

**Attachment G to Agenda File 2021-0248**


**FACILITY LEASE  
(CHULA VISTA BAYFRONT CONVENTION CENTER)**

**by and between**

**CITY OF CHULA VISTA BAYFRONT FACILITIES FINANCING AUTHORITY,  
as Lessor**

**and**

**CITY OF CHULA VISTA,  
as Lessee**

**Dated as of \_\_\_\_\_, [2021]**

**Relating to**

**CHULA VISTA BAYFRONT FACILITIES FINANCING AUTHORITY  
REVENUE BONDS  
(CHULA VISTA BAYFRONT CONVENTION CENTER)**

<b>\$ _____ [Series 2021A (Federally Taxable)]</b>	<b>\$ _____ [Series 2021B (Tax-Exempt)]</b>
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**FACILITY LEASE  
(CHULA VISTA BAYFRONT CONVENTION CENTER)**

THIS FACILITY LEASE (CHULA VISTA BAYFRONT CONVENTION CENTER) (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Facility Lease”), dated as of \_\_\_\_\_, [2021], is entered into by and between the Chula Vista Bayfront Facilities Financing Authority, a California joint exercise of powers authority (the “JEPA”) established and existing pursuant to an Amended and Restated Joint Exercise of Powers Agreement, dated and effective as of July 25, 2019 (as it may be amended, amended and restated, supplemented or otherwise modified from time to time, the “JEPA Agreement”), by and between the City of Chula Vista, a California charter city (the “City”), and the San Diego Unified Port District, a public corporation (the “Port”), as lessor, and the City, as lessee;

***WITNESSETH:***

WHEREAS, the JEPA, the Port and the City have determined it to be beneficial, for the JEPA to acquire a leasehold interest in certain real property described in Exhibit A hereto and depicted in Exhibit B hereto (the “Site”) and the Existing Improvements (defined herein) upon which the Convention Center (defined herein) to be owned by the JEPA will be constructed and operated; and

WHEREAS, the JEPA and the Port have entered into that certain Site Lease dated as of the date hereof, (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Site Lease”), pursuant to which the Port, as landlord, has leased to the JEPA the Site; and

WHEREAS, RIDA Chula Vista, LLC, a Delaware limited liability company (together with its permitted successors and assigns, “RIDA”) holds a leasehold interest in certain real property which is immediately adjacent to the Site (the “Ground Lease Property”) described in and pursuant to a Lease, entered into as of \_\_\_\_\_, [2021] (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Ground Lease”), by and between the Port, as landlord, and RIDA, as tenant on which RIDA will be constructing a resort hotel (the “Hotel”) in accordance with the requirements of the Ground Lease; and

WHEREAS, given the proximity of the proposed Hotel to the Site, the JEPA, the Port and the City have determined it to be beneficial to have RIDA construct the Convention Center on behalf of the JEPA and operate the Convention Center; and

WHEREAS, the Port and the City have agreed to cause the JEPA to provide financing for a portion of the costs of the Project (defined herein); and

WHEREAS, such financing will be accomplished through the issuance of the Bonds (defined herein) by the JEPA which will be payable, in part, from lease payments made by the City to the JEPA under this Facility Lease, pursuant to which the City is subleasing from the JEPA the Site and the Existing Improvements and leasing from the JEPA the Convention Center (the Convention Center, the Site and the Existing Improvements are referred to collectively herein as the “Facility”); and

WHEREAS, the City will sublease the Convention Center to RIDA and sub-sublease the Site to RIDA in accordance with the terms of a Sublease Agreement, dated as of the date hereof, in the form attached hereto as Exhibit F (as amended, amended and restated, supplemented or otherwise modified from time to time, together with any New Sublease (as defined in the Sublease) the “Sublease”), by and between the City, as sublessor, and RIDA, as sublessee, pursuant to which RIDA will sublease the Facility from the City; and

WHEREAS, to provide for certain construction requirements and other matters relating to the Project, the JEPA, Port, City, the Financing District and RIDA are entering into that certain Project Implementation Agreement (Chula Vista Bayfront Resort Hotel and Convention Center), dated the date hereof (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Project Implementation Agreement”); and

