SAN DIEGO UNIFIED PORT DISTRICT

LEASE TO

RIDA CHULA VISTA, LLC

OF PROPERTY LOCATED AT

CHULA VISTA, CALIFORNIA

TABLE OF CONTENTS

DEFINITIONS ADDENDUM

EXHIBITS

EXHIBIT V PUBLIC DEBT SERVICE OBLIGATION

LEASE

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

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

1. BASIC LEASE PROVISIONS

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

1.1 Term (See Article 3):

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

1.1.1 "Commencement Date":	THE DATE FIRST SET FORTH ABOVE.
1.1.2 "Expiration Date":	66 YEARS AFTER THE COMMENCEMENT DATE.

1.2 Premises:

The "**Premises**" consist of the real property more particularly described in Exhibit "A" attached hereto and depicted in Exhibit "B" attached hereto, in the City of Chula Vista (the "**City**"), California, together with any Existing Improvements.

1.3 Permitted Use (See Article 4):

The Premises and the Improvements shall only be used as follows and for no other purpose (the "**Permitted Use**"): (i) a single-branded resort hotel with at least 1,570 Rooms but not more than 1,600 Rooms on the Premises generally as shown on Exhibit "B" attached hereto, with an Acceptable Brand (the "**Resort Hotel**"); (ii) approximately 275,000 net usable square feet of associated meeting space in the Convention Center on the Premises generally as shown on Exhibit "B" attached hereto (the "**Convention Center**" and, together with the Resort Hotel, the "**Primary Use**"); (iii) any use which is ancillary or incidental to the Primary Use as described in Article 4; and (iv) any other use of the Premises and the Improvements that is approved by the Landlord in its sole and absolute discretion in writing; provided that any such uses are not restricted or prohibited by the CDP or any Laws; and provided, further, that in the event of any conflict between the terms of this Section 1.3 and the CDP or any Laws, Tenant shall deliver notice to Landlord of such a conflict and the Parties shall meet and confer within ten (10) days of Landlord receiving Tenant's notice to discuss the conflict and attempt to resolve the conflict in good faith. If the conflict cannot be resolved by the Parties within thirty (30) days after the meet and confer commences, then the Parties shall endeavor to resolve the dispute pursuant to Section 29.22.

"**Acceptable Brand**" shall mean the "Gaylord Hotels" brand or any other hotel brand that has achieved "AAA Four Diamond" rating standards in a reasonable number of its hotels or the equivalent as determined by Landlord in its reasonable discretion; provided that Tenant shall not terminate the Hotel Management Agreement that is in effect as of the Commencement Date before the date that is the third (3rd) anniversary of the later of (a) the date that the Initial Project Improvements are Complete and (b) the date that Landlord receives a copy of the final certificate of occupancy with respect to the Initial Project Improvements, unless as set forth in Section 11.5.3(f). Tenant shall not name the Resort Hotel or Convention Center with any name that includes "San Diego".

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

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

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

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

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

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

1.5 Minimum Annual Rent (See Article 5):

The "**Minimum Annual Rent**" shall be as follows:

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

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

Each period of twelve (12) consecutive months commencing on the Rent Commencement Date and each successive twelve (12) month period thereafter during the Term shall be referred to herein as a "**Lease Year**"; provided, however, that, if the first day of the first Lease Year of the First (1st) Lease Period is the not the first date of a month, such initial partial month shall be added to the first Lease Year of the First (1st) Lease Period so that such Lease Year will end on the last day of the month in which the first anniversary of the Rent Commencement Date occurs;

and provided, further, that each subsequent Lease Year shall commence on the day after the end of the immediately preceding Lease Year and shall end on the anniversary of the end of the immediately preceding Lease Year, except that the last Lease Year shall expire on the Expiration Date. For the avoidance of doubt and by way of example, if the Rent Commencement Date is June 15, 2018, the first Lease Year would be June 15, 2018 to June 30, 2019 and the Expiration Date of the Lease would be June 14, 2084.

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

1.6 Percentage Rent Rates (See Article 5):

The Percentage Rent Rates are set forth in Section 5.4.1.

1.7 Parking Improvement Rent, Premises Surface Parking Rent, Surface Parking Improvements Rent (See Section 4.3, 5.1.2, Exhibit "R", Exhibit "R-2", and Exhibit "R-3"):

Tenant shall pay the Parking Improvement Rent, Premises Surface Parking Rent, and Surface Parking Improvements Rent in accordance with Section 4.3, Section 5.1.2, and Exhibit "R" (or Exhibit "R-2" or Exhibit "R-3", as applicable).

1.8 Construction of Project (See Article 6)[1]:

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

(b) "**Outside Construction Completion Date**": Forty-Eight (48) months after the Outside Construction Commencement Date (as such date may be extended by one day for each day that a Force Majeure Event delays Completion of the Initial Project Improvements).

(c) ["**JEPA Development Cost Contribution**": [_____ Dollars ($_____)][2].

(d) "**Premises Preparation Cap**": [_____] Dollars ($[_____])][3].

(e) ["**Estimated Tenant Development Cost Contribution**": _____ Dollars ($_____)] shall be equal to the construction costs for the Resort Hotel and related resort-level amenities.

(f) "**Tenant Art Investment**": [_____][4]

1.9 Insurance (See Article 18):

[1] Blank amounts in this Section 1.8 to be agreed to by the Parties during the term of the DDA and inserted prior to execution of this Lease.

[2] Shall be the amount of the public financing by the Landlord, the City, and the JEPA for the Premises, the Tenant's Phase 1A Improvements or the Convention Center to be inserted prior to execution of the Lease.

[3] Shall be the Preliminary Site Preparation Amount (as defined in Section 4.8(b) of the DDA).

[4] Shall be an amount in compliance with BPC Policy No. 608 and shall be equal to one percent (1%) of the estimated Hard Construction Costs (as defined in the DDA) of the Estimated Tenant Development Cost Contribution.

1.9.1 Commercial General Liability:

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

1.9.2 Liquor Liability:

At any time that alcoholic beverages are served or sold on the Premises or Improvements, not less than Five Million Dollars ($5,000,000).

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

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

1.11 Notice Addresses (See Article 27):

To Tenant:

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

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

and

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

To Landlord:

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

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

1.12 Completion Guaranty:

Tenant's obligation to Complete all of the Initial Project Improvements and obtain the final certificate of occupancy with respect to the Initial Project Improvements shall be guaranteed by [● [5]] and, if Tenant so elects, certain other Persons which are approved by Landlord, in Landlord's reasonable discretion (each, a "**Completion Guarantor**" and, collectively, "**Completion Guarantors**"). The period between the Commencement Date and the date that is the later of: (a) the date when the Initial Project Improvements are Complete; and (b) the date that Landlord receives a copy of the final certificate of occupancy for the Initial Project Improvements shall be referred to herein as the "**Construction Period**". Tenant shall cause each Completion Guarantor to execute and deliver to Landlord a Completion Guaranty substantially in the form attached hereto as Exhibit "E" and incorporated herein by reference ("**Completion Guaranty**"), with any deviations from such form being reasonably acceptable to Landlord and Tenant, and at no time during the Construction Period shall there be no Completion Guaranty that is in full force and effect. The Completion Guaranty shall terminate on the date that is six (6) months after the later of: (a) the end of the Construction Period; or (b) the date the Resort Hotel is open for business.

2. GENERAL DEFINITIONS

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

3. TERM

3.1 Term.

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

3.2 Prior Agreements.

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

4. USE.

4.1 Permitted Use.

Tenant agrees that the Premises and the Improvements shall be used only and exclusively for the Permitted Use described in Section 1.3 and for no other purpose whatsoever. This restriction on use of the Premises and the Improvements absolutely prohibits a change in use

[5] Guarantor to be determined during the DDA phase pursuant to Section 4.15 of the DDA, which requires a Person or multiple Persons 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 $200,000,000 and which are approved by each of the Landlord and the City, in its reasonable discretion and shall be inserted prior to execution of this Lease.

by Tenant to a use that is not a Permitted Use. Tenant acknowledges and agrees that the only parking it has a right to utilize in connection with the Permitted Use is as set forth in Section 4.3. Tenant acknowledges and agrees that with respect to any public parking (other than the Surface Parking Improvements and any Parking Improvements) located adjacent to or proximate to the Premises, Tenant has only the rights of a member of the public notwithstanding any regular use of such parking by Tenant and/or its employees, Subtenants, independent contractors, visitors and patrons, and invitees.

4.2 Resort Hotel Use.

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

(a) Rental of Rooms;

(b) Rental of Meeting Space;

(c) Full-service restaurant and/or limited service restaurant, including cocktail lounge and any standalone bar or cocktail lounge;

(d) Snack bar, delicatessen and/or coffee shop(s);

(e) Retail shop(s);

(f) Barber and beauty shop;

(g) Spa services;

(h) Health, recreational, and tennis facilities, including recreational lessons;

(i) Bicycle rentals;

(j) Rental of automobiles;

(k) Motorcycle rentals;

(l) Boat rentals, beach equipment rentals and beach-related services;

(m) Special temporary exhibition(s), including production shows (including any and all uses in connection with the production of ICE! (including the use of the ICE! tent as temporary additional meeting space when such ICE! tent is not used for purposes of the ICE! production)) and outdoor entertainment (including ice skating and carnivals)[6];

(n) Vending machines, including telephones;

(o) Office and counter areas for Resort Hotel management and other ancillary services that are consistent with services provided by a convention center hotel comparable with the Resort Hotel;

(p) Installation of telecommunications equipment; and

(q) Each other use that (i) is ancillary or incidental to the Primary Use, (ii) is customary for a convention center hotel operating in the United States of America and that is comparable with the Resort Hotel and (iii) is not prohibited by the CDP or any Laws.

4.3 Parking Improvements.

[6] Subject to approval of use to be determined upon issuance of CDP.

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

4.3.1 Tenant Use Parking Improvements.

(a) Tenant shall have (i) subject to the terms of the Offsite Parking Land Tidelands Use and Occupancy Permit ("**Offsite Parking Land TUOP**"), the exclusive right to use the Offsite Parking Land[7] (A) for the parking of motor vehicles and (B) for the development of parking spaces, roadways and other means of pedestrian and vehicular access that are necessary or appropriate for the parking of vehicles for the Initial Improvements in accordance with the Plans ("**Surface Parking Improvements**"); and (ii) the exclusive right to use any surface parking Tenant may develop on the Premises in accordance with the Plans ("**Premises Surface Parking**").

(b) Tenant shall pay to Landlord monthly rent for the use of Surface Parking Improvements equal to the product of three percent (3%) multiplied by all Surface Parking Improvement Revenue for the applicable calendar month during the term of the Offsite Parking Land TUOP, which shall be subject to the adjustment set forth in the last sentence of this clause (b) ("**Surface Parking Improvements Rent**"). "**Surface Parking Improvement Revenue**" means the following amounts whether collected or uncollected, received, payable or accrued by Tenant, without any deductions or exclusions, whether paid in cash or for credit: (a) any amounts paid to Tenant by any Person for using a parking space in the Surface Parking Improvements through the Resort Hotel valet service and (b) any amounts paid to Tenant by any Person for self-parking in the Surface Parking Improvements. Tenant shall at all times operate the Surface Parking Improvements on a for-fee basis; provided that Tenant may deduct from the Surface Parking Improvement Revenue any refunds, rebates, discounts or credits which Tenant issues to Tenant's employees, Subtenants, independent contractors, visitors, patrons, customers, invitees or any other third party; provided, further, that, with respect to refunds only, Tenant may deduct any material refund only if such refund is documented in a reasonable form which is provided to Landlord as part of the Monthly Parking Report.

(c) Tenant shall pay to Landlord monthly rent for the use of the Premises Surface Parking equal to the product of three percent (3%) multiplied by the Premises Surface Parking Revenue for the applicable calendar month during the Term, which shall be subject to the adjustment set forth in the last sentence of this clause (c) ("**Premises Surface Parking Rent**"). "**Premises Surface Parking Revenue**" means the following amounts whether collected or uncollected, received, payable or accrued by Tenant, without any deductions or exclusions, whether paid in cash or for credit: (a) any amounts paid to Tenant by any Person for using a parking space in the Premises Surface Parking through the Resort Hotel valet service and (b) any amounts paid to Tenant by any Person for self-parking in the Premises Surface Parking. Tenant shall at all times operate the Premises Surface Parking on a for-fee basis; provided that Tenant may deduct from the Premises Surface Parking Revenue any refunds, rebates, discounts or credits which Tenant issues to Tenant's employees, Subtenants, independent contractors, visitors, patrons, customers, invitees or any other third party; provided, further, that, with respect to refunds only, Tenant may deduct any material refund only if such refund is documented in a reasonable form which is provided to Landlord as part of the Monthly Parking Report.

[7] Port to review proposed location on H23.

(d) Tenant shall have the right to construct at least 1,600 parking spaces within a parking structure ("**Parking Improvements**") on that certain real property located adjacent to the Premises as more particularly described in Exhibit "R-1" attached hereto and depicted in Exhibit "R-2" attached hereto ("**Parking Structure Land**"), and each Party shall comply with the terms and conditions set forth in Exhibit "R-4" attached hereto and incorporated herein by reference.

[The following Section 4.3.2 is to be included as Section 4.3.1 in this Lease if, prior to the Commencement Date, (a) Landlord has, in accordance with the DDA, notified Tenant that Landlord **will pay** the Parking Improvements Development Costs up to the amount of $40,000,000 and (b) either (i) the Estimated Parking Improvements Development Costs, as of the time they are delivered to Landlord and prior to the Commencement Date, do not exceed $44,000,000 or (ii) the Estimated Parking Improvements Development Costs, as of the time they are delivered to Landlord and prior to the Commencement Date, exceed $44,000,000 and Tenant has agreed, in its sole and absolute discretion, within ninety (90) days of receiving Landlord's notice that Landlord will pay the Landlord's Parking Contribution, to construct the Parking Improvements:]

4.3.2 Tenant Use Parking Improvements.

(a) Tenant shall design and construct at least 1,600 parking spaces within a parking structure ("**Parking Improvements**") on that certain real property located adjacent to the Premises as more particularly described in Exhibit "R-1" attached hereto and depicted in Exhibit "R-2" attached hereto ("**Parking Structure Land**"), and Tenant shall have (i) subject to the terms of the [easement/lease] attached as Exhibit "U", Section 4.3, Section 5.1.2 and Exhibit "R", the non-exclusive right to use at least 1,600 parking spaces within the Parking Improvements, (ii) the exclusive right to use any surface parking Tenant may develop on the Premises in accordance with the Plans ("**Premises Surface Parking**"), and (iii) subject to the terms of the Offsite Parking Land Tidelands Use and Occupancy Permit ("**Offsite Parking Land TUOP**"), the exclusive right to use the Offsite Parking Land (A) for the parking of motor vehicles and (B) for the development of parking spaces, roadways and other means of pedestrian and vehicular access that are necessary or appropriate for the parking of vehicles for the Initial Improvements in accordance with the Plans ("**Surface Parking Improvements**") until thirty (30) days after the Parking Improvements become operational for the intended use, which shall be the expiration date of the Offsite Parking Land TUOP.

(b) Tenant shall pay to Landlord the Parking Improvement Rent in accordance with the terms and conditions set forth on Exhibit "R" attached hereto and Section 5.1.2.

(c) Tenant shall pay to Landlord monthly rent for the use of Surface Parking Improvements equal to the product of the Surface Parking Improvements Rental Rate multiplied by all Surface Parking Improvement Revenue for the applicable calendar month during the term of the Offsite Parking Land TUOP, which shall be subject to the adjustment set forth in the last sentence of this clause (c) ("**Surface Parking Improvements Rent**"). "**Surface Parking Improvement Revenue**" means the following amounts whether collected or uncollected, received, payable or accrued by Tenant, without any deductions or exclusions, whether paid in cash or for credit: (a) any amounts paid to Tenant by any Person for using a parking space in the Surface Parking Improvements through the Resort Hotel valet service and (b) any amounts paid to Tenant by any Person for self-parking in the Surface Parking Improvements. Tenant shall at all times operate the Surface Parking Improvements on a for-fee basis; provided that Tenant may deduct from the Surface Parking Improvement Revenue

any refunds, rebates, discounts or credits which Tenant issues to Tenant's employees, Subtenants, independent contractors, visitors, patrons, customers, invitees or any other third party; provided, further, that, with respect to refunds only, Tenant may deduct any material refund only if such refund is documented in a reasonable form which is provided to Landlord as part of the Monthly Parking Report.

(d) Tenant shall pay to Landlord monthly rent for the use of the Premises Surface Parking equal to the product of the Premises Surface Parking Rental Rate multiplied by the Premises Surface Parking Revenue for the applicable calendar month during the Term, which shall be subject to the adjustment set forth in the last sentence of this clause (d) ("**Premises Surface Parking Rent**"). "**Premises Surface Parking Revenue**" means the following amounts whether collected or uncollected, received, payable or accrued by Tenant, without any deductions or exclusions, whether paid in cash or for credit: (a) any amounts paid to Tenant by any Person for using a parking space in the Premises Surface Parking through the Resort Hotel valet service and (b) any amounts paid to Tenant by any Person for self-parking in the Premises Surface Parking. Tenant shall at all times operate the Premises Surface Parking on a for-fee basis; provided that Tenant may deduct from the Premises Surface Parking Revenue any refunds, rebates, discounts or credits which Tenant issues to Tenant's employees, Subtenants, independent contractors, visitors, patrons, customers, invitees or any other third party; provided, further, that, with respect to refunds only, Tenant may deduct any material refund only if such refund is documented in a reasonable form which is provided to Landlord as part of the Monthly Parking Report.

[The following Sections 4.3.3 through 4.3.6 are to be included in this Lease as Sections 4.3.1 and 4.3.2 if the above Section 4.3.1 and 4.3.2 are not to be included in this Lease:]

4.3.3

(a) Tenant shall have (i) the exclusive right to use any surface parking Tenant may develop on the Premises in accordance with the Plans ("**Premises Surface Parking**"); and (ii) subject to the terms of the Offsite Parking Land Tidelands Use and Occupancy Permit ("**Offsite Parking Land TUOP**"), the exclusive right to use the Offsite Parking Land (A) for the parking of motor vehicles and (B) for the development of parking spaces, roadways and other means of pedestrian and vehicular access that are necessary or appropriate for the parking of vehicles for the Initial Improvements in accordance with the Plans ("**Surface Parking Improvements**") until thirty (30) days after the Parking Improvements become operational for the intended use, which shall be the expiration date of the Offsite Parking Land TUOP;

(b) Tenant shall pay to Landlord monthly rent for the use of Surface Parking Improvements equal to the product of the Surface Parking Improvements Rental Rate multiplied by all Surface Parking Improvement Revenue for the applicable calendar month during the term of the Offsite Parking Land TUOP, which shall be subject to the adjustment set forth in the last sentence of this clause (b) ("**Surface Parking Improvements Rent**"). "**Surface Parking Improvement Revenue**" means the following amounts whether collected or uncollected, received, payable or accrued by Tenant, without any deductions or exclusions, whether paid in cash or for credit: (i) any amounts paid to Tenant by any Person for using a parking space in the Surface Parking Improvements through the Resort Hotel valet service and (ii) any amounts paid to Tenant by any Person for self-parking in the Surface Parking Improvements. Tenant shall at all times operate the Surface Parking Improvements on a for-fee basis; provided that Tenant may deduct from the Surface Parking Improvement Revenue any refunds, rebates, discounts or credits which Tenant issues to Tenant's employees, Subtenants, independent contractors, visitors, patrons, customers, invitees or any other third

party; provided, further, that, with respect to refunds only, Tenant may deduct any material refund only if such refund is documented in a reasonable form which is provided to Landlord as part of the Monthly Parking Report;

(c) Tenant shall pay to Landlord monthly rent for the use of the Premises Surface Parking equal to the product of the Premises Surface Parking Rental Rate multiplied by the Premises Surface Parking Revenue for the applicable calendar month during the term of the Offsite Parking Land TUOP, which shall be subject to the adjustment set forth in the last sentence of this clause (c) ("**Premises Surface Parking Rent**"). "**Premises Surface Parking Revenue**" means the following amounts whether collected or uncollected, received, payable or accrued by Tenant, without any deductions or exclusions, whether paid in cash or for credit: (i) any amounts paid to Tenant by any Person for using a parking space in the Premises Surface Parking through the Resort Hotel valet service and (ii) any amounts paid to Tenant by any Person for self-parking in the Premises Surface Parking. Tenant shall at all times operate the Premises Surface Parking on a for-fee basis; provided that Tenant may deduct from the Premises Surface Parking Revenue any refunds, rebates, discounts or credits which Tenant issues to Tenant's employees, Subtenants, independent contractors, visitors, patrons, customers, invitees or any other third party; provided, further, that, with respect to refunds only, Tenant may deduct any material refund only if such refund is documented in a reasonable form which is provided to Landlord as part of the Monthly Parking Report.

4.3.4 Provided that Landlord reasonably believes that Landlord has a reasonably viable path to obtaining the Landlord's Parking Contribution, Landlord shall have the right at any time prior to the sixth (6^{th}) anniversary of the Commencement Date but not more frequently than twice in any Lease Year, to request from Tenant the Estimated Parking Improvements Development Costs. Tenant shall prepare the Estimated Parking Improvements Development Costs using commercially reasonable efforts to determine the Estimated Parking Improvements Development Costs and deliver the Estimated Parking Improvements Development Costs to Landlord no later than ninety (90) days after Tenant receives Landlord's notice requesting the Estimated Parking Improvements Development Costs. No later than ninety (90) days before the sixth (6th) anniversary of the Commencement Date, Landlord shall notify Tenant whether Landlord has decided in its sole and absolute discretion to contribute the Parking Improvements Development Costs, in an amount not to exceed Forty Million Dollars ($40,000,000) ("**Landlord's Parking Contribution**"). Landlord shall attach the Estimated Parking Improvements Development Costs, as provided by Tenant, to Landlord's notice.

4.3.5 If (a)(i) Landlord notifies Tenant that Landlord **will pay** the Landlord's Parking Contribution in accordance with this Article 4 and Exhibit "R", (ii) the Estimated Parking Improvements Development Costs, as determined by Tenant and attached to Landlord's notice, do not exceed $44,000,000 and (iii) Tenant determines, in the reasonable exercise of its discretion, that Landlord's obligation to contribute funds towards the Parking Improvements Development Cost is valid, enforceable and in compliance with Laws, including any Laws with respect to Landlord's procurement activities, or (b)(i) Landlord notifies Tenant that Landlord will pay the Landlord's Parking Contribution in accordance with this Article 4 and Exhibit "R", (ii) the Estimated Parking Improvements Development Costs, as determined by Tenant and attached to Landlord's notice, exceed $44,000,000, (iii) Tenant determines, in the reasonable exercise of its discretion, that Landlord's obligation to contribute funds towards the Parking Improvements Development Cost is valid, enforceable and in compliance with Laws, including any Laws with respect to Landlord's procurement activities, and (iv) Tenant elects, in its sole and absolute discretion, within one hundred eighty (180) days after Landlord notifies Tenant that Landlord will

pay the Landlord's Parking Contribution, that Tenant will construct the Parking Improvements, then:

(a) Tenant shall (i) design and construct at least 1,600 parking spaces within a parking garage ("**Parking Improvements**") on that certain real property located adjacent to the Premises as more particularly described in Exhibit "R-1" attached hereto and depicted in Exhibit "R-2" attached hereto ("**Parking Structure Land**") and (ii) subject to the terms of the [easement/lease] attached as Exhibit "U", Section 4.3, Section 5.1.2 and Exhibit "R", the non-exclusive right to use at least 1,600 parking spaces within the Parking Improvements; and

(b) Tenant shall comply with the terms and conditions set forth in this Article 4, Section 5.1.2, and on Exhibit "R" attached hereto, including without limitation, the payment to Landlord of the Parking Improvement Rent described herein and therein.

4.3.6 If (i) Landlord fails to notify Tenant whether Landlord will pay the Landlord's Parking Contribution in accordance with this Article 4 or (ii) Landlord notifies Tenant that Landlord will not pay the Landlord's Parking Contribution, or (iii)(A) Landlord notifies Tenant that Landlord will pay the Landlord's Parking Contribution, and (B) the Estimated Parking Improvements Development Costs, as determined by Tenant and attached to Landlord's notice, exceed Forty-Four Million Dollars ($44,000,000) and (C) Tenant does not elect, in its sole and absolute discretion, within one hundred eighty (180) days after Landlord notifies Tenant that Landlord will pay the Landlord's Parking Contribution, to construct the Parking Improvements, or (iv)(A) Landlord notifies Tenant that Landlord will pay the Landlord's Parking Contribution and (B) within one hundred and eighty (180) days after Landlord notifies Tenant that Landlord will pay the Landlord's Parking Contribution, Tenant determines, in the reasonable exercise of its discretion, that Landlord's obligation to contribute funds towards the Parking Improvements Development Cost is not valid, is not enforceable or is not in compliance with Laws, including any Laws with respect to Landlord's procurement activities, then: the Parties shall meet and confer to attempt in good faith to develop a financing plan for the construction of the Parking Improvements that is mutually acceptable to both Parties (a "**Parking Improvements Financing Plan**") within the next ninety (90) day period following (i), (ii), (iii) or (iv) above, as applicable (the "**Parking Meet & Confer Period**").

(a) If the Parties agree on a Parking Improvements Financing Plan, then each of the Parties shall perform its respective obligations set forth in such Parking Improvements Financing Plan.

(b) If the Parties do not reach agreement on a Parking Improvements Financing Plan during the Parking Meet & Confer Period after (i) Landlord notified Tenant that Landlord would pay the Landlord's Parking Contribution, (ii) Tenant determines, in the reasonable exercise of its discretion, that Landlord's obligation to contribute funds towards the Parking Improvements Development Cost is valid, enforceable or in compliance with Laws, including any Laws with respect to Landlord's procurement activities, (iii) the Estimated Parking Improvements Development Costs, as determined by Tenant and attached to Landlord's notice, would exceed Forty-Four Million Dollars ($44,000,000) and (iv) Tenant does not elect, in its sole and absolute discretion, to construct the Parking Improvements, then the Landlord shall have the right to elect to construct the Parking Improvements without contribution or subsidy from Tenant. If Landlord elects to construct the Parking Improvements, then Landlord shall notify Tenant thereof ("**Landlord Parking Construction Notice**") within two hundred seventy (270) days after the end of the Parking Meet & Confer Period and Landlord shall commence the construction of the Parking Improvements as soon as commercially reasonable thereafter, and each Party shall comply with the terms and conditions set forth in Exhibit "R-3" attached hereto and incorporated herein by reference. If Landlord does not deliver the Landlord Parking

Construction Notice to Tenant in accordance with this Lease, then Tenant shall have the right to construct the Parking Improvements without contribution or subsidy from the Landlord, and each Party shall comply with the terms and conditions set forth in Exhibit "R-4" attached hereto and incorporated herein by reference.

(c) If the Parties do not reach agreement on a Parking Improvements Financing Plan after (i) Landlord failed to notify Tenant whether Landlord would pay the Landlord's Parking Contribution in accordance with this Article 4 or (ii) Landlord notified Tenant that Landlord would not pay the Landlord's Parking Contribution or (iii)(A) Landlord notified Tenant that Landlord would pay the Landlord's Parking Contribution and (B) Tenant determined, in the reasonable exercise of its discretion, that Landlord's obligation to contribute funds towards the Parking Improvements Development Cost was not valid, enforceable or in compliance with Laws, including any Laws with respect to Landlord's procurement activities, then Tenant shall have the right to construct the Parking Improvements without contribution or subsidy from the Landlord and each Party shall comply with the terms and conditions set forth in Exhibit "R-4" attached hereto and incorporated herein by reference.

4.4 Continuous Operations.

From and after sixty (60) days after the Completion of the Initial Project Improvements, Tenant shall actively and continuously use and operate the Premises and the Improvements (excluding Existing Improvements) in accordance with the Permitted Use, except to the extent a Force Majeure Event renders Tenant unable to do so (which inability, for the avoidance of doubt, shall be for the period of time that such Force Majeure Event prevents the use and/or operation of the Premises and/or the Improvements (excluding the Existing Improvements) and except for temporary interruptions reasonably and directly related to Alterations (provided that Tenant shall diligently prosecute construction of such Alterations to Completion in accordance with Section 6.3.3). Active and continuous use and operation shall mean that the Improvements, including without limitation, the Resort Hotel and the Convention Center, but excluding the Existing Improvements, shall be continuously open for business, and appropriately staffed with personnel, on such days and for such hours as is customary for similar business operations in San Diego County, California, but that, as Tenant may decide in its sole discretion and in good faith in order to maximize the long-term best interest of the Project, portions of the Resort Hotel and the Convention Center which are not then in use may be temporarily closed (for example, floors of the Resort Hotel and restaurants may be temporarily closed during low occupancy periods and portions of the Resort Hotel may be closed temporarily for renovations; provided that such renovations are not otherwise prohibited by this Lease and provided, further, that Tenant diligently prosecutes such renovations to completion). Tenant acknowledges and agrees that said active and continuous use and operation of the Premises and the Improvements (other than the Existing Improvements) enhances the value of the lands within Landlord's jurisdiction; provides public service; and provides additional employment, taxes, and other benefits to the general economy of the area. Landlord acknowledges and agrees that Tenant shall not be in violation of this Section 4.4 for any failure to operate any retail, food service and other service space so long as Tenant has made and continues to make commercially reasonable efforts to lease such space.

4.5 Compliance with Laws.

Tenant shall in all activities on or in connection with the Premises and the Improvements, and in all uses thereof, including without limitation the Permitted Use and any construction of the Project Improvements or the making of any Alterations, abide by and comply with, and cause the Tenant Parties that are not Tenant and Hotel Operator to abide by and comply with, all Laws

at Tenant's sole cost and expense, and Landlord shall not have any obligations or responsibilities to comply with any Laws as to the Premises and the Improvements or any use thereby by Tenant Parties or Hotel Operator. In particular and without limitation, Tenant shall have the sole and exclusive obligation and responsibility, at Tenant's sole cost and expense, to comply with the requirements of the following: (i) the San Diego Unified Port District Code, including without limitation, Article 10 (Stormwater Management and Discharge Control), (ii) the ADA, including but not limited to regulations promulgated thereunder, (iii) applicable federal, state and local laws and regulations regarding employment and labor practices, including, without limitation, the provisions of Section 6.8 and Article 17 below, (iv) any Coastal Development Permit ("**CDP**") (including any conditions of approval or mitigation measures or project changes pursuant to the environmental review under the California Environmental Quality Act ("**CEQA**")) or any other California Coastal Commission ("**CCC**") regulations or local, state or federal requirements now or hereafter affecting the Premises or the Improvements, including the use or development thereof, (v) the Port Master Plan ("**PMP**"), (vi) any other development permits or approvals accepted by Tenant, and (vii) the policies adopted by the BPC. During the Term, the BPC shall not adopt any Law that only applies to the Project or Tenant, unless the Law is determined by the BPC, in its sole and absolute discretion, but in a manner that is neither arbitrary nor capricious, to be necessary for health and safety reasons, to protect the welfare of the people, or to exercise the Landlord's police powers under the Port Act. The foregoing limitation shall not apply to the adoption of any ordinance that authorizes an amendment to this Lease or is adopted to authorize the enforcement of Landlord's rights or the performance of Landlord's obligations under this Lease, including without limitation, any ordinances adopted by the BPC as part of any discretionary approval. In the event of any conflict between the terms of a policy adopted by the BPC and this Lease, Tenant shall deliver notice to Landlord of such a conflict and the Parties shall meet and confer within ten (10) days of Landlord's receipt of the notice to discuss the conflict and attempt to resolve the conflict in good faith. If the conflict cannot be resolved by the Parties within thirty (30) days after the meet and confer, then the Parties shall endeavor to resolve the conflict pursuant to Section 29.22. If the conflict is not resolved pursuant to Section 29.22, then the terms of this Lease shall control and Tenant shall be excused from complying with the terms of such policy adopted by the BPC to the extent of such conflict only.

4.6 Tenant's Contest Right.

4.6.1 General.

Subject to the terms and conditions of this Section 4.6, Tenant may pay the Property Tax Expenses under protest and Tenant may contest any amount of such Property Tax Expenses; provided that (a) Tenant shall first provide Landlord with at least ten (10) Business Days' written notice prior to commencing any such Contest, (b) Tenant shall reasonably cooperate with Landlord with respect to any such Contest and (c) Tenant shall cause the following conditions (collectively, the "**Contest Conditions**") to remain satisfied:

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

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

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

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

(v) Such Contest shall not challenge any Property Tax Expenses payable under any Enhanced Infrastructure Financing District or Communities Facilities District affecting the Premises or the Improvements that are in effect as of the Commencement Date or that Landlord has notified Tenant in writing, at least ninety (90) days before the Commencement Date, are necessary for the public financing and will be in place during the Term.

4.6.2 Landlord Obligations and Protections

Provided the BPC has consented to Landlord's participation, and subject to any conditions which may be required by the BPC, Landlord shall join in any Contest only if such Contest is legally required to be initiated or prosecuted in Landlord's name. In such case, Landlord shall cooperate, as Tenant reasonably requests, and at Tenant's sole cost and expense, to permit the Contest to be prosecuted in Landlord's name. Landlord shall give Tenant any publicly available documents requested by Tenant in writing that are in Landlord's control and Tenant determines are reasonably necessary for Tenant to prosecute its Contest except where (i) the document is subject to an exemption or exception under the California Public Records Act (California Government Code Sections 6250 et seq.); (ii) the document is confidential pursuant to another agreement between Landlord and another Person; (iii) the document is protected by the attorney-client privilege or work-product protections; (iv) the disclosure or release of such document would result in a breach of an agreement to which Landlord is a party; or (v) the disclosure or release of the document would result in a violation of Laws. Tenant shall pay all costs and expenses, including any legal costs, of any Contest, including, without limitation, any costs and expenses resulting from the withdrawal of a Contest. If Tenant requests that Landlord assist Tenant with any Contest in accordance with this Lease, and such assistance is consistent with the requirements of Section 4.6.1 and this Section 4.6.2, then Landlord shall, within fifteen (15) days after receipt of such request, notify Tenant of the total amount of Anticipated Assistance Costs. Tenant may, but shall have no obligation to, fund the Anticipated Assistance Costs ("**Tenant Funding**"). If Tenant does not notify Landlord that Tenant will provide Tenant Funding to Landlord, then Landlord shall have no obligation to assist Tenant with such Contest. If Tenant notifies Landlord that Tenant will provide Tenant Funding to Landlord and Tenant pays to Landlord an amount that is equal to or greater than the Anticipated Assistance Costs, then Landlord shall reasonably assist Tenant with such Contest as Tenant reasonably requires. If the actual amount of Assistance Costs in connection with such assistance is at any time greater than the Tenant Funding provided until such time, then Landlord shall promptly notify Tenant thereof and the Parties shall follow the process set forth in the preceding three sentences. Landlord shall have no obligation to reimburse Tenant for Tenant Funding up to the amount of Assistance Costs. Landlord shall have no liability to Tenant if Landlord does not assist, or continue to assist, with any Contest if Tenant refuses to provide Tenant Funding or the amount Tenant has advanced is not sufficient to cover the Assistance Costs or the Contest is not in compliance with Section 4.6.1 or this Section 4.6.2. Landlord shall return to Tenant any portion of Tenant Funding that Landlord receives from Tenant and does not use for the Contest within thirty (30) days after Landlord receives notice from Tenant that the Contest is concluded or Tenant is withdrawing the Contest.

4.6.3 Miscellaneous.

Tenant shall pay the contested Property Tax Expenses when due and payable regardless of any anticipated or ongoing Contest. Tenant shall be entitled to any refund of any

Property Tax Expenses (and penalties and interest) paid by Tenant whether such refund is made during or after the Term (except to the extent such refund includes any tax increase for which Tenant has been reimbursed by Landlord prior to receiving such refund); provided that Tenant shall be responsible for securing such refund and Landlord shall have no obligation or liability in connection with such refund. When Tenant concludes any Contest, Tenant shall pay the amount of any Property Tax Expenses as has been finally determined in such Contest to be due (except for any amounts that Tenant has already paid pursuant to this Section 4.6.3), and any costs, interest, penalties, or other liabilities in connection with such Property Tax Expenses.

4.7 Waste or Nuisance.

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

4.8 Reservations.

Tenant shall take possession of the Property subject to the agreements, licenses, right of entry agreements, and other documents set forth in Exhibit "S" attached hereto and incorporated herein by reference ("**Approved Agreements**"). The Landlord Parties and any third party requested by Landlord shall have the right to enter the Premises and the Improvements for the purpose of constructing, installing, maintaining, repairing, replacing or removing monitoring wells during normal business hours and upon a three (3) Business Days' prior notice to Tenant (except in the case of an emergency in which case no prior notice shall be required but each of such Landlord Parties and each of such third parties shall notify the Hotel Operator's Risk Manager thereof by phone prior to entering the Premises) and Landlord shall, and shall cause each of such Landlord Parties and each of such third parties to: (a) comply with all applicable security and safety procedures of Tenant of which Tenant informs Landlord in writing and with which such Landlord Party and such third party can reasonably comply, and (b) use commercially reasonable efforts to minimize any interference with Tenant's operation and use of the Premises and the Improvements while on the Premises and at the Improvements, and, so long as such Landlord Parties and such third parties comply with such requirements, Tenant shall not be entitled to any monetary payment or other remuneration for, or resulting from, any such access to the Premises or the Improvements by such Landlord Parties or such third parties. Except in the case of an emergency, Landlord shall consult with Tenant to ensure that the interference with Tenant's operation and use of the Premises and the Improvements is minimized to the extent commercially reasonable efforts permit. In addition, if Tenant reasonably requests that Landlord relocate any monitoring wells due to development or construction activities, then, within ten (10) days of Landlord's receipt of notice from Tenant to relocate any monitoring wells, Landlord shall inform Rohr and use commercially reasonable efforts to enforce Landlord's rights against Rohr with respect thereto. Landlord shall reasonably cooperate with Tenant and Rohr to find a new location for the monitoring well(s) that Tenant has reasonably requested be relocated and if such relocation is reasonably and economically feasible, Tenant shall pay for any costs and expenses to relocate any monitoring wells that Tenant requests be removed pursuant to this Section 4.8. For the avoidance of doubt, nothing in this Lease limits Landlord's right to enter the Premises for any purpose to enforce its regulatory authority to comply with Laws.

Landlord shall present to the BPC for its reasonable consideration any reasonable request by Tenant in writing for an easement on, over, under or across the Premises to others, including, without limitation, any Governmental Authority, for the purpose of constructing, installing, maintaining, repairing, replacing and removing utility systems in connection with the development, construction, use or operation of the Premises and the Improvements; provided,

however, that, in each case, (A) the term of such easement shall not exceed the Term; (B) Landlord shall not be responsible for any cost or expense relating to such easement, including without limitation, maintenance thereof; (C) Landlord shall have the right to terminate such easement at no cost or expense to Landlord in the event of an early termination of this Lease; (D) Landlord shall have the right to relocate such easement, at any time, in Landlord's sole and absolute discretion, at Tenant's sole cost and expense; (E) Landlord shall have the right to approve the location and dimensions of the easement in Landlord's reasonable discretion; and (F) at Landlord's election, Tenant shall, at its own cost and expense, remove any utility system constructed or installed pursuant to such easement at the expiration or earlier termination of the Lease.

If required by an order of the SDRWQCB, Landlord shall have the right to grant a license or easement to Rohr, Inc., a United Technologies Aerospace Systems Company ("**Rohr**") to construct, install, maintain, repair, replace and remove monitoring wells on the Premises; but only if (i) Rohr reasonably coordinates with Tenant in determining the location or re-location, as applicable, of the monitoring wells and (ii) Landlord and Rohr reasonably cooperate with Tenant to minimize the impact of such construction, installment, maintenance, repair, replacement or removal, as applicable, on the Premises and the Improvements.

Landlord shall not encumber the Premises or the Improvements during the Term or during any New Lease Period, except for (i) the Convention Center Subleases, (ii) the Parking Improvements (if Landlord has paid the Landlord's Parking Contribution and such encumbrance is subordinate to Tenant's rights to use and operate the Parking Improvements under this Lease as reasonably determined by Tenant and the Permitted Mortgage Lender), (iii) any other documents effectuating public financing by the Landlord, the City, and the JEPA of the Premises, the Tenant's Phase 1A Improvements or the Convention Center that Tenant has agreed to prior to the Commencement Date or that Tenant agrees to, in Tenant's reasonable discretion, during the Term, (iv) the Enhanced Infrastructure Financing District, (v) the Communities Facilities District, (vi) as permitted under this Section 4.8, or (vii) as required by Laws, without the prior written consent of Tenant and, during the continuance of any Event of Default while any Permitted Encumbrance remains outstanding or during any New Lease Period, each Permitted Lender, which consent shall not be unreasonably withheld, conditioned or delayed.

4.9 Neighboring Improvements.

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

4.10 Energy Requirements.

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

4.11 Health Rating.

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

5. RENT

Tenant agrees to pay to Landlord Greater Of Rent, Parking Improvement Rent, Premises Surface Parking Rent, Surface Parking Improvements Rent, and Additional Rent (collectively "**Rent**") in accordance with this Article 5 and Exhibit “R”, Exhibit “R-3”, or Exhibit “R-4”, as applicable. All payments of Rent and other sums due to Landlord hereunder shall be paid in legal tender of the United States, without notice, invoice, setoff, deduction or demand, except as otherwise expressly provided herein. No payment by Tenant or receipt or acceptance by Landlord of a lesser amount than the Rent shall be deemed to be a waiver of any current or preceding breach by Tenant of any provision hereof. No endorsement or statement on any check or any letter accompanying any check or payment as Rent shall be deemed an accord and satisfaction, and Landlord has the right to accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy in accordance with this Lease, at law or in equity. Tenant waives all rights that it may have under present or future law to designate the items of Rent to which any payments made by Tenant are to be credited. Tenant agrees that Landlord may apply any payments made by Tenant to such items of Rent as Landlord designates, irrespective of any designation or request by Tenant as to the items of Rent to which such payments should be credited.

All payments of Rent shall be delivered to and statements required under Section 5.4.3 below and Exhibit “R”, Exhibit “R-3”, or Exhibit “R-4”, as applicable, shall be filed with Landlord's Treasurer. Payments of Rent shall be made by check, electronic wire transfer or automated clearing house ("**ACH**") transfer. Checks shall be made payable to the San Diego Unified Port District and mailed to the San Diego Unified Port District, Finance Department, Post Office Box 120488, San Diego, California 92112-0488, or delivered to the San Diego Unified Port District, Finance Department, 3165 Pacific Highway, San Diego, California 92101. All payments of Rent by electronic wire transfer or ACH transfer shall be directed to (or such other location as Landlord may instruct by notice from time to time):

Beneficiary Bank:	Wells Fargo Bank, N.A.
Bank Location:	420 Montgomery, MAC: A0112-102
	San Francisco, CA 94104
ACH/Wire Routing Number:	121000248
Beneficiary:	San Diego Unified Port District
Beneficiary Account Number:	4944-983881
Type of Account:	Deposit
Reference	Description of payment

Required: Customer number and/or invoice(s) numbers

Landlord has the right to change the designated place of payment or filing at any time upon ten (10) Business Days' written notice to Tenant. Tenant assumes all risk of loss and responsibility for Late Charges and interest at the Default Rate for late payments, as hereinafter described.

