Operating Profit</b>	125,882,000	39.3%	129,274,000	39.2%	133,125,000	39.2%	137,432,000	39.3%	141,259,000	39.2%
<b>Base Management Fee</b>	9,607,000	3.0%	9,884,000	3.0%	10,179,000	3.0%	10,494,000	3.0%	10,800,000	3.0%
<b>Fixed Expenses</b>										
Property Taxes	11,898,000	3.7%	12,136,000	3.7%	12,379,000	3.6%	12,627,000	3.6%	12,879,000	3.6%
Insurance	2,714,000	0.8%	2,795,000	0.8%	2,879,000	0.8%	2,966,000	0.8%	3,055,000	0.8%
Total Fixed Expenses	14,612,000	4.6%	14,931,000	4.5%	15,258,000	4.5%	15,593,000	4.5%	15,934,000	4.4%
<b>Net Operating Income Before Reserve</b>	101,663,000	31.7%	104,459,000	31.7%	107,688,000	31.7%	111,345,000	31.8%	114,525,000	31.8%
<b>FF&amp;E Reserve</b>	12,809,000	4.0%	13,178,000	4.0%	13,573,000	4.0%	13,992,000	4.0%	14,400,000	4.0%
<b>Net Operating Income After Reserve</b>	\$88,854,000	27.7%	\$91,281,000	27.7%	\$94,115,000	27.7%	\$97,353,000	27.8%	\$100,125,000	27.8%

Source: *CBRE Hotels*

Full Year of Operation

It is a pleasure to continue to work with you and all parties involved on this most interesting assignment. If we can be of any further assistance in the interpretation of our findings, please feel free to contact us.

Sincerely,

*CBRE Hotels, Consulting*

A handwritten signature in blue ink, appearing to read "Bruce Baltin". The signature is fluid and cursive, with a large initial "B" and a long, sweeping underline.

Bruce Baltin  
Managing Director

## TERMS AND CONDITIONS

1. The Terms and Conditions herein are part of an agreement for consulting services (the "Agreement") between CBRE, Inc. (the "Consultant") and the client signing this Agreement, and for whom the consulting services will be performed (the "Client"), and shall be deemed a part of such Agreement as though set forth in full therein. The Agreement shall be governed by the laws of the state where the consulting office is located for the Consultant executing this Agreement.
2. Client shall be responsible for the payment of all fees stipulated in the Agreement. Payment of the consulting fee and preparation of a consulting report (the "Consulting Report, or the "report") are not contingent upon any predetermined value or on an action or event resulting from the analyses, opinions, conclusions, or use of the Consulting Report. Final payment is due as provided in the Proposal Specifications Section of this Agreement. If a draft report is requested, the fee is considered earned upon delivery of the draft report. It is understood that the Client may cancel this assignment in writing at any time prior to delivery of the completed report. In such event, the Client is obligated only for the prorated share of the fee based upon the work completed and expenses incurred (including travel expenses to and from the job site), with a minimum charge of \$500. Additional copies of the Consulting Reports are available at a cost of \$250 per original color copy and \$100 per photocopy (black and white), plus shipping fees of \$30 per report.
3. If Consultant is subpoenaed or ordered to give testimony, produce documents or information, or otherwise required or requested by Client or a third party to participate in meetings, phone calls, conferences, litigation or other legal proceedings (including preparation for such proceedings) because of, connected with or in any way pertaining to this engagement, the Consulting Report, the Consultant's expertise, or the Property, Client shall pay Consultant's additional costs and expenses, including but not limited to Consultant's attorneys' fees, and additional time incurred by Consultant based on Consultant's then-prevailing hourly rates and related fees. Such charges include and pertain to, but are not limited to, time spent in preparing for and providing court room testimony, depositions, travel time, mileage and related travel expenses, waiting time, document review and production, and preparation time (excluding preparation of the Consulting Report), meeting participation, and Consultant's other related commitment of time and expertise. Hourly charges and other fees for such participation will be provided upon request. In the event Client requests additional consulting services beyond the scope and purpose stated in the Agreement, Client agrees to pay additional fees for such services and to reimburse related expenses, whether or not the completed report has been delivered to Client at the time of such request.
4. Consultant shall have the right to terminate this Agreement at any time for cause effective immediately upon written notice to Client on the occurrence of fraud or the willful misconduct of Client, its employees or agents, or without cause upon 30 days written notice.
5. In the event Client fails to make payments when due then, from the date due until paid, the amount due and payable shall bear interest at the maximum rate permitted in the state where the office is located for the Consultant executing the Agreement. In the event either party institutes legal action against the other to enforce its rights under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and expenses. Each party waives the right to a trial by jury in any action arising under this Agreement.
6. Consultant assumes there are no major or significant items or issues affecting the Property that would require the expertise of a professional building contractor, engineer, or environmental consultant for Consultant to prepare a valid report. Client acknowledges that such additional expertise is not covered in the Consulting fee and agrees that, if such additional expertise is required, it shall be provided by others at the discretion and direction of the Client, and solely at Client's additional cost and expense.
7. In the event of any dispute between Client and Consultant relating to this Agreement, or Consultant's or Client's performance hereunder, Consultant and Client agree that such dispute shall be resolved by means of binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association, and judgment upon the award rendered by an arbitrator may be entered in any court of competent jurisdiction. Depositions may be taken and other discovery obtained during such arbitration proceedings to the same extent as authorized in civil judicial proceedings in the state where the office of the Consultant executing this Agreement is located. The arbitrator shall be limited to awarding compensatory damages and shall have no authority to award punitive, exemplary or similar damages. The prevailing party in the arbitration proceeding shall be entitled to recover its expenses from the losing party, including costs of the arbitration proceeding, and reasonable attorney's fees. Client acknowledges that Consultant is being retained hereunder as an independent contractor to perform the services described herein and nothing in this Agreement shall be deemed to create any other relationship between Client and Consultant. This engagement shall be deemed concluded and the services hereunder completed upon delivery to Client of the Consulting Report discussed herein.
8. All statements of fact in the report which are used as the basis of the Consultant's analyses, opinions, and conclusions will be true and correct to Consultant's actual knowledge and belief. Consultant does not make any representation or warranty, express or implied, as to the accuracy or completeness of the information or the condition of the Property furnished to Consultant by Client or others. The conclusions and any permitted reliance on and use of the Consulting Report shall be subject to the assumptions, limitations, and qualifying statements contained in the report.