WHEREAS, the parties hereto intend that, during the Term (defined herein), the Convention Center will be owned by the JEPA and the Convention Center will be operated and maintained by RIDA pursuant to the Sublease so long as the Sublease is in effect; and

WHEREAS, the City Council has determined that it is in the best interest of the City and for the common benefit of the citizens residing in the City to assist in the financing of the Project and to enter into this Facility Lease.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS AND EXHIBITS

**Section 1.1 Definitions and Rules of Construction.** Capitalized terms used but not defined herein shall have the meanings set forth in the Definitions Addendum attached as Exhibit D hereto and if not defined therein then shall have the meaning set forth in the Indenture, dated as of the date hereof (the “Indenture”), by and between the JEPA and Wilmington Trust, National Association, as trustee (the “Trustee”), pursuant to which the Bonds are issued. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa. The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Facility Lease, refer to this Facility Lease as a whole.

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

- Exhibit A: Description of the Site
- Exhibit B: Plat Map of the Site
- Exhibit C: Schedule of Lease Payments
- Exhibit D: Definitions Addendum
- Exhibit E: JEPA Documents
- Exhibit F: Form of Sublease
- Exhibit G: Schedule of MSA Lease Payments
- Exhibit H-1: Form of Facility Lease Advance Rent Notice
- Exhibit H-2: Form of Sublease Advance Rent Notice
- Exhibit I: Approved Agreements
- Exhibit J: Memorandum of Lease

## **ARTICLE II**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS**

**Section 2.1 Representations, Warranties, Covenants of the City.** The City represents, warrants and covenants to the JEPA as follows:

(a) Due Organization and Existence. The City is a municipal corporation and charter city, duly organized and existing under and by virtue of the Constitution and laws of the State, with the power and authority to own, lease and acquire real and personal property and equipment. To the extent permitted by law, the City agrees that during the term hereof it will maintain its existence as a charter city, will not dissolve or otherwise dispose of all or substantially all of its assets and will not combine or consolidate with or merge into any other entity or permit one or more other entities to consolidate with or merge into it.

(b) Authorization; Enforceability. The Constitution and laws of the State and the City Charter authorize the City to enter into this Facility Lease, the Sublease and the Project Implementation Agreement and to enter into the transactions contemplated by and to carry out its obligations under this Facility Lease, the Sublease and the Project Implementation Agreement and the City has duly authorized the execution and delivery of this Facility Lease, the Sublease and the Project Implementation Agreement. This Facility Lease, the Sublease and the Project Implementation Agreement constitute the legally, valid and binding obligations of the City, enforceable in accordance with their terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

(c) No Conflicts or Default; No Liens or Encumbrances. Neither the execution and delivery of this Facility Lease, the Sublease and the Project Implementation Agreement, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby and thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City is bound, including without limitation, the City Charter, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the City or upon the Facility, except to the extent of the encumbrance created by this Facility Lease and the Sublease.

(d) Execution and Delivery. The City has duly executed and delivered this Facility Lease, the Sublease and the Project Implementation Agreement in accordance with the Constitution and laws of the State and the City Charter.

(e) Indemnification of the JEPA and the Trustee. To the extent permitted by law and subject to the provisions and limitations of Section 10.2 herein, the City covenants to defend, indemnify and hold harmless the JEPA and the Trustee and their respective assigns, board members, directors, officers and employees (each an “Indemnified Party”) against any and all losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which an Indemnified Party may become subject under any statute or at law or in equity or otherwise in connection with the transactions contemplated by this Facility Lease arising from the City’s sole negligence, willful misconduct or breach of the City’s obligations hereunder, and shall reimburse any Indemnified Party for any legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of the City’s sole negligence, willful misconduct or breach of the City’s obligations hereunder. Notwithstanding the foregoing, the City shall not defend, indemnify and hold harmless any Indemnified Party for claims, losses or damages, including legal fees and expenses, arising out of the willful misconduct or negligence of such Indemnified Party or to the extent such Indemnified Party is being indemnified by RIDA for such claim in accordance with Section 2.2(b) of the Sublease; provided that the City agrees that one Indemnified Party shall not be responsible for the willful misconduct or negligence of any other Indemnified Party.