5.1 Rental Periods and Parking Improvement Rent.

5.1.1 Rental Periods.

The Term of this Lease shall be divided into the "Rental Periods" described in Section 1.4.

5.1.2 Parking Improvement Rent; Premises Surface Parking Rent; Surface Parking Improvements Rent.

On or before the twentieth (20^{th}) day of each month during the Term, in accordance with and to the extent required by Section 4.3 and Exhibit “R”, Exhibit “R-3” or Exhibit “R-4”, as applicable, Tenant shall pay to Landlord (a) the Parking Improvement Rent based on Tenant Parking Improvement Revenue, (b) the Premises Surface Parking Rent based on the Premises Surface Parking Revenue and (c) the Surface Parking Improvements Rent based on the Surface Parking Improvement Revenue.

5.2 Greater Of Rent.

Commencing on the Rent Commencement Date, the "**Greater Of Rent**" for each Lease Year shall be the greater of (i) the Minimum Annual Rent for such Lease Year as periodically adjusted as provided in Section 5.3, and (ii) with respect to the Fourth (4^{th}) Lease Period, the cumulative total of the Percentage Rent for such Lease Year as provided in Section 5.4 below.

5.2.1 Monthly Payments of Greater Of Rent.

(a) *Calculation of Payments*. Concurrently with the delivery of each Monthly Report, but in no event later than the twentieth (20^{th}) day of each month during the Term, and on or before the twentieth (20^{th}) day following the last day of the month in which this Lease is terminated or expires, Tenant shall pay to Landlord the greater of the following two amounts as and for the Greater Of Rent due with respect to the immediately preceding month:

(i) For any period of time before the beginning of the Fourth (4^{th}) Lease Period, Zero Dollars ($0), and during the Fourth (4^{th}) Lease Period, the total Percentage Rent computed for that portion of the Lease Year ending with and including the last day of the preceding month, less total Percentage Rent and monthly Minimum Annual Rent previously paid for the Lease Year, or

(ii) One-twelfth ($1/12^{th}$) of the Minimum Annual Rent, multiplied by the number of full calendar months from the beginning of the Lease Year to and including the preceding month, plus the amount of Minimum Annual Rent due with respect to any initial partial month in the first Lease Year, less the total Percentage Rent and monthly Minimum Annual Rent previously paid for the Lease Year.

(b) *Survival*. The terms of this Section 5.2.1 shall survive the expiration or earlier termination of this Lease.

5.3 Minimum Annual Rent.

Minimum Annual Rent for each Lease Year of the First (1st) Lease Period, Second (2nd) Lease Period, and Third (3rd) Lease Period is described in Section 1.5. Thereafter, Minimum Annual Rent shall be periodically adjusted by the "**Minimum Annual Rent Look Back Adjustments**" described in Section 5.3.1, which shall occur on the "**Minimum Rent Look Back Adjustment Dates**" described in Section 1.5.

5.3.1 Minimum Annual Rent Look Back Adjustments.

The Minimum Annual Rent shall be subject to adjustment on each Minimum Rent Look Back Adjustment Date set forth in Section 1.5 as follows. Within thirty (30) days following each Minimum Rent Look Back Adjustment Date, Landlord shall determine, and provide to Tenant, a written statement setting forth the calculation of, the average annual Greater Of Rent that was payable by Tenant (a) during the period from the first day of the Fourth (4th) Lease Period until the first Minimum Rent Look Back Adjustment Date and (b) with respect to all subsequent Minimum Rent Look Back Adjustment Dates, during the period between the applicable Minimum Rent Look Back Adjustment Date and the prior Minimum Rent Look Back Adjustment Date. Effective as of the applicable Minimum Rent Look Back Adjustment Date, Minimum Annual Rent shall be adjusted to an amount equal to sixty-five percent (65%) of such average annual Greater Of Rent payable over the three (3) Lease Years that immediately precede such Minimum Rent Look Back Adjustment Date; provided that in no event shall such new Minimum Annual Rent be less than the Minimum Annual Rent payable for the Lease Year immediately preceding such Minimum Rent Look Back Adjustment Date. Following the determination of a new Minimum Annual Rent, Tenant shall pay any underpayment of Minimum Annual Rent to Landlord within thirty (30) days following such determination. Tenant shall pay Greater Of Rent based on the Minimum Annual Rent at the rate set forth in Section 1.5 or as determined in accordance with this Section 5.3.1, as applicable, until such Minimum Annual Rent is adjusted by a Minimum Annual Rent Look Back Adjustment in accordance with this Section 5.3.1.

5.4 Percentage Rent.

"**Percentage Rent**" is the product of the applicable percentage set forth in Section 5.4.1 below (each, a "**Percentage Rent Rate**") multiplied by the Gross Income with respect to the applicable category described in Section 5.4.1 below. Percentage Rent shall be calculated on a monthly basis as provided in this Section 5.4 above and shall be paid in accordance with Section 5.2 above. During the First (1st) Lease Period, the Second (2nd) Lease Period and the Third (3rd) Lease Period, the amount of the Percentage Rent for each Lease Year shall be equal to Zero Dollars ($0).

5.4.1 Percentage Rent Categories.

Percentage Rents shall be based on the following percentages of the Gross Income, whether collected, uncollected, received, payable or accrued, in the Fourth (4th) Lease Period:

(a) Eight Percent (8%) or Nine Percent (9%) of the Gross Income, as applicable, from rental of Rooms, rental of in-Room movies, sale of similar in-Room entertainment services, charges for room service delivery, sale of telephone services, and sale of laundry and dry-cleaning services as follows:

(i) Lease Years 38 – 47: Eight Percent (8%)

(ii) Lease Years 48 – 66: Nine Percent (9%)

(b) Six Percent (6%) or Seven Percent (7%) of the Gross Income, as applicable, from rental of any meeting space, conference room, banquet room or event space in the Convention Center, Resort Hotel or anywhere else on the Premises (collectively, the

"**Meeting Space**") and sale of related merchandise and services provided to the Meeting Space (including Gross Income from recovery charges for materials, utilities, security, and similarly related accommodations, sales and services) as follows:

(i) Lease Years 38 – 47: Six Percent (6%)

(ii) Lease Years 48 – 66: Seven Percent (7%)

(c) Four Percent (4%) or Five Percent (5%) of the Gross Income, as applicable, from sale of food and nonalcoholic beverages (including, without limitation, coffee, tea or milk) sold in conjunction with food, as follows:

(i) Lease Years 38 – 47: Four Percent (4%)

(ii) Lease Years 48 – 66: Five Percent (5%)

(d) Six Percent (6%) or Seven Percent (7%) of the Gross Income, as applicable, from sale of nonalcoholic beverages (including, without limitation, coffee, tea or milk) not served in conjunction with food for consumption on the Premises and the Improvements, as follows:

(i) Lease Years 38 – 47: Six Percent (6%)

(ii) Lease Years 48 – 66: Seven Percent (7%)

(e) Six Percent (6%) or Seven Percent (7%) of the Gross Income, as applicable, from sale of alcoholic beverages for consumption on the Premises and the Improvements, as follows:

(i) Lease Years 38-47: Six Percent (6%)

(ii) Lease Years 48-66: Seven Percent (7%);

(f) Three Percent (3%) of the Gross Income from sale of packaged alcoholic and nonalcoholic beverages for consumption off of the Premises and the Improvements;

(g) Five Percent (5%) of the Gross Income from sale of merchandise including, but not limited to, gifts, novelties, souvenirs, clothing, luggage, jewelry, cigars, cigarettes, candy, sundries, and incidentals of any kind;

(h) Five Percent (5%) of the Gross Income from any admission, cover, or other entertainment charges;

(i) Five Percent (5%) of the Gross Income from rental of automobiles (whether or not the automobiles are stored or delivered at the Premises and the Improvements);

(j) Five Percent (5%) of the Gross Income from sale of health club services, hair cutting and salon services, make-up and beauty services and/or sale of spa services, including but not limited to facials, massages, body wraps, and aromatherapy;

(k) Fifteen Percent (15%) of the Gross Income from rental of bicycles and other recreational equipment;

(l) Ten Percent (10%) of the Gross Income from sale of recreation lessons;

(m) One-half Percent (0.5%) of the Gross Income from sale of any and all California State Lottery tickets;

(n) Ten Percent (10%) of the Gross Income from the rental of office space to tourism/visitor-serving tenants and maritime related tenants;

(o) Three Percent (3%) of the Gross Income from sale of groceries;

(p) Six Percent (6%) of the Gross Income from sale of passenger tickets for crew-operated excursion boats;

(q) Six Percent (6%) of the Gross Income from sale of passenger tickets for crew-operated sport fishing and whale-watching boats;

(r) Five Percent (5%) of the Gross Income from sale of merchandise and/or services through coin-operated vending or service machines or devices that are owned, rented, or leased by Tenant or Subtenant;

(s) Twenty-five Percent (25%) of any commissions and other compensation received for the right to install and operate coin-operated vending or service machines or devices, including telephones, that are not owned, rented, or leased by Tenant or Subtenant;

(t) Fifty Percent (50%) of the Gross Income from any and all telecommunications uses which shall include, but are not limited to, rooftop wireless antennas, antennas attached to a building façade, microwave antennas, paging antennas and cell phone equipment, excluding telecommunications uses that exclusively serve the uses on the Premises and the Improvements;

(u) Ten Percent (10%) of the Gross Income from sale of business services wherever provided on the Premises and the Improvements, including, without limitation, the sale of internet access or other telecommunication services (including, without limitation, sale of internet access or other telecommunication services in connection with the rental of Rooms, Meeting Space, unless such internet access or other telecommunication services are not separately charged and are incorporated within the rental charge of the relevant Room or Meeting Space);

(v) Ten Percent (10%) of any "mark-ups," income, fees and commissions that Tenant receives as compensation for handling and/or selling tickets sold for activities or events occurring outside the Premises and the Improvements and in which neither Tenant nor its Affiliate has a direct or indirect ownership interest (for example, admission tickets to the San Diego Zoo Safari Park located in the City of Escondido); provided, however, that, in the case of an Affiliate of Tenant that has a direct or indirect ownership interest in Tenant, such mark-ups, income, fees and commissions shall only be excluded if the Tenant does not retain any of the mark-ups, income, fees or commissions. For the avoidance of doubt and by way of example, if Tenant sells tickets to a Person at the Premises for an event at the Gaylord Rockies and Tenant maintains any portion of the mark-up, income, fee or commission of the tickets, then Tenant shall pay Landlord 10% of such mark-up, income, fee and commission;

(w) Ten Percent (10%) of the Gross Income from any and all services or uses permitted under the terms of this Lease and not otherwise addressed within the foregoing provisions; and

(x) Twenty Percent (20%) of the Gross Income from any and all services or uses not permitted under the terms of this Lease and not otherwise addressed within the foregoing provisions.

5.4.2 Gross Income.

(a) *Definition*. "**Gross Income**" shall include all Revenue received by Tenant, Subtenant, and Hotel Operator without any deductions or exclusions except as provided in Section 5.4.2(b) below, resulting from, directly or indirectly, or connected to or generated from, the occupancy or use of the Premises and the Initial Improvements, or any

business conducted on the Premises and the Initial Improvements for cash or credit, whether collected or uncollected, received, payable or accrued and from whatever source derived, including, but not limited to, any type of sales arising from the customers of any Tenant Party and Hotel Operator receiving services, products or benefits on or from the Premises and the Initial Improvements. For the avoidance of doubt and by way of example, Gross Income from lodging will include only Room revenues derived from the use of Rooms in the Initial Project Improvements; Gross Income from food and beverage sales will be limited to income from food and beverages served or delivered at or from the Initial Improvements and Premises; Gross Income from Meeting Space usage will be limited to revenue from the use of Meeting Space located within the Improvements and Premises; and Gross Income from retail sales will be limited to revenues from the sales of goods that are delivered at the Initial Improvements or for which the purchaser pays at the Initial Improvements. Without limitation of the foregoing, Gross Income shall be construed to include, without limitation, the entire amount of the actual sales price (including all finance charges received or paid by a Tenant Party or Hotel Operator) of all sales, rentals, leases and licenses or for other transfer of merchandise or services, and other receipts whatsoever, including, without limitation, agency sales and all mail, catalogue, computer, facsimile, telephone, telecommunication, electronic and other orders filled, transmitted or received through any media. Gross Income shall include any manufacturer's or importer's excise tax included in the prices of the goods sold, even though the manufacturer or importer is also the retailer thereof, whether or not the amount of such excise tax is stated as a separate charge.

(b) *Exclusions*. Refunds for goods returned shall be deducted from current Gross Income upon their return. Bad debt losses shall not be deducted from Gross Income. Gross Income shall not include any of the following:

(i) sales of United States postage;

(ii) any sales or transient occupancy tax payable by Tenant or a Tenant Party to any Governmental Authority as a direct result of operations under this Lease; provided that the amount of such taxes is shown on the books and records elsewhere herein required to be maintained;

(iii) gratuities; provided that the customer voluntarily determines the amount of said gratuity to be paid, or the customer is aware that Tenant or a Tenant Party has added a pre-established gratuity to the charge for the services rendered and said additional amount is segregated and identified as a gratuity on the billing to the customer;

(iv) proceeds of any disposition of Tenant's trade fixtures (that is fixtures that relate uniquely to Tenant and which are removable without non-repairable damage to the Improvements), furnishings, moveable equipment and other personal property of Tenant located on the Premises or at the Improvements;

(v) the Tenant Parking Improvements Revenue;

(vi) any rent received by Tenant from any Subtenant pursuant to the applicable Sublease, which does not include percentage of Gross Income collected by Tenant from Subtenant pursuant to Section 5.4.1. For the avoidance of doubt, it is understood that Tenant will pay to Landlord Percentage Rent in an amount equal to the applicable Percentage Rent Rate times the Gross Income with respect to the applicable category set forth in Section 5.4.1 without regard to the amount of rent that such Subtenant actually pays to Tenant. For illustration purposes and by way of example, if a Subtenant

sells a passage ticket for $100, then Tenant will pay Landlord Six Dollars ($6.00) even if such Subtenant pays more or less in rent in connection therewith to Tenant;

(vii) interest received or accrued with respect to the funds in any repair and replacement reserve required to be maintained under a Hotel Management Agreement; provided that such interest is required to be credited to the reserve;

(viii) any refunds, rebates, discounts and credits of a similar nature that are given, paid or returned in the course of obtaining Revenue or components thereof, which will be deducted from the Gross Income for the period in which such Revenue was earned; provided, however, that if any such refund, rebate, discount or credit is given, paid or returned, as applicable, after such period, then the amount of Gross Income, Percentage Rent and Greater of Rent for the affected period will be recalculated, and Landlord shall promptly credit Tenant any overpayment of the Greater of Rent; or

(ix) any insurance proceeds, Condemnation proceeds or any proceeds from a sale of the Project Improvements (or any portion thereof) or any refinancing of the Project (or any portion thereof).

5.4.3 Reports of Gross Income.

(a) *Monthly Reports.* On or before the twentieth (20^{th}) day of each month following the beginning of the Fourth (4^{th}) Lease Period, and on or before the twentieth (20^{th}) day following the last day of the month in which this Lease is terminated or expires, Tenant shall deliver to Landlord, in a form prescribed by Landlord, a detailed cumulative report of Gross Income for that portion of the Lease Year which ends with and includes the last day of the previous calendar month ("**Monthly Report**"). Each Monthly Report shall be signed by Tenant or an authorized representative of Tenant under penalty of perjury and shall include the following:

(i) The total Gross Income for said portion of the Lease Year, itemized as to each of the Percentage Rent categories for which a separate Percentage Rent Rate (or per unit charge, if applicable) is established;

(ii) The related itemized amounts of Percentage Rent computed, as herein provided, and the total thereof;

(iii) The total Minimum Annual Rent and Percentage Rent previously paid by Tenant for the Lease Year within which the preceding month falls; and

(iv) A calculation of the Greater Of Rent due for the preceding calendar month determined in accordance with the terms of Section 5.2.1(a).

(b) *Record Keeping.* Tenant shall, during the Term and, with respect to each record, for a period of seven (7) years after the date the record was created (or such longer period as Tenant may decide in its sole discretion), use commercially reasonable efforts to keep or cause to be kept, accurate and complete records and books of account of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuit of the rights granted herein (if conducted by or on behalf of Tenant or any Subtenant). The records shall be supported by source documents of original entry such as sales invoices, cash register tapes, bank depository documentation, purchase invoices, or other pertinent supporting documents. A balance sheet and income/expense statement, based upon the books of account, shall be prepared periodically but not less often than once per annum. All sales and other financial transactions shall be recorded by means of a comprehensive system which includes sufficient business processes to ensure that all Gross Income is clearly and accurately recorded and documented by reports and other original source documents. The

system shall provide reporting and distinction of all sales and other income and Revenue categories and shall generate an audit trail of all transactions. Any recordation system for sales or other income and Revenue transactions shall be subject to the written approval of the Landlord (such approval not to be unreasonably withheld, conditioned or delayed); provided that, so long as Marriott is the Hotel Operator under the Hotel Management Agreement, the recordation system for sales or other income and Revenue transactions that is used by Marriott shall satisfy the requirements set forth in this Section 5.4.3(b) until such time as Landlord sends notice to Tenant that Landlord does not reasonably approve of such recordation system, in which case Landlord and Tenant shall cooperate reasonably and in good faith to agree on a new recordation system and, once agreed, Tenant shall then promptly implement the recordation system that has been so agreed between Tenant and Landlord. In the event of admission or cover charges, Tenant shall issue either preprinted serially numbered tickets for each such admission or cover charge or such other evidence of the issuance of each individual ticket, which may include digital records of such tickets. In the event of the rental of vehicles or vessels, Tenant shall issue or cause to be issued either preprinted serially numbered rental agreements for each such rental transaction or such other evidence of the issuance of each rental transaction, which may include digital records of such rental transactions. The terms of this Section 5.4.3(b) shall survive the expiration or earlier termination of this Lease.

(c) *Maintenance of Records; Audit*. Tenant shall use commercially reasonable efforts to keep all of Tenant's books of account, records, financial statements, and documentation related to this Lease or to business operations conducted within or from the Premises or the Improvements (the "**Tenant Records**") during the Term and, with respect to each record, for a period of seven (7) years after the date the record was created (or such longer period as Tenant may decide in its sole discretion), either at the Premises, the Improvements, Tenant's main business office, any of Hotel Operator's business offices or at a location in San Diego County, California as is reasonably acceptable to Landlord. In the event the Tenant does not make available to Landlord Tenant Records, including in electronic form or hard copy form delivered via a reputable overnight courier, within San Diego County, then Tenant agrees to pay all reasonable travel and other expenses incurred by Landlord Parties in conducting an audit at the location where the Tenant Records are kept. For the avoidance of doubt, Tenant Records in electronic form will be deemed to be kept at each location at which such Tenant Record reasonably may be accessed. Without limitation of the foregoing, if there is any Subtenant occupying or operating from any portion of the Premises or the Improvements, then the books and records also shall include any occupancy, licensing, permit or operating agreements pertaining to such Subtenant, as well as the books of account, records, financial statements, and documentation, relating to the operations of such Subtenant at the Premises or the Improvements, as applicable. Upon at least forty-eight (48) hours' prior notice to Tenant, Landlord shall have the right to examine and audit the Tenant Records, including, without limitation, for the purpose of determining the accuracy thereof, the accuracy of the Monthly Reports, the Monthly Parking Reports, and the accuracy of the Rent paid to the Landlord. Landlord's audit rights shall apply to the current Lease Year and all prior Lease Years and Tenant waives the right to assert any statute of limitations in connection with any audit or any underpayment disclosed pursuant to such audit. In the event that the business operations conducted within or from the Premises or the Improvements are part of a larger business operation, and any part of the Tenant Records herein is prepared only for the larger operation, and not solely for the business operations of the Premises or the Improvements, then Landlord shall also have the right to examine and audit such books of account, records, financial statements, and documentation of the larger business operation as are necessary for Landlord to reasonably assess Tenant’s compliance with this Lease. If Tenant assigns its interest under this Lease, Tenant shall deliver to the Transferee the originals (or complete

copies) of the Tenant Records which shall be retained by Transferee and available to audit on the same terms as under this Section 5.4.3(c).

(d) *Failure to Maintain Records*. Tenant shall use commercially reasonable efforts to keep, or cause to be kept, each Tenant Record for a period of seven (7) years after the date the Tenant Record was created and to make each Tenant Record available for inspection by Landlord in accordance with the terms hereof. After the seven (7) year period has expired for a certain Tenant Record, Tenant shall deliver the original Tenant Record to Landlord at the address set forth in Section 1.11 or such other location designated by Landlord in writing, which may include the main offices of the City; provided, however, Tenant may elect to deliver all of the Tenant Records that expire in a given Lease Year at one time, in one delivery, within twelve (12) months after the end of the applicable Lease Year. Landlord may request that Tenant implement any additional accounting methods or controls that Landlord reasonably deems necessary, subject to prior written notice to Tenant. If Landlord does so, then Tenant will in good faith consider implementing such additional accounting methods or controls, as applicable, but Tenant may, in consultation with the Hotel Operator, elect in its reasonable discretion not to implement such additional accounting methods and controls. In the event the Tenant does not make available to Landlord the original Tenant Records, including in electronic form, within San Diego County, then Tenant agrees to pay all reasonable travel and other expenses incurred by Landlord Parties in conducting an audit at the location where the Tenant Records are kept.

(e) *Underpayment/Overpayment.* If the audit conducted by Landlord under Section 5.4.3(c) above reveals an underpayment or an overpayment of the Rent due, Tenant shall pay to Landlord the amount of the underpayment within thirty (30) days following written notice thereof from Landlord, or Landlord shall refund the amount of the overpayment within thirty (30) days following the determination of such overpayment (or, at Landlord's option, Landlord shall credit the overpayment against the installment of Greater Of Rent first coming due after such thirty- (30-) day period), as applicable. If the audit reveals a discrepancy of five percent (5%) or more between the Rent due as reported by Tenant and the Rent due as determined by the audit, and/or Tenant has failed to maintain (or has failed to cause to be maintained) complete and accurate Tenant Records as described in this Section 5.4 above, then Tenant shall also pay the cost of the audit within thirty (30) days after written notice thereof from Landlord.

5.5 Additional Rent.

For each Lease Year of the First (1st) Lease Period, Second (2nd) Lease Period, and Third (3rd) Lease Period, Tenant shall pay additional rent ("**Additional Rent**") to Landlord equal to twenty percent (20%) ("**Additional Rent Percentage**") of the amount by which the Net Operating Income for such Lease Year exceeds eleven percent (11%) of the Actual Capital Investment ("**Additional Rent Hurdle**").

For purposes of this Section 5.5, the following definitions shall apply:

"**Net Operating Income**" shall mean for any Lease Year the total Project Revenues less all Operating Expenses calculated on an annual basis.

"**Actual Capital Investment**" shall mean the actual cost incurred by Tenant, but neither funded nor reimbursed by Landlord, the City, or JPA, to design, construct and develop the Tenant's Phase 1A Improvements, the Premises Surface Parking, the Surface Parking Improvements, the Initial Project Improvements, or, if and after Tenant substantially completes the Parking

Improvements in accordance with Section 4.3, the Parking Improvements, including, without limitation, all financing costs and other costs that are capitalized in accordance with generally accepted accounting principles, as certified by a reputable, certified public accountant as of the Completion of the Initial Project Improvements and as of the substantial completion of the Tenant's Phase 1A Improvements, the Premises Surface Parking, the Surface Parking Improvements and, if applicable, the Parking Improvements, as the case may be.

"**Project Revenues**" shall mean all income, receipts, proceeds, amounts, money, cash, assets, property or things of value actually received by Tenant for all goods and merchandise sold, room revenues derived from hotel operations, food and beverages sold, the charges for all services performed, or any other revenues generated by or otherwise payable to Tenant (and Tenant Parties) (including, without limitation, user fees, retail and commercial rent, revenue from rooms, accommodations, food and beverage, and the proceeds of business interruption insurance) in, at or from the Premises and Initial Improvements, whether collected, uncollected, received, payable or accrued, and all rent actually received by Tenant from any Subtenant pursuant to the applicable Sublease. For the avoidance of doubt and by way of example, Project Revenues from lodging will include only Room revenues derived from the use of Rooms in the Initial Improvements; Project Revenues from food and beverage sales will be limited to income from food and beverages served or delivered at or from the Premises and Initial Improvements; Project Revenues from Meeting Space usage will be limited to revenue from the use of Meeting Space located within the Initial Improvements and Premises; and Project Revenues from retail sales will be limited to revenues from the sales of goods that are delivered at the Initial Improvements or for which the purchaser pays at the Initial Improvements. Project Revenues shall exclude (a) any promotional allowances, (b) proceeds from any sale of the Project Improvements (or any portion thereof) or any refinancing of the Project (or any portion thereof), in each case, that are not prohibited by this Lease, (c) proceeds of any disposition of Tenant's trade fixtures (that is fixtures that relate uniquely to Tenant and which are removable without non-repairable damage to the Improvements), furnishings, moveable equipment and other personal property of Tenant located on the Premises or at the Improvements, (d) bad debt losses, (e) all income, receipts, proceeds, amounts, money, cash, assets, property or things of value received by any Subtenant (but this exclusion (e) is not intended to exclude from Project Revenues rent actually received by Tenant from any Subtenant pursuant to the applicable Sublease), (f) interest received or accrued with respect to the funds in any repair and replacement reserve required to be maintained under a Hotel Management Agreement; provided that such interest is required to be credited to the reserve, (g) any refunds, rebates, discounts and credits of a similar nature that are given, paid or returned in the course of obtaining income or components thereof, which will be deducted from the Project Revenues for the period in which such income was earned; or (h) any insurance proceeds, Condemnation proceeds or any proceeds from a sale of the Project Improvements (or any portion thereof) or any refinancing of the Project (or any portion thereof).

"**Operating Expenses**" shall mean expenses, costs, and amounts of every kind that Tenant pays or incurs during any Lease Year because of or in connection with the ownership, operation, management, maintenance, repair, replacement, or restoration of the Premises and the Initial Project Improvements or, if and after Tenant substantially completes the Parking Improvements in accordance with Section 4.3, the Parking Improvements, or the operation or management of the business conducted thereon consistent with this Lease (collectively, "**Operation**"), including, by way of example, all direct and indirect employment expense (including wages, salaries, and other compensation and benefits of all persons engaged in Operation, including employer's social security taxes, unemployment taxes, insurance, and any other taxes imposed on Tenant that may be levied on those wages, salaries, and other

compensation and benefits), cost of goods sold, costs of supplies or materials consumed and any other cost or expense of any kind incurred in connection therewith; cost of equipment and fixtures installed in the Project Improvements or the Premises (to the extent not included in the calculation of Actual Capital Investment); the cost of any utilities; the cost of operating, managing, maintaining, and repairing any building system; the cost of licenses, certificates, permits, and inspections; the cost of any Contest; the costs incurred in connection with the implementation and operation of a transportation system management program or similar program; advertising and marketing expense of any kind (including the cost of participating in a reservation management or loyalty program); fees, charges, and other costs including management fees (or amounts in lieu of such fees), consulting fees, legal fees, and accounting fees of all persons engaged by Tenant or otherwise reasonably incurred by Tenant in connection with the operation, management, maintenance, and repair of the Premises and the Project Improvements, or the operation of the business conducted thereon; payments under any easement, license, operating agreement, declaration, restrictive covenant, or instrument relating to the sharing of costs by the Premises or the Project Improvements; including industry standard operator and franchise fees, replacement reserves, and replacement costs in excess of reserves; asset management fees for the Project Improvements (which shall not exceed one percent (1%) of the Project Revenues); gross tax receipts for the Project Improvements; sales, use, transient occupancy or similar tax; the cost of maintaining insurance premiums for the Initial Project Improvements and, if required pursuant to Section 4.3, the Parking Improvements (including liability insurance); property taxes for the Project Improvements; possessory interest tax on Tenant's leasehold interest (land value); incentive management fees ("**Management Incentive Fee**") for the Project Improvements (which shall not exceed twenty percent (20%) ("**Maximum Incentive Fee Percentage**") of the portion of the Net Operating Income that exceeds Seventy-Five Million Six Hundred and Eighty Thousand Dollars ($75,680,000) ("**Incentive Fee Hurdle**")); Rent actually paid by Tenant under this Lease; any other cost or expense that is properly allocated to the operation of the Premises or the Project Improvements under USALI; and all other expenses categorized as "deductions" under the Hotel Management Agreement that are agreed to by Landlord in the reasonable exercise of its discretion. Operating Expenses shall exclude debt service (principal and interest) paid by Tenant for the Project Improvements, depreciation of the Project Improvements, income taxes paid by Tenant for Project Revenues related to the Project Improvements and the costs or expenses of operating any business within any portion of the Premises or Project Improvements that is subleased to any Subtenant (but not the costs incurred by Tenant (as sublandlord and as Tenant) in operating such portion of the Premises or Project Improvements (such as insurance costs, maintenance and repair costs and Property Tax Expenses)).

On or before the twentieth (20^{th}) day of each month of the First (1^{st}) Lease Period, Second (2^{nd}) Lease Period, and Third (3^{rd}) Lease Period, commencing on the second month of the first Lease Year of the First (1^{st}) Lease Period and ending on the first month of the first Lease Year of the Fourth (4^{th}) Lease Period, Tenant shall render to Landlord, a monthly report of Net Operating Income for the immediately preceding month of the Lease Year and the Additional Rent due, if any. Each report shall be signed by Tenant or its authorized representative under penalty of perjury and shall be accompanied by payment of all Additional Rent due.

5.5.1 Additional Rent Example Calculation.

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

AR = Additional Rent

MIF = Management Incentive Fee

a = Additional Rent Percentage

b = Maximum Incentive Fee Percentage

c = Incentive Fee Hurdle

d = Additional Rent Hurdle

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

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

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

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

$$AR = \frac{20\% (\$100M - 20\% \times \$24.32M - \$86.35M)}{1-.04}$$

$$AR = \frac{20\% (\$100M - \$4.864M - \$86.35M)}{.96}$$

$$AR = \frac{20\% \times \$8.786M}{.96}$$

$$AR = \frac{\$1.7572M}{.96}$$

AR = $1.830 Million

5.6 Late Charges.

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

5.7 Net Lease.

Tenant acknowledges that the Rent will be absolutely net of any costs or expenses to Landlord relating to Premises or any Improvements and acknowledges and agrees that Landlord shall not be responsible for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Premises or any Improvements during the Term, whether foreseen or

unforeseen and whether or not within the contemplation of the Parties as of the Commencement Date, except as shall be otherwise expressly provided in this Lease. Without limitation of the foregoing, Landlord shall not be required to construct, install, provide or arrange for any utilities, roadway, docks, tide walls, drainage or other improvements of any nature on, in, under or above the Premises or any other location, except as shall be otherwise expressly provided in this Lease.

5.8 Reimbursement.

If under the terms of this Lease an amount expended by Landlord is to be reimbursed by Tenant pursuant to the "**Reimbursement Procedure**", then Tenant shall reimburse Landlord for the subject amount within thirty (30) days of Tenant's receipt of reasonable evidence of the work performed by or for Landlord and the costs incurred by Landlord for such work, including, without limitation, a reasonably detailed invoice or statement from Landlord for the subject amount and, if applicable, copies of any applicable third party invoices, and/or work description. Any amounts owed to Landlord pursuant to the Reimbursement Procedure shall constitute Additional Rent and shall accrue interest at the Default Rate from the date due until paid if not paid within the time period permitted under the Reimbursement Procedure.

6. CONSTRUCTION AND ALTERATION OF INITIAL PROJECT IMPROVEMENTS

6.1 Commencement and Completion of Initial Project Improvements.

Following the Commencement Date, but not later than the Outside Construction Commencement Date, Tenant shall commence the construction of the Initial Project Improvements. Tenant shall be deemed to have commenced the construction of the Initial Project Improvements when Tenant delivers a notice to proceed with respect to the construction of the Initial Project Improvements to Tenant's contractor. Thereafter, Tenant shall, subject to the terms of Section 6.5, diligently proceed with the construction of the Initial Project Improvements to Completion, and Complete the Initial Project Improvements by the Outside Construction Completion Date. Without limiting the generality of the foregoing, Tenant acknowledges and agrees that the cessation of construction of the Initial Project Improvements for more than thirty (30) consecutive days shall, unless caused by a Force Majeure Event, be deemed a failure by Tenant to diligently proceed with the construction of the Initial Project Improvements to Completion and shall constitute an Event of Default under this Lease without further notice or cure right by Tenant if Tenant does not resume construction of the Initial Project Improvements within ten (10) days after Tenant receives notice thereof from Landlord which notice shall include the following language: "**FAILURE BY TENANT TO RESUME CONSTRUCTION OF THE INITIAL PROJECT IMPROVEMENTS (AS SUCH TERM IS DEFINED IN THE LEASE) WITHIN TEN (10) DAYS AFTER THE DATE TENANT RECEIVES, OR IS DEEMED TO HAVE RECEIVED, THIS NOTICE SHALL CONSTITUTE AN EVENT OF DEFAULT UNDER THE LEASE"**. The Initial Project Improvements shall be constructed substantially in accordance, in all material respects, with the plans and specifications, including but not limited to working drawings, described in Exhibit "C" attached hereto (the "**Plans**"). The Plans have been previously approved in writing by Landlord. Changes to the Plans must be approved by Landlord in writing, in Landlord's sole and absolute discretion, and, once approved, shall be considered a part of the "Plans"; provided, however, Landlord's approval of any change in the Plans shall not be required if: (a) such change does not result in a use that is not a Permitted Use, (b) such change does not require modifications to the Plans for the structural portions of the Improvements, (c) such change does not change the design principles of the exterior appearance of the Initial Project Improvements, as set forth in the CDP, (d) such change is in compliance with the Chula Vista Building Code, (e) such change is in compliance

with, and does not violate the provisions of, the PMP, CDP, the EIR, CVBMP Documents and any other Laws, (f) such change does not result in the removal of trees in violation of the CDP, (g) such change does not trigger any storm water construction BMP permit or permanent structural BMP permit or alterations to existing permanent structural BMPs, and (h) such change does not pave any area greater than twenty-five (25) square feet unless Tenant has previously secured the approval to perform such work from all applicable Governmental Authorities, including Landlord. Within thirty (30) days of Landlord's notice to Tenant, Tenant shall provide to Landlord a reasonably detailed explanation of all changes that Tenant has made to the Plans without the Landlord's approval pursuant to this Section 6.1, including without limitation, an explanation of why such change did not require approval from Landlord, and copies of the revised Plans showing the changes, and Landlord shall have thirty (30) days from the receipt of such information to object to the changes to the Plans as requiring the Landlord's approval as provided in this Section 6.1. The Plans are by this reference made a part hereof. In the event of any inconsistency between the Plans and the terms and conditions of this Lease, the terms and conditions of this Lease shall prevail.

In constructing the Initial Project Improvements, Tenant shall comply with all Construction Requirements set forth in Exhibit "D" attached hereto and all Laws, including, without limitation, the PMP requirements, mitigation measures or conditions of approval under the terms of any of the approvals by any Governmental Authority for the Project, including any CDPs applicable to the Premises or the use or development thereof and any conditions of approval or mitigation measures or Project changes pursuant to any environmental review under CEQA. In addition, in connection with the construction of the Initial Project Improvements or Alteration of the Initial Project Improvements, Tenant shall comply with Section 6.8 regarding PWL requirements.

6.2 Premises Preparation Work.

Landlord shall pay to Tenant up to the Premises Preparation Cap for the work to be completed by Tenant to prepare the Premises for the construction of the Initial Project Improvements ("**Premises Preparation Work**"). On or before the twentieth (20th) day of each month, Tenant shall provide to Landlord on a monthly basis an invoice for an amount equal to the difference between (a) the amount of all costs that Tenant has incurred in connection with the Premises Preparation Work ("**Premises Preparation Work Costs**") *less* (b) the amount that Landlord has previously paid to Tenant in respect of Premises Preparation Work Costs. With each such invoice, Tenant shall submit supporting documentation and statutory conditional mechanics lien waivers from all of Tenant's contractors for the Premises Preparation Work who have not submitted statutory final lien waivers. Landlord shall pay the amount of each invoice for the Premises Preparation Work to Tenant no later than thirty (30) days after Landlord receives such invoice until Landlord has reimbursed Tenant an amount equal to the Premises Preparation Cap. Tenant shall send to Landlord the statutory final mechanics' lien waivers for any Premises Preparation Work when Tenant delivers the statutory final mechanics' lien waivers for the Initial Project Improvements; provided however, that nothing herein shall be interpreted as a modification of or waiver by Landlord of Tenant's obligations pursuant to Article 9. Notwithstanding the foregoing, Landlord will not be required to disburse any amount under this Section 6.2 in excess of the Premises Preparation Cap.

6.3 Alterations.

6.3.1 Major Alterations.

The term "**Major Alterations**" means all Alterations other than Minor Alterations and the Initial Project Improvements. Tenant shall comply with all Laws, at its sole cost and expense,

including, without limitation, obtaining any permits and approvals required to be obtained for the Major Alterations from any Governmental Authority. Tenant may not make any Major Alterations without the prior written consent of Landlord. Landlord's consent will not be unreasonably withheld. The foregoing is not intended to limit Landlord's discretion when Landlord is exercising its police or regulatory powers as a Governmental Authority pursuant to the Port Act or is considering issuing any discretionary approval. Any Major Alteration shall be subject to Section 6.7. Landlord may condition its approval of a Major Alteration on compliance with the Laws and Tenant obtaining insurance coverages in addition to those required under Article 18 if such additional coverage is customarily obtained in connection with work similar in scope to the Major Alteration. All Major Alterations shall be in accordance with plans and specifications, including but not limited to working drawings (collectively, "**Alteration Plans**") submitted to and approved by Landlord in writing prior to the commencement of the Major Alterations. Following approval by Landlord, any changes in the Alteration Plans shall be subject to Landlord's approval, in Landlord's sole discretion. If Landlord approves the Alteration Plans, and if Tenant elects to proceed with the Major Alterations, then Tenant shall construct and Complete all of the Major Alterations set forth in the Alteration Plans in one (1) integrated construction project with all due diligence; provided, however, that any Major Alterations may be Completed in phases if such phasing is permitted by the Laws.

6.3.2 Minor Alterations.

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

6.3.3 Diligent Construction; Continuous Operations.

Once construction of any Alterations is commenced, Tenant shall diligently prosecute construction of the Alterations to Completion. During the course of the construction of the Major Alterations, Tenant shall continue to use and operate the Premises and the Improvements (other than the Existing Improvements) to the extent required by Section 4.4. Once an Alteration is Complete, Tenant shall use and operate the Alteration as part of the Premises and the Improvements, as applicable, throughout the Term.

6.3.4 Construction Requirements.

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

6.4 Cost Reporting.

Tenant shall, during the Term and, with respect to each record, for a period of seven (7) years after the date such record is created (or such longer period as Tenant may decide in its sole

discretion), use commercially reasonable efforts to maintain customary records of construction costs incurred by Tenant in connection with the Improvements and any Major Alterations. Such records shall include, but are not limited to, a general ledger, vendor invoices, cancelled checks, agreements with third-party contractors and contractor progress payment billings. Tenant shall furnish to Landlord an itemized statement of the construction costs incurred and paid by Tenant in connection with the Improvements or any Major Alterations thereto, as applicable, within thirty (30) days after Tenant receives Landlord's request therefor (which request shall not be provided to Tenant until the Initial Project Improvements or the respective Major Alterations have been Completed). The statement shall be sworn to and signed, under penalty of perjury, by Tenant as fairly representing, to the best of Tenant's knowledge, the construction costs incurred and paid by Tenant. Should Tenant perform any construction with its own personnel, Tenant shall during the Term and, with respect to each record, for a period of seven (7) years after the date of such record (or such longer period as Tenant may decide in its sole discretion), maintain the following records with respect to the actual work performed by its own personnel: a payroll journal, copies of cancelled payroll checks, and timecards or other payroll documents which show dates worked, hours worked, and pay rates. Books and records herein required shall be maintained and made available either at the Premises, the Improvements, or at such other location in San Diego County, California as is reasonably acceptable to Landlord. Landlord shall have the right with 48 hours' advanced notice and at reasonable times to examine and audit said books and records without restriction for the purpose of determining the accuracy thereof, and the accuracy of the aforesaid statement. In the event Tenant does not make available the original books and records at the Premises or Improvements or within the limits of San Diego County, California, then Tenant agrees to pay all expenses incurred by Landlord Parties in conducting an audit at the location where said books and records are maintained in accordance with Section 5.4.3. After the seven (7) year period has expired for any record subject to this Section 6.4, Tenant shall deliver the original of such record to Landlord at the address set forth in Section 1.11 or such other location designated by Landlord in writing, which may include the main offices of the City; provided, however, that Tenant may elect to deliver all of the records subject to this Section 6.4 that expire in a given Lease Year at one time, in one delivery, within twelve (12) months after the end of the applicable Lease Year.

6.5 Force Majeure Event.

6.5.1 Definition.

"**Force Majeure Event**" means the occurrence of any of the following events (and the actual collateral effects of such event), individually or in any combination, to the extent that (x) such event is beyond the reasonable control of Tenant and (y) such event and/or such actual collateral effect prevents Tenant from the performance of its obligations under this Lease and is approved by the Landlord pursuant to Section 6.5.5 below:

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

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

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

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

(e) Fires (including wildfires).

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

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

(h) Delays in the issuance of any approvals or authorizations from any Governmental Authority (excluding Landlord and the City) that is necessary to proceed with development or operation of the Initial Project Improvements (provided that Tenant has timely and properly filed all applications, submitted all required documents and fees and taken all other reasonable actions that are necessary to obtain such approvals or authorizations and that Tenant, Hotel Operator or a Tenant Party is not responsible for the delay in the issuance of such approvals or authorizations).

(i) An act of God.

(j) Embargoes or blockades.

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

6.5.2 Calculation of Delay.

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

6.5.3 Exclusions.

For purposes of this Section 6.5, a Force Majeure Event shall not include adverse general economic or market conditions not caused by any of the events described in 6.5.1(a) through (k) above.

6.5.4 Obligation to Pay Rent.

In no event will a Force Majeure Event excuse the payment of Rent or any other monies due to Landlord under this Lease.