## Attachment E to Agenda File No. 2018-0070

9. Consultant shall have no responsibility for legal matters, including zoning, or questions of survey or title, soil or subsoil conditions, engineering, or other similar technical matters. The report will not constitute a survey of the Property analyzed.
10. Client shall provide Consultant with such materials with respect to the assignment as are requested by Consultant and in the possession or under the control of Client. Client shall provide Consultant with sufficient access to the Property to be analyzed, and hereby grants permission for entry unless discussed in advance to the contrary.
11. The data gathered in the course of the assignment (except data furnished by Client) and the report prepared pursuant to the Agreement are, and will remain, the property of Consultant. With respect to data provided by Client, Consultant shall not violate the confidential nature of the Consultant-Client relationship by improperly disclosing any proprietary information furnished to Consultant. Notwithstanding the foregoing, Consultant is authorized by Client to disclose all or any portion of the report and related data as may be required by statute, government regulation, legal process, or judicial decree, including to appropriate representatives of the Appraisal Institute if such disclosure is required to enable Consultant to comply with the Bylaws and Regulations of such Institute as now or hereafter in effect.
12. Unless specifically noted, in preparing the Consulting Report the Consultant will not be considering the possible existence of asbestos, PCB transformers, or other toxic, hazardous, or contaminated substances and/or underground storage tanks (collectively, "Hazardous Material") on or affecting the Property, or the cost of encapsulation or removal thereof. Further, Client represents that there is no major or significant deferred maintenance of the Property that would require the expertise of a professional cost estimator or contractor. If such repairs are needed, the estimates are to be prepared by others, at Client's discretion and direction, and are not covered as part of the Consulting fee.
13. In the event Client intends to use the Consulting Report in connection with a tax matter, Client acknowledges that Consultant provides no warranty, representation or prediction as to the outcome of such tax matter. Client understands and acknowledges that any relevant taxing authority (whether the Internal Revenue Service or any other federal, state or local taxing authority) may disagree with or reject the Consulting Report or otherwise disagree with Client's tax position, and further understands and acknowledges that the taxing authority may seek to collect additional taxes, interest, penalties or fees from Client beyond what may be suggested by the Consulting Report. Client agrees that Consultant shall have no responsibility or liability to Client or any other party for any such taxes, interest, penalties or fees and that Client will not seek damages or other compensation from Consultant relating to any such taxes, interest, penalties or fees imposed on Client, or for any attorneys' fees, costs or other expenses relating to Client's tax matters.
14. Consultant shall have no liability with respect to any loss, damage, claim or expense incurred by or asserted against Client arising out of, based upon or resulting from Client's failure to provide accurate or complete information or documentation pertaining to an assignment ordered under or in connection with this Agreement, including Client's failure, or the failure of any of Client's agents, to provide a complete copy of the Consulting Report to any third party.

