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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

		Page
I.	GENERAL PROVISIONS	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
II.	IDENTITY OF PARTIES	9
2.1	Developer	9
2.2	District	13
2.3	City	13
2.4	Notices	13
III.	TERM	16
3.1	Term	16
IV.	DESIGN AND DEVELOPMENT OF PROJECT	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__~~May 7, 2018 (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~~the same as the Execution Date.

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[1] and incorporated herein by reference, and as more particularly described in the Description of the Project Site attached hereto as Attachment No. 2[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.

[1] Attachment No. 1 includes the District Retained Property.

[2] Attachment No. 2 includes the District Retained Property.

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 JEPA 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 JEPA 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 JEPA"), or a new Joint Powers Authority to be formed by the District and City (the Existing JEPA or any new Joint Powers Authority formed by the City and District pursuant to this Agreement, shall be referred to herein as, the "JEPA"), 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 Map Showing General Location of Elements of the Project ~~Site Plan~~ attached hereto as Attachment No. ~~2~~3 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~~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 JEPA.** Notices to the JEPA 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 JEPA 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 JEPA 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 JEPA, City and District of a final, non-appealable judgment in the Validation Action finding in favor of the JEPA, 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 JEPA 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,~~ required 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~~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~~ "public work" under this Agreement 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", as defined in this chapter, unless ~~it is~~ currently registered and qualified to perform "public work" pursuant to Section 1725.5. It is not a violation of ~~Section 1771.1~~this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code~~if~~, provided 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~~ Notwithstanding anything in this Agreement to the contrary, the Developer shall not be responsible for ~~the District's or the City's~~any Person'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~~on behalf of the ~~Developer's contractors, subcontractors~~Developer or ~~consultants~~by any Person acting directly or indirectly under a contract with the Developer).

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~~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 JEPA 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 JEPA have executed the Plan of Finance substantially based on the Conceptual Outline of JEPA Plan of Finance;

(h) the District, the City and the JEPA 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 in its sole authority and in its sole and absolute discretion.

(d) From and after the second (2nd) 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 JEPA, 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 JEPA 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 NO. 2

DESCRIPTION OF PROJECT SITE

ATTACHMENT NO. 3

MAP SHOWING GENERAL LOCATION OF ELEMENTS OF THE PROJECT

ATTACHMENT NO. 4

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

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

Improvement Description	Cost Estimate[3]	Developer BFDIF Credit Eligible[4]	City Sewer Funding Eligible[5]	Other Funding[6]
Developer's Phase 1A Infrastructure Improvements				
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[7]	6,000,000		-	6,000,000
H-3 Utility Corridor[8]	1,530,000		310,000	1,220,000
Subtotal	*40,470,000*	*8,410,000*	*1,000,000*	*31,060,000*
Remaining Phase 1A Infrastructure Improvements				
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
Subtotal	*20,120,000*	-	*390,000*	*19,730,000*
City Infrastructure Improvements				
G Street Sewer Pump Station	2,640,000	-	2,640,000	
Total	**63,230,000**	**8,410,000**	**4,030,000**	**50,790,000**

[3] Cost Estimates are in 2016 dollars. Estimates include hard costs, soft costs, and contingencies.

[4] 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

[5] 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.

[6] 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.

[7] 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~~130,000 cubic yards of soil, funding will be proportionally increased to reflect the amount of soil actually delivered, but in no event shall such amount exceed $10 million. Actual costs may vary. See Section 4.8.

[8] 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.

ACTION	TARGET DATE
1. Execution of Agreement by District, City. 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. Deposit. Developer to deliver the Deposit to the District. (§1.6(a))	5 Days from Full Execution of the Agreement
3. Approval – Form of Ground Lease. 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. District Submits Draft Plans for Phase 1A Infrastructure Improvements and District and City Submit Easement Findings. 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. Developer Comments on Easement Findings. 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. District and City to Review Comments on Easement Findings. (§4.8(d))	30 days after No. 5 (Developer Comments on Easement Findings)

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

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

ACTION	TARGET DATE
21. Design of City Infrastructure Improvements. The City to prepare, or cause the preparation of, preliminary and final construction plans and documents for the City Infrastructure Improvements. (§4.2(a))	12 Months after Close of Escrow
22. Wildlife Advisory Group and Bayfront Cultural and Design Committee Review. 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))	90 Days from Full Execution of the Agreement
23. Formation of CFD. The City to complete all documents and actions necessary to commence formation of CFD. (§1.4)	120 Days from Full Execution of the Agreement
24. City Property Tax Contribution. 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)	January, 2019
25. Open Escrow Account: Preliminary Title Report. 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)	60 Days from Full Execution of the Agreement
26. Developer Title Review. The Developer to complete its title review and deliver Developer's Disapproval Notice to District. (§6.2)	90 Days from delivery of Preliminary Title Report
27. District Response to Title Review. The District to complete its title review and to deliver District's Response Notice to Developer. (§6.2)	90 Days from No. 26 (Developer Title Review)