6.5.5 Notice and Acceptance Requirement.

Tenant shall notify Landlord in writing within ten (10) days after Tenant learns of, and in no event later than thirty (30) days after commencement of a Force Majeure Event. Such notice (the "**Initial Force Majeure Notice**") must be made in good faith and describe the Force Majeure Event creating delay, why such delay is occurring, the estimated expected duration of such delay, and the commercially reasonable efforts that Tenant is taking to minimize the period of delay. Commencing on the date that is thirty (30) after the date of the Initial Force Majeure Notice and for so long as the Force Majeure Event or the actual collateral effects of such Force Majeure Event exist (whichever is later), Tenant shall provide to Landlord monthly written updates on the estimated expected duration of such delay and the commercially reasonable efforts that Tenant is taking to minimize the period of delay. Within thirty (30) days after the

Force Majeure Event or the actual collateral effects of such Force Majeure Event cease to exist (whichever is later), Tenant shall notify Landlord in writing that the Force Majeure Event and the actual collateral effects of such Force Majeure Event, as applicable, have ceased to exist and of the number of days by which Force Majeure Event (including the actual collateral effects of such Force Majeure Event) has delayed Completion of the Initial Project Improvements or Hotel Operator's operation of the Initial Project Improvements, as applicable (the "**Force Majeure Notice**"). Within thirty (30) days after Landlord's receipt of the Force Majeure Notice, Landlord shall provide notice to Tenant ("**Force Majeure Response**") that either Landlord (a) requires additional information to make a determination regarding Tenant's assertion of the existence of a Force Majeure Event or the duration of the delay caused by the Force Majeure Event or the actual collateral effects of such Force Majeure Event, (b) approves the Force Majeure Notice, or (c) denies some or all of the Force Majeure Notice. Landlord's approval or denial of the Force Majeure Notice shall be in Landlord's reasonable discretion. If Landlord denies some or all of the Force Majeure Notice, Landlord and Tenant will meet and confer in good faith for thirty (30) days after Landlord's delivery of the Force Majeure Response to attempt to reach a mutually acceptable modification to the Force Majeure Notice that will result in Landlord approving the Force Majeure Notice as modified ("**Meet & Confer Period**"). If the Landlord and Tenant do not agree on a modification to the Force Majeure Notice during the Meet & Confer Period, Tenant may elect to withdraw the Force Majeure Notice and if Tenant does not withdraw the Force Majeure Notice, Landlord shall present the Force Majeure Notice to the BPC for its consideration to either approve or deny the Force Majeure Notice at a regularly scheduled meeting that shall take place within sixty (60) days after the expiration of the Meet & Confer Period. If the BPC denies the Force Majeure Notice, then the dispute shall be resolved by a court of competent jurisdiction. If a court of competent jurisdiction determines in a final and non-appealable decision that the putative Force Majeure Event that was described in such Force Majeure Notice did not constitute a Force Majeure Event, the duration of such delay in the Completion of the Initial Project Improvements or operation of the Initial Project Improvements, as applicable, specified therein was not reasonable, or the efforts that Tenant took to minimize the period of delay were not commercially reasonable, then, as Landlord's sole and exclusive remedy for Tenant's failure to perform any obligation under this Lease from which Tenant claimed to be excused as a result of such Force Majeure Event, but was not excused, Tenant shall make Landlord whole for any loss that Landlord suffered as a result of such failure.

6.5.6 Initial Public Financing Payments; Construction Late Charges.

Construction of the Initial Project Improvements includes public financing provided in part by Landlord and City through a Joint Exercise of Powers Authority or other Joint Powers Authority (each, a "**JEPA**").

Tenant hereby acknowledges that if the Initial Project Improvements are not Complete by the Outside Construction Completion Date, Landlord will incur costs not contemplated by this Lease. Accordingly, in the event Tenant does not Complete the Initial Project Improvements by the Outside Construction Completion Date for any reason other than Landlord's breach of this Lease, then, from and after the Fifth (5^{th}) Lease Year, Tenant shall pay to Landlord each month the Tenant Public Financing Payment (the "**TPFP**") based on the formula set forth below (collectively, "**Construction Late Charges**"). The Parties hereby agree that said Construction Late Charges are Additional Rent and are not interest. The Parties further agree that the Construction Late Charges apply whether or not Tenant receives notice of its failure to Complete the Initial Project Improvements, and that said Construction Late Charges are appropriate to compensate Landlord for loss resulting from the loss of revenues that would have been received should the Initial Project Improvements have been Completed by the Outside Construction Completion Date; provided, however, Tenant acknowledges and agrees that there

will be an Event of Default under this Lease if Tenant fails to Complete the Initial Project Improvements within three hundred and sixty five (365) days after the Outside Construction Completion Date (as extended for a Force Majeure Event in accordance with Section 1.8(b)).

Calculation of TPFP Formula:

$$TPFP = \frac{PDSO - (ER + DSP)}{12}$$

Example of Calculation of TPFP:

Assuming the following annual amounts:

- Annual PDSO: $18,000,000
- Annual ER: $4,000,000
- Annual DSP: $4,000,000

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

$$TPFP = \frac{\$10,000,000}{12}$$

TPFP = $833,333.33

For purposes of this Section 6.5.6,

"**Existing Revenues**" or "**ER**" means, collectively, moneys in an amount equivalent to each of the following sources of revenue to the extent actually received by Landlord or the City on an annual basis:

(i) all Ground Lease Revenues (as defined in the Financing Agreement) derived from the Other Ground Leases (as defined in the Financing Agreement) and the Replacement RV Park (as defined in the Revenue Sharing Agreement), less a credit equal to the Net RV Park Buyout Credit (as defined in the Revenue Sharing Agreement);

(ii) the transient occupancy tax attributable to the existing RV Park (as defined in the Financing Agreement) in the CVBMP Project Area (as defined in the Financing Agreement) and the Replacement RV Park to be constructed; and

(iii) the PMSA Revenues (as defined in the Financing Agreement).

"**District Support Payment**" or "**DSP**" means the annual payments to be made by Landlord for repayment of the Revenue Bonds (as defined in the Financing Agreement) according to the schedule set forth in Section 4 of the Conceptual Outline of Joint Exercise of Powers Authority Plan of Finance attached to the DDA as Attachment No. 4.

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

The amount of the TPFP will be reduced to the extent the TPFP would otherwise be increased solely because Landlord or the City fails to use commercially reasonable efforts to collect amounts that, if collected, would be Existing Revenues and are due and payable.

6.5.7 Limits on Term of Force Majeure.

In no event shall a Force Majeure Event cause the Outside Construction Completion Date to extend beyond the Term.

6.5.8 Outside Construction Completion Date.

The Outside Construction Completion Date shall be extended by one day for each day that a Force Majeure Event delays Completion of the Initial Project Improvements.

6.6 Advertising Devices.

All signs, flags and other advertising devices (collectively, the "**Advertising Devices**") visible from outside the Premises or the Improvements, as applicable, except the Advertising Devices set forth on Exhibit "N" attached hereto which have been previously approved by the Landlord in writing ("**Pre-Approved Advertising Devices**"), must be expressly approved in writing by Landlord prior to installation. Landlord's written approval shall comply with the following: (1) Landlord's approval of Advertising Devices that is not a Discretionary Entitlement shall not be unreasonably withheld; (2) Landlord's approval of Advertising Devices that is a Discretionary Entitlement shall be subject to Landlord's sole and absolute discretion; and (3) all approvals by Landlord of Advertising Devices, whether they are a Discretionary Entitlement or not, shall be in accordance with all Laws (collectively, "**Review Processes**"). Not later than one hundred and eighty (180) days prior to the Completion of the Resort Hotel, Tenant may submit to Landlord a list of Advertising Devices to be flown, installed, placed or erected on the Premises and the Improvements, to be approved or disapproved by Landlord in accordance with the Review Processes. Such list shall specify, with respect to each proposed Advertising Device, its form, proposed location on the Premises or the Project Improvements, dimensions, frequency and duration of display and any other information that Landlord may request. Tenant shall not sell any naming rights to any portion of the Convention Center without the prior written consent of the Landlord, which consent may be denied, conditioned, or withheld in the Landlord's sole and absolute discretion. If Landlord consents to the sale of naming rights, Tenant shall pay Landlord percentage rent, in an amount to be mutually agreed to by Landlord and Tenant, based on the gross income for the sale of such naming rights. All signage in the Landlord's jurisdiction is subject to all Laws, including without limitation, San Diego Unified Port District Code Section No. 8.30. If Landlord hereafter adopts any other ordinance or policy governing signage, Tenant shall comply with such ordinance or policy subject to any grandfathering terms thereof.

6.7 Tenant Percent for Art.

Tenant shall expend no less than the Tenant Art Investment amount set forth in Section 1.8. Tenant acknowledges and agrees that any requests for proposed Alterations during the Term may be conditioned on the payment of additional commissions or purchases of artwork and/or in-lieu contributions.

6.8 Prevailing Wage.

6.8.1 Tenant acknowledges and agrees that:

(a) Any construction, alteration, demolition, installation or repair work required or performed under this Lease constitutes "public work" under California Prevailing Wage Law, including Labor Code §§ 1720 through 1861, et seq. ("**PWL**"), and obligates Tenant to cause such work to be performed as "public work," including, but not limited to, the payment of applicable prevailing wages to all Persons subject to the PWL.

(b) Tenant shall cause all Persons performing "public work" under the Lease to comply with all applicable provisions of the PWL and other applicable wage Laws.

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

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

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

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

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

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

(e) Landlord shall not be responsible for Tenant's failure to comply with any applicable provisions of the PWL.

(f) Tenant's violations of the PWL shall constitute a default under this Lease.

(g) Notwithstanding anything in this Lease to the contrary, Tenant shall not be responsible for any Person's failure to comply with any applicable provisions of the PWL with respect to any work performed by, or on behalf of, any Landlord Party (other than by a

Tenant Party or Hotel Operator, or on behalf of a Tenant Party or Hotel Operator, or by any Person acting directly or indirectly under a contract with a Tenant Party or Hotel Operator).

6.9 Historical Designation.

Neither Landlord nor Tenant shall designate, cause any Person to designate, submit or support any application to designate, the Premises or any Improvements as a federal, state or local historical landmark or as a historical resource, without the other Party's prior written consent, which may be withheld by such other Party in its sole and absolute discretion. The terms of this Section 6.9 shall survive the expiration or earlier termination of this Lease.

6.10 Submission of Redevelopment Plan.

Provided that there is no Event of Default, and subject to the restrictions set forth in Section 15.1 and Tenant's submission of an Inspection Report and completion of any outstanding work pursuant to Section 15.3, Tenant shall have the right to submit a redevelopment plan to the Landlord for the Improvements (other than the Existing Improvements) ("**Redevelopment Plan**") during or before the fifty-fifth (55^{th}) Lease Year. The Redevelopment Plan shall be accompanied by the following documents, which collectively shall be referred to herein as, the "**Redevelopment Plan Package**": (a) description of the development concept and the proposed project sufficient for the Landlord to understand the reason for the proposed redevelopment (including business expansion, modernization of facilities, aesthetic enhancement, increase in revenues); (b) description of the development concept and the proposed project sufficient for the Landlord to understand the scope of the entire development concept and whether it covers some or all of the Premises or Improvements (other than the Existing Improvements), which may include renderings and drawings showing a scaled site layout, interiors and exteriors of all significant buildings, landscape development and layout, preliminary sign concept, and any other prominent features; (c) evidence that Tenant is a "tenant in good standing", which means that the Tenant has (i) maintained the Premises and Improvements in good condition, free of deferred maintenance; (ii) a prompt payment history; (iii) not had an Event of Default; (iv) maximized the gross revenue of the Improvements; and (v) maintained accurate financial records that are accessible to the Landlord in accordance with the terms hereof; (d) any proposed changes to ownership; (e) description of the development team and its qualifications; (f) proforma cash flows for each part of the proposed redevelopment; (g) any proposed changes to the Acceptable Brand or Resort Hotel management team; (h) anticipated development cost, with repair and maintenance, furniture, fixture and equipment items separately identified; and (i) any proposed changes to the existing use. Within sixty (60) days after the Landlord's receipt of the Redevelopment Plan Package, Landlord shall determine in its reasonable discretion whether additional information is required or if the Redevelopment Plan Package is complete. Landlord shall have the right to request additional information related to the Redevelopment Plan Package. Within ninety (90) days of the date that Landlord determines that the Redevelopment Plan Package is complete, Landlord's staff shall present the Redevelopment Plan Package to the BPC for the BPC's consideration, which the BPC may approve or disapprove in the BPC's sole and absolute discretion. If the BPC approves the Redevelopment Plan, Tenant shall proceed with the Redevelopment Plan in accordance with the terms of this Lease related to Alterations, including, without limitation, Article 6 and Article 8 herein, and any other direction from the BPC. The terms of this Section 6.10 shall survive the expiration or earlier termination of this Lease.

6.11 Construction of Tenant's Phase 1A Improvements

Concurrently with the construction of the Initial Project Improvements, Tenant shall construct those certain public improvements described in Exhibit "B-1" attached hereto and incorporated herein by reference ("**Tenant's Phase 1A Improvements**") pursuant to separate agreement(s) to be entered into between Landlord, Tenant and the City. Tenant shall construct the Tenant's Phase 1A Improvements in accordance with the Plans, where such Tenant's Phase 1A Improvements are located on the Premises, and in accordance with plans and specifications approved by the Landlord, where such Tenant's Phase 1A Improvements are not located on the Premises.

7. TITLE TO AND DEMOLITION OF ALTERATIONS AND IMPROVEMENTS

7.1 Title.

All Initial Project Improvements which may be installed, constructed or placed in, on, over or under the Premises, from time to time by Tenant in accordance with Article 6, (a) shall be so installed, constructed or placed at Tenant's sole cost and expense except for the JEPA Development Cost Contribution, as it applies to the Convention Center and Tenant's Phase 1A Improvements, (b) shall remain Tenant's property during the Term (excluding the Convention Center for so long as the Convention Center is subject to public financing and the Convention Center Subleases), and (c) subject to the terms of Section 7.2, at the expiration or earlier termination of this Lease, shall either be demolished by Tenant at Tenant's sole cost and expense or remain on the Premises and automatically become the property of Landlord without additional compensation from Landlord; provided that, subject to Section 7.3 below, Tenant's trade fixtures (that is fixtures relating uniquely to Tenant and which are removable without non-repairable damage to the other Improvements), furnishings, moveable equipment and other personal property of Tenant shall remain the property of Tenant and shall be removed by Tenant as provided in Section 7.3. Upon Landlord's request, following the expiration or earlier termination of this Lease, Tenant shall execute and deliver (at no cost or expense to Landlord) a quitclaim deed as provided in Article 23 to confirm Landlord's ownership of the Improvements which are to remain on the Premises pursuant to Section 7.2, which obligation shall survive the expiration or earlier termination of this Lease. Notwithstanding the foregoing, if title to artwork in fulfillment of Tenant Art Investment is governed by a separate agreement between Tenant and the artist which has been approved by Landlord, then such agreement shall govern over this Lease with respect to the title of such artwork following the expiration or earlier termination of this Lease.

7.2 Demolition of Improvements.

If the Redevelopment Plan is disapproved by the BPC pursuant to Section 6.10, and Tenant elects to demolish the Improvements ("**Tenant's Demolition Election**") by written notice to Landlord at any time before the end of the sixty-third (63rd) Lease Year, then Tenant (a) shall demolish and remove all of the Improvements (provided, however, that Tenant shall not demolish or remove any of the following Improvements if Landlord instructs Tenant not to demolish or remove such Improvements in a written notice ("**Landlord's Non-Demolition Notice**") that is provided to Tenant no later than one (1) month after Tenant's notice of Tenant's Demolition Election: (i) the Parking Improvements (if Landlord has paid the Landlord's Parking Contribution), (ii) any Existing Improvements and (iii) any public and private utilities; (b) shall perform all remediation work that is required pursuant to Section 21.3 by the Expiration Date, but not earlier than twelve (12) months prior to the Expiration Date; and (c) shall obtain all permits required to perform such work in advance of the Expiration Date. Tenant acknowledges that demolition and removal of the Improvements and demolition and removal of public and private utilities and/or the remediation work pursuant to Section 21.3 may require Tenant to

obtain permits, certain of which may be discretionary. If Tenant makes Tenant's Demolition Election, then Tenant shall surrender the Premises to Landlord in a Buildable Condition. A "**Buildable Condition**" means completion of the following work: (i) the demolition and removal of any subsurface Improvements (including foundations and pilings (but Tenant will not be required to remove any subsurface Improvements that are located more than one (1) foot above the highest water table)), the Existing Improvements, and the public and private utilities, (provided, however, that a "Buildable Condition" will not require the demolition or removal of such subsurface Improvements, Existing Improvements and/or public and private utilities if Landlord instructs Tenant not to demolish and remove them in the Landlord's Non-Demolition Notice), any Hazardous Materials and Pre-Existing Materials but only as and to the extent required under Article 21, and any debris resulting from such demolition and removal; (ii) the remediation of any Hazardous Materials and Pre-Existing Materials but only as and to the extent required under Article 21; and (iii) the repair of any damage to the Premises, Improvements, Existing Improvements and/or public and private utilities, caused by (i) and (ii) above, pursuant to plans and specifications approved by Landlord in Landlord's reasonable discretion. If Tenant fails to surrender the Premises to Landlord in a Buildable Condition within the period allowed under Section 7.4, Landlord may do so, without obligation, and may charge the cost thereof to Tenant pursuant to the Reimbursement Procedure, together with Additional Rent for estimated administrative costs in the amount of ten percent (10%) of such cost, and interest on all such sums at the Default Rate from the date incurred until paid. Nothing contained in this Section 7.2 shall be interpreted to limit Tenant's indemnity obligations, including without limitation, Tenant's obligations under Section 21.3.

Tenant acknowledges and agrees that, if (a) the Redevelopment Plan is not submitted by Tenant during or before the fifty-fifth (55th) Lease Year in accordance with Section 6.10, or (b) there is an early termination of this Lease by Tenant or due to an Event of Default, or (c) Tenant fails to implement the Redevelopment Plan approved by the BPC prior to the end of the sixty-third (63rd) Lease Year, then, within thirty (30) days after the early termination of this Lease or any time after the end of the sixty-third (63rd) Lease Year, as may be applicable, Landlord may notify Tenant in writing of what Improvements and public and private utilities Landlord in its sole discretion requires Tenant to demolish and remove (such notice is referred to herein as the "**Landlord End of Term Election**"). Unless Landlord has previously delivered to Tenant the Landlord End of Term Election, not later than one (1) year before the Expiration Date or within sixty (60) days after the earlier termination of this Lease, as applicable, Tenant shall request in writing from Landlord the Landlord End of Term Election. If Landlord has not provided the Landlord End of Term Election within thirty (30) days thereafter, the same shall be deemed to be an election by Landlord for all Improvements to remain upon and be surrendered with the Premises, and title to such Improvements shall vest in Landlord in accordance with Section 7.1 and Article 23 (but Tenant shall remain responsible for any remedial work that may be required in accordance with Section 21.3). If Landlord provides to Tenant the Landlord End of Term Election in accordance with this Section 7.2, then Tenant shall demolish and remove all of the Improvements set forth in such Landlord End of Term Election, perform all remedial work in connection therewith pursuant to Section 21.3 and obtain all permits that are required to perform such work, by the Expiration Date (but not earlier than six (6) months prior to the Expiration Date) or, in the event of an early termination of this Lease, by the date that is ninety (90) days after Tenant receives all of the permits that are required for Tenant to perform such work ("**Early Termination Date**"); provided that Tenant shall seek to obtain all of such permits in a diligent manner and provide Landlord with copies of such permits upon receipt by Tenant. Tenant acknowledges that demolition of the Improvements and/or the remediation work in connection therewith pursuant to Section 21.3 may require Tenant to obtain permits, certain of which may be discretionary. Tenant shall repair any damage to the Premises (and the Improvements

which Landlord is not requiring Tenant to demolish and/or remove) caused by such demolition and removal, and Tenant shall surrender to Landlord the Premises in a Buildable Condition except with respect to any Improvements required by Landlord not to be demolished or removed. If Tenant does not make Tenant's Demolition Election or if Landlord provides to Tenant the Landlord End of Term Election with respect to fewer than all of the Improvements, then Tenant shall not demolish and remove any Improvements that Tenant is not required to demolish, and, if any of the Improvements that Tenant or Landlord elect not to be demolished are not in full compliance with Article 15, then Landlord may require, at Tenant's sole cost and expense, that such Improvements be modified to a state and condition which complies with Article 15.

7.3 Removal of Personal Property.

Except as provided below, all of Tenant's personal property including machines, appliances and equipment and trade fixtures (even though not personal property), located at or on the Premises and the Improvements, shall be removed by Tenant by the Expiration Date or earlier termination of this Lease. Tenant shall repair any damage occasioned by any removal of personal property and trade fixtures pursuant to Section 7.3 by the Expiration Date or earlier termination of this Lease. Notwithstanding the foregoing, at least ninety (90) days before the Expiration Date or, in the case of earlier termination of this Lease, within ten (10) days after such termination, unless Landlord expressly elects within the same time periods to require Tenant to remove the same, any artworks that constitute personal property and that were provided to comply with Tenant Art Investment but which are not governed by a separate agreement between Tenant and the artist relating to the removal of such artworks at the end of the Term, shall not be removed and shall remain located on the Premises or the Improvements, as applicable. If any personal property that is required to be removed is not removed by Tenant in accordance with this Section 7.3, then the same may be considered abandoned and, at the option of Landlord, shall thereupon become the property of Landlord, without cost to Landlord and without any payment to Tenant, except that Landlord shall have the right to have such personal property removed and to repair any and all damage occasioned by such removal, at the sole expense of Tenant pursuant to the Reimbursement Procedure.

7.4 Removal/Demolition/Remediation Period.

If (a) Tenant has made Tenant's Demolition Election, or (b) Landlord has provided the Landlord End of Term Election, and/or (c) Tenant is required to perform remediation work pursuant to Section 21.3, then Tenant shall continue to pay the full Rent to Landlord in accordance with this Lease during such demolition and removal work and/or any remediation work. If Tenant's demolition and removal work and remediation work is not completed by the Expiration Date or, in the event of an early termination of this Lease, by the Early Termination Date, then the terms of Article 26 regarding Rent payable during holdover shall apply. Notwithstanding any provision of this Article 7 to the contrary, if (i) Tenant has made Tenant's Demolition Election, or (ii) Landlord has provided the Landlord End of Term Election other than because of an early termination of this Lease by Tenant or due to an Event of Default, and/or (iii) Tenant is required to perform remediation work pursuant to Section 21.3, and, in each case, the Demolition and Remediation Report indicates that the time period for completion of such demolition and removal work and/or remediation work is estimated to be greater than six (6) months, then Tenant shall commence such demolition and removal work and/or remediation work sufficiently prior to the Expiration Date so that such demolition and removal work and/or remediation work is anticipated to be completed no later than the Expiration Date (for example, if the estimated removal period is ten (10) months, then Tenant shall commence such work at least ten (10) months prior to the end of the Term).

7.5 Survival.

The terms of this Article 7 shall survive the expiration or earlier termination of this Lease.

8. ENTITLEMENTS

8.1 Entitlement Costs.

If any discretionary approval, permit or entitlement, including, without limitation, environmental analysis under CEQA or the National Environmental Policy Act, the PMP, a Port Master Plan Amendment ("**PMPA**"), stormwater permits, a CDP and/or a Coastal Act exclusion (collectively, "**Discretionary Entitlement**"), are necessary, in Landlord's sole and absolute determination, in connection with any Improvements or Alterations, demolition work, remediation work or other projects undertaken by Tenant on or at the Premises or the Improvements (each, the "**Discretionary Project**"), then Tenant shall enter into agreements, consistent with the Landlord's applicable standard practices at that time (if any), with third-party experts, professionals and consultants to prepare reports and other materials ("**Consultant Services**") that are required to process the Discretionary Project and for the Landlord or any other relevant Governmental Authority to consider the Discretionary Entitlement or Discretionary Project. Tenant shall be directly responsible for the costs of the Consultant Services. Tenant shall reimburse Landlord pursuant to the Reimbursement Procedure for all reasonable costs and expenses incurred by Landlord in connection with preparing, processing, considering and approving any Discretionary Project, any Discretionary Entitlement or any appeal of any CDP or Coastal Act exclusion to the CCC. If Tenant fails to reimburse Landlord for such costs or expenses pursuant to the Reimbursement Procedure, then, in addition to any other remedies that Landlord may have, following three (3) Business Days' prior written notice to Tenant, Landlord may, at its reasonable discretion, discontinue the preparing, processing, considering or approving of such Discretionary Project, Discretionary Entitlement or such appeal of a CDP or Coastal Act exclusion to the CCC, as applicable, until Tenant reimburses Landlord, and Tenant shall be responsible for any costs and expenses incurred by Landlord related to such discontinuance as Additional Rent and such failure shall be an Event of Default. Nothing herein shall obligate Landlord to seek, process or obtain any Discretionary Entitlement or any other third-party Governmental Authority approval for a Discretionary Project for the benefit of Tenant, and Landlord makes no warranty or representation to Tenant that Tenant will obtain any Discretionary Entitlement or ministerial approval. Landlord shall not be required to pay any Governmental Authority fees or costs and expenses for any Consultant Services associated with any Discretionary Entitlement or any other third-party Governmental Authority approval for a Discretionary Project. If Tenant requests Landlord's assistance in obtaining from any third-party Governmental Authority any licenses, approvals, notifications, registrations or permits in connection with development, use and operation of the Premises and the Improvements, including the construction of the Project Improvements ("**Permitting Assistance**"), Landlord will consider Tenant's request and inform Tenant within thirty (30) days whether it will agree to reasonably assist Tenant.

8.2 Entitlements Indemnity.

Without limitation of Tenant's other obligations under this Lease, Tenant agrees, at its sole cost and expense, and with counsel reasonably acceptable to Landlord, to indemnify, defend and hold harmless the Landlord Parties from any third-party claims, demands, actions, causes of action, suits and Related Costs, arising out of Landlord's approval of any Discretionary Project, Discretionary Entitlement or appeal of a CDP or Coastal Act exclusion to the CCC. Landlord may, in its sole and absolute discretion, participate in the defense of any claims, demands,

actions and causes of action and suits, and Tenant shall reimburse Landlord for all reasonable costs that are incurred by Landlord in connection therewith, including, without limitation, reimbursement for attorneys' fees, experts' fees and other costs. Landlord's participation in such defense shall not relieve Tenant of any of its obligations under this Section 8.2. The foregoing indemnity obligations of Tenant are in addition to, and not in limitation of, any other indemnity obligations of Tenant contained in this Lease, and this Section 8.2 shall survive the expiration or earlier termination of this Lease.

8.3 Reservation of Discretion.

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

9. LIENS

9.1 No Right to Bind Landlord.

Neither Tenant, nor any Tenant Party, shall have any power or authority to do any act or thing, or to make any contract or agreement which shall bind Landlord in any way whatsoever, and Landlord shall have no responsibility to Tenant, Tenant Party or other Person who performs, causes to perform, engages in or participates in any construction of any Improvements, Alterations or any other work on the Premises at the request of Tenant or Tenant Party or other Persons. Landlord shall not be required to take any action to satisfy any such contract or agreement or to remove or satisfy any lien resulting therefrom.

9.2 Notice of Non-Responsibility.

Tenant shall give written notice to all contractors, subcontractors and materialmen of Landlord's non-responsibility in connection with any construction of any Improvements, Alterations or any other construction work on the Premises, and shall immediately provide Landlord with true copies of such notices not less than ten (10) days prior to the commencement of any work on the Premises. The Landlord Parties shall have the right to post and keep posted thereon notices of non-responsibility, or such other notices which Landlord may deem to be proper for the protection of Landlord's interest in the Premises. Tenant shall provide Landlord with any information required by Landlord to complete the notice of non-responsibility.

9.3 Mechanics' Liens.

Tenant shall pay or cause to be paid all costs for work, labor, services or materials supplied to or performed on the Premises that might result in any mechanics' lien or similar lien as and when Tenant is required to do so under Tenant's agreement with the respective provider thereof. If Tenant receives notice that any mechanics' lien or any similar lien is recorded against

the Premises and Tenant is not contesting such lien in accordance herewith, then Tenant shall cause such lien to be released and removed of record within thirty (30) days after Tenant receives notice of the recordation of the mechanics' lien or similar lien. Tenant shall indemnify, defend, release and save Landlord free and harmless from and against any and all claims of lien of laborers or materialmen or others for work performed or caused to be performed or for materials or supplies furnished for or at the Premises or Improvements by or for any Tenant Party and the Hotel Operator and all Related Costs.

9.4 Contest of Lien.

If Tenant in good faith wishes to contest the amount or validity of any lien, then Tenant shall have the right to do so; provided that (a) Tenant shall first provide Landlord with at least ten (10) Business Days' written notice prior to any such contest, (b) Tenant shall first record a surety bond sufficient to release such lien; and (c) Tenant shall cause the Contest Conditions to remain satisfied during such contest.

9.5 Landlord's Right to Pay.

If Tenant shall be in default in paying any charge for which a lien claim has been filed, and if Tenant has not contested such lien in accordance with Section 4.6.1, then Landlord may, but shall not be so obliged to, pay said lien claim and any costs incurred in connection therewith, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Tenant to Landlord, and Tenant shall pay the same to Landlord pursuant to the Reimbursement Procedure, together with interest on the full amount thereof at the Default Rate from the date of Landlord's payments until paid.

9.6 Notice of Liens.

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

9.7 Right of Entry.

Nothing herein shall imply any consent on the part of Landlord to subject Landlord's estate to liability under any mechanics' lien or other lien. Without limiting Tenant's obligations under Section 9.2 above, the Landlord Parties shall have the right, but not the obligation, to enter upon and inspect the portions of the Improvements that are generally accessible to the general public or the portions of the Premises where the construction of the Project Improvements and any Alterations thereto is ongoing, during normal business hours and upon a three (3) Business Days' prior notice to Tenant (except in the case of an emergency in which case no prior notice shall be required but each of such Landlord Parties shall notify the Hotel Operator's Risk Manager thereof by phone prior to entering the Premises) and Landlord shall, and shall cause each of such Landlord Parties to: (a) comply with all applicable security and safety procedures of Tenant of which Tenant informs Landlord in writing and with which such Landlord Party can reasonably comply, and (b) use commercially reasonable efforts to minimize any interference with Tenant's operation and use of the Premises and the Improvements while on the Premises and at the Improvements. Notwithstanding the foregoing, nothing herein shall limit the Landlord's right to enter the Premises and Improvements at any time to exercise its police powers.

10. LEASE ENCUMBRANCE

10.1 Restrictions on Encumbrance.

10.1.1 Landlord's Consent.

Tenant shall not encumber or hypothecate this Lease or the Convention Center Subleases, Tenant's leasehold interest, or the Improvements thereon, or any part thereof or interest therein or grant any security interest in the direct or indirect equity interests of Tenant (such encumbrance, hypothecation or grant of any security interest in any direct or indirect equity interests of Tenant being referred to herein as, a "**Financing Transaction**"), without Landlord's prior written consent to each Financing Transaction, which consent, subject to the terms of Section 10.1.2, shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything in this Lease to the contrary, this Article 10 shall not apply to, Landlord's consent shall not be required for, and the term "Financing Transaction" excludes any grant of any security interest in the indirect equity interests in Person if a foreclosure of such security interests would not result in a Change of Control. Tenant shall submit its request for consent to the Financing Transaction in writing to Landlord, together with a term sheet, commitment letter or comparable summary of the proposed terms of the Financing Transaction, together with redacted versions of the drafts of all material documents proposed to be executed in connection with the Financing Transaction, including, but not limited to, the loan agreement, promissory note, deed of trust, if applicable, pledge agreement, if applicable, all security documents and guaranties (each a "**Loan Document**" and, collectively, "**Loan Documents"**) as well as the documentation required in Sections 10.1.2(g), (h), (i) and (j). Within ten (10) days of receiving Tenant's request, Landlord may request from Tenant additional information regarding the lender and/or the proposed Financing Transaction. Landlord shall provide its response to Tenant's request for consent to the Financing Transaction within forty-five (45) days following Landlord's receipt of Tenant's request and all information reasonably requested by Landlord from Tenant. Such consent shall be deemed granted only upon Landlord's written consent to the Financing Transaction as described above and Tenant's satisfaction of the following additional conditions to such consent: prior to the recordation of the encumbrance in connection with such Financing Transaction, Tenant shall, both at the time the Loan Documents are finalized and subsequent to execution thereof: (a) provide Landlord with the opportunity to review (but not copy) a complete set of the unredacted final, fully executed and acknowledged (where applicable) Loan Documents for the Financing Transaction and a "redline" of such Loan Documents against the Loan Documents previously submitted by Tenant and most recently reviewed by Landlord, which review shall be conducted in person at the Premises, the Initial Project Improvements, or at a location in San Diego County as is reasonably acceptable to Landlord, and following such review, Landlord shall have confirmed to its sole satisfaction that the material terms and conditions of the Loan Documents have not changed from those originally submitted to and reviewed by Landlord, and (b) deliver to Landlord, with a redacted copy of the final, fully executed and acknowledged (where applicable) Loan Documents, an affidavit by an authorized representative of Tenant certifying under penalty of perjury that (x) the Loan Documents attached to the affidavit, in their unredacted form, conform to the conditions set forth in Section 10.1.2 or 10.1.3, as applicable, and (y) the name of the borrower and the name of the lender that is a party to the Permitted Encumbrance have not changed from the Loan Documents most recently delivered to Landlord. If the affidavit required under this Section 10.1.1 is determined by Landlord, in its reasonable discretion, to be incorrect during the Term, then an Event of Default may be triggered as and to the extent set forth in Section 12.1.5. Tenant shall reimburse Landlord pursuant to the Reimbursement Procedure for all of Landlord's reasonable costs and expenses associated with its review of the Financing Transaction,

including without limitation, any “Cost Recovery Fee” pursuant to BPC Policy No. 106. Said costs shall include, without limitation, Landlord's reasonable legal fees (whether with in-house or outside counsel or both) and disbursements relating to or arising out of Landlord's review of any Financing Transaction, regardless of whether such Financing Transaction is consented to by Landlord or consummated, and Landlord's transaction processing fees charged by Landlord for Landlord's analysis and processing of Tenant's request.

10.1.2 Conditions to a Permitted Lease Encumbrance.

Notwithstanding anything to the contrary herein, Landlord shall administratively grant consent to any Financing Transaction for a Permitted Lease Encumbrance if all of the following conditions and requirements are satisfied to the reasonable satisfaction of Landlord:

(a) The lender that is a party to the Permitted Lease Encumbrance is a Financial Institution;

(b) The maximum principal amount of all indebtedness that is secured by such Permitted Lease Encumbrance does not exceed the greater of: (1) seventy-five percent (75%) of the value of the aggregate of (i) Tenant’s fee interest in the Resort Hotel pursuant to this Lease, provided that if the Resort Hotel is not Completed, the value that the Resort Hotel would have when it is first stabilized as determined by an Appraisal, (ii) Tenant’s fee interest in the Convention Center pursuant to this Lease provided that if the Convention Center is not Completed, the value that the Convention Center would have when it is first stabilized as determined by an Appraisal, (iii) Tenant’s leasehold interest in the Convention Center pursuant to the Convention Center Sublease; provided that, if the Convention Center is not Completed, the value that such leasehold interest would have when the Convention Center is first stabilized as determined by an Appraisal, (iv) Tenant’s fee interest in any other Improvements (except the Parking Improvements) pursuant to this Lease; provided that if such other Improvements are not Completed, the value that such Improvements would have when they are first Completed; (v) Tenant’s interest in the Parking Improvements, (vi) Tenant’s leasehold interest in the Premises created by this Lease, as determined by an Appraisal without accounting for any indebtedness that is secured by any existing Permitted Equity Encumbrance, and (vii) the indebtedness that is secured by any existing Permitted Equity Encumbrance; provided that the items set forth in clauses (i) – (vii) above are not duplicative; or (2) the amount of repayment of an existing Permitted Lease Encumbrance which the proposed Financing Transaction is intended to replace (provided that such Permitted Lease Encumbrance was initially consented to by Landlord);

(c) With respect to any Permitted Lease Encumbrance that is proposed to occur on or after the commencement of the Fourth (4^{th}) Lease Period, if requested by Landlord, Tenant has considered amendments to non-economic provisions of this Lease in good faith for the purpose of conforming this Lease to changes to the Laws that are then in effect; provided that any such amendment shall neither create any new obligations for Tenant, increase any obligations of Tenant nor limit any rights or remedies of Tenant that are set forth in this Lease, in each case, except to a *de minimis* extent;

(d) The loan secured by the Permitted Lease Encumbrance has a payment term that provides for the full repayment of the loan prior to the Expiration Date;

(e) The loan secured by the Permitted Lease Encumbrance is not cross-collateralized with other real property(ies) (other than the Parking Improvements and the Convention Center);

(f) The loan secured by the Permitted Lease Encumbrance is not cross-defaulted with other financings that are not solely related to and for the Project;

(g) Tenant provides to Landlord a written acknowledgment that Tenant will not seek Rent relief as a result of not being able to meet its debt service or debt repayment obligations with respect to the loan secured by the Permitted Lease Encumbrance;

(h) Tenant provides to Landlord a recent Appraisal in accordance with Section 10.1.2(b) that shows compliance with the loan to value ratio set forth in Section 10.1.2(b);

(i) Tenant provides to Landlord cash flow projections of an annual budget for the Project;

(j) If two (2) Audited Fiscal Years have elapsed since the Commencement Date, Tenant provides to Landlord audited financial statements of Tenant for not less than the most recent two (2) Audited Fiscal Years, and if fewer than two (2) Audited Fiscal Years have elapsed since the Commencement Date, Tenant provides to Landlord audited financial statements of Tenant for the Audited Fiscal Year, if any;

(k) Tenant provides such other documents, information and materials relating to the Permitted Lease Encumbrance as Landlord may reasonably request within the ten (10) day period described in Section 10.1.1;

(l) Tenant has provided a term sheet, commitment letter or comparable summary of the proposed terms of the Financing Transaction with respect to the Financing Transaction in compliance with the procedures set forth in Section 10.1.1 above; and

(m) Tenant has provided redacted versions of the draft Loan Documents, redacted versions of the final Loan Documents and the affidavit to Landlord in compliance with the procedures set forth in Section 10.1.1 above.

Any Permitted Lease Encumbrance shall be subject to the conditions set forth in Section 10.1.1 regarding the delivery of final Loan Documents.

"**Appraisal**" shall be defined as a third party appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) as modified from time to time and for so long as it is a generally accepted standard for commercial real estate appraisals or if the USPAP is no longer in existence or is not a generally accepted standard for commercial real estate appraisals, a successor or comparable acceptable standard for commercial real estate appraisals.

10.1.3 Permitted Equity Encumbrance.

Notwithstanding anything to the contrary herein, Landlord shall administratively grant consent to an encumbrance of the equity interests in Tenant or in any Person or Persons that own(s) direct or indirect equity interests in Tenant ("**Mezzanine Interests**") if all of the following conditions and requirements are satisfied to the reasonable satisfaction of Landlord:

(a) The lender is (1) (x) MICC (California), LLC, a Delaware limited liability company ("**MICC**"), an Affiliate of MICC, or is the financing arm of the Acceptable Brand and (y) is approved by Landlord pursuant to Section 10.1.3 and (2) is a party to a Financing Transaction for a Permitted Equity Encumbrance made in accordance with this Lease ("**Permitted Mezzanine Lender**");

(b) The borrower is a Person(s) that, in the aggregate, directly or indirectly, own all of the equity interests of Tenant (collectively, the "**Pledgor**");

(c) After the loan secured by the Mezzanine Interests is consummated, there will only be one outstanding loan encumbering any of the equity interests in Tenant, whether directly or indirectly;

(d) The loan secured by the Mezzanine Interests shall not be syndicated;

(e) The loan secured by the Mezzanine Interests has a payment term that provides for the full repayment of such loan prior to the Expiration Date;

(f) The loan secured by the Mezzanine Interests is not cross-collateralized with other equity interests;

(g) The loan secured by the Mezzanine Interests is not cross-defaulted with other equity financing that is not solely related to and for the Project;

(h) Tenant provides to Landlord a written acknowledgment that Tenant will not seek Rent relief as a result of not being able to meet its debt service or debt repayment obligations with respect to the loan secured by the Mezzanine Interests;

(i) Tenant provides to Landlord cash flow projections of an annual budget for the Project;

(j) If two (2) Audited Fiscal Years have elapsed since the Commencement Date, Tenant provides to Landlord audited financial statements of Tenant for not less than the most recent two (2) Audited Fiscal Years, and if fewer than two (2) Audited Fiscal Years have elapsed since the Commencement Date, Tenant provides to Landlord audited financial statements of Tenant for the Audited Fiscal Year, if any;

(k) Tenant provides such other documents, information and materials relating to the Permitted Equity Encumbrance as Landlord may reasonably request within the ten (10) day period described in Section 10.1.1 above;

(l) Tenant has provided a term sheet, commitment letter or comparable summary of the proposed terms of the Financing Transaction in compliance with the procedures set forth in Section 10.1.1 above;

(m) Tenant has provided redacted versions of the draft Loan Documents, redacted versions of the final Loan Documents and the affidavit to Landlord in compliance with the procedures set forth in Section 10.1.1 above.

Any Permitted Equity Encumbrance shall be subject to the conditions set forth in Section 10.1.1 regarding the delivery of final fully executed and acknowledged (where applicable) Loan Documents.

The term "**Equity Collateral Enforcement Action**" means any action or proceeding or other exercise of a Permitted Mezzanine Lender's rights and remedies in connection with its security interests in the Pledgor in order to realize upon its equity collateral, including, without limitation, the acceptance of an assignment in lieu of foreclosure for the equity collateral. With respect to any Permitted Equity Encumbrance, (a) the granting of such Permitted Equity Encumbrance by Landlord shall not be deemed a Change of Control of Tenant, (b) any enforcement action and/or the completion of any Equity Collateral Enforcement Action (including, without limitation, the acquisition of all (or substantially all) of the direct or indirect ownership of Tenant) or the exercise of voting control over Tenant by a Permitted Mezzanine Lender with respect to such equity collateral security interest shall not be deemed a Change of Control of Tenant and shall not be prohibited by this Lease, (c) the Permitted Mezzanine Lender shall have the same cure rights and notice rights as are given to any other Permitted Lender under this Article 10, but such periods for the notice rights and cure rights shall run concurrently with the rights provided

to the Permitted Mortgage Lender, and (d) in the case of MICC only, MICC shall have the same rights, including the same cure rights and the same notice rights, as are given to any other Permitted Lender under this Article 10, but such periods for notice rights and cure rights shall run concurrently with the rights provided to the Permitted Mortgage Lender.

10.2 Definition of "Permitted Lease Encumbrance", "Permitted Equity Encumbrance", "Permitted Encumbrance"; "Permitted Mortgage Lender", and "Permitted Lender".