(f) Covenant Regarding Sales and Use Tax. During the Term, the City shall not initiate any action or voluntarily agree to (i) reduce the rate or levy of, (ii) repeal, terminate or reduce the items subject to, or (iii) suspend or terminate the collection of, the Sales and Use Tax.

(g) Covenant Regarding Transient Occupancy Taxes. During the Term, the City shall not initiate any action or voluntarily agree to (i) reduce the rate or levy of, (ii) repeal, terminate or reduce the items subject to, or (iii) suspend, or terminate the collection of, the Transient Occupancy Taxes.

(h) Enforcement of Sublease Terms. The City shall enter into the Sublease and subject to the limitations set forth in Section 10.2 hereof shall diligently enforce the terms of the Sublease against RIDA and any successor thereto. The City shall not amend, waive or otherwise modify any provisions of the Sublease without the prior written consent of the Port and the JEPA.

(i) Advance Rent Notice. As and when required pursuant to the Project Implementation Agreement (and only at such times), the JEPA shall submit Facility Lease Advance Rent Notices to the City. Upon receipt of a Facility Lease Advance Rent Notice from the JEPA, the City shall promptly submit to RIDA a Sublease Advance Rent Notice for an equivalent amount.

(j) RIDA Sublease Payments and Sublease Advance Rent. The City acknowledges and agrees that the RIDA Sublease Payments and the Sublease Advance Rent do not constitute Lease Revenues and are not available for and shall not be used by the City to make any of the Lease Payments or Pre-Completion Lease Payments. Subject to the foregoing, in the event that the City receives any payment of RIDA Sublease Payments or Sublease Advance Rent, within 10 Business Days, the City will pay such amount to the JEPA as rent in addition to the City’s obligation to make Lease Payments and Pre-Completion Lease Payments hereunder. The City shall have no liability to pay any amount to the JEPA with respect to RIDA Sublease Payments or Sublease



Advance Rent other than amounts actually paid to the City by RIDA. In satisfaction of the City's obligation to pay RIDA Sublease Payments and Sublease Advance Rent to the JEPA, the City hereby assigns to the JEPA all rights that the City has to RIDA Sublease Payments and Sublease Advance Rent.

**Section 2.2 Representations, Warranties and Covenants of the JEPA.** The JEPA represents, warrants and covenants to the City as follows:

(a) Due Organization and Existence; Enforceability. The JEPA is a public body corporate and politic duly organized, existing and in good standing under and by virtue of the laws of the State and the JEPA Agreement, has the power to enter into the Site Lease, this Facility Lease, the Project Implementation Agreement, the Loan Agreement, the Port Support Agreement and the Indenture; is possessed of full power to own and hold real and personal property, and to lease and sell the same and to issue the Bonds; and has duly authorized the execution and delivery of the Site Lease, this Facility Lease, the Project Implementation Agreement, the Loan Agreement, the Port Support Agreement and the Indenture and the issuance of the Bonds. The Site Lease, this Facility Lease, the Project Implementation Agreement, the Loan Agreement, the Port Support Agreement and the Indenture constitute the legally valid and binding obligations of the JEPA, enforceable in accordance with their respective terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

(b) Limitation on Encumbrances. The JEPA will not pledge or encumber the Lease Payments or other Revenues derived from the Facility or from its other rights under this Facility Lease, the Loan Agreement, the Port Support Agreement or the Site Lease, except as provided under the terms of this Facility Lease, the Site Lease and the Indenture. The JEPA shall not encumber the Facility during the Term, except for any documents effectuating the issuance of the Bonds that the City has agreed to prior to the commencement of the Term, or that the City agrees to, in the City's reasonable discretion, during the Term, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) No Conflicts or Defaults; No Liens or Encumbrances. Neither the execution and delivery of the Site Lease, this Facility Lease, the Project Implementation Agreement, the Loan Agreement, the Port Support Agreement or the Indenture, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of the formation documents of the JEPA, including the JEPA Agreement, or any restriction or any agreement or instrument to which the JEPA is now a party or by which the JEPA is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the JEPA, except for the pledges contained in Section 4.1 of the Indenture, or upon the Facility, except to the extent of the encumbrance created by this Facility Lease and the Site Lease.