ACTION	TARGET DATE
28. Developer Due Diligence Investigations. 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))	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)
29. Submission of Completed Building Permit Application and Final Cost Estimates - Developer's Improvements. Developer to submit to the District/City completed Building Permit Application, final cost estimates and documents for the Developer's Improvements. (§4.5(b))	15 Months from Full Execution of the Agreement
30. Developer to Obtain Building Permit Processing Agreement.	90 Days after Full Execution of the Agreement.
31. Staff Approval and Acceptance – Completed Final Cost Estimates. 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)	20 Days after No. 29 (Submission of Final Cost Estimates – Developer's Improvements)
32. Execution of New S-1 RV Park Lease and Construction of New S-1 RV Park. 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)	150 Days from Full Execution of the Agreement
33. Submission of Encumbrance Package and Proposed Completion Guaranty. Developer to submit to District encumbrance package per BPC Policy No. 355 and proposed Completion Guaranty language	Month 15 from Full Execution of the Agreement
34. Acceptance or Rejection of Encumbrance Package and Completion Guaranty. BPC to accept encumbrance package per BPC Policy No. 355 for construction financing and Completion Guaranty language. (§5.2(e))	60 days after No. 33 (Submission of Encumbrance Package and Proposed Completion Guaranty)

ACTION	TARGET DATE
35. Submission of Management Agreement. Developer to submit to District and City the Management Agreement. (§5.2(f))	Month 15 from Full Execution of the Agreement
36. Consent – Management Agreement. BPC and City Council to consent to the Management Agreement. (§5.2(f))	60 Days after No. 35 (Submission of Management Agreement)
37. Vacation of the Existing RV Park. 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.	Not later than September 4, 2019
38. Review of Underwriter's Updated Projections. The District and City to review and evaluate the underwriter's updated financial projections. (§5.2(o))	20 Days from completion of No. 19 (CDP Approval by District)
39. Final Plan of Finance. 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.	10 Days from completion of No. 38 (Review of Underwriter's Updated Projections)
40. Commence Drafting of Bond Documents. 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)	10 Days from completion of No. 39 (Final Plan of Finance)
41. Preparation of JEPA Bond Documents. The JEPA to commence all documents to present to the JEPA Board, BPC and the City Council for approval of issue of Bonds for public financing. (§1.4)	10 Days from completion of No. 39 (Final Plan of Finance)
42. Approval – Convention Center Subleases. JEPA Board, BPC and City Council to approve and authorize execution of Convention Center Subleases, and other related documents.	30 Days from completion of all tasks commenced as referenced in Nos. 38-41

ACTION	TARGET DATE
43. Authorization for City Manager. 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)	30 Days from completion of all tasks commenced as referenced in Nos. 38-41
44. Authorization for District's Executive Director. 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)	30 Days from completion of all tasks commenced as referenced in Nos. 38-41
45. Approval of JEPA Bonds. The JEPA Board to conditionally approve and authorize execution of JEPA Bond documents and issue of JEPA Bonds. (§1.4)	30 Days from completion of all tasks commenced as referenced in Nos. 38-41
46. CFD Financing. The City to conditionally approve and authorize levy of special tax. (§1.4)	30 Days from completion of all tasks commenced as referenced in Nos. 38-41
47. EIFD Bonds. The City to conditionally approve and authorize execution of EIFD Bond documents and issue of EIFD Bonds. (§1.4)	30 Days from completion of all tasks commenced as referenced in Nos. 38-41
48. Validation Action – Bonds. The JEPA and consultants to file an action for validation of the bonds. (§4.19)	30 Days from completion of all tasks commenced as referenced in Nos. 42-47

CLOSE OF ESCROW:

ACTION	TARGET DATE
49. Submission of Construction Contracts. 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))	30 Days Prior to Close of Escrow.
50. Grading Permits and all Discretionary Actions. 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)	30 Days Prior to Close of Escrow.
51. Project Public Investment. 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)	Prior to Close of Escrow.
52. Execution and Delivery of Ground Lease, etc. 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))	Concurrently with Close of Escrow on Convention Center Subleases and Issuance of Bonds.
53. Execution and Delivery of Convention Center Subleases, etc. 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))	Concurrently with Close of Escrow on Ground Lease and Issuance of Bonds.
54. Escrow Fees, Charges. The District, City, JEPA and Developer to pay their respective fees, charges and other costs into escrow. (§6.5)	Prior to Close of Escrow.

ACTION	TARGET DATE
55. Issue of Bonds. The JEPA to prepare and close on sale of JEPA Bonds for public financing. (§1.4)	Concurrently with Close of Escrow.
56. Developer's Financing. 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. Certificates. 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. Close of Escrow. 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

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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