Each mortgage, deed of trust or similar security instrument securing Tenant's payment and performance in connection with the Financing Transaction by a Permitted Mortgage Lender that is consented to by Landlord is a "**Permitted Lease Encumbrance**". Any security agreement, pledge agreement or similar instrument or agreement that creates any security interest in the Mezzanine Interests securing Tenant's payment and performance in connection with any Financing Transaction by a Permitted Mezzanine Lender that is consented to by Landlord is a "**Permitted Equity Encumbrance**" (together with the Permitted Lease Encumbrance, "**Permitted Encumbrance**"). The term "**Permitted Mortgage Lender**" means the lender approved by Landlord pursuant to Sections 10.1.1 and 10.1.2 and that is a party to a Financing Transaction for a Permitted Lease Encumbrance made in accordance with this Lease. Landlord's consent shall not be required for an assignment or transfer of indebtedness secured by a Permitted Encumbrance, where the terms and conditions of the Permitted Encumbrance are not changed or modified in a manner for which Tenant must obtain Landlord's consent under Section 10.6.3. The term "**Permitted Lender**" means each Permitted Mortgage Lender and each Permitted Mezzanine Lender, or any one thereof. For the avoidance of doubt, a holder of indebtedness that is secured by any Financing Transaction, but that is not a Permitted Mortgage Lender because it is not a party to a Financing Transaction (i.e., the holder of some or all of the indebtedness that is secured by a Permitted Lease Encumbrance in favor of an agent that holds collateral as security for such indebtedness) need not be approved by Landlord, and may assign or transfer such indebtedness without Landlord's consent or approval, but shall not be a Prohibited Person.

10.3 Rights of Permitted Lender.

10.3.1 Voluntary Lease Surrender.

So long as a Permitted Encumbrance remains outstanding, Landlord will not accept the voluntary surrender, cancellation, or termination of this Lease by Tenant before the Term expires, unless each Permitted Lender with an outstanding Permitted Encumbrance provides prior written consent thereto. Nothing in this Section 10.3.1 shall impair Landlord's right to terminate this Lease as a result of an Event of Default or by reason of Landlord's other rights to terminate this Lease as set forth in this Lease, subject to the Permitted Lender's notice and cure rights pursuant to Section 10.3.2 below, if applicable, and the New Lease rights pursuant to Section 10.3.2(d) below, if applicable.

10.3.2 Right to Cure/New Lease.

(a) Notice of Default. So long as one or more loans secured by a Permitted Encumbrance remain outstanding, Landlord hereby agrees to give each Permitted Lender with a Permitted Encumbrance that has provided Landlord with its address and has requested a copy of the same, a copy of any written notice, which Landlord gives to Tenant pursuant to Section 12.1, at the same time as it delivers it to Tenant, and such notice shall be deemed delivered three (3) days after delivery thereof to the respective Permitted Lenders, whereupon each Permitted Lender shall have the right, but not the obligation, to cure such default or Event of Default. This Lease shall not terminate as a result of an Event of Default if a Permitted

Lender cures such Event of Default within (i) thirty (30) days after the Permitted Lender is deemed to have received such notice of an Event of Default in the payment of Rent, or (ii) subject to the terms of this Section 10.3.2, within ninety (90) days after the Permitted Lender is deemed to have received such notice of any other Event of Default under this Lease. Landlord shall accept performance of the terms of this Lease by the Permitted Lender, or any agent, nominee or designee of the Permitted Lender that Permitted Lender notifies Landlord in writing is performing the cure rights on behalf of and for the Permitted Lender under this Section 10.3.2(a); provided such performance is completed within the time frames set forth in this Section 10.3.2 as if the terms were performed by Tenant, regardless of whether there has been an Event of Default and Permitted Lender is liable to Landlord for the performance by such agent, nominee or designee. If there is more than one Permitted Lender, then Landlord shall recognize only the cure rights of the Permitted Mortgage Lender that has been most recently designated as authorized to exercise cure rights by the Permitted Mortgage Lender with the earliest recorded Permitted Lease Encumbrance that has not been reconveyed and to which Landlord consented without any liability to Tenant or the other Permitted Lenders; provided, however, that Landlord shall accept without the necessity of further inquiry, and without liability to Tenant and any Permitted Lender, a written notice from the Permitted Mortgage Lender with the earliest recorded Permitted Lease Encumbrance that is still outstanding and to which Landlord consented as confirmation that such Permitted Mortgage Lender has the first right to exercise any cure rights under this Lease or enter into a New Lease as set forth in Article 10, and such notice shall be valid for all purposes until such time as such Permitted Mortgage Lender informs Landlord in writing that such notice is no longer valid or Landlord receives a new written notice from the Permitted Mortgage Lender with the earliest recorded Permitted Encumbrance that is outstanding to which Landlord consented stating that the prior Permitted Mortgage Lender with the earliest recorded Permitted Lease Encumbrance no longer has an outstanding Permitted Lease Encumbrance as evidenced by a copy of the recorded reconveyance of the Deed of the Trust for such prior Permitted Mortgage Lender.

(b) Possession Required. If the Event of Default specified in Section 10.3.2(a)(ii) cannot be cured until the Permitted Lender has obtained possession of the Premises (or, in the case of a Permitted Mezzanine Lender, control of Tenant) through foreclosure or otherwise, and if the Permitted Lender has delivered to Landlord within the ninety- (90-) day cure period specified in Section 10.3.2(a)(ii) Permitted Lender's written commitment (in form acceptable to Landlord in its sole discretion) to use diligent efforts to cure (or to cause Tenant to cure) such Event of Default with due diligence upon obtaining possession of the Premises (or, in the case of a Permitted Mezzanine Lender, control of Tenant) through foreclosure or otherwise, then the Permitted Lender shall have such additional time (but in no event to exceed two hundred and seventy (270) days from the date of obtaining possession of the Premises) as is reasonably necessary to cure (or to cause Tenant to cure) such Event of Default, but only if the Permitted Lender: (i) unless judicially stayed, commences the judicial or other foreclosure of the Permitted Encumbrance within ninety (90) days from receipt of written notice of the occurrence of an Event of Default under this Lease; (ii) prosecutes said foreclosure with due diligence; and (iii) cures, during said period, all monetary Events of Default and, during the period of said stay and/or foreclosure, continues to pay and perform during said period of stay and/or foreclosure all other monetary obligations of Tenant in a timely manner, including, without limitation, payment of all Rent, taxes, assessments, utility charges, insurance premiums and all other amounts required to be paid by Tenant under this Lease. Notwithstanding anything herein to the contrary, nothing herein shall require a Permitted Lender who has taken possession of the Premises or, in the case of an Equity Collateral Enforcement Action, control of Tenant, to cure any non-monetary default that, by its nature, is not reasonably capable of being cured by the Permitted Lender, or in the case

of an Equity Collateral Enforcement Action, Tenant, such as a Bankruptcy Event (an "**Incurable Default**"). All such Incurable Defaults shall be deemed to be permanently waived following the Permitted Lender's taking possession of the Premises or, in the case of an Equity Collateral Enforcement Action, control of Tenant. All monetary obligations and non-monetary obligations that are not Incurable Defaults shall still be performed as required under this Lease, subject to the extended cure periods set forth in this Section 10.3.2. In no event shall nuisance or waste caused by Tenant's failure to use the Premises and the Improvements in accordance with the Permitted Use or failure to construct, operate and maintain the Premises and Improvements in accordance with the requirements of this Lease be an Incurable Default.

(c) No Termination by Landlord. Landlord shall not terminate this Lease by reason of an Event of Default if Landlord has failed to comply with its obligations under Section 10.3 or if the Permitted Lender (i) is curing or has cured all Events of Defaults under the Lease in the payment of Rent within the time frames provided in Section 10.3.2(a)(i) above, and (ii) has cured all other Events of Default within the time frames provided in Sections 10.3.2(a)(ii) and 10.3.2(b), other than any Incurable Default.

(d) New Lease. In the event of any termination of this Lease of which Landlord has received written notice by reason of a surrender, cancellation, or termination by Tenant, or as a result of the rejection or disaffirmance of this Lease pursuant to bankruptcy law or other Law affecting creditors rights, or as a result of any other termination of this Lease for any reason, then Landlord shall deliver notice to each Permitted Lender that the Lease has been terminated or rejected, as applicable. The notice shall include a statement of all Rent that would be due under this Lease but for the termination hereof or the rejection of this Lease, as applicable, and all other Events of Default, or breaches under this Lease, that are then known to Landlord, without the duty of inquiry; provided that in no event shall such notice prevent or estop Landlord from asserting other breaches under the Lease or Events of Default that become known to Landlord after the time the notice is sent to the Permitted Lender. The Permitted Mortgage Lender (a "**New Tenant**") shall then have the option, to be exercised within sixty (60) days following receipt of such notice of termination or rejection, as applicable, to enter into a new lease ("**New Lease**") with Landlord and, if Permitted Mortgage Lender does not exercise such option within such sixty- (60-) day period, then, if MICC or an Affiliate of MICC is the Permitted Mezzanine Lender (also referred to herein as a "**New Tenant**"), it shall have the option, to be exercised no later than seventy-five (75) days following receipt of such notice of termination, to enter into a New Lease with Landlord (the period of time during which any Permitted Lender may require a New Lease, the "**New Lease Period**"), in each case, on the following terms and conditions:

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

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

(iii) Upon execution of the New Lease, the New Tenant shall cure all other defaults under this Lease, which have not yet been cured (other than any Incurable Default), with due diligence in a timely manner in accordance with the cure periods under the Lease assuming such cure periods commence with the execution of the

New Lease and without additional notice (provided that Landlord has already provided such notice of such default to New Tenant).

(iv) Nothing herein shall be construed to require Landlord to deliver possession of the Premises to the New Tenant. Upon execution and delivery of the New Lease, the New Tenant may take any and all appropriate actions as may be necessary to remove parties in possession from the Premises. Landlord shall not grant any real property interest in the Premises during the sixty (60) day period, or seventy-five (75) day period, as applicable set forth in Section 10.3.2(d).

(v) The sublessee under each Sublease shall be deemed to have agreed that each sublessee whose Sublease was in effect immediately prior to the execution of such New Lease shall, on the date of its execution or the commencement of its term, whichever is later, pursuant to its Sublease, attorn to the New Tenant and the New Tenant shall accept such attornment of each Sublease which was entered into in compliance with the terms hereof; provided that Landlord shall have no obligation to require the same of sublessee and shall have no liability to New Tenant resulting from the failure of any sublessee to comply with this Section 10.3.2(d)(v).

During such sixty (60) day period and thereafter if Permitted Lender timely accepts such offer of a New Lease until the termination or expiration of such New Lease, ownership of the Improvements (excluding the Convention Center for so long as the Convention Center is subject to public financing and the Convention Center Subleases) shall not vest in Landlord, and the Permitted Lender's lien in and to the Improvements shall continue unaffected by the termination of this Lease.

Should neither the Permitted Mortgage Lender, nor an SPE Lender Affiliate, nor MICC accept said offer for such New Lease in writing within said sixty (60) day or seventy-five (75) day period, as applicable, or, having so accepted said offer, should it fail promptly to execute the New Lease or satisfy the requirements of clauses (ii) and (iii) above in a timely manner, then the termination of this Lease shall be effective as to all of the Permitted Lenders and the Permitted Lenders shall have no further rights hereunder.

10.3.3 Loan Default.

If a Permitted Encumbrance or any loan secured by a Permitted Encumbrance is in default at any time, then the Permitted Lender shall, as provided by Law, have the right, without Landlord's prior consent, to:

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

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

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

provided, however, that no Assignment to the successful bidder (a "**Foreclosure Purchaser**") that is neither the Permitted Mortgage Lender, an Affiliate of the Permitted Mortgage Lender that is a special purpose entity set up and operated by Permitted Mortgage Lender specifically to take and hold properties with respect to which Permitted Mortgage Lender has foreclosed or

taken a deed in lieu of foreclosure ("**SPE Lender Affiliate**") shall be effective without Landlord's prior written consent in accordance with Section 10.4 below.

10.3.4 Assume Lease Obligations.

Notwithstanding anything in this Lease to the contrary, (a) in the case of the acquisition of the leasehold interest created by this Lease in connection with a Permitted Lease Encumbrance and as an express condition thereto, the Foreclosure Purchaser shall, before or concurrently with such acquisition, agree in writing to be bound by all provisions of, and assume each and every obligation of Tenant, under this Lease and (b) in the case of an Equity Collateral Enforcement Action and as an express condition thereto, the Foreclosure Purchaser shall, before or concurrently with such Equity Collateral Enforcement Action, cause Tenant to reaffirm, in writing, promptly after the Equity Collateral Enforcement Action, its obligations under this Lease; provided, however, that under no circumstance shall such Permitted Lender or such Foreclosure Purchaser have any liability hereunder unless and until it becomes Tenant under this Lease. Notwithstanding the foregoing, nothing in this Section 10.3.4 shall limit the liability of a Permitted Lender for damage or loss caused by Permitted Lender's attempt to cure a non-monetary Event of Default. A Permitted Lender that has: (i) acquired the leasehold interest and assumed the Tenant's obligations, or (ii) entered into a New Lease pursuant to Section 10.3.2(d), shall be released from all obligations under this Lease first arising after the effective date of the assignment and assumption of the leasehold interest to an assignee consented to by Landlord, in accordance with Section 10.4.

10.4 Landlord's Consent to Assignment or Transfer.

10.4.1 Landlord's Consent to Assignment

Landlord's consent shall not be required for an Assignment to a Foreclosure Purchaser that is a Permitted Mortgage Lender, an SPE Lender Affiliate, MICC (as applicable) or an Affiliate of MICC (as applicable). Landlord's prior written consent shall be required for the following: (1) an Assignment to a Foreclosure Purchaser that is neither the Permitted Mortgage Lender, nor an SPE Lender Affiliate, nor MICC (as applicable), nor an Affiliate of MICC (as applicable), or (2) an Assignment or Sublease of all or substantially all of the Premises and the Improvements by the Permitted Mortgage Lender, an SPE Lender Affiliate, MICC (as applicable), or an Affiliate of MICC (as applicable) should such entity become the tenant by reason of: (i) being the successful bidder upon said foreclosure, (ii) an assignment in lieu of foreclosure, or (iii) a New Lease entered into pursuant to Section 10.3.2(d) above. Landlord shall provide its response (including, if applicable, a reasonably detailed explanation of the basis for Landlord's withholding consent) to Tenant's request for consent to the Assignment within forty-five (45) days following Landlord's receipt of Tenant's request and all information reasonably requested by Landlord from Tenant. Within thirty (30) days after Tenant or a Permitted Lender submits a request for consent, Landlord shall notify Tenant if Landlord reasonably requires any additional information in connection with the proposed Assignment. Any Permitted Lender may seek consent for more than one prospective acquirer of Tenant's interest in this Lease in connection with a foreclosure sale to be held pursuant to either judicial proceedings, power of sale and/or a sale of Mezzanine Interests as provided in its Permitted Encumbrance or as permitted by applicable Law. Landlord will grant such consent if in Landlord's reasonable determination the following items have been satisfied:

(a) The assignee is reputable (which shall mean the absence of reputations for dishonesty, criminal conduct, or association with criminal elements – "reputable" shall not mean "prestigious", nor shall the determination of whether one is reputable involve

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

(b) The assignee shall satisfy the subsections 11.5.3(a) (Sufficient Experience), (b) (Consistent Use), (d) (Reputation), (e) (Public Financing) and (f) (Hotel Brand) of this Lease.

(c) The assignee agrees in writing to assume each and every obligation of the Tenant under this Lease or the New Lease, as the case may be, pursuant to a form of assignment and assumption agreement substantially in the form of Exhibit “L” attached hereto with any deviations from such form being approved by the Landlord in Landlord’s reasonable discretion; and

(d) The assignee agrees in writing to cure all uncured defaults with due diligence in a timely manner arising under this Lease or the New Lease (including any uncured defaults under this Lease even if replaced by the New Lease), other than any Incurable Default.

No such assignee shall subsequently: (i) assign this Lease, or sublease any or all of the Premises or the Improvements without Landlord's prior written consent, in accordance with Article 11 herein; or (ii) encumber this Lease, leasehold interest, equity interests of Tenant, the Premises or the Improvements thereon without Landlord's prior written consent, in accordance with this Article 10.

10.4.2 Basis for Decision

The burden of producing evidence and the burden of proof showing Landlord that a prospective assignee, Foreclosure Purchaser or Subtenant, as applicable, meets each and all of the aforesaid qualifications and standards shall be on said Permitted Lender or Foreclosure Purchaser, as applicable. Landlord's decision shall be based upon Landlord's high duty of care in administering a valuable public resource, which it holds in trust for the people of the State of California. In the absence of fraud or arbitrary or unreasonable action in applying or failing to apply said standards, Landlord's decision shall be final.

10.4.3 If Landlord Rejects Lease Transferee

(a) *Judicial Reference.* In the event Landlord rejects: (i) the Foreclosure Purchaser, or (ii) a proposed assignee of the Permitted Lender (said Foreclosure Purchaser or proposed assignee of the Permitted Lender being sometimes referred to hereinafter as the "**Rejected Transferee,**" and said Foreclosure Purchaser, or proposed assignee of the Permitted Lender being sometimes referred to hereinafter as the "**Applicant**"), the sole remedy of the Applicant and Rejected Transferee shall be to seek relief in the nature of specific performance through consensual general reference as provided in Part 2, Title 8, Chapter 6 (Section 638, et seq.) of the California Code of Civil Procedure, or any successor California statute governing resolution of disputes by a court-appointed referee (“**Judicial Reference**”) and in no event shall Landlord be liable to the Rejected Transferee or Applicant, or any Person whatsoever, for monetary damages. Notwithstanding the foregoing, the Rejected Transferee shall be entitled to recover such monetary damages, if any, it may sustain as a result of Landlord's failure or refusal to comply with a final, non-appealable, Superior Court order confirming an award in favor of the Rejected Transferee in said Judicial Reference.

(b) *Issue*. The issue to be submitted to Judicial Reference shall be whether the BPC's record contains substantial evidence to support the decision to reject the Applicant in

accordance with the standards set forth in Sections 10.4.1 and 10.4.2 above. The Rejected Transferee may submit said issue to Judicial Reference.

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

10.4.4 Notice of Foreclosure Sale.

Permitted Lender shall include a statement in any notice of foreclosure sale covering the requirements under Section 10 for Landlord's consent to an Assignment upon said foreclosure.

10.4.5 Cancellation; Surrender; Modification; Amendment.

There shall be no cancellation, surrender (which term shall be deemed to include any determination by Tenant to treat this Lease as terminated under 11 U.S.C. § 365(h) if Landlord rejects this Lease in a bankruptcy or insolvency proceeding affecting Landlord) or modification of this Lease which is binding on any Permitted Lender (other than correction of scrivener's errors), without the prior written consent of each Permitted Lender (but nothing herein shall prevent Landlord or Tenant from terminating this Lease pursuant to the express terms hereof, subject, however, to each Permitted Lender's rights to obtain a New Lease in accordance with Section 10.3.2(d)). Tenant hereby advises Landlord that Tenant is assigning any right which it may have to object to any sale of Landlord's interests in the Premises and the Improvements free and clear of this Lease under the terms of 11 U.S.C. § 363(f)(2) to the Permitted Lenders to act on Tenant's behalf and any such objection by Permitted Mortgage Lenders shall be as effective as if made by Tenant and, for the benefit of Landlord, Tenant hereby waives any and all right to object to any sale of Landlord's interests in the Premises so assigned to the Permitted Lenders. So long as a Permitted Encumbrance remains outstanding, Landlord shall not consent to any amendment or modification of this Lease that is not consented to in writing by each Permitted Lender with an outstanding Permitted Lease Encumbrance of which Landlord has received notice.

10.5 Subordination, Non-Disturbance and Attornment Agreement.

Prior to or on the Commencement Date, (a) Landlord and each Permitted Mortgage Lender shall enter into a subordination, non-disturbance and attornment agreement substantially in the form of Exhibit "P-1" attached hereto and (b) Landlord and each Permitted Mezzanine Lender

shall enter into a subordination, non-disturbance and attornment agreement substantially in the form of Exhibit "P-2" attached hereto.

10.6 Miscellaneous.

10.6.1 Estoppel Statements.

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

10.6.2 Completion of Initial Project Improvements.

If any Foreclosure Purchaser acquires the leasehold interest before the date when the Initial Project Improvements are Completed, such Foreclosure Purchaser shall have the right, but no obligation, to Complete any of the Initial Project Improvements. If such Foreclosure Purchaser elects to Complete any of the Initial Project Improvements ("**Initial Project Improvements Completion Election**"), then such Foreclosure Purchaser shall notify Landlord thereof no later than ninety (90) days after acquiring the leasehold interest ("**Initial Project Improvements Completion Election Notice**"). If such Foreclosure Purchaser does not provide an Initial Project Improvements Completion Election Notice in accordance with this Section 10.6.2, then Landlord shall have the right to terminate this Lease, without the consent of any Permitted Lender, by giving such Foreclosure Purchaser written notice thereof and such Foreclosure Purchaser shall have no liability for any failure to Complete any of the Initial Project Improvements, but shall be responsible for the failure to comply with any other terms, covenants and conditions of this Lease while such Foreclosure Purchaser was the Tenant under the Lease and for the failure to deliver to Landlord a release of all liens on the Premises, Improvements and leasehold interest which such Foreclosure Purchaser has caused to exist, such Foreclosure Purchaser has consented to or which exist solely due to negligence of such Foreclosure Purchaser. If such Foreclosure Purchaser provides an Initial Project Improvements Completion Notice in accordance with this Section 10.6.2, then Landlord shall negotiate in good faith with such Foreclosure Purchaser to set a new commercially reasonable timetable for Completion of the applicable Initial Project Improvements ("**New Initial Project Improvements Completion Timetable**"). For the avoidance of doubt, the new date of Completion of the applicable Initial Project Improvements ("**New Outside Construction Completion Date**") may be later than the Outside Construction Completion Date set forth in Section 1.8(b)), based on the status of the construction of the Initial Project Improvements at the time of the applicable foreclosure or action in lieu of foreclosure, as applicable, but in no event shall such New Outside Construction Completion Date be extended by a period that does not reasonably take into account the status of the construction of the Initial Project Improvements at the time of the applicable foreclosure or action in lieu of foreclosure, as applicable, and the amount of time that it would reasonably take a sophisticated developer with experience constructing and operating hotels to Complete the Initial Project Improvements and in no event shall such New Outside Construction Completion Date extend beyond four (4) years from the Outside Construction Completion Date set forth in Section 1.8(b). Once Landlord and such Foreclosure Purchaser agree on a New Initial Project Improvements Completion Timetable, then such Foreclosure Purchaser shall Complete the applicable Initial Project Improvements in accordance with such New Initial Project Improvements Completion Timetable and such Foreclosure Purchaser shall pay Construction Late Charges in accordance with Section 6.5.6 only if and to the extent that any of the applicable Initial Project Improvements are not Completed by the New Outside Construction Completion Date. If Landlord and such Foreclosure Purchaser cannot agree on a New Initial

Project Improvements Completion Timetable, then Landlord and such Foreclosure Purchaser shall proceed to Judicial Reference in accordance with Section 10.4.3(c); provided that the New Outside Construction Completion Date shall be tolled during the pendency of any Judicial Reference pursuant to this Section 10.6.2. For the avoidance of doubt, nothing in this Section 10.6.2 shall be construed as limiting Landlord's right to recover from the original Tenant Construction Late Charges based on the original Outside Construction Completion Date in accordance with Section 6.5.6.

10.6.3 Amendments and Modifications to Loan Documents.

Notwithstanding anything to the contrary herein, Tenant and Permitted Lender shall have the right to make any amendment or modification to any of the Loan Documents without Landlord's consent if (a) Landlord receives a copy of the amendment or modification within thirty (30) days after it has been executed and (b) following the amendment or modification, (i) the requirements of Sections 10.1.2 or 10.1.3, as applicable, are satisfied and (ii) the name of the borrower and the name of the lender that is a party to the Permitted Encumbrance remain the same. Notwithstanding the foregoing, no Landlord consent shall be required for any protective advances made by a Permitted Lender under and in compliance with the applicable Loan Documents approved by Landlord.

11. SUBLEASE; ASSIGNMENT

11.1 Sublease.

11.1.1 Consent Required.

The Subleases for the Convention Center that are attached hereto as Exhibit "I" and incorporated herein by reference ("**Convention Center Subleases**") have been consented to by the Landlord in the form attached.

Subject to the terms of Sections 11.1 through 11.4 and except for (a) any Sublease that is for less than five thousand (5,000) square feet of the total square footage of the Initial Improvements or (b) any of the Convention Center Subleases, no Sublease shall be made or permitted without the prior written consent of Landlord (which consent shall not be unreasonably withheld, conditioned or delayed).

11.1.2 Request for Consent.

If a Sublease is proposed for which Landlord consent is required, Tenant shall notify Landlord in writing, which notice (the "**Sublease Notice**") shall include (i) the proposed effective date of the Sublease, which shall not be less than sixty (60) days and not more than one hundred eighty (180) days after the date of delivery of the Sublease Notice, (ii) a narrative description, with supporting documents, of the proposed Sublease, including without limitation, the name of the proposed Subtenant, the term of the Sublease, the proposed use of the Premises and/or the Improvements, as applicable, the experience of the proposed Subtenant, the organizational structure of the proposed Subtenant, and any additional information that Landlord may reasonably require to evaluate the Sublease based on the factors set forth in Section 11.1.3, (iii) with respect to any Sublease that has a maximum total term of more than five (5) years, a copy of the proposed sublease agreement, (vi) a statement of any current litigation or any litigation which was resolved within the prior five (5) years affecting the proposed Subtenant and (vii) such other information as Landlord may reasonably require. Not later than thirty (30) days after receipt of a Sublease Notice, Landlord shall notify Tenant (a) that Landlord has all information that it requires to evaluate the proposed Sublease or (b) of any

additional information that Landlord reasonably requires to evaluate the proposed Sublease, as applicable. Landlord shall notify Tenant that it consents or does not consent to the proposed Sublease (including, if applicable, a reasonably detailed explanation for Landlord withholding its consent) not later than sixty (60) days after Landlord has received all information that Landlord reasonably requested to evaluate the proposed Sublease. Any Sublease made without Landlord's prior written consent shall, at Landlord's option, be null, void and of no effect undone at Tenant's sole cost and expense and shall not be binding on Landlord. Tenant shall pay to Landlord Landlord's standard applicable fee set by the BPC in connection with Landlord reviewing and approving each Sublease for which Landlord's consent is required pursuant to the Reimbursement Procedure, regardless of whether the Sublease is consummated or Landlord's consent thereto is granted. Any Sublease shall be subject to the terms and provisions of this Lease.

The burden of producing evidence and the burden of proof showing Landlord that a prospective Subtenant meets each and all of the aforesaid qualifications and standards and that Landlord breached, or did not act reasonably under, this Section 11.1, shall be on the Tenant.

11.1.3 Consent Factors.

If Landlord consents to any Sublease, Tenant may within one hundred eighty (180) days after the date of delivery of the Sublease Notice, enter into such Sublease; provided that, if there is any material change to the financial condition of the Subtenant or any other material change to any of the proposed terms or conditions of the Sublease as set forth or attached to the Sublease Notice, then Tenant shall again submit a Sublease Notice to Landlord for its approval and take all other action required under this Section 11.1.

Notwithstanding anything to the contrary herein, Landlord shall grant consent to any Sublease that is required hereunder if all of the following conditions and requirements are satisfied in the Landlord's reasonable discretion:

(a) Consistent Use.

The Subtenant's proposed use of the Premises and the Improvements following the proposed Sublease will be for the Permitted Use only or such proposed use as has been approved by the Landlord or BPC, as applicable;

(b) Reputation.

The Subtenant is reputable (which shall mean the absence of reputations for dishonesty, criminal conduct or association with criminal elements – "reputable" shall not mean "prestigious", nor shall the determination of whether one is reputable involve considerations of personal taste or preference) and has no pattern of or reputation for, either discriminatory employment practices which violate any Laws or non-compliance with Environmental Laws;

(c) Financial Stability.

The Subtenant has sufficient financial resources for the Subtenant to perform its obligations under the Sublease;

(d) Event of Default.

At the time of the delivery of the Sublease Notice and at the time of the execution of the Sublease, there is no Event of Default;

(e) Public Financing.

The Sublease and Subtenant satisfy the requirements for a permitted Sublease and permitted Subtenant under the Convention Center Subleases attached hereto as Exhibit "I" and the requirements under any other documents effectuating the public financing by the Landlord, City or the JEPA for or related to the Premises, the Tenant's Phase 1A Improvements or the Convention Center for so long as such financing remains outstanding; provided that such requirements must not be materially more stringent than the requirements that were in effect under the public financing that is outstanding as of the Commencement Date as determined by Tenant in its reasonable discretion; and

(f) Term.

The proposed Sublease will be for no longer than the remainder of the Term.

11.1.4 Effect of Sublease.

If Landlord consents to a Sublease, (i) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Sublease by either Tenant or a Subtenant, and (iii) Tenant shall deliver to Landlord, within ten (10) days after execution, an original executed copy of all documentation pertaining to the Sublease, and any document evidencing a Sublease shall be in form acceptable to Landlord.

11.1.5 Conditions.

In the event Landlord consents to any Sublease as required hereunder, then at Landlord's election said consent shall be conditioned upon the following: (i) in the case of a Subtenant under a Sublease of all or substantially all of the Premises and the Improvements, such Subtenant shall agree to be bound by all provisions, and assume each and every obligation, under this Lease (including those obligations arising or pertaining to periods prior to the effective date of the Sublease), or, in the case of a Subtenant under a Sublease of less than all or substantially all of the Premises and the Improvements, such Subtenant shall execute a document reasonably acceptable to Landlord acknowledging that all rights of the Subtenant are subject to all terms and conditions of this Lease as the same relate to the space subject to the Sublease; and (ii) the Subtenant shall execute an attornment agreement as provided in Section 11.2 below.

11.2 Subtenant Attornment.

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

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

11.3 Sublease Rent Requirements.

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

11.4 Reporting of Sublease Information.

If Tenant has entered into any Subleases, then, within thirty (30) days of request from Landlord and within sixty (60) days after the end of each calendar year, Tenant shall submit to Landlord a rent roll in the form of Exhibit "G" attached hereto containing the information described therein for each Sublease then in effect, along with a site plan showing locations of any Subleases.

11.5 Assignment.

11.5.1 Consent Required.

Subject to the terms of this Section 11.5 and except for any Assignment to a Foreclosure Purchaser that is a Permitted Mortgage Lender, an SPE Lender Affiliate, MICC (if applicable), or MICC Affiliate (if applicable), no Assignment or Change of Control of Tenant (collectively, "**Transfer**") shall be made or permitted without, in each instance, the prior written consent of Landlord (which consent shall not be unreasonably withheld, conditioned or delayed). Consents to Assignment to a Foreclosure Purchaser are addressed in Section 10.4. It is mutually agreed that Landlord is a Governmental Authority holding title to the Premises in trust for the citizens of the State of California and acting as a prudent steward of the Premises and that the personal qualifications of the parties Controlling Tenant are a part of the consideration for granting this Lease. As such, a Change of Control is as relevant to Landlord as an Assignment. Notwithstanding anything herein to the contrary, no Transfer is allowed prior to the date that the Initial Project Improvements are Completed and Landlord has received a copy of the final certificate of occupancy with respect to the Initial Project Improvements.

11.5.2 Request for Consent.

If a Transfer is proposed for which Landlord consent is required, Tenant shall notify Landlord in writing, which notice (the "**Transfer Notice**") shall include (i) the proposed effective date of the Transfer, which shall not be less than ninety (90) days and not more than one hundred eighty (180) days after the date of delivery of the Transfer Notice, (ii) narrative

description, with supporting documents, of the proposed Transfer, including without limitation, the name of the Transferee, the proposed use of the Premises and the Improvements following the proposed Transfer, the experience of the Transferee, the organizational structure of the Transferee that depicts all Persons that hold twenty percent (20%) or more of direct and indirect interest in such Transferee, and any additional information that Landlord may require to evaluate the Transfer based on the factors set forth in Section 11.5.3, (iii) all of the material terms of the proposed Transfer, including without limitation, any proposed encumbrances, (iv) with respect to an Assignment, the name and address of the proposed assignee or, with respect to a Change of Control of Tenant, the name and address of the Person(s) acquiring an interest resulting in a Change of Control of Tenant (each such assignee, or Person acquiring an interest resulting in a Change of Control of Tenant, a "**Transferee**"), (v) with respect to a Change of Control of Tenant, a complete description of the direct and indirect ownership and Control of Tenant immediately before and immediately after the Transfer in writing and depicted in an organizational chart (but in no event will Tenant be required to disclose the identity of any Person that holds less than a 20% direct or indirect underlying interest in Tenant), (vi) a copy of all existing and/or proposed documentation pertaining to the proposed Transfer, including all existing and proposed operative documents to be executed to evidence such Transfer and the agreements incidental or related to such Transfer, which shall at a minimum include, organizational documents, (vii) a statement of any current litigation or any litigation which was resolved within the prior five (5) years affecting the proposed Transferee, (viii) in the case of an Assignment only, financial statements of the proposed Transferee as of the end of the most recent calendar quarter that ended at least one hundred fifty (150) days before the date of submission that are certified by a reputable, certified public accountant or certified on behalf of the proposed Transferee as being prepared in accordance with generally accepted accounting principles by a Person that is authorized to execute such financial statements on behalf of the proposed Transferee, as applicable (which shall be audited if that is the customary practice of the Transferee), and (ix) such other information as Landlord may reasonably require. Any Assignment made without Landlord's prior written consent shall, at Landlord's option, be null, void and of no effect, undone at Tenant’s sole cost and expense and shall not be binding on Landlord. Tenant shall pay to Landlord Landlord's standard applicable fee set by the BPC Policy No. 106, or its equivalent, in connection with Landlord reviewing each Transfer for which Landlord consent is required pursuant to the Reimbursement Procedure, regardless of whether the Transfer is consummated or Landlord's consent thereto is granted. Any Transfer shall be subject to the terms and provisions of this Lease.

The burden of producing evidence and the burden of proof showing Landlord that a prospective Transferee meets each and all of the aforesaid qualifications and standards and that Landlord breached, or did not act reasonably or in good faith, under this Section 11.5 shall be on the Tenant.

11.5.3 Consent Factors.

Not later than thirty (30) days after receipt of a Transfer Notice, Landlord shall notify Tenant (i) that Landlord has all information that it requires to evaluate the proposed Transfer or (ii) of any additional information that Landlord reasonably requires to evaluate the proposed Transfer, as applicable. Landlord shall notify Tenant that it consents or does not consent to the proposed Transfer (including, if applicable, a reasonably detailed explanation for Landlord withholding its consent) not later than sixty (60) days after Landlord has received all information that Landlord reasonably requested to evaluate the proposed Transfer. If Landlord consents to

any Transfer, Tenant may within one hundred eighty (180) days after the date of delivery of the Transfer Notice, enter into such Transfer, upon the same terms and conditions as set forth in the Transfer Notice furnished by Tenant to Landlord; provided that, if there is any material change to the financial condition of the Transferee or any other material change to any of the proposed terms or conditions of the Transfer as set forth or attached to the Transfer Notice, then Tenant shall again submit a Transfer Notice to Landlord for its approval and take all other action required under this Section 11.5.

Notwithstanding anything to the contrary herein, Landlord shall grant consent to any Transfer that is required hereunder if all of the following conditions and requirements are satisfied (it being understood that for the purposes of this Section 11.5.3 and Section 11.5.5, in the case of a Change of Control, references to "**Transferee**" shall mean the Person that Controls the Tenant following the Change of Control) in the Landlord's reasonable discretion:

(a) Sufficient Experience.

The Transferee has at least ten (10) years of experience (directly or through one or more of its subsidiaries) owning or managing hotels that have at least 500 rooms and meeting space comparable to the Meeting Space (or retains a manager with such qualifications);

(b) Consistent Use.

The Transferee's proposed use of the Premises and the Improvements following the proposed Transfer will be for the Permitted Use only or such proposed use as has been approved by the Landlord or BPC, as applicable;

(c) Initial Project Improvements Are Complete.

The Transfer is to occur after the date that is the later of the (1) date the Initial Project Improvements are Completed and (2) the date that Landlord receives a copy of the final certificate of occupancy for the Initial Project Improvements; provided that this clause (c) shall not apply if such Transfer is (i) in connection with any foreclosure on the Permitted Encumbrance or any action in lieu of foreclosure by a Permitted Lender or to a Foreclosure Purchaser that is a Permitted Lender or an SPE Lender Affiliate or (ii) the immediately subsequent Transfer by such Foreclosure Purchaser that is a Permitted Mortgage Lender or an SPE Lender Affiliate.

(d) Reputation.

The Transferee is reputable (which shall mean the absence of reputations for dishonesty, criminal conduct or association with criminal elements – "reputable" shall not mean "prestigious", nor shall the determination of whether one is reputable involve considerations of personal taste or preference) and has no pattern of, or reputation for, either discriminatory employment practices which violate any Laws or non-compliance with Environmental Laws;

(e) Public Financing.

The Transfer and Transferee satisfy the requirements for a permitted Transfer and permitted Transferee under the Convention Center Subleases attached hereto as Exhibit "I" and the requirements under any other documents effectuating the public financing by the Landlord, City or JEPA for or related to the Premises, the Tenant's Phase 1A Improvements or the Convention Center for so long as such financing remains outstanding; provided that such requirements must not be materially more stringent than the requirements that were in effect under the public financing that is outstanding as of the Commencement Date as determined by Tenant in its reasonable discretion;

(f) Hotel Brand.

The Transferee's proposed hotel brand will be an Acceptable Brand; provided that if the Transfer is prior to the third (3rd) anniversary of the later date of (i) the date that the Initial Project Improvements are Complete and (ii) the date that Landlord receives a copy of the final certificate of occupancy with respect to the Initial Project Improvements, Landlord may disapprove of the Transfer on the grounds that the Resort Hotel brand will not be the Gaylord Hotels brand; provided further that the foregoing proviso and the proviso in the definition of "Acceptable Brand" will not apply if such Transfer is in connection with any foreclosure on the Permitted Lease Encumbrance or any action in lieu of foreclosure by a Permitted Mortgage Lender or to a Foreclosure Purchaser that is a Permitted Mortgage Lender or an SPE Lender Affiliate;

(g) Default.

At the time of request or Transfer, there is no Event of Default under this Lease or any other lease between Landlord and Tenant or an entity that is Controlled by or under common Control with Tenant or which Controls Tenant; provided that this clause (g) shall not apply if such Transfer is (i) in connection with any foreclosure on the Permitted Encumbrance or any action in lieu of foreclosure by a Permitted Lender or to a Foreclosure Purchaser that is a Permitted Lender or an SPE Lender Affiliate or (ii) the immediately subsequent Transfer by such Foreclosure Purchaser that is a Permitted Lender or an SPE Lender Affiliate;

(h) Assignment and Assumption Agreement.

In the case of an Assignment, Tenant and the Transferee shall enter into, and deliver to Landlord, an assignment and assumption agreement substantially in the form of Exhibit "L" attached hereto, with any deviations from such form being approved by the Landlord in Landlord's reasonable discretion.

11.5.4 Effect of Transfer.

If Landlord consents to a Transfer, (i) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee, and (iii) Tenant shall deliver to Landlord, within one hundred and eighty (180) days after Landlord's consent to such Transfer, an original executed copy of all documentation pertaining to the Transfer, including any documents set forth in Section 11.5.3, in a form acceptable to Landlord. In the case of an Assignment of this Lease only, that complies with the terms of this Section 11.5, upon Landlord's receipt of a fully executed assignment and assumption agreement substantially in the form of Exhibit "L" (with any deviations from such form being approved by Landlord in Landlord's reasonable discretion) where Transferee assumes all liability and obligations under this Lease first arising from and after the effective date of such Transfer, and Tenant (but not the Completion Guarantor(s), if the effective date of the Transfer will be before the date that is the later of: six (6) months after (i) the end of the Construction Period and (ii) the date the Resort Hotel is open for business) shall be relieved from any liability under this Lease first arising from and after the effective date of such Transfer.

11.5.5 Conditions.

In the event Landlord consents to any Assignment as required hereunder, then said consent shall be conditioned upon (i) the assignee agreeing in writing to be bound by all provisions, and assuming each and every obligation, under this Lease (including those obligations arising or pertaining to periods prior to the effective date of the Assignment) through an assignment and assumption agreement substantially in the form of Exhibit "L" hereto (with any deviations from such form being approved by the Landlord in Landlord's reasonable

discretion) and executes and delivers such assignment and assumption agreement to Landlord; and (ii) the Completion Guarantor(s) (if applicable) delivering a written acknowledgement, in a form acceptable to Landlord, consenting to the Assignment and reaffirming their obligations under the Completion Guaranty. Without limiting the generality of the foregoing, any assignee shall be obligated for the payment to Landlord of any underpayment of Rent determined to be due under Section 5.4.3(e) above, together with the cost of the audit, if applicable, notwithstanding that such underpayment of Rent, and related audit, pertains to a period of time prior to the effective date of the Assignment.

11.6 Landlord Participation Fee.

Upon each (a) Assignment of this Lease pursuant to Section 11.5, (b) a change in the composition of the direct or indirect ownership of Tenant, and (c) Sublease of all or substantially all of the Premises and the Improvements, Tenant shall pay to Landlord a fee (the "**Assignment Participation Fee**") in an amount equal to one percent (1%) of the Assignment Proceeds of such transaction; provided, however, that Tenant shall not pay the Assignment Participation Fee (i) if one or more of the members of Tenant (as of the time of Completion of the Initial Project Improvements and Landlord's receipt of a copy of the final certificate of occupancy for the Initial Project Improvements) which shall include, as applicable (A) each sibling of such Person, the spouse of such Person, and each parent, child, grandchild or great-grandchild of such Person (including relatives by marriage); (B) any trust for the benefit of such Person or any of the foregoing members of his or her family; (C) where such Person is a trust, any beneficiary of the trust of any of the foregoing family members of a beneficiary of the trust, or any other trust established for the benefit of any of the foregoing; and (D) each Person that Controls, is Controlled by, or in under common Control of, such Person or any of the foregoing Persons) (each, an "**Original Member**"), collectively, directly or indirectly, owns at least a ten percent (10%) ownership interest in the Initial Project Improvements (including through direct or indirect ownership in Tenant), (ii) in the case of any Transfer in connection with any foreclosure on the Permitted Encumbrance or any action in lieu of foreclosure by a Permitted Lender or to a Foreclosure Purchaser that is a Permitted Lender or an SPE Lender Affiliate or the immediately subsequent Transfer by such Foreclosure Purchaser that is a Permitted Lender or an SPE Lender Affiliate to any other Person consented to by Landlord, (iii) in the case of a change in the composition of the direct or indirect ownership of Tenant as a result of an Equity Collateral Enforcement Action by a Permitted Mezzanine Lender or (iv) in the case of a change in the composition of the direct or indirect ownership of Tenant resulting from a transfer of ownership interests traded on a recognized public exchange. Prior to Landlord's consent to any transaction subject to an Assignment Participation Fee, Tenant shall deliver to Landlord a written statement showing the calculation of the Assignment Participation Fee owed to Landlord from Tenant based on the terms of the transaction and an organizational chart showing all Persons holding at least a twenty percent (20%) direct or indirect ownership interest in the Project Improvements prior to such transaction and after such transaction. The statement of the calculation of the Assignment Participation Fee shall contain such detail as may be reasonably requested by Landlord to verify the calculation of the Assignment Participation Fee. The Assignment Participation Fee due to Landlord shall be payable in full to Landlord concurrent with the completion of the transaction and shall be a joint and several obligation of the transferee and transferor. When owed, the Assignment Participation Fee shall constitute Additional Rent.