(d) Execution and Delivery. The JEPA has duly executed and delivered the Site Lease, this Facility Lease, the Project Implementation Agreement, the Loan Agreement, the Port Support Agreement and the Indenture in accordance with the Constitution and laws of the State and the JEPA Agreement.

(e) Maintenance of Existence. To the extent permitted by law, the JEPA agrees that during the term hereof it will maintain its existence as a joint powers authority, will not dissolve or otherwise dispose of all or substantially all of its assets, if any, will not become a general or limited partner in any partnership and will not combine or consolidate with or merge into any other entity or permit one or more other entities to consolidate with or merge into it, unless (i) such action will not cause a merger of the City's subleasehold interest in the Site and its leasehold interest in the Convention Center and RIDA's sub-leasehold interests in the Facility, (ii) the successor thereto is a public agency which expressly agrees to assume all rights and responsibilities of the JEPA under the Site Lease, this Facility Lease, the Project Implementation Agreement, the Loan Agreement, the Port Support Agreement and the Indenture, and (iii) the JEPA provides to the Trustee an Opinion of Bond Counsel that such combination, consolidation or merger will not, in and of itself, cause the interest on any Outstanding Tax-Exempt Bonds to be included in the gross income of the Owners thereof for federal income tax purposes; provided, that no such assignment shall have an adverse effect on the Indenture, the Loan Agreement, the Bonds, the Project Implementation Agreement, Port Support Agreement, the Financing District, the rights of RIDA under the Sublease or the receipt by the Trustee of any of the revenues pledged under the Indenture to the payment of the Bonds. Nothing herein shall prevent the JEPA from becoming a member of another joint exercise of powers authority.

(f) Use of RIDA Sublease Payments and Sublease Advance Rent. The JEPA acknowledges and agrees that the RIDA Sublease Payments and the Sublease Advance Rent do not constitute Lease Revenues and are not available to be used by the City to make Lease Payments, and, therefore, will not be available to repay the Bonds and shall not be pledged by the JEPA to the repayment of the Bonds.

(g) Payment of Certain City Expenses. If the City is obligated to make any expenditure, other than the payment of Lease Payments and payments under Section 2.1(e) herein (including payments to any attorneys or third parties engaged by the City with respect to claims arising under Section 2.1(e)), in order to comply with its covenants and agreements in this Facility Lease, then to the extent such expenditure is not paid for from funds made available to the City by RIDA, such amounts shall be paid or reimbursed by the JEPA, subject to the availability of funds and a separate agreement to be entered into between the Port and City (which may be the Revenue Sharing Agreement), as Priority Administrative Expenses or Additional Administrative Expenses in accordance with the Indenture and the City shall have no liability to pay any such amounts that shall not be reimbursed by the JEPA from any other source of funds.

### ARTICLE III

#### APPLICATION OF BOND PROCEEDS; CONSTRUCTION OF PROJECT

**Section 3.1 Deposit of Bond Proceeds.** On the Closing Date for the Bonds, the JEPA shall cause the net proceeds of the Bonds to be paid to the Trustee. Such funds shall be deposited by the Trustee in the funds and accounts as provided in Section 3.2 of the Indenture and shall be used pursuant to the terms of the Indenture, the Loan Agreement and the Project Implementation Agreement.

**Section 3.2 Financing of Project.** The City and the JEPA agree that the Trustee shall disburse the net proceeds of the Bonds in accordance with Sections 3.4 and 3.10 of the Indenture and the terms of the Project Implementation Agreement.

**Section 3.3 Construction of Convention Center; Completion Certification.** As and to the extent set forth in the Project Implementation Agreement, RIDA is obligated to Complete (as defined in the Project Implementation Agreement) the Convention Center. The JEPA shall provide notice to the City of the date on which the Convention Center is Complete and the date on which the Convention Center will be available for use and occupancy by the City.