LIMITATION OF LIABILITY. EXCEPT TO THE EXTENT ARISING FROM SECTION 16 BELOW, OR SECTION 17 IF APPLICABLE, IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS AFFILIATE, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR CONTRACTORS BE LIABLE TO THE OTHER, WHETHER BASED IN CONTRACT, WARRANTY, INDEMNITY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT OR OTHERWISE, FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, INCIDENTAL OR INDIRECT DAMAGES AND AGGREGATE DAMAGES IN CONNECTION WITH THIS AGREEMENT FOR EITHER PARTY (EXCLUDING THE OBLIGATION TO PAY THE FEES REQUIRED HEREUNDER) SHALL NOT EXCEED THE GREATER OF THE TOTAL FEES PAYABLE TO CONSULTANT UNDER THIS AGREEMENT OR TEN THOUSAND DOLLARS (\$10,000). THIS LIABILITY LIMITATION SHALL NOT APPLY IN THE EVENT OF A FINAL FINDING BY AN ARBITRATOR OR A COURT OF COMPETENT JURISDICTION THAT SUCH LIABILITY IS THE RESULT OF A PARTY'S FRAUD OR WILLFUL MISCONDUCT.

15. Client shall not disseminate, distribute, make available or otherwise provide any Consulting Report prepared hereunder to any third party (including without limitation, incorporating or referencing the Consulting Report, in whole or in part, in any offering or other material intended for review by other parties) except to (i) any third party expressly acknowledged in a signed writing by Consultant as an "Intended User" of the Consulting Report provided that either Consultant has received an acceptable release from such third party with respect to such Consulting Report or Client provides acceptable indemnity protections to Consultant against any claims resulting from the distribution of the Consulting Report to such third party, (ii) any third party service provider (including rating agencies and Client's auditors) using the Consulting Report in the course of providing services for the sole benefit of Client, or (iii) as required by statute, government regulation, legal process, or judicial decree. In the event Consultant consents, in writing, to Client incorporating or referencing the Consulting Report in any offering or other materials intended for review by other parties, Client shall not distribute, file, or otherwise make such materials available to any such parties unless and until Client has provided Consultant with complete copies of such materials and Consultant has approved all such materials in writing. Client shall not modify any such materials once approved by Consultant. In the absence of satisfying the conditions of this paragraph with respect

## Attachment E to Agenda File No. 2018-0070

to a party who is not designated as an Intended User, in no event shall the receipt of a Consulting Report by such party extend any right to the party to use and rely on such report, and Consultant shall have no liability for such unauthorized use and reliance on any Consulting Report. In the event Client breaches the provisions of this paragraph, Client shall indemnify, defend and hold Consultant, and its affiliates and their officers, directors, employees, contractors, agents and other representatives (Consultant and each of the foregoing an "Indemnified Party" and collectively the "Indemnified Parties"), fully harmless from and against all losses, liabilities, damages and expenses (collectively, "Damages") claimed against, sustained or incurred by any Indemnified Party arising out of or in connection with such breach, regardless of any negligence on the part of any Indemnified Party in preparing the Consulting Report.

16. In the event Client incorporates or references the Consulting Report, in whole or in part, in any offering or other material intended for review by other parties, Client shall indemnify, defend and hold each of the Indemnified Parties harmless from and against any Damages in connection with (i) any transaction contemplated by this Agreement or in connection with the consulting or the engagement of or performance of services by any Indemnified Party hereunder, (ii) any actual or alleged untrue statement of a material fact, or the actual or alleged failure to state a material fact necessary to make a statement not misleading in light of the circumstances under which it was made with respect to all information furnished to any Indemnified Party or made available to a prospective party to a transaction, or (iii) an actual or alleged violation of applicable law by Client (including, without limitation, securities laws) or the negligent or intentional acts or omissions of Client (including the failure to perform any duty imposed by law); and will reimburse each Indemnified Party for all reasonable fees and expenses (including fees and expenses of counsel) (collectively, "Expenses") as incurred in connection with investigating, preparing, pursuing or defending any threatened or pending claim, action, proceeding or investigation (collectively, "Proceedings") arising therefrom, and regardless of whether such Indemnified Party is a formal party to such Proceeding. Client agrees not to enter into any waiver, release or settlement of any Proceeding (whether or not any Indemnified Party is a formal party to such Proceeding) without the prior written consent of Consultant (which consent will not be unreasonably withheld or delayed) unless such waiver, release or settlement includes an unconditional release of each Indemnified Party from all liability arising out of such Proceeding.
17. Time Period for Legal Action. Unless the time period is shorter under applicable law, except in connection with paragraphs 16 and 17 above, Consultant and Client agree that any legal action or lawsuit by one party against the other party or its affiliates, officers, directors, employees, contractors, agents, or other representatives, whether based in contract, warranty, indemnity, negligence, strict liability or other tort or otherwise, relating to (a) this Agreement or the Consulting Report, (b) any services or studies under this Agreement or (c) any acts or conduct relating to such services or studies, shall be filed within two (2) years from the date of delivery to Client of the Consulting Report to which the claims or causes of action in the legal action or lawsuit relate. The time period stated in this section shall not be extended by any incapacity of a party or any delay in the discovery or accrual of the underlying claims, causes of action or damages.