For the purposes of this Section 11.6, the term "**Assignment Proceeds**" shall mean the purchase price or other consideration paid (either in cash or by an assumption of debt or other consideration and, if paid over time, the present value of the total consideration using the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one

percent (1%)) to the Tenant and/or holders of direct or indirect interests in Tenant in connection with the subject transaction less the sum of (x) any reasonable prorations, closing costs or other customary deductions to the purchase price for which the seller is responsible, (y) the certified cost of designing, developing and constructing the Initial Project Improvements as of the time of the Completion of the Initial Project Improvements and (z) one hundred (100) times the amount of any Assignment Proceeds that have been previously paid to Landlord, which sum shall be prorated in the case of an assignment of a portion of the Improvements.

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

11.7 Permitted Lender and Foreclosure Purchasers.

The foregoing provisions of this Article 11 shall not apply to the Transfers which are governed by Sections 10.3 and 10.4.

12. EVENTS OF DEFAULT AND REMEDIES

12.1 Events of Default.

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

12.1.1 Abandonment.

"**Abandonment**" shall mean that on and after Completion of the Initial Project Improvements, for thirty (30) consecutive days or longer, none of the Improvements (excluding the Existing Improvements) are operated by Tenant and none of the Improvements (excluding the Existing Improvements) are operated by the Hotel Operator, except for temporary closures permitted under Section 4.4 or as a result of an existing Force Majeure Event in accordance with Section 6.5 that prevents Hotel Operator and Tenant from being on the Premises or operating a portion of the Improvements (excluding the Existing Improvements) and Tenant does not cure such condition within sixty (60) days after written notice thereof from Landlord.

12.1.2 Failure to Pay.

Failure by Tenant to pay, when due, any Rent, other payment, and/or charge that Tenant is required to pay hereunder, where such failure continues for a period of five (5) days after written notice thereof from Landlord; provided, however, that any notice provided under this Section 12.1.2 shall be in lieu of, and not in addition to, any notice required under Section 1161 of the California Code of Civil Procedure, as amended.

12.1.3 Failure to Perform.

Failure by Tenant to perform any express or implied covenants or conditions in this Lease (other than as provided in the other subsections of this Section 12.1), where such failure

continues for thirty (30) days after written notice thereof from Landlord; provided that, if the nature of such failure is such that the same cannot reasonably be cured within such thirty (30) day period, and Tenant diligently commences such cure within such thirty (30) day period and thereafter diligently proceeds to rectify and cure such failure, then such failure shall not constitute an Event of Default; and provided, further, that if such failure is due to a Force Majeure Event in accordance with Section 6.5, then such failure shall not constitute an Event of Default for so long as the Force Majeure Event or the actual collateral effects of such Force Majeure Event exists.

12.1.4 Bankruptcy Event.

The occurrence of a Bankruptcy Event.

12.1.5 Failure to Provide a True, Correct and Complete Affidavit

Any affidavit provided by Tenant pursuant to Section 10.1.1, 15.4.2 or 15.4.4 is not true, correct or complete as required in Section 10.1.1, 15.4.2 or 15.4.4, as applicable, if Tenant does not cure such deficiency within five (5) Business Days after it knows about the deficiency, or within five (5) Business Days after written notice thereof from Landlord; provided, however, if such deficiency is such that it would have changed the decision of the Landlord to consent to the encumbrance or the Hotel Management Agreement, as applicable, Landlord may elect to require that such consent be reconsidered and where that is not possible due to the passing of time or otherwise, such failure by Tenant shall constitute an Event of Default under this Lease.

12.1.6 Specified Defaults.

The occurrence of any event expressly stated to constitute an Event of Default under this Lease.

12.2 Remedies.

Upon any Event of Default, Landlord may, in addition to all other rights and remedies afforded to Landlord hereunder or by law or in equity, take any one or more of the following actions:

12.2.1 Termination of Lease.

Terminate this Lease by giving Tenant written notice thereof, in which event Tenant shall immediately surrender the Premises to Landlord. In the event that Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant:

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

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

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

(d) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, without limitation,

the cost of recovering possession of the Premises, expenses of reletting (including necessary repair, renovation and alteration of the Premises), reasonable attorneys' fees, and any other reasonable costs; plus

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

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

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

12.2.2 Continue Lease in Effect.

Exercise the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant’s breach and abandonment and recover Rent as it becomes due if Tenant has the right to sublet or assign this Lease, subject only to reasonable limitations).

12.2.3 Perform Acts on Behalf of Tenant.

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

12.2.4 Increased Security Deposit.

Notwithstanding anything to the contrary in Section 28.4, require Tenant to, in which case Tenant shall, increase the security deposit with an amount equal to three (3) months of the Minimum Annual Rent (which remedy may be exercised on more than one occasion with further increases in the security deposit on any subsequent Event of Default); provided that Landlord shall return such increased amount of the security deposit to Tenant on the first anniversary of the date on which the applicable Event of Default ceased to exist upon request in writing from Tenant except if another Event of Default then exists, and a separate increased security deposit has not already been delivered to Tenant with respect to such Event of Default in accordance with this Section 12.2.4, then Landlord will continue to hold such increased amount of security deposit until the first anniversary of the date on which such other Event of Default ceases to exist and Tenant requests in writing the return of the increased amount of the security deposit from Landlord.

12.2.5 Payment by Tenant.

Require Tenant to, in which case Tenant shall, pay to Landlord all costs incurred by Landlord (including court costs and reasonable attorneys' fees and expenses and staff time) in: (a) obtaining possession of the Premises; (b) removing and storing Tenant's or any other

occupant's property; (c) repairing, restoring, altering, remodeling, or otherwise putting the Premises into condition acceptable to a new tenant; (d) performing Tenant's obligations which Tenant failed to perform; and (e) enforcing, or advising Landlord of, its rights, remedies, and recourses arising out of the Event of Default.

12.2.6 Assignment of Plans and Other Matters.

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

13. BANKRUPTCY

13.1 Bankruptcy Event.

Upon occurrence of a Bankruptcy Event, Landlord shall have all rights and remedies available pursuant to Article 12. After the commencement of a Bankruptcy case: (i) the Tenant shall perform all post-petition obligations of Tenant under this Lease; and (ii) if Landlord is entitled to damages (including unpaid Rent) from and after any order for relief pursuant to the terms of this Lease, then all such damages shall be entitled to administrative expense priority pursuant to the Bankruptcy Code. Tenant acknowledges that this Lease is a lease of nonresidential real property and therefore Tenant, as the debtor in possession, or the trustee shall not seek or request any extension of time to assume or reject this Lease or to perform any obligations of this Lease which arise from or after the order of relief.

13.2 Assignment/Assumption.

13.2.1 General.

Any Person to which this Lease is assigned pursuant to the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such an assignment, and any such assignee shall upon request by Landlord execute and deliver to Landlord an instrument confirming such assumption in a form acceptable to Landlord. If the Tenant desires to assign this Lease under the Bankruptcy Code to any Person who shall have made a bona fide offer, then the Tenant shall give Landlord written notice of such proposed assignment and assumption (which notice shall set forth the name and address of such Person, all of the terms and conditions of such offer, and the adequate assurance to be provided Landlord to assure such Person's future performance under this Lease) prior to the date Tenant shall make application to the appropriate court for authority and approval to enter into such assignment and assumption. Landlord shall thereupon have the prior right and option, to be exercised by notice to the Tenant given at any time prior to the

effective date of such proposed assignment and assumption, to accept an assignment and assumption of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such Person, less any brokerage commissions which may be payable out of the consideration to be paid by such Person for the assignment and assumption of this Lease. If the Tenant fails to assume or assume and assign this Lease in accordance with the requirements of the Bankruptcy Code within the period provided by the Bankruptcy Code or allowed by the Bankruptcy Court, then the Lease shall be deemed rejected and the Landlord shall have all rights and remedies available to it pursuant to Section 12.2.

13.2.2 Financial Statements.

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

13.3 Adequate Assurances.

In the event Tenant or proposed assignee under Section 13.2 proposes under the Bankruptcy Code to cure any default under this Lease or to assume or assign this Lease and is obliged to provide adequate assurance to Landlord that (a) a default shall be cured, (b) Landlord shall be compensated for its damages arising from any breach of this Lease and (c) future performance of Tenant's obligations under this Lease shall occur, then such adequate assurances shall include all of the following, as designated by Landlord in its sole and absolute discretion:

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

(b) A prompt cash payment to compensate Landlord for any monetary defaults or actual damages arising directly from a breach of this Lease;

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

(d) The assumption or assignment of all of Tenant's interest and obligations under this Lease.

14. EMINENT DOMAIN

14.1 Eminent Domain.

If all or any portion of the Premises and the Improvements shall be condemned pursuant to exercise of the power of eminent domain, or acquired under an actual threat of the exercise of such power (collectively, "**Condemnation**"), then the rights and obligations of Landlord and Tenant with respect thereto shall be as set forth in this Article 14. Nothing in this Article 14 shall be interpreted to prevent Landlord from exercising its power of eminent domain as to Tenant’s leasehold interest, Premises and/or the Improvements.

14.2 Notice of Condemnation.

If either Party receives notice of any Condemnation or intended Condemnation (including, without limitation, service of process), then, within five (5) Business Days of receipt thereof, such Party shall deliver to the other Party an exact copy of such notice of any Condemnation or intended Condemnation and the date such notice was received.

14.3 Representation of Interest.

Landlord and Tenant shall each have the right to represent its respective interests in such proceeding or negotiation with respect to a Condemnation or intended Condemnation and to make full proof of its claims. Landlord and Tenant each agrees to execute and deliver to the other Party any instrument which may be required to effectuate or facilitate the provisions of this Article 14.

14.4 Early Termination.

In the event (a) of a Condemnation (other than a Temporary Condemnation) of all of the Premises or all of the Improvements, or a portion of the Premises or the Improvements that exceeds Two Hundred Million Dollars ($200,000,000) and prevents Tenant from reasonably and economically using the remainder of the Premises or the Improvements, for the same Permitted Use as at the time of the Condemnation (as reasonably determined by Tenant and reasonably approved by Landlord) or (b) of a Condemnation (other than a Temporary Condemnation) where the Premises, the Improvements or any portion thereof need to be repaired or restored as a result of a Condemnation (other than a Temporary Condemnation), the cost of such repair or restoration exceeds ten percent (10%) of the then current fair market value of all of the Premises and Improvements, the amount that Tenant (as distinct from the Permitted Lender) has received as part of the Leasehold Award from the Condemnation (less any amount that Tenant is required to pay to the Permitted Lender) is fifty percent (50%) or less of the cost of such repair or restoration, and the Loan Documents do not require Permitted Lender to contribute the Leasehold Award received from the Condemnation toward the repair or restoration, then, provided that each Permitted Lender consents to the termination of the Lease and releases all liens in its favor on the Premises, Improvements, and Tenant's leasehold interest in this Lease (but not in any Leasehold Award to which such Permitted Lender is entitled pursuant to Section 14.7), Tenant may terminate this Lease by delivering to Landlord written notice thereof and this Lease shall then terminate as of the date of such Condemnation. A termination of this Lease pursuant to this Section 14.4 shall act to relieve Tenant from any further liability under this Lease except as to obligations accruing or arising on or prior to such termination or which are otherwise required to be performed in connection with such termination or surrender of the Premises and Improvements or which otherwise expressly survive such termination. Tenant shall deliver the Premises and Improvements to Landlord in a Buildable Condition and in accordance with any other condition required for the surrender of the Premises under this Lease.

14.5 Partial Condemnation.

If only a portion of the Premises or the Improvements is subject to Condemnation and this Lease is not terminated pursuant to Section 14.4 above, then this Lease shall continue in full force and effect upon the same terms and conditions as set forth herein, and the Minimum Annual Rent shall be reduced in proportion to the reduction in the value of the Premises and/or the Improvements, as applicable, after the Condemnation as compared to the value of the Premises and/or the Improvements, as applicable, immediately prior to the Condemnation (as reasonably determined by Landlord and approved by Tenant in its reasonable discretion).

14.6 Temporary Condemnation.

If the Premises, the Improvements or any portion thereof is subject to a Temporary Condemnation, then this Lease shall continue in full force and effect and there shall be no adjustment or abatement in Rent during the term of such Temporary Condemnation. Any portion of an award, settlement or other compensation or damages which may be given for such Temporary Condemnation attributable to the Term shall be the property of Tenant and any portion attributable to any period following the expiration of the Term shall be the property of Landlord. As used herein, a "**Temporary Condemnation**" shall mean any taking which is not intended by the condemning authority to be permanent at the time such Condemnation initially occurs.

14.7 Award.

14.7.1 Leasehold Award.

In the event of any Condemnation of all or any portion of the Premises or all or any portion of the Improvements (other than a Temporary Condemnation), Landlord shall be entitled to any and all awards and/or settlements or other compensation or damages which may be given for (a) any "bonus value" respecting this Lease (which is the excess value of the leasehold arising from the fact that the scheduled rent is less than the market rent for the Premises and the Improvements), and (b) the land (and water, if applicable) comprising the Premises. Any and all other awards and/or settlements or other compensation or damages (collectively, "**Leasehold Award**") for the Improvements and the leasehold estate created by this Lease (excluding any bonus value thereof) shall be paid as follows:

(a) Provided this Lease is not terminated pursuant to Section 14.4(a) above, that portion of the Leasehold Award determined by Landlord to be reasonably necessary to repair and restore the Premises and/or Improvements shall be payable in trust to the Permitted Mortgage Lender with an outstanding Permitted Lease Encumbrance that is still outstanding, if any, and shall be disbursed for the payment of the costs of repairing and restoring the remaining portion of the Premises and/or Improvements to substantially its value, condition and character prior to such Condemnation to the extent the same may be practicable. If there is no Permitted Mortgage Lender or if there is but the Permitted Mortgage Lender declines to act as a trustee for the disbursement of funds as provided above, then such Leasehold Award shall be payable in trust to a bank or trust company doing business in the County of San Diego California agreed upon by the Parties, or if the Parties fail to agree, to Bank of America, N.A., or its successor, and shall be disbursed by such trustee as provided above. If the Permitted Mortgage Lender is the trustee, then the Permitted Mortgage Lender may disburse the progress payments in accordance with its normal loan disbursement procedures (*e.g.* upon receipt of appropriate mechanics' lien releases, and invoices) so long as such disbursement procedures are reasonably acceptable to Landlord and ensure that the Leasehold Award is applied to the costs of repairing and restoring the remaining portion of the Premises and Improvements.

(b) If this Lease is terminated pursuant to Section 14.4(a), or if there are excess proceeds available after completion of the repair and restoration of the remaining portion of the Premises and the Improvements as provided above, then any portion of the Leasehold Award not used for the repair and restoration of the remaining portion of the Premises and the Improvements pursuant to clause (a) above, or used to place the Premises and Improvements in the condition required for the surrender of same to Landlord, shall be paid as follows (1) first, to any Permitted Mortgage Lender, to repay any indebtedness to the extent required under the Loan Documents; (2) second, to the JEPA, if such condemnation occurs while there is any public financing outstanding, to the extent necessary to reduce the

amount of the JEPA Development Cost Contribution, so that such JEPA Development Cost Contribution is in the same proportion to the value of the Convention Center and Tenant's Phase 1A Improvements, as applicable, after the Condemnation as compared to the proportion of the JEPA Development Cost Contribution to the value of the Convention Center and Tenant's Phase 1A Improvements, immediately prior to the Condemnation; (3) third, to the Landlord for the loss to the value of the Premises and Parking Improvements; and (4) fourth, to the Tenant to reduce the amount of Tenant's equity investment, so that such equity investment is in the same proportion to the value of the Improvements (excluding the Convention Center for so long as the Convention Center is subject to public financing including any associated leases or subleases), after the Condemnation as compared to the proportion of Tenant's equity investment to the value of the Improvements (excluding the Convention Center for so long as the Convention Center is subject to public financing including any associated leases or subleases), immediately prior to the Condemnation.

(c) Any portion of the Leasehold Award relating to the Project Improvements (excluding the Convention Center and the Convention Center Subleases for so long as the Convention Center is subject to public financing, and the Parking Improvements) and not used as described in clauses (a) and (b) and which is payable to Tenant pursuant to clause (b) shall be paid to the Permitted Lender to be applied against the indebtedness that is secured by its Permitted Encumbrance to the extent such payment is required to be made by Tenant pursuant to the terms of the Permitted Encumbrance held by the Permitted Lender.

(d) Any remaining portion of the Leasehold Award relating to Project Improvements and not used as described in clauses (a), (b) and (c) shall be paid to Tenant. Notwithstanding the foregoing sentence, with respect to any Leasehold Award received in connection with any Condemnation for street widening or the installation of utilities, public sidewalks or walkways which occurs at any time following the Commencement Date, and provided such Condemnation does not result in material physical damage to then existing buildings or driveways, parkway access or access ways serving the Improvements and does not impair the use or operation of the Improvements, Landlord shall be entitled to receive, in addition to any award otherwise payable to Landlord pursuant to this Article 14, all of that portion of the Leasehold Award that would otherwise be distributed to Tenant pursuant to this clause (d).

14.7.2 Claims by Tenant.

Nothing in this Article 14 shall be construed to preclude Tenant from prosecuting any claim directly against the condemning authority, but not against Landlord, if such claim does not diminish or otherwise adversely affect the Leasehold Award or Landlord's rights herein. Tenant shall be entitled to any award allocated by a court of competent jurisdiction to Tenant's personal property.

15. MAINTENANCE AND REPAIR

15.1 Maintenance and Repair.

Tenant's maintenance and repair obligations with respect to the Parking Improvements (if any), Surface Parking Improvements, and Premises Surface Parking shall be as set forth in Section 4.3 and Exhibit "R", Exhibit "R-3" or Exhibit "R-4", as applicable, and not this Article 15.

At any time when any Hotel Management Agreement is in effect, Tenant shall, at its sole cost and expense, and at all times during the Term, comply with the maintenance and repair standards for the Premises and the Initial Improvements set forth in such Hotel Management Agreement. Tenant, at its sole cost and expense, shall also maintain, repair, replace and

rebuild the Premises and Initial Improvements as necessary to keep the Initial Improvements in first-class condition and repair except for reasonable wear and tear. Without limitation of the foregoing, Tenant shall perform all maintenance and make all repairs and replacements, ordinary as well as extraordinary, foreseen or unforeseen, structural or otherwise, which may be necessary or required so that at all times the Premises and the Initial Improvements (together will all equipment, trade fixtures, mechanical and utility systems, paving, landscaping, installations and appurtenances) shall be in compliance with the Hotel Management Agreement, and in first-class condition and repair, except for reasonable wear and tear. Tenant acknowledges and agrees that, during the Term, in order to adhere to these maintenance and repair standards, certain repairs and replacements which are accounted for as capital expenditures shall be required and are bargained for by Landlord as consideration for this Lease, and that regular capital reinvestment in the Premises and the Initial Improvements should therefore be anticipated by Tenant and that capital reinvestment for such purposes does not qualify Tenant for any concessions, subsidies, or other modifications of the Lease during the Term. Tenant also acknowledges that capital expenditures related to maintenance and repair so as to keep or return the Initial Improvements to first-class condition and repair are not to be equated with capital expenditures for a major refurbishment or renovation representing an upgrade to the appearance and/or operation of the Initial Improvements which extends its useful life and repositions the Initial Improvements in a manner likely to generate more Revenue. Further, Tenant shall provide containers for the collection of trash and garbage outside the Initial Improvements, which may require Landlord's approval, and keep the Premises and the Initial Improvements in a clean, safe, healthy and sanitary condition, free and clear of rubbish, litter, and any fire hazards. Tenant's maintenance shall include, without limitation, all preventive maintenance, painting and replacements necessary to maintain and preserve the Premises and Initial Improvements, and compliance with the Best Management Practices ("**BMPs**") set forth in the Jurisdictional Runoff Management Program incorporated by reference in Article 10 of the San Diego Unified Port District Code.

Prior to Tenant performing any non-routine repair or replacement (which shall mean any repair or replacement that does not occur with an expected or known frequency in the normal course of business) to the exterior, the structure or building systems or which will substantially interfere with the typical operation of the Initial Improvements, or affect the portions of the Initial Improvements that are generally accessible to the public, such as the lobby area of the Resort Hotel, Tenant shall submit to Landlord plans and specifications with respect to such repair or replacement, as applicable, and receive Landlord's written approval thereof, pursuant to the procedures set forth in Article 6, as if such repair or replacement, as applicable, were Alterations. If such approval is administrative, Landlord shall not unreasonably reject any plans or specifications with respect to any repair or replacement, as applicable, that, if not performed by Tenant, would result in an Event of Default. If such approval is not administrative, Tenant shall cooperate in good faith with Landlord to prepare plans or specifications with respect to any repair or replacement to be presented to the BPC. If the BPC withholds its consent and does not give Tenant the opportunity to revise the plans or specifications for reconsideration by the BPC, then Tenant may challenge such decision of the BPC through Judicial Reference in accordance with Section 10.4.3(c). Tenant's obligation to repair or replace shall be suspended during the pendency of any Judicial Reference pursuant to this Section 15.1.

By entering into this Lease, Tenant expressly waives all rights to make repairs at the expense of Landlord, as provided in Section 1942 of the California Civil Code, and all rights provided by Section 1941 of the California Civil Code.

15.2 Condition in Compliance with Laws.

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

15.3 Inspection Report.

Within sixty (60) days after notice from Landlord to Tenant requesting an Inspection Report, which notice shall not be given more than once in any five- (5-) year period (unless Landlord determines that Tenant may be in default of its obligations under this Article 15, in which event such time limitation shall not apply), Tenant, at Tenant's sole expense, shall provide to Landlord a detailed inspection report listing any known defects, required repairs or deferred maintenance items in the Premises and the Improvements and recommendations for work to be performed to ensure that the condition of the Premises and the Improvements is in full compliance with this Lease, including the standard of condition set forth in Section 15.1 (the "**Inspection Report**"). If Landlord requests an Inspection Report more than once in any Rental Period, then Landlord shall pay Tenant for any reasonable costs incurred by Tenant in connection with such Inspection Report unless such Inspection Report demonstrates that Tenant is in default of its obligations under this Article 15. The Inspection Report shall be (i) prepared by an unrelated third-party inspector licensed in the State of California selected by Tenant, (ii) certified to Landlord, to the best knowledge of the Person conducting the inspection, as complete and accurate, and (iii) in a form reasonably acceptable to Landlord. Without limitation of Tenant's obligations or Landlord's remedies hereunder, Tenant shall commence work to comply with the recommendations set forth in such Inspection Report within thirty (30) days of receipt of same and diligently pursue such work to completion within not later than one hundred eighty (180) days of receipt of such Inspection Report. As a condition precedent to Tenant submitting the Redevelopment Plan Package, notwithstanding that Landlord may not have requested an Inspection Report, Tenant shall deliver an Inspection Report not earlier than six (6) months prior to the submission of the Redevelopment Plan Package and perform any work recommended therein prior to submitting the Redevelopment Plan Package.

Notwithstanding the requirement in Section 15.3 that Tenant provide Landlord with an Inspection Report within sixty (60) days after notice from Landlord, so long as there is no Event of Default and the Premises and the Improvements are operated pursuant to a Hotel Management Agreement under an Acceptable Brand, and such Hotel Management Agreement requires Tenant to maintain and repair the Premises and Improvements in accordance with such Hotel Management Agreement and requires there to be established a reserve for repair and maintenance of the Premises and Improvements, including without limitation, the furniture, trade fixtures and equipment, and such repair and maintenance occur in accordance with the requirements of such Hotel Management Agreement and Sections 15.1 and 15.2, then the foregoing Inspection Reports shall not be required; provided, however, that the delivery of an Inspection Report and performance of the work recommended therein shall continue to be a condition precedent to Tenant's submission of the Redevelopment Plan Package.

15.4 Hotel Management Agreement.

15.4.1 Consent Required.

A Hotel Management Agreement shall be subject to prior written consent of Landlord (which consent shall not be unreasonably withheld, conditioned or delayed).

15.4.2 Request for Consent.

If a Hotel Management Agreement is proposed for which Landlord consent is required, Tenant shall notify Landlord in writing, which notice (the "**Hotel Management Agreement Notice**") shall include (a) the proposed effective date of the Hotel Management Agreement, which shall not be more than six (6) months after the later of: (i) the date of delivery of the Hotel Management Agreement Notice containing all of the information required in clauses (b) and (c) and (ii) Landlord's review of the original unredacted version of the proposed Hotel Management Agreement at Landlord's office at 3165 Pacific Highway, San Diego, California, (b) a copy of the proposed Hotel Management Agreement with all proprietary information contained therein redacted together with an affidavit from an authorized representative of Tenant certifying under penalty of perjury that the redacted version of the Hotel Management Agreement is a true, correct and complete copy of the final proposed Hotel Management Agreement except for the redactions and (c) such other information as Landlord may reasonably require. Any inaccuracy in the affidavit from the authorized representative of Tenant, as determined by Landlord in its reasonable discretion, may constitute an Event of Default as and to the extent set forth in Section 12.1.5. Not later than thirty (30) days after receipt of a Hotel Management Agreement Notice, Landlord shall notify Tenant (1) that Landlord has all information that it requires to evaluate the proposed Hotel Management Agreement or (2) of any additional information that Landlord reasonably requires to evaluate the proposed Hotel Management Agreement, as applicable. Landlord shall notify Tenant that it consents or does not consent to the proposed Hotel Management Agreement (including, if applicable, a reasonably detailed explanation for Landlord withholding its consent) not later than sixty (60) days after Landlord has received all information that Landlord reasonably requested to evaluate the proposed Hotel Management Agreement. Any Hotel Management Agreement executed without Landlord's prior written consent shall, at Landlord's option, be null, void and of no effect and not binding on Landlord. Tenant shall pay to Landlord Landlord's standard applicable fee set by BPC Policy No. 106 for the review of subleases in connection with Landlord reviewing each Hotel Management Agreement pursuant to the Reimbursement Procedure, regardless of whether the Hotel Management Agreement is consummated or Landlord's consent thereto is granted. Any Hotel Management Agreement shall be subject to the terms and provisions of this Lease.

15.4.3 Consent Factors.

If Landlord consents to any Hotel Management Agreement, Tenant may within six (6) months after the date that Landlord consents to the Hotel Management Agreement enter into such Hotel Management Agreement; provided that, if there is any material change to the financial condition of the proposed Hotel Operator or any other material change to any of the proposed terms or conditions of the Hotel Management Agreement as reviewed by Landlord in person or as set forth or attached to the Hotel Management Agreement Notice, then Tenant shall again submit a Hotel Management Agreement Notice to Landlord for its approval and take all other action required under this Section 15.4.

Notwithstanding anything to the contrary herein, Landlord shall grant consent to any Hotel Management Agreement that is required hereunder if all of the following conditions and requirements are satisfied in Landlord's reasonable discretion:

(a) Completion of Initial Project Improvements.

The effective date of the proposed Hotel Management Agreement is the date that is the third (3rd) anniversary of the later of (a) the date that the Initial Project Improvements are Completed and (b) the date the Landlord receives a copy of the final certificate of occupancy with respect to the Initial Project Improvements.

(b) Consistent Use.

The Hotel Operator's proposed use of the Premises and the Improvements under the proposed Hotel Management Agreement will be for the Permitted Use only or such proposed use as has been approved by the Landlord or BPC, as applicable;

(c) Reputation.

The Hotel Operator is reputable (which shall mean the absence of reputations for dishonesty, criminal conduct or association with criminal elements – "reputable" shall not mean "prestigious", nor shall the determination of whether one is reputable involve considerations of personal taste or preference) and has no pattern of, or reputation for, either discriminatory employment practices which violate any Laws or non-compliance with Environmental Laws;

(d) Financial Resources.

The Hotel Operator has sufficient financial resources for the Hotel Operator to perform its obligations under the Hotel Management Agreement and this Lease, as applicable;

(e) Event of Default.

At the time of the Hotel Management Agreement Notice and at the time of the execution of the Hotel Management Agreement, there is no Event of Default;

(f) Public Financing.

The Hotel Management Agreement and the Hotel Operator satisfy the requirements for a permitted Hotel Management Agreement and permitted Hotel Operator under the Convention Center Subleases attached hereto as Exhibit "I" and the requirements under any other documents effectuating the public financing by Landlord or issued for or related to the Premises, the Tenant's Phase 1A Improvements or the Convention Center for so long as such financing remains outstanding; provided that such requirements must not be materially more stringent than the requirements that were in effect under the public financing that is outstanding as of the Commencement Date as determined by Tenant in its reasonable discretion; and

(g) Term.

The proposed Hotel Management Agreement will be for no longer than the remainder of the Term.

(h) Sufficient Experience.

The Hotel Operator has at least ten (10) years of experience (directly or through one or more of its subsidiaries) managing or operating hotels that have at least five hundred (500) Rooms and meeting space comparable to the Meeting Space; provided that, as long as Marriott or any of its Affiliates remains or will be the Hotel Operator hereunder, the requirements of this clause (h) will be deemed to have been satisfied.

15.4.4 Effect of Hotel Management Agreement.

If Landlord consents to a Hotel Management Agreement, then (a) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified; (b) such consent shall not be deemed consent to any further Hotel Management Agreement by either Tenant or a Hotel Operator or any amendments to the Hotel Management Agreement; (c) Landlord shall have the right to review the original unredacted executed version of the Hotel Management Agreement at Landlord's office at 3165 Pacific Highway, San Diego, California at least ten (10) days prior to the delivery of the executed version of the Hotel Management Agreement to the Hotel Operator and shall have five (5) Business Days after completing its review to elect to withdraw its consent to the Hotel Management Agreement by delivering written notice to Tenant which specifies in reasonable detail the reasons for such withdrawal if

(i) such executed version of the Hotel Management Agreement is materially different from the draft of the Hotel Management Agreement that Landlord reviewed previously and (ii) such material differences would provide a basis for Landlord not to have provided consent. If Landlord does not withdraw its consent to the Hotel Management Agreement, then Tenant shall deliver to Landlord, within ten (10) days after Tenant's delivery of the executed version of the Hotel Management Agreement to the Hotel Operator, an affidavit from an authorized representative of Tenant which attaches the redacted version of the fully executed Hotel Management Agreement delivered to Hotel Operator and certifies under penalty of perjury that (i) the redacted version of the Hotel Management Agreement attached to the affidavit is a true, correct and complete copy of the Hotel Management Agreement executed by Tenant and the new Hotel Operator except for any redactions and no additions, deletions, or revisions were made to the unredacted Hotel Management Agreement reviewed by Landlord. Any inaccuracy in the affidavit, as determined by Landlord in its reasonable discretion, may constitute an Event of Default as and to the extent set forth in Section 12.1.5.

15.4.5 Conditions.

In the event Landlord consents to any Hotel Management Agreement as required hereunder, then at Landlord's election said consent shall be conditioned upon such Hotel Operator executing a document reasonably acceptable to Landlord acknowledging that all rights of the Hotel Operator are subject to all terms and conditions of this Lease as the same relate to the Premises or Improvements subject to the Hotel Management Agreement.

15.4.6 Non-Disturbance Agreement.

Prior to or on the Commencement Date and prior to or concurrently with the execution of each new Hotel Management Agreement, Landlord and the applicable Hotel Operator shall enter into a non-disturbance agreement with such Hotel Operator based on terms reasonably acceptable to both Landlord and Hotel Operator.

15.5 Performance by Landlord.

15.5.1 Inspection.

Landlord shall have the right but not an obligation to enter, view, inspect and determine the condition of, and protect its interests in the Premises and Improvements (other than Rooms that are occupied by guests), during normal business hours and upon a three (3) Business Days' prior notice to Tenant (except in the case of an emergency in which case no prior notice shall be required but Landlord shall notify the Hotel Operator's Risk Manager thereof by phone prior to entering the Premises) and Landlord shall: (a) comply with all applicable security and safety procedures of Tenant of which Tenant informs Landlord in writing and with which Landlord can reasonably comply, and (b) use commercially reasonable efforts to minimize any interference with Tenant's operation and use of the Premises and the Improvements while on the Premises and at the Improvements. If Landlord determines that the Premises and/or the Improvements are not in the condition required pursuant to the terms of this Lease, Landlord shall deliver written notice to Tenant detailing the items to be corrected and Tenant shall commence the necessary maintenance, alteration, repair, replacement and rebuilding work necessary to remedy the issues set forth in Landlord's notice within ten (10) days after written notice from Landlord and diligently pursue such work to completion.

15.5.2 Landlord Repair Rights.

At Landlord's option, if Tenant fails to commence to perform the necessary maintenance, alteration, repair, replacement or rebuilding work within ten (10) days of Landlord's written demand therefor (except in the event of an emergency in which case no such notice shall be required) in accordance with this Lease, then Landlord may, but shall not be required to, perform such maintenance, alteration, repair, replacement or rebuilding work, and Tenant shall pay Landlord the actual cost thereof, together with interest thereon at the Default Rate from the date due until paid and an administrative fee in the amount of ten percent (10%) of the cost of such work, pursuant to the Reimbursement Procedure. Such payments shall constitute Additional Rent under this Lease and shall be paid monthly as billed by Landlord or in a lump sum payment, as directed by Landlord. If requested by Landlord, Tenant shall pay to Landlord the entire estimated cost of such work in advance, but such payment shall not relieve Tenant from the obligation to pay any excess costs that may be actually incurred by Landlord. Landlord shall have no obligation to repair or maintain any portion of the Premises. The rights of Landlord under this Section 15.5.2 shall not create any obligations or increase any obligations of Landlord set forth elsewhere in this Lease, nor shall the exercise of such rights, or the failure to exercise same, limit any other rights or remedies of Landlord. Landlord shall have the right to enter the portions of the Premises where the necessary maintenance, alteration, repair, replacement or rebuilding work, as applicable, is to be performed or is being performed in accordance with this Section 15.5.2 during normal business hours and upon a three (3) Business Days' prior notice to Tenant (except in the case of an emergency in which case no prior notice shall be required but Landlord shall notify the Hotel Operator’s Risk Manager thereof by phone prior to entering the Premises) and Landlord shall: (a) comply with all applicable security and safety procedures of Tenant of which Tenant informs Landlord in writing and with which Landlord can reasonably comply, and (b) use commercially reasonable efforts to minimize any interference with Tenant's operation and use of the Premises and the Improvements while on the Premises and at the Improvements.

15.6 Records.

Tenant shall, during the Term and, with respect to each record, for a period of seven (7) years from the date the record was created (or such longer period as Tenant may decide in its sole discretion), use commercially reasonable efforts to keep, or cause to be kept, accurate and complete records of maintenance conducted at the Premises and the Improvements. The records must be supported by source documents of original entry such as invoices, receipts, work orders, construction contracts, service contracts or other pertinent supporting documents. All of Tenant's maintenance records relating to the Premises and the Improvements shall be kept either at the Premises or at such other locations in San Diego County, California as are acceptable to Landlord. Landlord shall have the right at any time to examine such maintenance records without restriction and, at Landlord's request, Tenant shall provide Landlord with copies thereof at Tenant's expense for the purpose of determining the accuracy thereof. After the seven (7) year period has expired for a certain record of maintenance, Tenant shall deliver the original record of maintenance to Landlord at the address set forth in Section 1.11 or such other location designated by Landlord in writing, which may include the main offices of the City; provided, however, that Tenant may elect to deliver all of the records of maintenance subject to this Section 15.6 that expire in a given Lease Year at one time, in one delivery, within twelve (12) months after the end of the applicable Lease Year.

16. TAXES AND PROPERTY EXPENSES

16.1 Taxes.

This Lease may result in a taxable possessory interest and be subject to the payment of property and other taxes. Tenant shall pay, prior to delinquency, all Tax Expenses attributable to any time period during the Term now or hereafter assessed against, or relating in any way to the Tenant, this Lease, the Premises, the Improvements, or the use or occupancy thereof by Tenant and Tenant Parties. Tenant shall promptly following written request therefor from Landlord, provide Landlord with evidence of the payment of Tax Expenses. "**Tax Expenses**" shall include, without limitation, all federal, state, county, or local governmental or municipal taxes, fees, assessments, charges or other impositions of every kind and nature, whether general, special, ordinary or extraordinary (including, without limitation, real estate taxes, possessory interest taxes, use taxes, general and special assessments, leasehold taxes or taxes based upon Tenant's receipt of rent, including gross receipts or sales taxes applicable to Tenant's receipt of rent, personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, systems and equipment, appurtenances, furniture and other personal property used by Tenant in connection with the Premises and the Improvements) and any taxes and assessments relating to the business or other activities of Tenant upon or in connection with the Premises and the Improvements. Tax Expenses also shall include, without limitation:

(a) Any tax on Landlord's receipt of Rent, right to Rent or other income from the Premises and the Improvements;

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

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

16.2 Property Expenses.

Without limitation of Tenant's other obligations under this Lease, Tenant agrees to pay, on or before the date due, all Property Expenses. As used herein, "**Property Expenses**" shall include, without limitation, all costs and expenses of any nature incurred or payable, or arising in connection with, the ownership, management, maintenance, construction, repair, replacement, restoration or operation of the Premises and/or the Improvements, including, without limitation, any amounts paid for: (i) the cost of supplying any utilities, the cost of operating, maintaining, repairing, renovating and managing any utility systems, mechanical systems, communications systems, sanitary and storm drainage systems, and the cost of supplies and equipment and maintenance and service contracts in connection therewith; (ii) the cost of licenses, certificates, permits and inspections; (iii) the cost of any insurance carried or required to be carried by Tenant pursuant to this Lease and the Hotel Management Agreement with respect to the Premises and/or the Improvements including without limitation any premiums and deductibles;

(iv) the cost of landscaping, supplies, tools, equipment and materials, and all fees, charges and other costs incurred in connection with the management, operation, repair and maintenance of the Premises and/or the Improvements; (v) payments under any easement, license, permit, operating agreement, declaration, or covenant or instrument pertaining to the Premises that exist as of the Commencement Date or that are created or consented to by Tenant; and (vi) the cost of any Improvements, capital repairs, capital alterations, or capital equipment, required by Laws, the Hotel Management Agreement or otherwise required under this Lease.

17. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION AND OFAC

17.1 Nondiscrimination.

Tenant shall comply with Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the California Constitution; the California Fair Employment and Housing Act; the ADA; and any other applicable Laws now existing or hereinafter enacted, requiring equal employment opportunities or prohibiting discrimination. This shall include, without limitation, Laws prohibiting discrimination because of race, color, religion, sex, national origin, ancestry, physical or mental disability, veteran status, medical condition, marital status, age, sexual orientation, pregnancy, or other non-job related criteria. In complying with all such Laws, including, without limitation the ADA, Tenant shall be solely responsible for such compliance and required programs, and there shall be no allocation of any such responsibility between Landlord and Tenant. Each Subtenant shall comply with the requirements of this Article 17.

17.2 Compliance with Employment and Labor Requirements.

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

17.3 OFAC Compliance.

Tenant represents and warrants that (i) Tenant and, to the best of Tenant's knowledge, the Persons that directly or indirectly hold an interest in Tenant (collectively, "**Tenant's Members**", each a "**Tenant Member**") (other than any such Person that owns an interest in Tenant through publicly traded securities) is not now a Person with whom Landlord or any citizen of the United States is restricted from doing business with under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (commonly known as the "**USA Patriot Act**") and regulations promulgated pursuant thereto, or under any successor statutes or regulations, including, without limitation, persons and entities ("**Prohibited Persons**") named on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("**OFAC**") or a Person (also, a "**Prohibited Person**") with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, (ii) to the best of Tenant's knowledge, none of the funds or other assets of Tenant constitute property of, or are beneficially owned, directly or indirectly, by any Prohibited Persons (iii) to the best of Tenant's knowledge, no Prohibited Person directly or indirectly Controls Tenant, or any of Tenant's Members, either individually or in the aggregate and (iv) to the best of Tenant's knowledge, none of the funds of Tenant have been derived from any unlawful activity with the result that the investment in Tenant is prohibited by Laws or that the Lease is in violation of Laws. Tenant covenants and agrees that at no time during the Term

shall a Tenant Member with a twenty percent (20%) or more direct or indirect interest in Tenant be a Prohibited Person. Tenant shall reimburse Landlord for all reasonable costs, including, without limitation, attorneys' fees, resulting from Tenant's failure to comply with this Section 17.3. If Tenant receives written notice that any of Tenant's Members (other than any such Person that holds an interest in Tenant through publicly traded securities) is a Prohibited Person, then Tenant shall promptly use Tenant's best and commercially reasonable efforts to cause such Person to divest such Person's interests in Tenant. Notwithstanding any limits set forth in this Section 17.3 any Person who is blocked under the USA Patriot Act shall be blocked to the full extent required under the USA Patriot Act and any regulations promulgated thereunder.

18. INSURANCE

18.1 Insurance.

Tenant shall maintain the policies of insurance described in this Article 18 in full force and effect throughout the Term.

18.2 Forms of Coverage.

The policies for said insurance shall, as a minimum, provide the following:

18.2.1 Commercial General Liability.

"**Occurrence**" form Commercial General Liability covering the Premises, operations and contractual liability assumed by Tenant in this Lease in the amount of not less than as set forth in Section 1.9. Tenant's indemnification obligations under this Lease shall in no event be limited by the terms or qualifications to the contractual liability coverage under such insurance.

18.2.2 Liquor Liability.

At any time that alcoholic beverages are served or sold on the Premises or Improvements, Liquor Liability coverage in the amount of not less than as set forth in Section 1.9 shall be obtained. If no alcoholic beverages are served or sold on the Premises, the proof of insurance shall so state.

18.2.3 All Risk and Builder's Risk Property Coverage.

Tenant's property insurance obligations with respect to the Parking Improvements (if any) shall be as set forth in Section 4.3, and not this Article 18. All Risk of Physical Loss Property Coverage, including debris cleanup provisions, in an amount of not less than the then full 100% replacement value of all Improvements, together with business interruption and extra expense coverage, including a provision for the continuation of Rent payments for twelve (12) months, and coverage for vandalism and malicious mischief, earthquake sprinkler leakage, boiler and machinery and, if so required by Landlord, flood and earthquake in an amount of not less than the maximum probable loss for all Improvements. Specific limits of insurance for flood and earthquake shall be determined at the joint discretion of Tenant and Landlord. The coverage policies shall be endorsed with a Loss Payee endorsement in favor of the Landlord and the Permitted Mortgage Lender to the extent of each of Landlord and Permitted Mortgage Lender's interest in the Premises and Improvements with the Landlord deemed to represent the interest of the JEPA as to the Convention Center. It is agreed that any insurance proceeds in excess of Twenty-Five Thousand Dollars ($25,000) resulting from a loss under said policies shall be payable jointly to Landlord and Permitted Mortgage Lender, and it is understood that said proceeds will be reinvested in rebuilding and/or repairing the damaged Improvements and

applied to Tenant's Rent obligations hereunder, as applicable. However, if there is a Permitted Mortgage Lender, then all property damage proceeds from such policies of insurance (other than from the business interruption and extra expense coverage) shall be payable in trust, with safeguards reasonably acceptable to Landlord, to such Permitted Mortgage Lender to be disbursed for the repair and restoration of the Improvements to the extent of the Permitted Mortgage Lender's interest in the Premises and Improvements (or, if there is no Permitted Mortgage Lender, or if there is, but the Permitted Mortgage Lender declines to hold and disburse such proceeds, to a bank or trust company doing business in the County of San Diego agreed upon by the parties, or if the parties fail to agree, to Bank of America, N.A., or its successor, which proceeds shall be deposited in interest bearing accounts or deposits agreed upon by the parties, or if the parties fail to agree, then in the bank's regular passbook savings account); provided, however, if this Lease terminates in accordance with Section 20.2, then such proceeds shall be disbursed as provided in Section 20.2. All interest shall be added to the trust funds to be disbursed with the principal. All such proceeds shall be disbursed in progress payments for the payment of the cost of repairing or restoring the property so damaged or destroyed. The specific manner of holding such proceeds and the method and conditions of disbursement shall be subject to the prior written approval of Landlord (which approval shall not be unreasonably withheld, conditioned or delayed) so as to ensure the application of such proceeds in compliance with this Lease.

During the construction of the Initial Project Improvements or any subsequent Alterations or restoration work (unless Tenant's property insurance will provide coverage equivalent to the builder's risk policy required herein for such Alterations or restoration work, including through a construction rider, and Tenant has provided Landlord with evidence of such insurance), builder's risk completed value form insurance covering the perils insured under the ISO special causes of loss form, including collapse, water damage and transit, covering the total value of work performed and equipment, supplies and materials furnished (with an appropriate limit for soft costs in the case of construction) and covering the full insurable value (exclusive of the cost of noninsurable items) of all equipment, supplies and materials at any off-site storage location used with respect to the Project or in transit. Specific limits of insurance for flood and earthquake shall be determined at the joint discretion of Tenant and Landlord. The damage coverage shall be endorsed with a Loss Payee endorsement in favor of Landlord. The insurance proceeds shall be paid and disbursed in the same manner as set forth in this Section 18.2.3 above.

18.2.4 Worker's Compensation.

Workers' compensation insurance covering all persons employed by Tenant at the Premises and Improvements and with respect to whom death or bodily injury claims could be asserted against Tenant, Landlord, the Premises, or the Improvements, with statutorily required limits, and employer's liability insurance with minimum limits of not less than One Million Dollars ($1,000,000) for each accident/employee/disease. Workers' compensation insurance shall include a waiver of subrogation in favor of Landlord Parties.

18.2.5 Automobile Liability.

Business automobile liability insurance covering liability arising out of vehicles used on or about the Premises and Improvements by Tenant or its employees (including owned, non-owned, leased, rented and/or hired vehicles) insuring against liability for bodily injury, death and property damage in an amount not less than One Million Dollars ($1,000,000) each accident limit.

18.2.6 UST Insurance Obligations.

In the event underground storage tanks are located on the Premises, Tenant is required to comply with all Laws applicable to underground storage tanks, including, without limitation, United States Code, Title 42, Chapter 82, Subchapter IX, 40 Code of Federal Regulations ("**CFR**") Part 280, 40 CFR Part 281 and 40 CFR Parts 282.50 – 282.105, and Title 23, Division 3, Chapter 18 of California Code of Regulations, collectively, herein "**UST Law**". At the time Tenant is required to comply with any provisions of UST Law requiring financial assurance mechanisms, Tenant shall provide Landlord with a certified copy of its Certification of Financial Responsibility. If Tenant's program for financial responsibility requires insurance, then Tenant's policy(ies) shall name the Landlord Parties as additional insureds, and all other terms of Section 18.3 below, shall apply. Should Tenant change its financial assurance mechanisms, Tenant shall immediately provide Landlord with a certified copy of its revised Certification of Financial Responsibility.

18.2.7 Contractor's Pollution Liability Coverage.

If the Landlord determines, in its sole and absolute discretion, that Tenant performs or contracts for any work which involves a Hazardous Materials Activity or which has the potential to disturb or result in the release of any Hazardous Material, for which there is potential exposure to pollution or Hazardous Materials to Persons or the environment, Tenant shall obtain or cause its contractor to obtain Contractor's Pollution Liability, Pollution Legal Liability and/or Asbestos Pollution Liability and/or Errors & Omissions applicable to the work being performed or the potential release of any Hazardous Material, with limits of $5,000,000 per claim or occurrence and $10,000,000 aggregate per policy period of one year or the limits maintained by or available to the contractor, whichever is higher. The Landlord Parties shall also be named as an additional insured on any such policy. Immediately upon learning of or reasonably suspecting that a release of Hazardous Materials has occurred on, in, under or about the Premises, Tenant shall provide notice of the same to Landlord.

18.3 <u>General Requirements.</u>

18.3.1 Certificates and Other Requirements.

All required insurance shall be in force the first day of the Term, and shall be maintained continuously in force throughout the Term. In addition, the cost of all required insurance shall be borne by Tenant. During the entire Term, Tenant shall provide Landlord with insurance certificates, in the form customary in the insurance industry, issued by the insurer evidencing the existence of the necessary insurance policies and certified endorsements effecting coverage required by this Article 18 ("**Certificates**"). The Certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind insurance on its behalf. Notwithstanding the foregoing, Tenant shall request copies of each insurance policy required under this Article 18 and make available to the Landlord for inspection at the Premises or the Improvements any insurance policy it receives.

18.3.2 Additional Insureds and Other Requirements.

All liability insurance policies shall name, or be endorsed to name the Landlord Parties as additional insureds and protect the Landlord Parties against any legal costs in defending claims. All liability policies shall provide cross-liability coverage. If Tenant receives notice of any cancellation, modification such that the requirements of this Lease are no longer satisfied, suspension or voiding of an insurance policy required under this Article 18 from the applicable insurance carrier, then Tenant shall provide to Landlord written notice thereof within five (5)

Business Days of receipt of such notice. To the extent the policy is blanket endorsed or is specifically endorsed to provide the same, all insurance policies shall also provide that the subject policy shall not be cancelled without thirty (30) days' prior written notice to Landlord. All insurance policies shall be endorsed to state that Tenant's insurance is primary and not excess or contributory to any insurance issued in the name of Landlord. Further, all insurance companies must have a S&P or AM Best rating of not less than “A-”.

18.3.3 Deductibles.

Any deductibles or self-insured retentions must be declared to both Tenant and Landlord and be consistent with customary deductibles and self-insured retentions, as applicable, for a convention center hotel operating in the United States of America that is comparable with the Resort Hotel; provided, however, if the deductible or self-insured retention is in excess of One Hundred Thousand Dollars ($100,000), Tenant shall provide Landlord with reasonably satisfactory evidence of its ability to meet the deductible or self-insured retention. The evidence to be provided to Landlord must include separate, unconsolidated, audited financial statements to be provided annually or upon Landlord’s written request to Tenant. If Tenant does not provide reasonably satisfactory evidence of its ability to meet the deductible or self-insured retention, then Tenant shall have the option to either: (i) reduce or eliminate such deductible or self-insured retention as respects the Landlord Parties; (ii) procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses; or (iii) agree to self-insure the risk with form of collateral or written agreement acceptable to Landlord.

18.3.4 Updates.

If Landlord reasonably determines that the insurance provisions in this Lease do not constitute Adequate Insurance, then Landlord shall notify Tenant thereof and of the changes to the insurance requirements of this Lease that Landlord reasonably believes are necessary to cause such requirements to constitute Adequate Insurance. The Parties agree that the insurance provisions will be modified to increase Tenant’s insurance obligations to the smallest extent that is consistent with such modified insurance provisions providing for Adequate Insurance. The Parties shall, in the first instance, attempt to agree on any revisions to such insurance provisions so that they provide for Adequate Insurance by entering into good faith negotiations and, if, within seven (7) days from the commencement of such negotiations, the Parties do not reach agreement, then, until the dispute is finally resolved by a final judgment rendered by a court of competent jurisdiction, the then-existing insurance requirements of this Lease shall continue to govern Tenant’s obligations. After the Parties agree on a new insurance program that constitutes Adequate Insurance or such final judgment of a court of competent jurisdiction establishes a new insurance program, such new insurance program shall bind the Parties. Tenant shall deposit new Certificates incorporating such changes within thirty (30) days of the Parties agreeing on such new insurance program. Failure by Tenant to maintain insurance or deposit insurance Certificates as required in this Article 18, where such failure is not cured by Tenant within ten (10) days following written notice thereof to Tenant, shall constitute an Event of Default. Without limitation of the foregoing, Tenant agrees that if Tenant does not take out and maintain such insurance or furnish Landlord with Certificates in a timely manner, Landlord may, but shall not be required to, procure said insurance on Tenant’s behalf and charge Tenant the cost thereof, which amount shall be payable by Tenant to Landlord pursuant to the Reimbursement Procedure.

18.3.5 No Limit on Liability.

The procuring of such required policies of insurance shall not be construed to limit Tenant's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Lease.

18.3.6 Compliance with Insurance Requirements.

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

18.4 Waiver of Subrogation.

Tenant hereby releases the Landlord Parties from any and all liability or responsibility to Tenant or anyone claiming through or under Tenant by way of subrogation or otherwise for any loss or damage to the Premises, any Improvements, or any of Tenant's personal property or business caused by or arising from a fire or any other event that is covered by the insurance required to be carried pursuant to this Lease or is actually carried, even if such fire or other event shall have been caused by the fault or negligence of any of the Landlord Parties. Each Subtenant similarly releases the Landlord Parties. Tenant, and any Subtenant, shall also obtain an endorsement waiving the insurance company's subrogation rights against the Landlord Parties for any insurance policies required by the terms of this Lease. Tenant and Subtenant shall also defend and indemnify the Landlord Parties in the manner specified in Section 19.1 in the event any Person asserts such a claim.

19. INDEMNITY

19.1 Indemnity.

Tenant hereby indemnifies and shall defend the Landlord Parties, at Tenant's sole cost and expense and with counsel reasonably selected by Landlord, and hold the Landlord Parties harmless from any and all claims (including claims under negligence and strict liability), demands, liability, losses, causes of actions and suits of any kind, administrative or judicial proceedings, orders, judgments, and all Related Costs arising directly or indirectly out of (i) the performance by Tenant of its obligations under this Lease, (ii) the construction of any Improvements, (iii) any breach by Tenant of its obligations under this Lease, (iv) any accident, injury or damage whatsoever caused to any Person or the property of any Person on or about the Premises or at the Improvements; (v) the use, occupancy, possession or operation of the Premises and the Improvements by any Tenant Party or Hotel Operator, or any acts or omissions of any Tenant Party or Hotel Operator, except for claims or litigation arising through the sole gross negligence or willful misconduct of any Landlord Party (but subject to Section 18.4). The foregoing indemnity, defense and hold harmless obligations of Tenant shall not include any claims (including claims under negligence and strict liability), demands, liability, losses, causes of actions and suits of any kind, administrative or judicial proceedings, orders, judgments, and all Related Costs arising directly or indirectly out of x) the Project's failure or alleged failure to comply with Section 15 and Exhibit 3 of the Settlement Agreement or any other document implementing or duplicating Section 15 and Exhibit 3 of the Settlement Agreement, provided that Tenant has satisfied its obligations under Section 4.10, Exhibit "O", and any other agreement entered into between the Landlord and/or City with Tenant regarding the subject of this subsection (x) or any Person's failure to comply with any applicable provisions of the PWL with respect to any work performed by, or on behalf of, any Landlord Party (other than by a Tenant Party or Hotel Operator, or on behalf of a Tenant Party or Hotel Operator, or by any

Person acting directly or indirectly under a contract with a Tenant Party or Hotel Operator). If Landlord determines in its reasonable discretion that there is a conflict of interest with Tenant's counsel representing Landlord and Tenant, then Landlord, at its election, may conduct its own defense with its own counsel independent from Tenant's counsel (and in that event Tenant will select its own counsel) and the reasonable costs incurred by Landlord in such defense shall be covered by the foregoing indemnification, hold harmless and defense obligations and be subject to reimbursement pursuant to the Reimbursement Procedure. The terms of this Article 19 shall survive the expiration or earlier termination of this Lease. The foregoing indemnity obligations of Tenant are in addition to, and not in limitation of, any other indemnity obligations of Tenant contained in this Lease or any other agreement between Landlord and Tenant.

20. DAMAGE OR DESTRUCTION

20.1 Casualty.

Tenant's obligations with respect to any damage to or destruction of the Parking Improvements (if any) shall be as set forth in Section 4.3 and Exhibit "R", Exhibit "R-3", or Exhibit "R-4", as applicable, and not this Article 20. Subject to Section 20.2, in the event of any damage to or destruction of any Improvements, whether or not from a risk coverable by the insurance described in Article 18, Tenant shall promptly repair and restore such Improvements, in a manner reasonably approved in writing by Landlord, so that after such restoration and repair, the Initial Improvements are at least as valuable and usable as immediately prior to such damage or destruction. Tenant shall be entitled to have any insurance policy proceeds received by Tenant held in trust with the Permitted Mortgage Lender with a Permitted Lease Encumbrance that has the Improvements as collateral and disbursed as progress payments as the work of repair, restoration or replacement progresses, to be used solely for paying for such work; and upon completion of such work free and clear of mechanics or other liens, any remaining balance of any insurance proceeds shall be paid first to the Permitted Mortgage Lender to reduce the indebtedness of the Permitted Lease Encumbrance, and thereafter, if the Permitted Lender permits or if it is required by the terms of the Permitted Encumbrance, to Tenant and Landlord proportionate to the equity investment of each Party in the Improvements. The Permitted Mortgage Lender may disburse the progress payments in accordance with its normal disbursement procedures (e.g. upon receipt of appropriate mechanics lien releases, invoices, etc.) so long as such disbursement procedures are reasonably satisfactory to Landlord and ensure that the proceeds of insurance are applied to the costs of repairing, restoring or replacing the Improvements that were damaged or destroyed. To the extent that the insurance proceeds are insufficient to pay for the costs of restoring, repairing or replacing the damaged Improvements, Tenant shall pay such deficiency to the trustee for application to the restoration costs within sixty (60) days after the insurer first makes available such insurance proceeds for repair, restoration or replacement. The provisions of Articles 6 and 7 shall apply to all work performed pursuant to this Article 20. Notwithstanding the foregoing, if Tenant and the Permitted Lender are not able to obtain sufficient insurance proceeds (in the case of an insured casualty) or construction funds (in the case of an uninsured casualty) to commence repair, restoration or replacement of the damaged Initial Improvements within ninety (90) days of such damage or destruction, and in the case of an insured casualty, Tenant and the Permitted Lender have used their best efforts to so obtain such insurance proceeds, or in the case of an uninsured casualty, Tenant and the Permitted Lender have used their best efforts to obtain sufficient construction funds, then Tenant and the Permitted Lender shall have such additional time as is necessary to obtain such insurance proceeds or construction funds (but in no event to exceed one hundred and eighty (180) days from the date of such damage or destruction) in which to commence to repair, restore or replace the damaged Improvements.

20.2 Termination.

Notwithstanding Section 20.1 to the contrary, if (a) there is damage or destruction to the Initial Project Improvements during the last three (3) years of the Term, the cost of repairing said damage or destruction exceeds the cost of demolishing and removing the remaining Initial Project Improvements as determined by the Demolition and Remediation Report, and Landlord has delivered to Tenant a Landlord End of Term Election that requires that Tenant demolish the Initial Project Improvements or (b) there is damage or destruction to the Initial Project Improvements, the cost of repairing said damage or destruction exceeds One Hundred Million Dollars ($100,000,000) and a Permitted Mortgage Lender requires that any or all of the property damage insurance proceeds are used to repay any indebtedness that is secured by Permitted Lease Encumbrance, or (c) there is damage or destruction to the Initial Project Improvements and the repairing of said damage or destruction would violate any Law, then Tenant shall have the option to terminate this Lease, subject to Tenant's satisfaction of all of the following requirements: (i) Tenant shall, within ninety (90) days after the date of the casualty, give Landlord written notice of its election to terminate ("**Notice of Election to Terminate**"); (ii) Tenant shall secure and deliver to Landlord the written consent of each Permitted Lender to terminate the Lease; (iii) Tenant shall secure and deliver to Landlord the releases from each Permitted Lender of all liens in favor of each Permitted Lender on the Premises, Improvements, and Tenant's leasehold interest in this Lease (but not any insurance proceeds to which such Permitted Lender is entitled pursuant to this Section 20.2) effective as of the termination date; and (iv) Tenant shall within one hundred and eighty (180) days of Landlord's receipt of the Notice of Election to Terminate, (x) at the election of Landlord, surrender the Premises to Landlord in a Buildable Condition and (y) pay all sums due and payable to Landlord to the date of termination. Any and all property damage insurance proceeds (exclusive of any proceeds applicable to Tenant's personal property that would be retained by Tenant at the end of the Term, all of which shall be paid to Tenant) paid as a result of the damage or destruction giving rise to the termination, shall be distributed in accordance with the following order of priority: (1) first, to the repayment of any indebtedness that is secured by a Permitted Lease Encumbrance, if any such Permitted Lease Encumbrance is still outstanding, to the extent the interest of such Permitted Mortgage Lender is directly affected as a result of the damage or destruction; (2) second, to Landlord for the portion of the remaining principal amount of the public financing procured as of the Commencement Date by the Landlord, City or the JEPA that is fairly allocable to the Convention Center; and (3) third, to Tenant.

20.3 No Rental Abatement.

Except as may be expressly permitted in this Lease, Tenant shall not be entitled to any abatement or reduction in the Rent during any period of time that any Initial Improvements located on the Premises are in need of repair, restoration or replacement or are under construction for such repairs, restoration or replacements or any other period of time during the Term.

20.4 Waiver of Statutory Provisions.

The provisions of this Lease, including this Article 20, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises or Initial Improvements, or any other portion thereof, and any California statute or regulation, now or hereafter in effect, regarding the rights or obligations of a tenant concerning damage or destruction following a casualty event are waived and shall have no application to this Lease or any damage or destruction to all or any part of the Premises or Initial Improvements as a result of a casualty event.

21. HAZARDOUS MATERIALS

21.1 Hazardous Materials.

21.1.1 Tenant Use of Hazardous Materials.

Tenant shall not cause or permit any Hazardous Material, or products or materials which include any hazardous substance as a component to be generated, brought onto, used, stored, emitted, released or disposed of in or about the Premises or Improvements (collectively and individually, a "**Hazardous Materials Activity**") by Tenant or its agents, whether by a Tenant Party, Hotel Operator or any other Person, during the Term (including any extensions or holdover periods resulting from Tenant's obligations pursuant to Section 21.1.4) unless expressly approved, at Landlord's sole discretion, in writing by Landlord after submittal by Tenant of Material Safety Data Sheets or other information requested by Landlord regarding the Hazardous Material. Approval by Landlord of any Hazardous Materials Activity shall not create or impose any liability or obligation on Landlord with respect to such Hazardous Material or Hazardous Materials Activity and Tenant shall assume all liability and obligations related thereto. All Hazardous Materials Activity shall be in strict compliance with all applicable Laws and other requirements in effect during the Term, including, without limitation, Laws and requirements that regulate Hazardous Materials or otherwise relate to public health and safety or the protection of the environment ("**Environmental Laws**"). Tenant shall comply at all times with all Environmental Laws. Provided that Tenant is in compliance with Environmental Laws, Tenant shall not be required to obtain Landlord's consent to generate, store or use reasonable and customary quantities of Hazardous Materials for cleaning materials or supplies, construction materials or supplies, food service materials or supplies, paint, auto supplies (including, without limitation, gasoline, oil and other supplies incidental to motorized vehicles) or office materials or supplies reasonably required to be used in the normal course of the Permitted Use.

21.1.2 Notice of Release or Inquiry.

If Tenant becomes aware of (i) any actual or threatened release that occurs during the Term of any Hazardous Material on, in, under, from, or about the Premises or Improvements or (ii) any notice, inquiry, investigation, proceeding, or claim by any government agency or other Person regarding the presence that occurs during the Term of any Hazardous Material on, in, under, from or about the Premises or Improvements (collectively, "**Inquiry**"), Tenant shall give Landlord written notice of such release or Inquiry within twenty-four (24) hours after Tenant learns that there has been a release or Inquiry and shall simultaneously furnish to Landlord copies of any notices of inquiry or investigation, claims, notices of violation, reports, warning or other writings received by Tenant that concern such release or Inquiry. Unless Landlord receives separate notice, Tenant shall provide Landlord with advance written notice of any meeting scheduled between any Tenant Party and any federal, state or local government agency (including, but not limited to, the United States Environmental Protection Agency, the Regional Water Quality Control Board, Department of Toxic Substances Control or Air Resources Board) ("**government agency**") where a material item of discussion is directly related to the subject matter of this Article 21, at least five (5) Business Days prior to such meeting or as soon as reasonably possible if the government agency schedules such meeting with any Tenant Party for less than five (5) Business Days from the date the meeting is proposed. Landlord shall be entitled to have its representatives attend and participate in any and all such meetings. If the government agency brings up Hazardous Material on, in, under, from, or about the Premises or Improvements in any other scheduled meeting, Tenant shall

suggest that a separate meeting should be scheduled so that Landlord can participate in such meeting.

21.1.3 Landlord Right to Inspect and Data.

If Hazardous Materials Activity has occurred during the Term or is ongoing, Landlord or its designated representatives, at Landlord's sole discretion, may, but are not obligated to, enter upon the Premises and/or Improvements and make any inspections, non-intrusive tests or measurements that Landlord deems necessary or desirable to determine if a release or discharge of Hazardous Materials has occurred. Landlord shall furnish to Tenant a minimum of twenty-four (24) hours' notice prior to conducting any inspections or tests, unless, in Landlord's reasonable judgment, circumstances require otherwise. If Landlord reasonably suspects a possible release of Hazardous Materials or a use of Hazardous Materials in violation of Environmental Law, then Landlord shall describe the concern to Tenant, and may require Tenant, at Tenant's sole expense, to have additional investigation for such Hazardous Materials conducted on, under or about the Premises and/or Improvements by an environmental consultant or engineering firm designated by Landlord; provided, however, that Tenant's obligation to conduct such investigation shall terminate if Tenant can demonstrate to Landlord's reasonable satisfaction that there was neither any release of Hazardous Materials, nor any use of Hazardous Materials during the Term in violation of Environmental Law. Such tests may include, without limitation, any area outside the Premises or Improvements that may have been contaminated, including but not limited to surface and groundwater. Tenant shall provide to Landlord, as soon as reasonable after they become available to Tenant, access to all non-privileged information reports and data obtained, generated or learned as a result of sampling or testing activities on the Premises or Improvements, including raw and verified lab data and consultant reports. Tenant shall be permitted to have representatives present during any sampling or testing on or at the Premises, and may obtain split samples, if requested, copies of the results of on-site testing and visual inspections, and complete access to all samples and tests taken or conducted as a result of any investigations of the Premises or Improvements. Access to any non-privileged consultant reports issued by or on behalf of Tenant concerning the Premises or Improvements shall be provided to Landlord as soon as reasonable after such reports are finalized. Any environmental reports issued by or on behalf of Tenant regarding the Premises, the Improvements, or Hazardous Materials Activities related thereto shall first be generated in draft form and furnished to Landlord for review and comment, except in the case when any resulting delay in producing a final environmental report would violate any Laws or any order of any government agency. Except in the case when any resulting delay in producing a final environmental report would violate any Laws or any order of any government agency, no such report shall be made final until Landlord has had reasonable opportunity to review the draft and to identify any factual inaccuracies therein; provided, however, that if Landlord fails to comment on a draft report within thirty (30) days after Tenant provides Landlord with the final draft report and any information needed by Landlord to complete its review, Tenant shall provide Landlord with notice to deliver any comments to the draft report within fifteen (15) days of the delivery of the notice. If Landlord does not respond after the second notice, Tenant may complete and submit the report. Notwithstanding the foregoing, under no circumstance shall any report submitted by Tenant pursuant to this Section 21.1.3 bind the Landlord or contain any representation from Landlord. Landlord's failure to inspect, test or take other actions pursuant to this Section 21.1.3 shall in no way relieve Tenant of any responsibility for a release of a Hazardous Material.

21.1.4 Environmental Cleanup Obligations.

If, on or after the Commencement Date, any Hazardous Material has been released by Tenant Parties or Hotel Operator, or any Pre-Existing Hazardous Material is exacerbated by Tenant Parties or Hotel Operator and thereby violates any Environmental Laws and/or results in (a) any investigation mandated by any government agency, (b) any clean-up order by any government agency, (c) any third-party claim or demand against Landlord, (d) any material increase in Landlord's liability or (e) any material increase in the cost or amount of investigation, removal or remediation action required ("**Material Exacerbation**", and "**Materially Exacerbate**" and "**Materially Exacerbated**" shall have correlative meanings to "Material Exacerbation"), then Tenant shall promptly take all necessary actions, at Tenant's sole expense, to investigate, remove or remediate such contamination in compliance with all Environmental Laws and in a manner and to the satisfaction of applicable regulatory authority ("**Environmental Cleanup**"). Tenant shall have no obligation to undertake any Environmental Cleanup with respect to any contamination caused by any Pre-Existing Hazardous Material unless such Environmental Cleanup is required as a result of Tenant's Material Exacerbation, and the extent of Tenant's obligation to undertake such Environmental Cleanup shall be limited to that required as a result of the Material Exacerbation. Tenant shall provide notice to Landlord prior to performing any removal or remedial action. In the event that an Environmental Cleanup conducted or required of Tenant interferes with the current or future use of the Premises, Improvements, or other property of Landlord, Tenant shall promptly alter or amend the Environmental Cleanup (whether such is completed or not and regardless of the time period elapsed between the cleanup activities and Landlord's request to alter the Environmental Cleanup because of the interference), upon notice from Landlord, as necessary to prevent and/or eliminate such interference. Tenant shall not propose, and Landlord is under no obligation to agree to, any covenant of use restriction or other institutional controls as part of any removal or remediation required as a result of this Section 21.1.4. Unless otherwise agreed in writing by Landlord, an Environmental Cleanup required under this Section 21.1.4 shall avoid and not include the use of additional restrictive covenants or other institutional controls. To the extent Landlord incurs any costs or expenses in performing Tenant's obligation to conduct an Environmental Cleanup which is Tenant's obligation under this Lease or under Environmental Law, Tenant shall reimburse Landlord for all such costs and expenses in accordance with the Reimbursement Procedure. This provision does not limit the indemnification obligation set forth in Section 21.2. Notwithstanding any provision of this Lease to the contrary, if there is contamination caused by Pre-Existing Hazardous Material and Tenant determines that the additional cost to Tenant of developing the Initial Project Improvements as a result of Pre-Existing Hazardous Materials, including, but not limited to, the cost of investigating such contamination, removing such Pre-Existing Hazardous Material or remediating such contamination, and incremental soft costs, any additional general conditions costs and interest during construction as a result of such Pre-Existing Hazardous Materials, exceeds $10,000,000, then Tenant shall have the right to terminate this Lease. Tenant's right to terminate pursuant to the foregoing sentence shall be conditioned upon Tenant's satisfaction of the following conditions: (i) Tenant, at its own cost and expense, obtains and delivers to Landlord a report prepared by a contractor licensed in the State of California with expertise in demolition and remediation, which report details and estimates the cost and time period for completion of the demolition of the Initial Project Improvements (if any) and any remediation work that may be required by Section 21.3; (ii) Tenant delivers to Landlord commercially reasonable evidence that Tenant has immediately available funds in an amount equal to the estimated costs set forth in clause (i); (iii) Tenant obtains consent of each of the Permitted Lenders (which consent shall not be unreasonably withheld, conditioned or delayed) to terminate this Lease; and (iv) Tenant pays to Landlord an amount equal to the amounts that shall have been disbursed to Tenant from the proceeds of the JEPA bond issuance pursuant to the public financing to pay the costs of developing the Convention Center and Tenant's Phase 1A Improvements. If the existence of any Pre-Existing

Hazardous Materials delays the Completion of the Initial Project Improvements, then the Outside Construction Completion Date shall be extended by the duration of such delay to the extent such delay does not result from Tenant's failure to comply with the agreed upon groundwater and soil management plan.

21.1.5 Environmental Cleanup Extending Beyond Term.

Should any Environmental Cleanup of Hazardous Materials for which Tenant is responsible not be completed prior to the expiration or earlier termination of this Lease, then: (i) Tenant shall deposit with Landlord an amount of money equal to the balance of the estimated costs of such Environmental Cleanup as reasonably determined by an independent third-party environmental consultant that is acceptable to Tenant and selected by Landlord (the "**Independent Consultant**"), and (ii) if the nature of the contamination or Environmental Cleanup required of Tenant is such as to make any portion of the Premises or Improvements untenable or unleaseable, then Tenant shall be liable to Landlord as a holdover Tenant until the Environmental Cleanup has been completed to the extent required by this Lease, or to the extent necessary to render the Premises and/or Improvements, as applicable, in full compliance with all Environmental Laws and to make the Premises and/or Improvements, as applicable, suitable for lease to third parties. The estimated cost of the Environmental Cleanup shall require approval of the Landlord. Landlord shall release funds from such deposit from time to time to pay for such Environmental Cleanup costs incurred with Landlord's approval. To the extent the Independent Consultant estimates, at any time, that the funds remaining on deposit may not be sufficient to cover all remaining anticipated Environmental Cleanup costs, then Tenant shall deposit, within thirty (30) days of Landlord's written demand therefor, such additional funds with Landlord as Independent Consultant may estimate at such time may be required to complete the Environmental Cleanup.

21.1.6 Financial Security.

If Landlord determines, in its reasonable discretion, that Tenant does not have insurance or other financial resources sufficient to enable Tenant to fulfill its obligations under this Article 21 whether or not accrued, liquidated, conditional, or contingent, then Tenant shall, at the request of Landlord, procure and thereafter maintain in full force and effect such commercially available environmental impairment liability and/or pollution liability insurance policies and endorsements, or shall otherwise provide such collateral or security reasonably acceptable to Landlord as is appropriate to assure that Tenant will be able to perform its duties and obligations hereunder.

21.2 Hazardous Materials Indemnification.

Excluding Pre-Existing Hazardous Material, Tenant hereby assumes for itself and shall indemnify, defend Landlord Parties, and hold the Landlord Parties harmless from any and all claims, demands, liability, losses, causes of actions and suits of any kind, administrative or judicial proceedings, orders (judicial or administrative), judgments, and all Related Costs (whether or not based upon personal injury, negligence, strict liability, property damage, or contamination of, or adverse effects upon, the environment, waters or natural resources, including any loss of or damage to Landlord's real or personal property), which occur or arise during or after the Term relating to, or resulting from, any Hazardous Materials Activity, any Tenant Hazardous Material, any Material Exacerbation of Pre-Existing Hazardous Material by a Tenant Party or Hotel Operator, or any breach by Tenant of its obligations under this Article 21, at Tenant's sole cost and expense and with counsel and experts selected by Landlord in its reasonable discretion and who act according to Landlord's reasonable direction, with

reasonable input and cooperation from Tenant. Tenant's obligations under this Article 21 (including the indemnification of Landlord by Tenant under this Section 21.2) include, without limitation, any Environmental Cleanup required by this Lease, costs incurred in connection with any investigation of site conditions or any cleanup, treatment, remedial, removal, or restoration work required by this Lease or any federal, state or local government agency because of Hazardous Materials present in the air, soil or ground water above, on, or under the Premises or Improvements. Landlord shall have a direct right of action against Tenant even if no third party has asserted a claim. The indemnification and Environmental Cleanup requirements under Article 21 include, but, are not necessarily limited to:

(b) Losses attributable to diminution in the value of the Premises or Improvements;

(c) Losses of rental or other income from the Premises or Improvements;

(d) Loss of or damage to natural resources regarding which Landlord is the lawfully designated trustee;

(e) Loss or restriction of use of rentable space(s) in the Premises or Improvements;

(f) Adverse effect on the marketing of any space(s) in the Premises or Improvements; and

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

21.3 Termination of Lease.

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

21.4 Storage Tanks.

21.4.1 Storage Tanks.

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

21.4.2 Records.

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

21.4.3 Aboveground Storage Tanks.

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

21.5 Environmental Covenants.

21.5.1 Excavated Soil Removal.

Tenant hereby acknowledges that excavation of soils from the Premises could result in exportation of a regulated waste requiring appropriate characterization, handling, transport and

disposal (collectively, "**Excavated Soil Removal**"). Landlord takes no responsibility and assumes no liability whatsoever for Excavated Soil Removal. Accordingly, Tenant hereby waives any claim, or potential claim, it may have to recover costs or expenses from Landlord arising out of or associated with Excavated Soil Removal and agrees to indemnify, defend and hold harmless the Landlord Parties from and against any and all claims (including under negligence or strict liability), liabilities, losses, damages, costs, and expenses arising from, out of, or in any way related to Excavated Soil Removal, except only claims or litigation arising through the gross negligence or willful misconduct of Landlord.

21.5.2 Worker Claims for Hazardous Material.

Landlord shall have no liability or responsibility for ensuring that Tenant's workers, including without limitation those conducting testing, construction and maintenance activities on the Premises and Improvements are protected from any Hazardous Material existing on the Premises and Improvements. Tenant shall assess all human health risks from vapor transport or direct contact with residual hazardous substances or contaminants and incorporate such engineering and institutional controls as may be required to sufficiently protect human health of onsite workers and transient visitors. Tenant hereby waives any claim, or potential claim, it may have to recover any damages, losses, Related Costs related to worker exposure or alleged worker exposure to any residual onsite contamination and to indemnify, defend and hold harmless the Landlord Parties from and against any and all such Related Costs, claims (including under negligence or strict liability), liabilities, losses and damages, except only claims or litigation arising through the gross negligence or willful misconduct of Landlord.

21.5.3 Covenant Not To Sue and Release of Landlord.

Tenant hereby RELEASES the Landlord Parties from, COVENANTS NOT TO SUE the Landlord Parties for and ASSUMES FOR ITSELF all obligations, requirements and liabilities of Tenant under Article 21, including for claims for contribution, equitable indemnity or otherwise seeking to transfer or limit the obligations, requirements and liabilities of Tenant under Article 21. With respect to all releases made by Tenant under or pursuant to this Article 21, Tenant hereby waives the application and benefits of California Civil Code § 1542 and hereby verifies that it has read and understands the provision of California Civil Code § 1542 set forth in Article 22.

21.6 Survival.

The terms of this Article 21 shall survive the expiration or earlier termination of this Lease.

22. "AS-IS" LEASE AND WAIVERS

22.1 Tenant's Acknowledgment.

Tenant acknowledges that prior to entering into this Lease, Landlord has given Tenant sufficient opportunity to consider, inspect and review, to Tenant's complete satisfaction: (1) any and all rights, appurtenances, entitlements, obligations, and liabilities concerning the Premises, including without limitation any Existing Improvements; (2) the physical condition of the Premises, including, without limitation, the condition and value of any Improvements and the soils, subsoil media, and ground waters at or under the Premises; (3) the risk of climate change and the possible adverse consequences thereof, including, without limitation, rises in sea level and possible damage to and destruction of the Premises; (4) the development potential of the Premises including, without limitation, as may be affected by the preceding clause (3); (5) the effect of all Laws, including, without limitation, those concerning land use, environmental quality

and maintenance, endangered species, and traffic regulation; (6) the financial prospects of the Premises and local market conditions; (7) Tenant's determination of the feasibility of Tenant's intended use and enjoyment of the Premises; (8) the presence of any Pre-Existing Hazardous Material and any other contamination of the Premises, including any Improvements, soils, groundwater and adjacent to San Diego Bay water and sediment; and (9) all other facts, circumstances, and conditions affecting, concerning or relating to the Premises. The land use; the environmental, biological, physical and legal condition of the Premises; the risks associated with possible climate change; the feasibility of Tenant's intended use and enjoyment of the Premises; and such other facts, circumstances and conditions being collectively referred to herein as the "**Condition of the Premises**"; and, without limitation on any other provision of this Lease, Tenant expressly assumes the risk that adverse conditions affecting the Premises have not been revealed by Tenant's investigations.

22.2 Only Landlord's Express Written Agreements Binding.

Tenant acknowledges and agrees that no Person acting on behalf of Landlord is authorized to make, and that except as expressly set forth in this Lease, neither Landlord nor anyone acting for or on behalf of Landlord has made, any representation, warranty, agreement, statement, guaranty or promise to Tenant, or to anyone acting for or on behalf of Tenant, concerning the Condition of the Premises or any other aspect of the Premises. Tenant further acknowledges and agrees that no representation, warranty, agreement, statement, guaranty or promise, if any, made by any Person for or acting on behalf of Landlord which is not expressly set forth in this Lease will be valid or binding on Landlord.

22.3 As-Is Lease.

Tenant further acknowledges and agrees that Tenant's execution of this Lease shall constitute Tenant's representation, warranty and agreement that the Condition of the Premises has been independently verified by Tenant to its full satisfaction, and that, except to the extent of the express covenants of Landlord set forth in this Lease, Tenant will be leasing the Premises based solely upon and in reliance on its own inspections, evaluations, analyses and conclusions, or those of Tenant's representatives; and that **TENANT IS LEASING THE PREMISES IN ITS "AS-IS, WITH ALL FAULTS" CONDITION AND STATE OF REPAIR INCLUSIVE OF ALL FAULTS AND DEFECTS, WHETHER KNOWN OR UNKNOWN, AS MAY EXIST AS OF THE TENANT'S EXECUTION OF THIS LEASE, INCLUDING ANY EXISTING IMPROVEMENTS.** Without limiting the scope or generality of the foregoing, Tenant expressly assumes the risk that the Premises do not or will not comply with any Laws now or hereafter in effect.

22.4 Waivers, Disclaimers and Indemnity.

22.4.1 Waiver and Disclaimer.

Tenant hereby fully and forever waives, and Landlord hereby fully and forever disclaims, all warranties of whatever type or kind with respect to the Premises, whether expressed, implied or otherwise including, without limitation, those of fitness for a particular purpose, tenantability, habitability or use.

22.4.2 Landlord's Materials.

Tenant acknowledges that any information and reports, including, without limitation, any engineering reports, architectural reports, feasibility reports, marketing reports, soils reports, environmental reports, analyses or data, or other similar reports, analyses, data or information

of whatever type or kind which Tenant has received or may hereafter receive from Landlord Parties or its agents or consultants (collectively, the "**Landlord's Materials**") have been furnished without warranty of any kind (other than that Landlord has delivered true and correct copies of each of the items set forth on Exhibit "T" attached hereto ("**District Documents**")) and on the express condition that Tenant will make its own independent verification of the accuracy, reliability and completeness of such Landlord's Materials and that Tenant will not rely thereon. Accordingly, subject to terms of Section 22.4.3 below, Tenant agrees that under no circumstances will it make any claim against, bring any action, cause of action or proceeding against, or assert any liability upon, Landlord Parties or any of the Persons that prepared or furnished any of the Landlord's Materials as a result of the inaccuracy, unreliability or incompleteness of, or any defect or mistake in, any such Landlord's Materials, and Tenant hereby fully and forever releases, acquits and discharges Landlord Parties and each Person furnishing such Landlord's Materials of and from, any such claims, actions, causes of action, proceedings or liability, whether known or unknown (other than in connection with Landlord's breach of its representation and warranty set forth in this Section 22.4.2 that Landlord has delivered to Tenant true and correct copies of each of the documents set forth on Exhibit "T" attached hereto).

22.4.3 Release and Waiver.

(a) *Release*. Except to the extent of Claims (as defined below) against Landlord arising from any breach by Landlord of its covenants and obligations expressly provided in this Lease or Landlord's representation and warranty set forth in Section 22.4.2, Tenant, on behalf of Tenant, its successors and assigns, hereby fully and forever releases, acquits and discharges Landlord of and from, and hereby fully, and forever waives and agrees not to assert any and all claims, actions, causes of action, suits, proceedings, demands, rights, damages, Related Costs, losses, judgments, provisional relief, fines, penalties, and fees, including, without limitation, any and all claims for compensation, reimbursement, or contribution whatsoever (individually and collectively, "**Claims**"), whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent, that any Tenant Party, Hotel Operator or any of Tenant's successors or assigns now has or may have or which may arise or be asserted in the future arising out of, directly or indirectly, or in any way connected with: (i) any act or omission of Landlord (or any Person acting for or on behalf of Landlord or for whose conduct Landlord may be liable), whether or not such act be the active, passive or sole negligence of Landlord, in connection with prior ownership, maintenance, operation or use of the Premises; (ii) any condition of environmental contamination or pollution at the Premises (including, without limitation, any Pre-Existing Hazardous Material or other contamination or pollution of any soils, subsoil media, surface waters or ground waters at the Premises and any clean-up or abatement order effecting the Premises); (iii) to the extent not already included in clause (ii) above, the prior, present or future existence, release or discharge, or threatened release, of any Hazardous Materials at the Premises (including, without limitation, the release or discharge, or threatened release, of any Hazardous Materials into the air at the Premises or into any soils, subsoils, surface waters or ground waters at the Premises); (iv) the violation of, or noncompliance with, any Environmental Law or other applicable Law now or hereafter in effect, however and whenever occurring; (v) the condition of the soil and groundwater at the Premises; (vi) the Condition of the Premises, including, without limitation, the condition of any improvements located on the Premises including, without limitation, the structural integrity and seismic compliance of such improvements; (vii) any matters which would be shown on an accurate ALTA land survey of the Premises (including, without limitation, all existing easements and encroachments, if any); (viii) all applicable Laws now or hereafter in effect; (ix) matters which would be apparent from a visual inspection of the Premises; or (x) to the extent not

already covered by any of the foregoing clauses (i) through (ix) above, the use, maintenance, development, construction, ownership or operation of the Premises by Landlord or any predecessor(s)-in-interest in the Premises of Landlord.

(b) *Waiver of Civil Code Section 1542*. With respect to all releases made by Tenant under or pursuant to Article 21 and this Article 22, Tenant hereby waives the application and benefits of California Civil Code § 1542 and hereby verifies that it has read and understands the following provision of California Civil Code § 1542:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Tenant: _____

22.4.4 Survival.

The terms of this Article 22 shall survive the expiration or earlier termination of this Lease.

23. QUITCLAIM OF TENANT'S INTEREST UPON TERMINATION

Subject to the terms of this Article 23 and Article 7 upon the expiration or earlier termination of this Lease, all Improvements, excluding trade fixtures, installed or constructed on the Premises, (i) other than the Improvements demolished pursuant to Tenant's Demolition Election (but excluding the Parking Improvements (if any), Existing Improvements and public or private utilities that Landlord requests that Tenant does not demolish or remove, as applicable, pursuant to Landlord's Non-Demolition Notice), or (ii) other than the Improvements demolished pursuant to Landlord End of Term Election, as applicable, shall become the property of Landlord and a part of the realty without compensation to Tenant and shall be surrendered to Landlord. In order to confirm such transfer of ownership, at Landlord's request following the expiration or earlier termination of the Lease, Tenant shall deliver to Landlord a Tenant-executed quitclaim deed in recordable form conveying the Improvements to Landlord free and clear of any mechanics' or materialmen's liens and other encumbrances. Without limitation of the foregoing, Tenant hereby appoints Landlord as Tenant's attorney-in-fact to execute such deed in the name and on behalf of Tenant and to record same in the official records of San Diego County, California. This power of attorney is irrevocable and coupled with an interest.

24. PEACEABLE SURRENDER

Upon expiration or earlier termination of this Lease, Tenant shall peaceably surrender the Premises to Landlord in accordance with the end of Term obligations set forth in this Lease, including without limitation, Articles 7, 21 and 23. Notwithstanding the foregoing, Tenant shall leave or demolish such Improvements as required pursuant to Article 7. If Tenant fails to surrender the Premises at the expiration of this Lease or the earlier termination or cancellation thereof in the condition required under this Lease, in addition to Landlord's other remedies, Tenant shall defend and indemnify Landlord from all liability and expense resulting from the delay or failure to surrender, including without limitation any succeeding tenant claims based on Tenant's failure to surrender or Landlord's failure to deliver the Premises and loss of profits.

25. WAIVER

No waiver of any provision of this Lease shall be implied by any failure of a party to enforce any remedy on account of the violation of such provision, even if such violation shall continue or be

repeated subsequently. Any waiver by a party of any provision of this Lease may only be in writing, and no express waiver shall affect any provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated. No receipt of monies by Landlord from Tenant after the termination of this Lease shall in any way alter the length of the Term or of Tenant's right of possession hereunder or after the giving of any notice shall reinstate, continue or extend the Term or affect any notice given Tenant prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit or after final judgment for possession of the Premises, Landlord may receive and collect any Rent due, and the payment of said Rent shall not waive or affect said notice, suit or judgment. The Landlord shall have the power and authority to waive any requirement of Tenant under this Lease except as such authority may be limited by the Port Act or BPC from time to time; provided, however, Landlord may elect to obtain approval of the BPC as a condition to exercising this authority.

26. HOLDOVER

This Lease shall terminate without further notice at expiration of the Term. Any holding over by Tenant after either expiration or earlier termination of this Lease without Landlord's prior written consent shall be a tenancy-at-sufferance upon all of the provisions of this Lease, except those pertaining to the Term, and except that Minimum Annual Rent shall be 150% of the Minimum Annual Rent in effect prior to such expiration or termination. If Tenant, with Landlord's consent, remains in possession of the Premises after the expiration or earlier termination of this Lease, such possession shall be deemed a month-to-month tenancy terminable upon thirty (30) days' notice furnished at any time by either Party to the other Party. All provisions of this Lease, except those pertaining to the Term, shall apply to the month-to-month tenancy, and Tenant shall continue to pay all Rent required by this Lease. Notwithstanding anything herein to the contrary, in no event shall the Term, together with any holdover period, exceed sixty-six (66) years.

27. NOTICES

All notices provided for by this Lease or by Law to be given or served upon Landlord or Tenant shall be addressed as provided in Section 1.11 (as such address may have been changed by subsequent notice given to the other Party) and shall be in writing and: (i) personally served upon Landlord or Tenant, or any Person hereafter authorized by either Party in writing to receive such notice, (ii) delivered via reputable over-night courier service, or (iii) delivered by U.S. postal service certified letter.

Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the parties so served; provided, however, that, if served by certified mail, service shall be considered completed and binding on the Party served forty-eight (48) hours after deposit in the U.S. Mail.

28. SECURITY DEPOSIT

28.1 Amount of Security Deposit.

A security deposit in the amount set forth in Section 1.10 shall be provided to Landlord by Tenant, on or before Tenant's execution of this Lease. The security deposit shall be held by Landlord and used for the purpose of remedying an Event of Default. If there shall be an Event of Default, then Landlord shall have the right, but shall not be obligated, to use, apply or retain all or any portion of the security deposit for the payment of any (a) Rent or any other amount applicable to such Event of Default, or (b) amount that Landlord may spend or become

obligated to spend, or for the compensation of Landlord for any losses incurred, by reason of such Event of Default (including any damage or deficiency arising in connection with the reletting of the Premises). If any portion of the security deposit (in whatever form) is so used or applied, then, within three (3) Business Days after Landlord gives written notice to Tenant of such use or application, Tenant shall increase the Letter of Credit (as defined below) (or deliver to Landlord additional funds, in the case of a cash security deposit) in an amount sufficient to restore the security deposit to the original security deposit amount, and Tenant's failure to do so shall constitute an Event of Default if such failure is not cured within the notice and cure period set forth in Section 12.1.2 above. Tenant waives any and all rights that Tenant may have under Section 1950.7 of the California Civil Code, any successor statute, and all similar provisions of Law, now or hereafter in effect. Tenant agrees that (i) any statutory time frames for the return of a security deposit are superseded by the express period identified in this Article 28, and (ii) Landlord has the right to claim from the security deposit any and all sums expressly identified in this Article 28, and any additional sums reasonably necessary to compensate Landlord for any and all losses or damages caused by the Event of Default, including, but not limited to, all damages or Rent due upon termination of this Lease pursuant to Section 1951.2 of the California Civil Code. Landlord shall not be required to keep the security deposit in trust, segregate it or keep it separate from Landlord's general funds, and Tenant shall not be entitled to any interest accrued on the security deposit.

28.2 Letter of Credit.

Landlord has in its possession an Irrevocable Standby Letter of Credit with an issue date of May 10, 2018 from Wells Fargo Bank, N.A. ("**Wells Fargo**") for the benefit of the Landlord in the amount of One Million Dollars ($1,000,000) ("**WF Letter of Credit**") delivered to Landlord pursuant to the requirements of the Disposition and Development Agreement dated May 7, 2018 entered into between the Landlord, the City and Tenant (District Clerk No. 68398) ("**DDA**"). Tenant may replace the WF Letter of Credit provided the new irrevocable stand-by letter of credit ("**Letter of Credit**") is drawn on Wells Fargo or another bank that has a Moody's Long Term Letter of Credit rating of "A-" or higher and a Moody's Long Term Deposit rating of "A-" or higher. The principal sum of the Letter of Credit shall be made payable to Landlord or order. Each Letter of Credit provided during the Term shall be valid for a minimum of twelve (12) months from date of issuance; provided, however, that, when the remaining Term is one (1) year or less, the Letter of Credit shall be valid for a minimum of three (3) months beyond the Expiration Date and if a Letter of Credit is not valid for the entire remaining Term plus three (3) months beyond the Expiration Date, then such Letter of Credit shall be extended or renewed at least sixty (60) days prior to its expiration.

All of the principal sum of the Letter of Credit shall be available unconditionally to Landlord for the purposes and uses for the security deposit provided in Section 28.1. The bank, and the form and provisions of the Letter of Credit shall be acceptable to the Landlord, in its reasonable discretion, and if not so acceptable, Landlord shall have the right to reject such Letter of Credit; provided, however, that a Letter of Credit substantially in the form of Exhibit "J" attached hereto without material changes shall be deemed acceptable to Landlord and any of the banks listed on Exhibit "K" attached hereto shall be deemed acceptable to Landlord. The Letter of Credit and Drawing Certificate shall not be acceptable to Landlord if it requires Landlord to present the Letter of Credit in person, at a location that is not in San Diego County, send written notice of an Event of Default or request or demand payment from Tenant after an Event of Default, prior to Landlord drawing on any funds under the Letter of Credit.

28.3 Cash Alternative.

Notwithstanding the above, Tenant may elect to provide said security deposit in the form of cash.

28.4 Release of Security Deposit.

Subject to Section 12.2.4, Landlord shall release to Tenant or order, as applicable, the full then-remaining amount of the security deposit within ninety (90) days following Completion of all of the Initial Project Improvements and receipt by Landlord of a copy of the final certificate of occupancy with respect to the Initial Project Improvements.

29. GENERAL PROVISIONS

29.1 Terms; Captions.

The necessary grammatical changes required to make the provisions hereof apply either to corporations, limited liability companies or partnerships or individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed. The captions of Articles and Sections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections. The word “including” or any variation thereof means “including, without limitation” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

29.2 Binding Effect.

Each of the provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of Landlord and of Tenant, but also of their respective heirs, successors or assigns, provided this clause shall not permit any Assignment by Tenant contrary to the provisions of Article 11 of this Lease.

29.3 No Merger.

At any time that a Permitted Lease Encumbrance is outstanding and during the New Lease Period, if both Landlord's and Tenant's estates in the Premises become vested in the same owner (other than by termination of this Lease following an Event of Default hereunder, subject to the rights of a Permitted Mortgage Lender pursuant to Section 10.3 above), this Lease shall not be terminated by application of the doctrine of merger except at the express election of Landlord and with the consent of any Permitted Mortgage Lender.

29.4 Recording.

Unless the Parties agree otherwise in writing in advance, on or before the Commencement Date, Landlord and Tenant shall execute a Memorandum of Lease substantially in the form of Exhibit “F” attached hereto (the "**Memorandum of Lease**"). At Tenant’s option, Tenant shall cause the Memorandum of Lease to be recorded at Tenant's sole cost and Tenant shall be solely responsible for any transfer taxes or fees required to be paid in connection with the recording of the Memorandum of Lease.

29.5 Landlord Transfer.

Tenant acknowledges that, subject to the Port Act and the oversight of the California State Lands Commission, Landlord has the right to transfer all or any portion of its interest in the Premises and in this Lease, and Tenant agrees that in the event of any such transfer and the express assumption of Landlord's obligations hereunder and under each of the documents set

forth on Exhibit “Q” attached hereto (a "**Landlord Transfer**"), Landlord shall automatically be released from all liability under this Lease for periods after the date of such Landlord Transfer, and Tenant agrees to look solely to such transferee for the performance of Landlord's obligations hereunder that arise after the date of such Landlord Transfer. Each landlord hereunder shall be liable only for those obligations arising during its period of ownership and shall be released from further obligations after it completes a Landlord Transfer.

29.6 Time of Essence.

Time is of the essence with respect to this Lease and each of its provisions.

29.7 Partial Invalidity.

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

29.8 Entire Agreement.

It is understood and acknowledged that there are no oral agreements between the Parties affecting this Lease and this Lease supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the Parties with respect to the subject matter hereof. This Lease contains all of the terms, covenants, conditions, warranties and agreements of the Parties relating in any manner to the rental, use and occupancy of the Premises and the Improvements and shall be considered to be the only agreement between the Parties and their representatives and agents; and none of the terms, covenants, conditions or provisions of this Lease can be modified, deleted or added to except in writing signed by the Parties. All negotiations and oral agreements acceptable to the Parties have been merged into and are included herein. There are no other representations or warranties between the Parties, and all reliance with respect to representations is based totally upon the representations and agreements contained in this Lease. However, Tenant acknowledges and agrees that other documents may restrict Tenant's use of the Premises and the Improvements or impose other obligations not specifically referenced in this Lease, including, but not limited to, conditions of approval of a CDP or mitigation measures under CEQA.

29.9 Joint and Several.

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

29.10 Tenant’s Authority.

Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in the state in which the Premises are located and that Tenant has full right and authority to execute and deliver this Lease and that each Person signing on behalf of Tenant is authorized to do so.

29.11 Financial and Other Information Supplied by Tenant.

Tenant represents and warrants that the financial statements provided to Landlord from the Completion Guarantor are a complete copy of the financial statements of the Completion Guarantor and accurately represent the financial condition of the Completion Guarantor as of the Commencement Date. The material breach of this warranty shall constitute an Event of Default.

29.12 Attorneys' Fees.

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

29.13 Transaction Costs.

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

29.14 Governing Law.

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

29.15 Brokers.

Landlord and Tenant each hereby warrant to each other that neither has retained or employed any real estate broker or agent in connection with the negotiation of this Lease. Tenant shall be solely responsible for the payment of any fee or commission due to any broker and agrees to indemnify and defend and hold Landlord harmless from any and all claims, demands, losses, liabilities, lawsuits and costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing by Landlord.

29.16 Counterparts.

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

29.17 Drafting Presumption; Review Standard.

The parties acknowledge that this Lease has been agreed to by both the parties, that both Landlord and Tenant have consulted with attorneys with respect to the terms of this Lease and that no presumption shall be created against the drafting party. Any deletion of language from this Lease prior to its execution by Landlord and Tenant shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication

that the parties intended thereby to state the converse of the deleted language. Unless otherwise specified in this Lease, any approval or consent to be given by Landlord or BPC may be given or withheld in Landlord's or BPC's sole and absolute discretion.

29.18 Certified Access Specialist.

For purposes of Section 1938 of the California Civil Code, Landlord hereby discloses to Tenant, and Tenant hereby acknowledges, that the Premises have not undergone inspection by a Certified Access Specialist.

29.19 Third Party Beneficiaries.

There are no third party beneficiaries of this Lease, except for each Permitted Lender as it relates to Article 10, Section 14.7, Section 20.1, and Section 20.2 only and only to the extent such Permitted Lender has any rights to enforce against Landlord under Article 10, Section 14.7, Section 20.1, or Section 20.2; provided, however, that Permitted Lender shall not have the right to enforce such rights against Landlord until Permitted Lender expressly agrees in writing that Landlord shall have the right to assert Landlord's rights against Permitted Lender as it relates to Article 10, Section 14.7, Section 20.1, or Section 20.2.

29.20 Quantum of Person's Indirect Ownership.

For purposes of this Lease, 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.

29.21 Constitutional Rights and Compliance with Law.

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

29.22 Dispute Resolution.

Except as otherwise provided in this Lease to the contrary, any controversy or claim arising out of or relating to this Lease, or the breach hereof, shall be determined pursuant to non-binding mandatory mediation. The mediator shall be a mediator mutually acceptable to the Parties and shall have at least twenty (20) years of experience drafting and implementing hotel ground leases within the County of San Diego and preferably within the jurisdiction of Landlord. The Parties shall each pay fifty percent (50%) of the cost of the mediation and each Party shall pay its own costs and expenses, including any attorneys' fees, related to the mediation.

Signature page follows.

IN WITNESS WHEREOF, LANDLORD AND TENANT HAVE EXECUTED THIS LEASE AS OF THE DATE FIRST SET FORTH ABOVE.

APPROVED AS TO FORM AND LEGALITY:

GENERAL COUNSEL

By: _____

Assistant/Deputy

SAN DIEGO UNIFIED PORT DISTRICT,

a public corporation

By: _____

Tony Gordon
Director, Real Estate

RIDA CHULA VISTA, LLC,

a Delaware limited liability company

By: _____]
Name:[_____]
Its: [_____]

SDUPD Docs No. _____

DEFINITIONS ADDENDUM

This Definitions Addendum constitutes a part of that certain Lease (the "Lease") entered into as of _____, 20_____ by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation ("Landlord") and RIDA CHULA VISTA, LLC, a Delaware limited liability company ("Tenant") and by reference to the same in the Lease, the following definitions are incorporated into and constitute a part of the Lease.

DEFINITIONS ADDENDUM	
2010 TITLE 24	The Building Energy Efficiency Standards, Title 24, Part 6, of the California Code of Regulations in effect as of May 4, 2010.
50% ENERGY STANDARD	The requirement in Section 15 of the Settlement Agreement that requires all Developments within the Proposed Project (as defined in the Settlement Agreement) area achieve, in the aggregate, a fifty percent (50%) reduction in annual energy compared to that allowed under 2010 Title 24.
ABANDONMENT:	defined in Section 12.1.1.
ACCEPTABLE BRAND:	defined in Section 1.3.
ACH:	defined in Section 5.
ADA:	the Americans with Disabilities Act, 42 U.S.C. §12101 (et seq.) and the regulations promulgated thereunder, as the same may be amended from time to time.
ADDITIONAL ENERGY SAVINGS MEASURES	Energy savings measures, programs or credits available to achieve the 50% Energy Standard. Such Additional Energy Savings Measures may include, without limitation, Tenant's participation in renewable or "time of use" energy purchase programs, and/or other measures identified in Section 15.2 of the Settlement Agreement.
ADDITIONAL RENT:	defined in Section 5.5.
ADEQUATE INSURANCE:	insurance that using standards customary in the insurance industry provides adequate protection for the Premises and Improvements (other than the Existing Improvements) and for the Landlord Parties and/or members of the public using the Premises or Improvements (other than the Existing Improvements) or using services connected with the use, operation or occupancy of the Premises and Improvements (other than the Existing Improvements) by Tenant Parties and Hotel Operator.
ADVERTISING DEVICES:	defined in Section 6.6
AFFILIATE:	with respect to any Person, any Person that Controls, is directly or indirectly Controlled by, or is under common ownership or Control with, such Person.
ALTERATIONS:	any alterations, additions, installations, removals, demolitions, improvements or other physical changes to the Premises and

DEFINITIONS ADDENDUM	
	the Improvements following the Completion of the Initial Project Improvements, including the addition, installation or removal of any fixtures (other than trade fixtures) but excluding installation, maintenance, replacement or refreshing of any furniture, trade fixtures or equipment.
ALTERATION PLANS:	defined in Section 6.3.1.
ANTICIPATED ASSISTANCE COSTS:	with respect to any assistance that Tenant requests that Landlord provide to Tenant, the total amount of Assistance Costs that Landlord reasonably anticipates to incur in connection with such assistance.
APPLICANT:	defined in Section 10.4.3.
APPRAISAL:	defined in Section 10.1.2.
APPROVED AGREEMENTS:	defined in Section 4.8.
ASSIGNMENT:	any disposition, assignment, sale, conveyance, exchange or other transfer of all or any portion of Tenant's interest in this Lease (including without limitation any easements), the leasehold estate created hereby, the Premises or the Improvements, whether by operation of law or otherwise.
ASSIGNMENT PARTICIPATION FEE:	defined in Section 11.6.
ASSIGNMENT PROCEEDS:	defined in Section 11.6.
ASSISTANCE COSTS:	with respect to any assistance that Tenant requests that Landlord provide to Tenant, the amount of costs and expenses reasonably incurred or to be incurred by Landlord in providing such assistance.
ASTS:	defined in Section 21.4.1.
AUDITED FISCAL YEAR:	at any time, each Tenant fiscal year which at such time satisfies either or both of the following conditions: (i) at least one hundred twenty (120) days have elapsed since the end of such Tenant fiscal year or (ii) Tenant has audited financial statements for such Tenant fiscal year.
BANKRUPTCY CODE:	the United States Bankruptcy Code (11 U.S.C. § 101, et seq.), as amended, and any successor statute.
BANKRUPTCY EVENT:	the occurrence with respect to Tenant, any Completion Guarantor(s) or any other Person liable for Tenant's obligations hereunder (including without limitation any member or manager of Tenant) of any of the following: (a) appointment of a receiver or custodian for any property of such Person, or the institution of a foreclosure or attachment action upon any property of such Person; (b) filing by such Person of a voluntary petition under

DEFINITIONS ADDENDUM	
	the provisions of the Bankruptcy Code; or (c) such Person making or consenting to an assignment for the benefit of creditors or a composition of creditors.
BRAND STANDARDS:	standards of the brand that are applicable to the Improvements, subject to any waivers or limitations agreed by the holder of such brand.
BMPS:	defined in Section 15.1.
BPC:	Board of Port Commissioners of the San Diego Unified Port District.
BUILDABLE CONDITION:	defined in Section 7.2.
BUSINESS DAY:	a day (other than a Saturday or Sunday) on which banks in San Diego County, California are open for ordinary banking business.
CCC:	defined in Section 4.5.
CDP:	defined in Section 4.5.
CEQA:	defined in Section 4.5.
CERTIFICATES:	defined in Section 18.3.1.
CFR:	defined in Section 18.2.6.
CHANGE OF CONTROL:	with respect to any Person, a merger, consolidation, recapitalization or reorganization of such Person or other transaction or an amendment to any governing document of such Person that, in the case of any of the foregoing, results in any third party that is not an Affiliate of such Person having the ability to Control such Person; provided that, with respect to Tenant, as long as Ira Mitzner or any of his replacements set forth in the Original LLC Agreement is the manager of Tenant in accordance with the Original LLC Agreement, then there shall be no Change of Control of Tenant.
CHANGE IN OWNERSHIP:	defined on Exhibit “R” and Exhibit “R-3”, as applicable.
CHULA VISTA BUILDING CODE:	Chula Vista Building Standards Code (Title 15 of the Chula Vista Municipal Code), as amended, and any successor statute.
CITY:	defined in Section 1.2.
CLAIMS:	defined in Section 22.4.3(a).
COMMENCEMENT DATE:	defined in Section 1.1.1.
COMPLETION AND COMPLETE:	shall mean that Tenant has obtained and delivered to Landlord (i) a certificate of occupancy or temporary certificate of occupancy for substantially all of the Initial Project Improvements or Alterations with respect to the Initial Project Improvements, as applicable, from the appropriate

DEFINITIONS ADDENDUM	
	Governmental Authority or (ii) equivalent certification from the appropriate Governmental Authority certifying that substantially all of the Initial Project Improvements or Alternations to the Initial Project Improvements, as applicable, may be used in accordance with the designs therefor; provided, however, that the Tenant's Phase 1A Improvements shall be complete when they are substantially completed.
COMPLETION GUARANTOR(S):	defined in Section 1.12.
COMPLETION GUARANTY:	defined in Section 1.12.
COMPONENT OF PROJECT IMPROVEMENTS:	defined in Paragraph 7 of Exhibit "D" hereto.
CONDEMNATION:	defined in Section 14.1.
CONDITION OF THE PREMISES:	defined in Section 22.1.
CONTEST:	defined in Section 4.6.1.
CONTEST CONDITIONS:	defined in Section 4.6.1.
CONSTRUCTION LATE CHARGES:	defined in Section 6.5.6.
CONSTRUCTION PERIOD:	defined in Section 1.12.
CONSTRUCTION REQUIREMENTS:	those requirements, conditions and procedures regulating the installation, construction, modification and repair of Improvements and Alterations as described in Exhibit "D" and "D-2" attached to this Lease.
CONSULTANT SERVICES:	defined in Section 8.1.
CONTROL, CONTROL, CONTROLLED AND CONTROLLING:	shall be deemed, with respect to any Person, to be either or both (i) the ownership of more than fifty percent (50%) of the stock or other voting interest of such Person or the ownership of beneficial interests in such Person, or (ii) the power to direct the management of such Person with respect to major decisions of such Person, whether through voting interests or by way of agreement.
CONVENTION CENTER:	defined in Section 1.3.
CONVENTION CENTER SUBLEASES:	defined in Section 11.1.1.
COURT:	defined in Section 10.4.3(c).
CPI:	the Consumer Price Index published by the United States

DEFINITIONS ADDENDUM	
	Department of Labor, Bureau of Labor Statistics, now known as the "Consumer Price Index" for all Urban Consumers (Index 1982-1984 = 100). As used in this Lease, the phrase “as adjusted for CPI” with respect to any Dollar amount means such Dollar amount multiplied by a fraction, the numerator of which is the CPI as of the first day of the Lease Year in which such adjustment occurs, and the denominator of which is the CPI as of the Commencement Date.
CVBMP DOCUMENTS:	shall mean the following documents: (i) the Settlement Agreement; (ii) Chula Vista Bayfront Development Policies (District Clerk No. 59407); (iii) Chula Vista Bayfront Master Plan Natural Resources Management Plan (District Clerk No. 65065), approved by the BPC on May 10, 2016, by Resolution No. 2016-79, and the City Council of the City of Chula Vista on June 14, 2016, by Resolution No. 2016-119; (iv) Chula Vista Bayfront Master Plan Public Access Program (District Clerk No. 59408); (v) Chula Vista Bayfront Design Guidelines (District Clerk No. 67959); (vi) Integrated Planning Vision (District Clerk No. 63989); (vii) Chula Vista Bayfront Master Plan & Port Master Plan Amendment (District Clerk Nos. 59406); and (viii) Mitigation Monitoring and Reporting Program for the Chula Vista Bayfront Master Plan (District Clerk No. 56555).
DDA:	defined in Section 28.2.
DEFAULT RATE:	an annual rate equal to the lesser of (i) the annual "Bank Prime Loan" rate cited in the Federal Reserve Statistical Release Publication H.15(519), published weekly (or such other comparable index as Landlord and Tenant shall reasonably agree upon if such rate ceases to be published), plus four (4) percentage points, and (ii) the highest rate permitted by applicable Law.
DEMOLITION AND REMEDIATION REPORT:	a report prepared by a contractor licensed in the State of California with expertise in demolition and remediation, which report details and estimates the current cost and time period for completion of the demolition work that is required by Section 7.2 and any remediation work that may be required by Section 21.3.
DEVELOPMENT COSTS:	the costs of the entire design, architectural work, engineering work, development work and construction work with respect to the Resort Hotel and the Convention Center.
DIR:	defined in Section 6.8.1(d)(ii).
DISCRETIONARY ENTITLEMENT:	defined in Section 8.1.
DISCRETIONARY PROJECT:	defined in Section 8.1.
DISTRICT SUPPORT	defined in Section 6.5.6.

DEFINITIONS ADDENDUM	
PAYMENT / DSP:	
DISTRICT DOCUMENTS	defined in Section 22.4.2.
EARLY TERMINATION DATE:	defined in Section 7.2.
EIR:	defined in Section 1.3.
ENVIRONMENTAL CLEANUP:	defined in Section 21.1.4.
ENVIRONMENTAL LAWS:	defined in Section 21.1.1.
EQUITY COLLATERAL ENFORCEMENT ACTION:	defined in Section 10.1.3.
ESTIMATED PARKING IMPROVEMENTS DEVELOPMENT COSTS:	the costs of the entire design, architectural work, engineering work, development work and construction work with respect to the Parking Improvements that are estimated by Tenant in its reasonable discretion.
ESTIMATED TENANT DEVELOPMENT COST CONTRIBUTION:	defined in Section 1.8(f).
EVENT OF DEFAULT:	defined in Section 12.1.
EXCAVATED SOIL REMOVAL:	defined in Section 21.5.1.
EXISTING IMPROVEMENTS:	any Improvements (including utilities, storm drains and park ways) located upon the land (and water, if applicable) that are in existence and located on, in, over or under the Premises as of the Commencement Date, whether constructed by Landlord, a prior tenant or another third party.
EXISTING REVENUES / ER:	defined in Section 6.5.6.
EXPIRATION DATE:	defined in Section 1.1.2.
FINANCING AGREEMENT:	that certain Amended and Restated Chula Vista Bayfront Master Plan Financing Agreement dated June 20, 2017, by and between the City and Landlord and filed in the Office of the District Clerk as Document No. 67068.
FINANCIAL INSTITUTION:	Any one of the following that is in good legal standing under the laws of its jurisdiction of incorporation having assets exceeding One Billion Dollars ($1,000,000,000): (i) an insurance company qualified to do business in the state of California; or (ii) a U.S. federally- or state-chartered bank, savings bank, or savings and loan association; or (iii) a pension or retirement fund operated for the employees and former employees of, and regulated and controlled by, the United States of America or any

DEFINITIONS ADDENDUM	
	state thereof, or any agency thereof (e.g., the California State Teachers' Retirement System); or (iv) a real estate investment trust; or (v) any lender or investment fund whose regular on-going business includes real property secured, or mezzanine, financing for commercial or industrial properties; or (vi) a Person owned and Controlled by any one or more of the preceding entities; or (vii) a trust company that is organized and doing business under the laws of any state or the United States of America, regularly acts as a collateral agent or indenture trustee for indebtedness that is secured by commercial or industrial property, and is subject to supervision or examination by federal or state authority; (viii) a combination of two or more of the preceding entities; or (ix) a trustee, servicer or authorized agent that is established to form a single asset trust to issue certificates or other beneficial interests in a loan: (a) that is Controlled by any of the entities set forth in (i) through (v) above, (b) that in each case is authorized under the Laws to exercise corporate trust powers and to accept the trust conferred, (c) that is subject to supervision and examination by federal or state authority, and (d) whose regular on-going business includes serving as a trustee, servicer or an authorized agent for real property secured financing for commercial or industrial properties.
FINANCING TRANSACTION:	defined in Section 10.1.1.
FORCE MAJEURE EVENT:	defined in Section 6.5.
FORCE MAJEURE NOTICE:	defined in Section 6.5.5.
FORCE MAJEURE RESPONSE:	defined in Section 6.5.5.
FORECLOSURE PURCHASER:	defined in Section 10.3.3.
GOVERNMENTAL AUTHORITY:	each and every governmental agency, authority, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Premises (or any activity this Lease allows), including without limitation, the Landlord and the City, United States federal government, the State and County governments and their subdivisions and municipalities, and all applicable Government Agencies, governmental authorities, and subdivisions thereof.
GOVERNMENT AGENCY:	defined in Section 21.1.2.
GREATER OF RENT:	defined in Section 5.2.
GROSS INCOME:	defined in Section 5.4.2(a).

DEFINITIONS ADDENDUM	
HARD CONSTRUCTION COSTS:	with respect to any component of the Project Improvements, all costs that Tenant is required to pay to the respective construction contractor for the construction of such component of the Project Improvements under the construction agreement for such component of the Project Improvements.
HAZARDOUS MATERIAL:	any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, including, without limitation, asbestos and oil and petroleum products, which is a "Hazardous Material" or "Hazardous Substance" within the meaning of any applicable Law (including, but not limited to, hazardous substances as defined by Cal. Health & Safety Code § 25316 and anything that may result in contamination or pollution as defined by Cal. Water Code § 13050), and at any concentration that is subject to regulation under any Law relating to such Hazardous Material or Hazardous Substance. Notwithstanding any exclusion from the definition of hazardous substance or hazardous material in any applicable Law, Hazardous Material as defined herein includes any hydrocarbons, petroleum, petroleum products or waste and any other chemical, substance or waste, that is regulated by, or may form the basis of liability under, any Environmental Laws.
HAZARDOUS MATERIALS ACTIVITY:	defined in Section 21.1.1.
HMMD:	defined in Section 21.4.1.
HOTEL MANAGEMENT AGREEMENT:	management agreement for the Resort Hotel between Tenant and the Hotel Operator.
HOTEL MANAGEMENT AGREEMENT NOTICE:	defined in Section 15.4.2.
HOTEL OPERATOR:	Marriott or its successor in accordance with this Lease.
IMPROVEMENTS:	Initial Improvements, the Premises Surface Parking and, if and when substantially completed by Tenant in accordance with Section 4.3 and Exhibit “R”, Exhibit “R-3” or Exhibit “R-4”, as applicable, the Parking Improvements, and any Alterations thereto.
INCURABLE DEFAULT:	defined in Section 10.3.2(b).
INITIAL FORCE MAJEURE NOTICE:	defined in Section 6.5.5.
INITIAL IMPROVEMENTS:	those buildings, structures and other improvements (including vaults, utilities and other underground improvements) now (including any Existing Improvements) or hereafter (including Initial Project Improvements and Alterations) located on, in, over or under the Premises, other than the Parking Improvements and other than any Alterations to the Parking Improvements.

DEFINITIONS ADDENDUM	
INITIAL PROJECT IMPROVEMENTS:	the Improvements that are located on the Premises and are initially developed by Tenant and described by the Plans referred to in Exhibit “C” to this Lease, (as opposed to Existing Improvements and subsequent Alterations to the Project Improvements), and specifically excluding the Parking Improvements and any Alterations to the Parking Improvements.
INSPECTION REPORT:	defined in Section 15.3.
INQUIRY:	defined in Section 21.1.2.
JEPA:	defined in Section 6.5.6.
JEPA DEVELOPMENT COST CONTRIBUTION:	defined in Section 1.8(d).
JUDICIAL REFERENCE:	defined in Section 10.4.3(a).
LANDLORD:	defined in the preamble of this Lease.
LANDLORD END OF TERM ELECTION:	defined in Section 7.2.
LANDLORD PARKING CONSTRUCTION NOTICE:	defined in Section 4.3.6(b).
LANDLORD PARTIES:	Landlord and the officers, directors, members of the BPC, employees, partners, affiliates, agents, contractors, successors and assigns of Landlord, in each case, when acting only in the capacity of a Landlord Party.
LANDLORD TRANSFER:	defined in Section 29.5.
LANDLORD’S PARKING CONTRIBUTION:	defined in Section 4.3.4.
LANDLORD'S MATERIALS:	defined in Section 22.4.2.
LANDLORD'S NON-DEMOLITION NOTICE:	defined in Section 7.2.
LATE CHARGES:	defined in Section 5.6.
LAWS:	All of the following to the extent (i) applicable to the Premises, the Improvements or any activity under this Lease, (ii) binding and enforceable and (iii) promulgated, adopted, approved or enacted by a Governmental Authority: present and future state of California, federal and local laws, orders, ordinances, regulations, statutes, requirements, codes and executive orders, including, without limitation, the ADA, and any law of like import, and all rules, regulations and government orders with respect thereto, including without limitation any of the foregoing relating to Hazardous Materials, environmental matters (including, but

DEFINITIONS ADDENDUM	
	not limited to, Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), the Resource Conservation and Recovery Act ("**RCRA**"), the Clean Air Act, the Clean Water Act, Oil Pollution Act, the Toxic Substances Control Act and comparable and supplemental California laws), the California Coastal Act, CEQA, the Public Trust Doctrine, public health and safety matters and landmarks protection, as any of the same now exist or may hereafter be adopted or amended. Said Laws shall include, but are not limited to, the Laws enacted by the San Diego Unified Port District Act, such as Article 10 of the San Diego Unified Port District Code; the PMP; the policies of the BPC; any applicable ordinances of the city in which the Premises are located, including the building code thereof, and any permits and approvals by any Governmental Authority and the Landlord, including, without limitation, any California Coastal Development Permit, applicable to the Premises or the use or development thereof.
LEASE:	defined in the preamble to this Lease.
LEASE YEAR:	defined in Section 1.5.
LEASEHOLD AWARD:	defined in Section 14.7.1.
LETTER OF CREDIT:	defined in Section 28.2.
LOAN DOCUMENTS:	defined in Section 10.1.1.
MAJOR ALTERATIONS:	defined in Section 6.3.1.
MARRIOTT:	Marriott Hotel Services, Inc. and any of its Affiliates.
MATERIAL CHANGE IN OWNERSHIP OF TENANT:	shall occur when the Persons who own, directly or indirectly, any equity interest in Tenant as of the Commencement Date, do not, in the aggregate, and would not if they acted in concert, Control Tenant.
MATERIAL EXACERBATION:	defined in Section 21.1.4.
MEET & CONFER PERIOD:	defined in Section 6.5.5.
MEETING SPACE:	defined in Section 5.4.1(b).
MEMORANDUM OF LEASE:	defined in Section 29.4.
MEZZANINE INTEREST:	defined in Section 10.1.3.
MICC:	defined in Section 10.1.3(a).
MINIMUM ANNUAL RENT:	defined in Section 1.5 and Section 5.3.
MINIMUM ANNUAL RENT LOOK BACK	defined in Section 5.3.

DEFINITIONS ADDENDUM	
ADJUSTMENT:	
MINIMUM ENERGY EFFICIENCY DESIGN STANDARD	The requirement that each building operate at an energy consumption level equal to or better than the more stringent of the following two standards: (i) fifteen percent (15%) less than the amount of energy that each building would otherwise be permitted to consume under 2010 Title 24; or (ii) the minimum energy efficiency performance standard adopted by the City at the time a building permit application is submitted for each building.
MINIMUM RENT LOOK BACK ADJUSTMENT DATES:	defined in Section 1.5.
MINOR ALTERATIONS:	defined in Section 6.3.2.
MONTHLY PARKING REPORT:	a monthly report of Tenant Parking Improvement Revenue, Surface Parking Improvement Revenue, and Premises Surface Parking Revenue, in a form prescribed by Landlord and delivered by Tenant in accordance with this Lease.
MONTHLY REPORT:	defined in Section 5.4.3.
NEIGHBORING PARCELS:	defined in Section 4.9.
NEW LEASE:	defined in Section 10.3.2(d).
NEW LEASE PERIOD:	defined in Section 10.3.2(d).
NEW OUTSIDE CONSTRUCTION COMPLETION DATE:	defined in Section 10.6.2.
NEW INITIAL PROJECT IMPROVEMENTS COMPLETION TIMETABLE:	defined in Section 10.6.2.
NEW TENANT:	defined in Section 10.3.2(d).
NOTICE OF ELECTION TO TERMINATE:	defined in Section 20.2.
OFAC:	defined in Section 17.3.
OFFSITE PARKING LAND:	the land as described in the Offsite Parking Land TUOP.
OFFSITE PARKING LAND TUOP:	that certain Offsite Parking Land TUOP, dated as of the date hereof, between Landlord, as lessor, and Tenant, as lessee.
OPERATION:	defined in Section 5.5.
ORIGINAL LLC AGREEMENT:	that certain Limited Liability Company Agreement of RIDA Chula Vista, LLC, dated as of February, 2018, as amended pursuant

DEFINITIONS ADDENDUM	
	to any amendment that does not amend the management of Tenant.
ORIGINAL MEMBER:	defined in Section 11.6.
OUTSIDE CONSTRUCTION COMMENCEMENT DATE:	defined in Section 1.8(a).
OUTSIDE CONSTRUCTION COMPLETION DATE:	defined in Section 1.8(b).
PARKING IMPROVEMENTS:	defined in Section 4.3.1(d), 4.3.2(a), 4.3.5(a), or 4.3.6, as applicable.
PARKING IMPROVEMENTS DEVELOPMENT COSTS:	the costs of the entire design, architectural work, engineering work, development work and construction work with respect to the Parking Improvements.
PARKING IMPROVEMENT RENT:	defined in Exhibit “R”, “R-3”, or “R-4”, as applicable.
PARKING IMPROVEMENT RENT RATE:	defined in Exhibit “R” or Exhibit “R-3”, or Exhibit “R-4”, as applicable.
PARKING IMPROVEMENTS FINANCING PLAN:	defined in Section 4.3.6.
PARKING MEET & CONFER PERIOD:	defined in Section 4.3.6.
PARKING STRUCTURE LAND:	that certain real property located adjacent to the Premises and described on Exhibit “R-1” and depicted on Exhibit “R-2” hereto.
PAYMENT BOND:	defined in Paragraph 7 of Exhibit “D” or Exhibit “D-2” hereto, as applicable.
PDSO:	defined in Section 6.5.6.
PERCENTAGE RENT:	defined in Section 5.4.
PERCENTAGE RENT RATE:	defined in Section 5.4.
PERFORMANCE BOND:	defined in Paragraph 7 of Exhibit “D” or Exhibit “D-2” hereto, as applicable.
PERMITTED ENCUMBRANCE:	defined in Section 10.2.
PERMITTED EQUITY ENCUMBRANCE:	defined in Section 10.2.
PERMITTED LEASE ENCUMBRANCE:	defined in Section 10.2.

DEFINITIONS ADDENDUM	
PERMITTED MEZZANINE LENDER:	defined in Section 10.1.3(a).
PERMITTED MORTGAGE LENDER:	defined in Section 10.2.
PERMITTED LENDER:	defined in Section 10.2.
PERMITTED USE:	defined in Section 1.3.
PERMITTING ASSISTANCE:	defined in Section 8.1.
PERSON:	any individual, partnership, firm, joint venture, association, corporation, limited liability company, government agency or any other form of business entity.
PLANS:	defined in Section 6.1.
PLEDGOR:	defined in Section 10.1.3(b).
PMP:	defined in Section 4.5.
PMPA:	defined in Section 8.1.
PRE-APPROVED ADVERTISING DEVICES:	means all Advertising Devices visible from outside the Premises or the Improvements that have been previously approved by the Landlord in writing
PRE-EXISTING HAZARDOUS MATERIAL:	any Hazardous Material located on or under the Premises prior to the Commencement Date, whether known or unknown, and any Hazardous Material located outside the Premises (including any premises owned by Landlord) prior to the Commencement Date that migrates onto the Premises thereafter.
PREMISES:	defined in Section 1.2.
PREMISES PREPARATION CAP:	defined in Section 1.8(e).
PREMISES PREPARATION WORK:	defined in Section 6.2.
PREMISES PREPARATION WORK COSTS:	defined in Section 6.2.
PREMISES SURFACE PARKING:	defined in Section 4.3.1(a), 4.3.2(a), or 4.3.3(a), as applicable.
PREMISES SURFACE PARKING RENT:	defined in Section 4.3.1(c), 4.3.2(d), or 4.3.3(c), as applicable.
PREMISES SURFACE PARKING RENTAL RATE:	means three percent (3%) until the last day of the calendar month in which the Parking Improvements first become operational, and the applicable Parking Improvement Rent Rate

DEFINITIONS ADDENDUM	
	thereafter.
PREMISES SURFACE PARKING REVENUE:	defined in Section 4.3.1(c), 4.3.2(d), 4.3.3(c), as applicable.
PRIMARY USE:	defined in Section 1.3.
PROHIBITED PERSON:	defined in Section 17.3.
PROHIBITED PERSONS:	defined in Section 17.3.
PROJECT:	Tenant's development of the Project Improvements.
PROJECT IMPROVEMENTS:	the Initial Project Improvements and, if and when substantially completed by Tenant in accordance with Section 4.3, the Parking Improvements.
PROJECT IMPROVEMENTS COMPLETION ELECTION:	defined in Section 10.6.2.
PROJECT IMPROVEMENTS COMPLETION ELECTION NOTICE:	defined in Section 10.6.2.
PROPERTY EXPENSES:	defined in Section 16.2.
PROPERTY TAX EXPENSES:	property taxes (including, without limitation, real estate taxes, possessory interest taxes, use taxes, general and special assessments, leasehold taxes or taxes based upon Tenant's receipt of rent).
PUBLIC SERVICE DEBT OBLIGATION / PSDO:	defined in Section 6.5.6.
PWL:	defined in Section 6.8.1(a)
REDEVELOPMENT PLAN:	defined in Section 6.10.
REDEVELOPMENT PLAN PACKAGE:	defined in Section 6.10.
REFERENCE NOTICE:	defined in Section 10.4.3(c).
REIMBURSEMENT PROCEDURE:	defined in Section 5.8.
REJECTED TRANSFEREE:	defined in Section 10.4.3(a).
RELATED COSTS:	any costs, damages (of all kinds including punitive damage, diminution in value and loss of use), claims, liabilities, expenses (including reasonable attorneys', consultants' and experts' fees), losses, fines, penalties and court costs related to the subject matter of the Related Costs and amounts paid in settlement of

DEFINITIONS ADDENDUM	
	any claims or actions related to the subject matter of the Related Costs.
RENT:	defined in Article 5.
RENT COMMENCEMENT DATE:	defined in Section 1.4.
RENTAL PERIODS:	defined in Section 1.4.
RESORT HOTEL:	defined in Section 1.3.
REVENUE:	all income, receipts, proceeds, amounts, money, cash, assets, property or other things of value, whether collected, uncollected, received, payable or accrued.
REVENUE SHARING AGREEMENT:	that certain Revenue Sharing Agreement between the City and Landlord dated April 24, 2018 and filed with the District Clerk as Document No. 68392.
REVIEW PROCESSES:	defined in Section 6.6.
ROHR:	defined in Section 4.8.
ROOM:	a separately keyed lodging unit of the Resort Hotel.
SDRWQCB:	defined in Section 21.4.3.
SETTLEMENT AGREEMENT:	Chula Vista Bayfront Master Plan Settlement Agreement, dated May 4, 2010, among the Bayfront Coalition Member Organizations identified therein, Landlord, the City of Chula Vista and the Redevelopment Agency of the City of Chula Vista (District Clerk No. 56523).
SPE LENDER AFFILIATE:	defined in Section 10.3.3.
SUBLEASE:	any sublease (or sub-sublease or other level of sublease), and any occupancy, franchise, license, concession agreement or other right to use applicable to this Lease or the Premises or the Improvements or any part thereof; provided, however, that "Sublease" excludes (i) any agreement for temporary use of the Meeting Space or Rooms in the Resort Hotel and (ii) Hotel Management Agreement.
SUBLEASE NOTICE:	defined in Section 11.1.2.
SUBTENANT:	any subtenant (or sub-subtenant or other level of subtenant), occupant, franchisee, licensee, or concessionaire under any Sublease; provided, however, that "Subtenant" shall exclude the Hotel Operator.
SURFACE PARKING IMPROVEMENT REVENUE:	defined in Section 4.3.1(b), 4.3.2(c), or 4.3.3(b), as applicable.
SURFACE PARKING IMPROVEMENTS	defined in Section 4.3.1(b).

DEFINITIONS ADDENDUM	
RENTAL RATE:	
SURFACE PARKING IMPROVEMENTS:	defined in Section 4.3.1(a), 4.3.2(a), or 4.3.3(a), as applicable.
SURFACE PARKING IMPROVEMENTS RENT:	defined in Section 4.3.2(c) or 4.3.3(b), as applicable.
SURFACE PARKING IMPROVEMENTS RENTAL RATE:	means three percent (3%) until the last day of the calendar month in which the Parking Improvements first become operational, and the applicable Parking Improvement Rent Rate thereafter.
TAX EXPENSES:	defined in Section 16.1.
TEMPORARY CONDEMNATION:	defined in Section 14.6.
TENANT:	defined in the Preamble of this Lease.
TENANT ART INVESTMENT:	defined in Section 1.8(g).
TENANT FUNDING:	defined in Section 4.6.2.
TENANT HAZARDOUS MATERIAL:	any Hazardous Material either (i) brought onto the Premises or Improvements during the Term by any Person or (ii) brought onto the Premises, Improvements or any other property by Tenant, Tenant Party, or Hotel Operator or generated by any of the same.
TENANT MEMBER:	defined in Section 17.3.
TENANT PARKING IMPROVEMENT REVENUE:	defined in Exhibit “R”, “R-3” or “R-4”, as applicable.
TENANT PARTY:	Tenant, and the agents, employees, representatives, contractors, subcontractors, suppliers, materialmen, workmen, licensees, concessionaires, Affiliates and successors and assigns of Tenant, and Subtenants, and the agents, employees, representatives, contractors, subcontractors, suppliers, materialmen, workmen, concessionaires, licensees, Affiliates and successors and assigns of each of such Subtenants, in each case, when acting only in the capacity of a Tenant Party.
TENANT RECORDS:	defined in Section 5.4.3(c).
TENANT'S DEMOLITION ELECTION:	defined in Section 7.2.
TENANT’S PHASE 1A IMPROVEMENTS:	defined in Section 6.11.
TERM:	defined in Section 1.1.
TPFP:	defined in Section 6.5.6.

DEFINITIONS ADDENDUM	
TRANSFER:	defined in Section 11.5.1.
TRANSFER NOTICE:	defined in Section 11.5.2.
TRANSFEREE:	defined in Section 11.5.2 and 11.5.3, as applicable.
USA PATRIOT ACT:	defined in Section 17.3.
USTs:	defined in Section 21.4.1.
UST LAW:	defined in Section 18.2.6.
WELLS FARGO:	defined in Section 28.2.
WF LETTER OF CREDIT:	defined in Section 28.2.

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Legal Description shall be the same as that attached to the DDA with the exception that the Parking Structure Land will be carved out.

(to be attached prior to execution.)

EXHIBIT B

DEPICTION OF PREMISES

(to be attached prior to execution.)

EXHIBIT B-1

DESCRIPTION OF TENANT'S PHASE 1A IMPROVEMENTS

THE FOLLOWING TENANT'S PHASE 1A IMPROVEMENTS SHALL BE CONSTRUCTED BY TENANT:

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 UTILITY CORRIDOR: PROJECT INCLUDES INSTALLATION OF NEW STORM DRAIN, SEWER, WATER, AND DRY UTILITIES.

EXHIBIT B-2

DESCRIPTION OF NEIGHBORING IMPROVEMENTS

Parcels H-1, H-1A, H8, H9 and H23 located in the Chula Vista Bayfront in the City of Chula Vista, California.

(insert map showing location of parcels and attach prior to execution of lease.)

EXHIBIT C

PLANS

[DESCRIBE AND ATTACH ANY PLANS AND SPECIFICATIONS, INCLUDING BUT NOT LIMITED TO WORKING DRAWINGS THAT ARE APPROVED BY THE LANDLORD AND/OR BPC FOR THE INITIAL PROJECT IMPROVEMENTS, TENANT'S PHASE 1A IMPROVEMENTS, PREMISES SURFACE PARKING AND SURFACE PARKING IMPROVEMENTS.]

Preparer:

Project:

Job No.:

Approval Date:

Number of pages attached:

[PLANS MUST BE DESCRIBED AND ATTACHED PRIOR TO EXECUTION OF THE LEASE.]

EXHIBIT D

CONSTRUCTION REQUIREMENTS
(Initial Project Improvements)

1. GENERALLY. TENANT SHALL COMPLY WITH THE PROVISIONS OF THIS EXHIBIT D AS FOR THE INITIAL PROJECT IMPROVEMENTS, THE CONDITIONS OF PROJECT APPROVAL SET FORTH IN EXHIBIT D-1 FOR THE INITIAL PROJECT IMPROVEMENTS, AND THE PROVISIONS OF THE LEASE IN CONNECTION WITH ALL CONSTRUCTION OR DEMOLITION WORK FOR THE INITIAL PROJECT IMPROVEMENTS ("CONSTRUCTION WORK").

2. Contractors. Landlord shall have the right to approve the general contractor for Construction Work, in its reasonable discretion. All contractors and subcontractors performing any Construction Work must be licensed in the State of California.

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

4. Contractors, Architects and Engineers Agreements. Landlord shall have the right to approve the architectural, engineering and construction contracts for all of the Initial Project Improvements, in its reasonable discretion. All such contracts for work related to the Convention Center shall provide, in form and content reasonably satisfactory to Landlord, (i) for the collateral assignment thereof to Landlord as security to Landlord for Tenant's performance hereunder, which collateral assignment will provide that Landlord may enforce such collateral assignment and realize on such collateral only if this Lease terminates in accordance with its terms and no Permitted Lender has any rights to obtain a New Lease, and (ii) that if this Lease is terminated Landlord may, at its election, use any Plans, including the construction drawings, created by such architect, engineer or contractor for the contemplated Convention Center at the Premises.

5. Construction Barricades. Tenant shall install a construction barricade around the area of Construction Work, and erect such other protective measures as may be reasonably required by Landlord.

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

7. Performance Bond and Payment Bond. Prior to Tenant commencing the construction of the Initial Project Improvements, Tenant shall furnish Landlord with the following separate corporate surety bonds in connection with the construction of each of the components of the Initial Project Improvements (each, a "Component of Initial Project Improvements"):

(i) A corporate surety performance bond ("Performance Bond") issued by a surety company licensed and admitted to transact business as such in the State of California, in an amount not less than one hundred percent (100%) of the estimated Hard Construction Costs of the applicable Component of Initial Project Improvements. The Performance Bond and its issuer shall be reasonably satisfactory to Landlord. The Performance Bond shall name Tenant as principal and Landlord as obligee, assuring full completion of the construction by Tenant of such Component of Initial Project Improvements; and

(ii) A corporate surety payment bond ("Payment Bond") issued by a surety company licensed and admitted to transact business as such in the State of California, in an amount equal to one hundred percent (100%) of the estimated Hard Construction Costs of the applicable Component of Initial Project Improvements, guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the performance of the construction of such Component of Initial Project Improvements and for labor done thereon and protecting Landlord from any and all liability, loss or damages arising out of or in connection with any failure to make any such payments. The Payment Bond shall name Tenant as principal and Landlord as obligee.

(iii) The Payment Bond and Performance Bond shall be in form and content reasonably satisfactory to Landlord.

(iv) Tenant may provide to Landlord a corporate guaranty from a contactor that is reasonably acceptable to Landlord in lieu of the Performance Bond and the Payment Bond for any such Component of the Initial Project Improvements.

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

9. Construction Schedule. Tenant shall, at least ten (10) days prior to date on which Tenant intends to commence construction of any Construction Work, deliver to Landlord a construction schedule.

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

(i) Workers' compensation and employer's liability insurance:

(a) Workers' compensation insurance as required by any applicable law or regulation.

(b) Employer's liability insurance in the amount of $1,000,000 each accident/employee/disease.

(ii) General liability insurance: Commercial General Liability insurance covering all operations by or on behalf of the contractor, which shall include the following minimum limits of liability and coverages:

(a) Required coverages:

(1) Premises and Operation;

(2) Products and Completed Operations;

(3) Contractual Liability;

(4) Broad Form Property Damage (including Completed Operations);

(5) Explosion, Collapse and Underground Hazards; and

(6) Personal Injury Liability.

(b) Minimum limits of liability:

(1) $2,000,000 each occurrence (for bodily injury and property damage);

(2) $2,000,000 for Personal Injury Liability;

(3) $5,000,000 aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the Work); and

(4) $5,000,000 general aggregate applying separately to this Project.

(iii) Automobile Liability Insurance: Automobile liability insurance including coverage for owned, leased, rented, hired, and/or non-owned automobiles. The limits of liability shall not be less than $1,000,000 for each accident limit for bodily injury, death and property damage.

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

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

Landlord Parties shall be named as an additional insured on the forgoing insurance, and such insurance shall provide that the same shall not be canceled, or reduced in amount or coverage below the requirements of this Lease, nor shall it be allowed to expire, without at least thirty (30) days prior written notice to Landlord. The foregoing insurance shall include a waiver of subrogation in favor of Landlord Parties.

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

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

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

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

EXHIBIT D-1

Conditions of Project Approval
(Initial Project Improvements)

To be attached prior to execution of Lease.

(PLACEHOLDER PAGE)

EXHIBIT D-2

CONSTRUCTION REQUIREMENTS (Alterations)

1. GENERALLY. TENANT SHALL COMPLY WITH THE PROVISIONS OF THIS EXHIBIT D-2, THE CONDITIONS OF PROJECT APPROVAL SET FORTH IN EXHIBIT D-1, AND THE PROVISIONS OF THE LEASE IN CONNECTION WITH ALL CONSTRUCTION OR DEMOLITION WORK AT THE PREMISES THAT ARE NOT THE INITIAL PROJECT IMPROVEMENTS OR THE PARKING IMPROVEMENTS ("CONSTRUCTION WORK").

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

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

4. Contractors, Architects and Engineers Agreements. Landlord shall have the right to approve the architectural, engineering and construction contracts for all of the Improvements (other than Minor Alterations), in its reasonable discretion.

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

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

7. Performance Bond and Payment Bond. Prior to Tenant commencing any Major Alteration, Tenant shall furnish Landlord with the following separate corporate surety bonds in connection with such Major Alteration:

(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 Alteration. The Performance Bond and its issuer shall be reasonably satisfactory to Landlord. The Performance Bond shall name Tenant as principal and Landlord as obligee, assuring full completion of by Tenant of such Major Alteration; 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 Alteration, guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the performance of the Major Alteration and for labor done thereon and protecting Landlord from any and all liability, loss or damages arising out of or in connection with any failure to make any such payments. The Payment Bond shall name Tenant as principal and Landlord as obligee.

(iii) The Payment Bond and Performance Bond shall be in form and content reasonably satisfactory to Landlord.

(iv) Tenant may provide to Landlord a corporate guaranty from a contractor that is reasonably acceptable to Landlord in lieu of the Performance Bond and the Payment Bond for any Major Alteration.

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

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

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

(i) Workers' compensation and employer's liability insurance:

(a) Workers' compensation insurance as required by any applicable law or regulation.

(b) Employer's liability insurance in the amount of $1,000,000 each accident/employee/disease.

(ii) General liability insurance: Commercial General Liability insurance covering all operations by or on behalf of the contractor, which shall include the following minimum limits of liability and coverages:

(a) Required coverages:

(1) Premises and Operation;

(2) Products and Completed Operations;

(3) Contractual Liability;

(4) Broad Form Property Damage (including Completed Operations);

(5) Explosion, Collapse and Underground Hazards; and

(6) Personal Injury Liability.

(b) Minimum limits of liability:

(1) $2,000,000 each occurrence (for bodily injury and property damage);

(2) $2,000,000 for Personal Injury Liability;

(3) $5,000,000 aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the Work); and

(4) $5,000,000 general aggregate applying separately to this Project.

(iii) Automobile Liability Insurance: Automobile liability insurance including coverage for owned, leased, rented, hired, and/or non-owned automobiles. The limits of liability

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

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

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

Landlord Parties shall be named as an additional insured on the forgoing insurance, and such insurance shall provide that the same shall not be canceled, or reduced in amount or coverage below the requirements of this Lease, nor shall it be allowed to expire, without at least thirty (30) days prior written notice to Landlord. The foregoing insurance shall include a waiver of subrogation in favor of Landlord Parties.

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

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

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

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

EXHIBIT E

FORM OF COMPLETION GUARANTY

Pursuant to Section 1.12 of the Lease, the form of Completion Guaranty will be substantially in a form reasonably agreed to by Tenant and Landlord prior to execution of the Lease (with any deviations from such form being approved by Landlord and Tenant in each of Landlord's and Tenant's reasonable discretion during the Term) and shall terminate on the date that is the later of: six months after (a) the end of the Construction Period; or (b) the date the Resort Hotel is open for business.

(to be attached prior to execution.)

EXHIBIT F

FORM OF MEMORANDUM OF LEASE

RECORDING REQUESTED BY:

_____
_____
_____

(Above Space for Recorder's Use Only)

MEMORANDUM OF LEASE

This Memorandum of Lease, hereinafter "Memorandum," is dated _____, 20__, between SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, “Landlord” and RIDA CHULA VISTA, LLC, a Delaware limited liability company, “Tenant” concerning that certain real property described in Exhibit "A" and depicted in Exhibit "B", attached hereto and by this reference made a part hereof (the “Leased Premises”).

For good and adequate consideration, Landlord leases the Leased Premises to Tenant, and Tenant hires them from Landlord, for the term and on the provisions contained in that certain Lease of even date herewith by and between Landlord and Tenant (the "**Lease**"), including without limitation provisions prohibiting assignment, subleasing, and encumbering said leasehold without the express written consent of Landlord in each instance, all as more specifically set forth in said Lease, and, subject to the terms of Article 23 of the Lease, Landlord conveys to Tenant and Tenant accepts from Landlord, all of Landlord’s right, title and interest in and to the Existing Improvements, which said Lease is incorporated in this Memorandum by this reference.

The term of the Lease is sixty-six (66) years, beginning _____, 20__, and ending _____, 20__.

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

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Lease as of the date first set forth above.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: _____
Assistant/Deputy

SAN DIEGO UNIFIED PORT DISTRICT,
a public corporation

By: _____
Tony Gordon
Director, Real Estate

RIDA CHULA VISTA, LLC,
a Delaware limited liability company

By: _____
Signature

NAME: _____

Its: _____

By: _____
Signature

NAME: _____

Its: _____

EXHIBIT A TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION OF PREMISES

(to be attached prior to execution.)

EXHIBIT B TO MEMORANDUM OF LEASE

DEPICTION OF PREMISES

(to be attached prior to execution.)

(FOR USE BY SAN DIEGO UNIFIED PORT DISTRICT)

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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

Description of Attached Document
Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____
- □ Individual
- □ Corporate Officer --Title(s):_____
- □ Partner -- ⊐ Limited ⊐ General
- □ Attorney in Fact
- □ Trustee
- □ Guardian or Conservator
- □ Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer's Name _____
- □ Individual
- □ Corporate Officer --Title(s):_____
- □ Partner -- ⊐ Limited ⊐ General
- □ Attorney in Fact
- □ Trustee
- □ Guardian or Conservator
- □ Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

(FOR USE BY RIDA CHULA VISTA, LLC)

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____
- □ Individual
- □ Corporate Officer --Title(s):_____
- □ Partner -- □ Limited □ General
- □ Attorney in Fact
- □ Trustee
- □ Guardian or Conservator
- □ Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer's Name _____
- □ Individual
- □ Corporate Officer --Title(s):_____
- □ Partner -- □ Limited □ General
- □ Attorney in Fact
- □ Trustee
- □ Guardian or Conservator
- □ Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

EXHIBIT G

RENT ROLL

[EXCEL COPY OF THE FOLLOWING AVAILABLE ON REQUEST]

EXHIBIT H

FORM OF ESTOPPEL STATEMENT

Name
Address

RE: [_____] ("**Premises**")

Ladies and Gentlemen:

This Estoppel Statement ("**Statement**") is issued by the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (hereinafter referred to as "**Landlord**"), as landlord under that certain lease dated [_____], covering a portion of those lands conveyed to Landlord by that certain act of the Legislature of the State of California entitled "San Diego Unified Port District Act", Stats. 1962, 1st Ex. Sess., c. 67, as amended, between Landlord and RIDA Chula Vista, LLC, a Delaware limited liability company (hereinafter referred to as "**Tenant**"), as tenant, a copy of which lease is on file in the Office of the Clerk of Landlord bearing Document No. [_____] (the "**Lease**").

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

1. The Lease is currently in full force and effect and has not been modified in whole or in part, except as provided by [that/those] certain amendment[s] described and dated as follows: [N/A or list amendment(s)], copies of which amendment(s) [is/are] on file in the Office of the Clerk of Landlord bearing Document No.(s) [_____].

2. The Lease is for a term of sixty-six (66) years, commencing [_____] and ending [_____].

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

4. Landlord has no actual knowledge (without any duty of investigation or inquiry) of any other assignment or hypothecation of said leasehold estate, or any pledge or assignment of rents with respect to said Premises [except any security interest therein created in favor of [_____] for a loan in the amount of [_____] Dollars ($[_____]) as consented to by Landlord in an Administrative Approval or Resolution No. [_____], a copy of which is attached hereto and by reference incorporated herein].

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

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

Executed this _____ day of _____, 20___.

APPROVED AS TO FORM AND LEGALITY
GENERAL COUNSEL

By: _____
Assistant/Deputy

SAN DIEGO UNIFIED PORT DISTRICT,
a public corporation

By: _____
[_____]
[_____]

SDUPD Docs No. _____

EXHIBIT I

FORM OF CONVENTION CENTER SUBLEASES

The form of Convention Center Subleases will be negotiated by the Landlord and Tenant and will be the documents effectuating the public financing by the Landlord, City or the JEPA for or related to the Premises, the Tenant's Phase 1A Improvements or the Convention Center to be reasonably agreed by Landlord and Tenant.

(to be attached prior to execution.)

EXHIBIT J

FORM OF LETTER OF CREDIT

[Form of Letter of Credit substantially similar to Irrevocable Standby Letter of Credit from Wells Fargo Bank, N.A., Number IS000040852U, issued on May 10, 2018 to the Landlord, as the beneficiary, and Tenant, as the applicant, in the amount of $1,000,000 that expires on May 10, 2019.]

EXHIBIT K

LETTER OF CREDIT ISSUERS

Wells Fargo Bank, N.A.

Bank of America, N.A.

Cullen/Frost Bankers, Inc.

Crédit Agricole S.A.

The Bank of Nova Scotia, operating as Scotiabank

BBVA Compass Bancshares, Inc.

EXHIBIT L

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

Pursuant to Article 11 of the Lease, the form of Assignment and Assumption Agreement will be substantially in a form to be reasonably agreed to by Tenant and Landlord prior to execution of the Lease (with any deviations from such form being approved by Landlord in Landlord's reasonable discretion during the Term) where Transferee assumes all liability and obligations under this Lease first arising from and after the effective date of such Transfer, and Tenant (but not the Completion Guarantor(s), if the effective date of the Transfer will be before the date that is six (6) months after the later of :(i) the end of the Construction Period and (ii) the date the Resort Hotel is open for business) shall be relieved from any liability under this Lease first arising from and after the effective date of such Transfer.

(to be attached prior to execution.)

EXHIBIT M

PRIOR AGREEMENTS

During the term of the DDA, Landlord and Tenant will include any agreements or specific portions of any agreements which have express survival provisions.

(to be attached prior to execution.)

EXHIBIT N

PRE-APPROVED ADVERTISING DEVICES

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

(to be attached prior to execution.)

EXHIBIT O

ENERGY REQUIREMENTS

[Agreement among Landlord, the City and Tenant regarding the use, and monitoring of use, of energy at the Premises and Improvements pursuant to Section 15 and Exhibit 3 of the Settlement Agreement to be negotiated and finalized prior to execution of this Ground Lease and to be based on the following Section 4.22 from the DDA:

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.]

EXHIBIT P

FORM OF SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Prior to execution of this Lease, each Permitted Lender will present its form of Subordination, Non-Disturbance and Attornment Agreement for the Landlord's consideration. If the Permitted Lender and the Landlord can mutually agree on the form of Subordination, Non-Disturbance and Attornment Agreement and the Landlord secures any necessary approvals from the BPC, such form of Subordination, Non-Disturbance and Attornment Agreement for the Permitted Mortgage Lender will be attached as Exhibit "P-1" hereto and the form of Subordination, Non-Disturbance and Attornment Agreement for the Permitted Mezzanine Lender will be attached as Exhibit "P-2" hereto.

(to be attached prior to execution.)

EXHIBIT Q

LANDLORD TRANSFER DOCUMENTS

Lease

Convention Center Subleases

CVBMP Documents

EXHIBIT R

PARKING IMPROVEMENTS

1. Landlord shall pay to Tenant the Landlord's Parking Contribution in accordance with Section 4.3 and this Exhibit "R"; provided, however, that Landlord shall not be required to pay any Parking Improvements Development Costs for which Landlord has not received an invoice pursuant to and in accordance with this Exhibit "R". Tenant shall provide to Landlord on a monthly basis invoices for an amount equal to the difference between (a) the amount of all Parking Improvements Development Costs that Tenant has incurred *less* (b) the cost of all Parking Improvements Development Costs for which Landlord has previously paid Tenant. With each such invoice, Tenant shall submit supporting documentation and statutory conditional mechanics lien waivers (or bonds in lieu of such lien waivers) from all of Tenant's contractors for the Parking Improvements who have not submitted statutory final mechanics lien waivers (or bonds in lieu of such lien waivers). Tenant shall withhold a retainage of ten percent (10%) of each amount payable to any contractor for the Parking Improvements Development Costs until Tenant receives copies of the statutory conditional final mechanics lien waivers for the Parking Improvements from such contractor ("**Retainage**"). Tenant shall clearly designate in each invoice the total amount of the Retainage. Except for the applicable amount of the Retainage, and provided that the amount of the remaining amount of the invoice when added to the other invoices paid by Landlord pursuant to this Section 1 and the Retainage will not exceed the Landlord's Parking Contribution, Landlord shall pay the amount of each invoice to Tenant no later than thirty (30) days after Landlord receives such invoice. Upon Landlord's receipt of copies of the statutory final mechanics lien waivers for the Parking Improvements, Landlord shall pay the total amount of the Retainage to Tenant, which shall then pay the respective portion of the Retainage to each applicable contractor for the Parking Improvements Development Costs. Notwithstanding anything to the contrary in this Lease, if Landlord elects to pay the Landlord's Parking Contribution, Landlord will not be required to pay any amount in excess of Landlord's Parking Contribution for the Parking Improvements Development Costs.

2. Landlord shall own the Parking Improvements. Landlord shall grant to Tenant an easement or lease to use, operate, repair and maintain the Parking Improvements in the form of Exhibit "U" attached hereto.

3. Except to the extent that Landlord is responsible for any maintenance, repair or replacement under the next sentence, Tenant shall be responsible for all maintenance and repair of the Parking Improvements and energy components installed by Tenant to comply with the Minimum Energy Efficiency Design Standard with respect to the Parking Improvements ("**Tenant Energy Improvements**"). Notwithstanding the foregoing, Landlord shall be responsible for all costs associated with maintenance, repair and replacement, if any, related to (a) the structural components of the Parking Improvements (other than cosmetic features) and (b) all energy components installed on or at the Parking Improvements other than the Tenant Energy Improvements ("**Landlord Energy Improvements**", and together with the Tenant Energy Improvements, the "**Energy Improvements**"). Landlord shall maintain all-risk property insurance on the

Parking Improvements and Energy Improvements in full force and effect from the completion of the Parking Improvements to the end of the Term, in an amount not less than the replacement cost of the Parking Improvements and Energy Improvements. Such insurance shall name Tenant Parties as additional insureds and such insurance shall include a waiver of subrogation in favor of Tenant Parties. Notwithstanding anything to the contrary in this Lease, Landlord shall not be required to maintain all-risk property insurance for any personal property of a Tenant Party or Hotel Operator at the Parking Improvements and Tenant shall be solely responsible for any loss or damage to the personal property of Tenant Party or Hotel Operator. Tenant shall maintain Commercial General Liability insurance covering the Parking Improvements and Energy Improvements and operation of the Parking Improvements and Energy Improvements in the amount of not less than Two Million Dollars ($2,000,000) combined single limit per occurrence for bodily injury and property damage. The general aggregate shall be Four Million Dollars ($4,000,000) unless a Two Million Dollar ($2,000,000) per location aggregate limit is provided by separate endorsement. Such insurance shall name Landlord Parties as additional insureds and such insurance shall include a waiver of subrogation in favor of Landlord Parties. If the Parking Improvements or the Energy Improvements are damaged or destroyed and such damage or destruction does not result from Tenant's failure to perform its maintenance or repair obligations under this Exhibit "R" or caused by the negligence of a Tenant Party or Hotel Operator, then (a) Landlord may elect to repair, restore or replace the damaged Parking Improvements and the Energy Improvements, as applicable, in which case Landlord shall complete such repair, restoration or replacement, as applicable, in a diligent manner at its sole cost and expense (including in the case when the insurance proceeds are insufficient to pay for the costs of such repair, restoration or replacement, as applicable), or (b) Landlord may elect that Tenant repairs, restores or replaces the damaged Parking Improvements and the Energy Improvements, as applicable, in which case Tenant shall complete such repair, restoration or replacement, as applicable, in a diligent manner, and Landlord shall pay Tenant for all costs of such repair, restoration or replacement, as applicable, and funds shall be distributed in a manner substantially similar to the manner set forth in Section 1 of this Exhibit "R". If the damage or destruction does result from Tenant's failure to perform its maintenance or repair obligations under this Exhibit "R" or the negligence of a Tenant Party or Hotel Operator, and is not insured under the insurance that Landlord is required to maintain hereunder, then Tenant shall repair, restore, or replace, as applicable, the Parking Improvements and Energy Components in a diligent manner at its sole cost and expense.

4. Commencing on the Rent Commencement Date, Tenant shall pay to Landlord monthly parking improvement rent equal to the product of the applicable percentage rate set forth below, as adjusted pursuant to Section 6 of this Exhibit "R" ("**Parking Improvement Rent Rate**"), multiplied by all Tenant Parking Improvement Revenue for the applicable calendar month, and less any refunds, rebates, discounts or credits which Tenant issues to Tenant's employees, Subtenants, independent contractors, visitors, patrons, customers, invitees or any other third party; provided that, with respect to refunds only, Tenant may deduct any material refund only if such refund is documented in a reasonable form which is provided to Landlord as part of the Monthly Parking Report (such amount from time to time, "**Parking Improvement Rent**"):

    - Lease Years 1 – 37: 12.5%
    - Lease Years 38 – 66: 15%

"**Tenant Parking Improvement Revenue**" means the following amounts whether collected or uncollected, received, payable or accrued by Tenant, without any deductions or exclusions, whether paid in cash or for credit: (a) any amounts paid to Tenant by any Person for using a parking space in the Parking Improvements through the Resort Hotel valet service and (b) any amounts paid to Tenant by any Person for self-parking in the Parking Improvements. Tenant shall at all times operate the Parking Improvements on a for-fee basis.

Upon written notice to Tenant, and not more frequently than five (5) times per year, Landlord shall have the right to reserve all parking spaces in the Parking Improvements that Tenant or the Hotel Operator determines, each in its reasonable discretion, are available during the specified times, for use by the general public during special events in the Chula Vista Bayfront. Landlord shall have the right to set the rates for such reserved parking spaces and shall not be required to pay Tenant, any other Tenant Party or the Hotel Operator for the use of such reserved parking spaces but any revenues for the use of such spaces will be paid to Tenant and shall be included in the Tenant Parking Improvement Revenue.

5. On or before the twentieth (20^{th}) day of each month, and on or before the twentieth (20^{th}) day following the last day of the month in which this Lease is terminated or expires, Tenant shall deliver to Landlord, in a form prescribed by Landlord, a detailed cumulative report of Tenant Parking Improvement Revenue, Surface Parking Improvement Revenue, and Premises Surface Parking Revenue for that portion of the Lease Year which ends with and includes the last day of the previous calendar month ("**Monthly Parking Report**"). Each Monthly Parking Report shall be signed by an authorized representative of Tenant under penalty of perjury and shall include the following:

    a. The total Tenant Parking Improvement Revenue, Surface Parking Improvement Revenue, and Premises Surface Parking Revenue for said portion of the Lease Year itemized as to each of percentage rent categories for which a separate percent rent category is established; and

    b. The related itemized amounts of percentage rent computed, and herein provided, and the total thereof.

6. If the Persons that own the direct and indirect ownership interests in Tenant as of the Commencement Date (which shall include, as applicable, (A) each sibling of such Person, the spouse of such Person, and each parent, child, grandchild or great-grandchild of such Person (including relatives by marriage); (B) any trust for the benefit of such Person or any of the foregoing members of his or her family; and (C) where such Person 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) own, in the aggregate, less than fifty-one percent (51%) of the direct and indirect ownership interest in Tenant ("**Change in Ownership**"), then the applicable Parking Improvement Rent Rate shall increase as follows, and shall be effective immediately as of the date of such Change in Ownership:
    - Lease Years 1 – 37: 15%
    - Lease Years 38 – 66: 20%;

    provided, however, that the foregoing increases in the Parking Improvement Rent Rate shall not apply in the case of any Change in Ownership in connection with any

foreclosure on the Permitted Encumbrance or any action in lieu of foreclosure by a Permitted Lender or to a Foreclosure Purchaser that is a Permitted Lender or an SPE Lender Affiliate or the immediately subsequent Change in Ownership by such Foreclosure Purchaser to any other Person.

EXHIBIT R-1

DESCRIPTION OF PARKING STRUCTURE LAND

(to be inserted prior to execution.)

EXHIBIT R-2

DEPICTION OF PARKING STRUCTURE LAND

(to be inserted prior to execution.)

EXHIBIT R-3

PARKING IMPROVEMENTS

1. Landlord shall construct diligently the Parking Improvements on the Parking Structure Land.

2. Landlord shall own the Parking Improvements. Landlord shall grant to Tenant an easement or lease to use, operate, repair and maintain the Parking Improvements in the form of Exhibit "U" attached hereto. Subject to the terms of the [easement/lease] set forth in Exhibit "U", Section 4.3 and this Exhibit "R-3", Tenant shall have the non-exclusive right to use 1,600 parking spaces within the Parking Improvements.

3. Except to the extent that Landlord is responsible for any maintenance, repair or replacement under the next sentence, Tenant shall be responsible for all maintenance and repair of the Parking Improvements and energy components installed by Tenant to comply with the Minimum Energy Efficiency Design Standard with respect to the Parking Improvements ("**Tenant Energy Improvements**"). Notwithstanding the foregoing, Landlord shall be responsible for all costs associated with maintenance, repair and replacement, if any, related to (a) the structural components of the Parking Improvements (other than cosmetic features) and (b) all energy components installed on or at the Parking Improvements other than the Tenant Energy Improvements ("**Landlord Energy Improvements**", and together with the Tenant Energy Improvements, the "**Energy Improvements**"). Landlord shall maintain all-risk property insurance on the Parking Improvements and Energy Improvements in full force and effect from the completion of the Parking Improvements to the end of the Term, in an amount not less than the replacement cost of the Parking Improvements and Energy Improvements. Such insurance shall name Tenant Parties as additional insureds and such insurance shall include a waiver of subrogation in favor of Tenant Parties. Notwithstanding anything to the contrary in this Lease, Landlord shall not be required to maintain all-risk property insurance for any personal property of a Tenant Party or Hotel Operator at the Parking Improvements and Tenant shall be solely responsible for any loss or damage to the personal property of Tenant Party or Hotel Operator. Tenant shall maintain Commercial General Liability insurance covering the Parking Improvements and Energy Improvements and operation of the Parking Improvements and Energy Improvements in the amount of not less than Two Million Dollars ($2,000,000) combined single limit per occurrence for bodily injury and property damage. The general aggregate shall be Four Million Dollars ($4,000,000) unless a Two Million Dollar ($2,000,000) per location aggregate limit is provided by separate endorsement. Such insurance shall name Landlord Parties as additional insureds and such insurance shall include a waiver of subrogation in favor of Landlord Parties. If the Parking Improvements or the Energy Improvements are damaged or destroyed and such damage or destruction does not result from Tenant's failure to perform its maintenance obligations under this Exhibit "R-3" or the negligence of a Tenant Party or Hotel Operator, then (a) Landlord may elect to repair, restore or replace the damaged Parking Improvements and the Energy Improvements, as applicable, in which case Landlord shall complete such repair, restoration or replacement, as applicable, in a diligent manner at its sole cost and expense (including in the case when the insurance proceeds are insufficient to pay for

the costs of such repair, restoration or replacement, as applicable), or (b) Landlord may elect that Tenant repairs, restores or replaces the damaged Parking Improvements and the Energy Improvements, as applicable, in which case Tenant shall complete such repair, restoration or replacement, as applicable, in a diligent manner, and Landlord shall pay Tenant for all costs of such repair, restoration or replacement, as applicable, and funds shall be distributed in a manner substantially similar to the manner set forth in Section 1 of Exhibit "R". If the damage or destruction does result from Tenant's failure to perform its maintenance or repair obligations under this Exhibit "R" or the negligence of a Tenant Party or Hotel Operator, and is not insured under the insurance that Landlord is required to maintain hereunder, then Tenant shall repair, restore, or replace, as applicable, the Parking Improvements and Energy Components in a diligent manner at its sole cost and expense.

4. Commencing on the Rent Commencement Date, Tenant shall pay to Landlord monthly parking improvement rent equal to the product of the applicable percentage rate set forth below, as adjusted pursuant to Section 6 of this Exhibit "R-3" ("**Parking Improvement Rent Rate**"), multiplied by all Tenant Parking Improvement Revenue for the applicable calendar month, and less any refunds, rebates, discounts or credits which Tenant issues to Tenant's employees, Subtenants, independent contractors, visitors, patrons, customers, invitees or any other third party; provided that, with respect to refunds only, Tenant may deduct any material refund only if such refund is documented in a reasonable form which is provided to Landlord as part of the Monthly Parking Report (such amount from time to time, "**Parking Improvement Rent**"):

    - Lease Years 1 – 37: 12.5%
    - Lease Years 38 – 66: 15%

    "**Tenant Parking Improvement Revenue**" means the following amounts whether collected or uncollected, received, payable or accrued by Tenant, without any deductions or exclusions, whether paid in cash or for credit: (a) any amounts paid to Tenant by any Person for using a parking space in the Parking Improvements through the Resort Hotel valet service and (b) any amounts paid to Tenant by any Person for self-parking in the Parking Improvements. Tenant shall at all times operate the Parking Improvements on a for-fee basis.

    Upon written notice to Tenant, and not more frequently than five (5) times per year, Landlord shall have the right to reserve all parking spaces in the Parking Improvements that Tenant or the Hotel Operator determines, each in its reasonable discretion, are available during the specified times, for use by the general public during special events in the Chula Vista Bayfront. Landlord shall have the right to set the rates for such reserved parking spaces and shall not be required to pay Tenant, any other Tenant Party or the Hotel Operator for the use of such reserved parking spaces but any revenues for the use of such spaces will be paid to Tenant and shall be included in the Tenant Parking Improvement Revenue.

5. On or before the twentieth (20th) day of each month, and on or before the twentieth (20th) day following the last day of the month in which this Lease is terminated or expires, Tenant shall deliver to Landlord, in a form prescribed by Landlord, a detailed cumulative report of Tenant Parking Improvement Revenue, Surface Parking Improvement Revenue and Premises Surface Parking Revenue for that portion of the Lease Year which ends with and includes the last day of the previous calendar month ("**Monthly Parking Report**"). Each Monthly Parking Report shall be signed by an

authorized representative of Tenant under penalty of perjury and shall include the following:

a. The total Tenant Parking Improvement Revenue, Surface Parking Improvement Revenue and Premises Surface Parking Revenue for said portion of the Lease Year itemized as to each of percentage rent categories for which a separate percent rent category is established; and

b. The related itemized amounts of percentage rent computed, and herein provided, and the total thereof.

6. If the Persons that own the direct and indirect ownership interests in Tenant as of the Commencement Date (which shall include, as applicable, (A) each sibling of such Person, the spouse of such Person, and each parent, child, grandchild or great-grandchild of such Person (including relatives by marriage); (B) any trust for the benefit of such Person or any of the foregoing members of his or her family; and (C) where such Person 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) own, in the aggregate, less than fifty-one percent (51%) of the direct and indirect ownership interest in Tenant ("**Change in Ownership**"), then the applicable Parking Improvement Rent Rate shall increase as follows, and shall be effective immediately as of the date of such Change in Ownership:
    - Lease Years 1 – 37: 15%
    - Lease Years 38 – 66: 20%;

   provided, however, that the foregoing increases in the Parking Improvement Rent Rate shall not apply in the case of any Change in Ownership in connection with any foreclosure on the Permitted Encumbrance or any action in lieu of foreclosure by a Permitted Lender or to a Foreclosure Purchaser that is a Permitted Lender or an SPE Lender Affiliate or the immediately subsequent Change in Ownership by such Foreclosure Purchaser to any other Person.

EXHIBIT R-4

PARKING IMPROVEMENTS

1. Tenant shall design and construct diligently the Parking Improvements on the Parking Structure Land.

2. Tenant shall own the Parking Improvements. Tenant shall operate, or cause a third party consented to by Landlord (in its reasonable discretion) to operate, the Parking Improvements.

3. Tenant shall have the exclusive right to use all of the parking spaces within the Parking Improvements.

4. Tenant shall be responsible for all maintenance and repair of the Parking Improvements and energy components installed by Tenant to comply with the Minimum Energy Efficiency Design Standard ("**Energy Improvements**"). Tenant shall maintain all-risk property insurance on the Parking Improvements and Energy Improvements in full force and effect from the completion of the Parking Improvements to the end of the Term, in an amount not less than the replacement cost of the Parking Improvements and Energy Improvements and shall include business interruption and extra expense for full recovery of the net profits and continuing expenses (including Rent to Landlord) for the duration of the period of restoration. Such insurance shall name Landlord Parties as additional insureds and such insurance shall include a waiver of subrogation in favor of Landlord Parties. Tenant shall also maintain Commercial General Liability insurance covering the Parking Improvements and Energy Improvements and operation of the Parking Improvements and Energy Improvements in the amount of not less than Two Million Dollars ($2,000,000) combined single limit per occurrence for bodily injury and property damage. The general aggregate shall be Four Million Dollars ($4,000,000) unless a Two Million Dollar ($2,000,000) per location aggregate limit is provided by separate endorsement. Such insurance shall name Landlord Parties as additional insureds and such insurance shall include a waiver of subrogation in favor of Landlord Parties.

5. Commencing on the later of (a) the Rent Commencement Date and (b) completion of the Parking Improvements, Tenant shall pay to Landlord monthly parking improvement rent equal to the product of three percent (3%) ("**Parking Improvement Rent Rate**"), multiplied by all Tenant Parking Improvement Revenue for the applicable calendar month, and less any refunds, rebates, discounts or credits which Tenant issues to Tenant's employees, Subtenants, independent contractors, visitors, patrons, customers, invitees or any other third party; provided that, with respect to refunds only, Tenant may deduct any material refund only if such refund is documented in a reasonable form which is provided to Landlord as part of the Monthly Parking Report (such amount from time to time, "**Parking Improvement Rent**"):

   "**Tenant Parking Improvement Revenue**" means the following amounts whether collected or uncollected, received, payable or accrued by Tenant, without any deductions or exclusions, whether paid in cash or for credit: (a) any amounts paid to Tenant by any Person for using a parking space in the Parking Improvements through the Resort Hotel valet service and (b) any amounts paid to Tenant by any Person for

self-parking in the Parking Improvements. Tenant shall at all times operate the Parking Improvements on a for-fee basis.

6. On or before the twentieth (20th) day of each month, and on or before the twentieth (20th) day following the last day of the month in which this Lease is terminated or expires, Tenant shall deliver to Landlord, in a form prescribed by Landlord, a detailed cumulative report of Tenant Parking Improvement Revenue, Surface Parking Improvement Revenue, and Premises Surface Parking Revenue for that portion of the Lease Year which ends with and includes the last day of the previous calendar month ("**Monthly Parking Report**"). Each Monthly Parking Report shall be signed by an authorized representative of Tenant under penalty of perjury and shall include the following:

    a. The total Tenant Parking Improvement Revenue, Surface Parking Improvement Revenue, and Premises Surface Parking Revenue for said portion of the Lease Year itemized as to each of percentage rent categories for which a separate percent rent category is established; and

    b. The related itemized amounts of percentage rent computed, and herein provided, and the total thereof.

EXHIBIT S

APPROVED DOCUMENTS

Right of Entry with Rohr

Easement with Rohr

CVBMP Documents

Approved Title Exceptions

(to be revised / completed prior to execution.)

EXHIBIT T

DISTRICT DOCUMENTS

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

EXHIBIT U

PARKING EASEMENT/LEASE

Prior to execution of the Lease, the Landlord and Tenant will negotiate a form of Parking Easement or Parking Lease to memorialize any rights of the Tenant to use the Parking Structure Land and the Parking Improvements.

(to be attached prior to execution.)

EXHIBIT V

PUBLIC DEBT SERVICE OBLIGATION

(to be attached prior to execution.)**