## **ARTICLE IV**

### **AGREEMENT TO LEASE; TERM OF LEASE; LEASE PAYMENTS**

**Section 4.1 Lease.** The JEPA hereby subleases the Site and the Existing Improvements and leases the Convention Center and all appurtenant rights thereto, to the City and the City hereby subleases the Site and the Existing Improvements and leases the Convention Center and all appurtenant rights thereto from the JEPA upon the terms and conditions set forth herein, subject to the Permitted Encumbrances and subject to the reservations in Section 2(b) of the Site Lease. For purposes of Section 1938 of the California Civil Code, the JEPA hereby discloses to the City and the City hereby acknowledges, the Site has not undergone an inspection by a Certified Access Specialist.

The JEPA and the City each agree that the JEPA is the owner of the Convention Center during the Term and that the Port will be the owner of the Convention Center upon the termination of the Site Lease and all tax filings will be made consistent with this understanding.

**Section 4.2 Term.** The Term shall commence on the Commencement Date and shall end on \_\_\_\_\_, 20[58], unless extended pursuant to Section 4.3 hereof or terminated sooner pursuant to Section 6.1(c) or (d)(ii) hereof. Notwithstanding anything to the contrary contained herein, subject only to the requirement that this Facility Lease may not extend to a date which is more than sixty-six (66) years from the Commencement Date, this Facility Lease shall not terminate during the term of the Sublease.

**Section 4.3 Extension of Lease Term.** The initial ending date of the Term stated in Section 4.2 may be extended as follows:

(a) If on the final maturity date of the Bonds all interest and principal on the Bonds shall not be fully paid as a result of an abatement of the Lease Payments as provided in Section 4.10 hereof, or a failure of the City to pay the Lease Payments when due hereunder, then the Term shall be extended until all Bonds shall be fully paid.

(b) Notwithstanding the foregoing, if (i) the Ground Lease has terminated for a reason other than (A) an Event of Default (as defined in the Ground Lease) or (B) pursuant to RIDA's exercise of a right to terminate the Ground Lease and (ii) in accordance with applicable law, RIDA remains in possession of the Ground Lease Property notwithstanding such termination, then, on the date that is the 37<sup>th</sup> anniversary of the Commencement Date, the Term of this Facility Lease shall be extended for 29 years on the terms and conditions set forth in this Facility Lease with such modifications to the provisions with respect to the payment of rent so that for any period of time following such extension, the sum of the rent to be paid under this Facility Lease and the Rent (as defined in the Ground Lease) required to be paid under the Ground Lease will equal the Rent (as defined in the Ground Lease) that would have been paid under the Ground Lease as if the Expansion Date (as defined in the Ground Lease) had occurred and the Ground Lease had not been terminated.

(c) Notwithstanding anything to the contrary contained herein, the Term shall in no event be extended beyond the date which is sixty-six (66) years from the Commencement Date.

#### **Section 4.4 Lease Payments.**

(a) Time and Amount. Subject to the provisions of and limitations contained in Sections 4.4(b), 4.10 and 6.1 hereof, the City agrees to pay to the JEPA, its successors and assigns, from moneys on deposit in the Lease Revenues Fund, as the annual rental for the use and possession of the Facility, the Lease Payments in the amounts and on the dates set forth in this Section 4.4 (a). The Lease Payments are due and payable in arrears and in immediately available funds on each Lease Payment Date. The payment due on each May 15 shall be rental for the period from the prior November 15 through the next following May 14 and shall be in an amount equal to the amount on deposit in the Lease Revenues Fund on such Lease Payment Date, and the payment due on each November 15 shall be rental for the period from the prior May 15 through the next following November 14 and shall be in an amount equal to the amount on deposit in the Lease Revenues Fund on such Lease Payment Date; provided, however, that the total Lease Payments due in a Lease Year shall not exceed the Maximum Lease Payment for such Lease Year. In the event that amounts remain on deposit in the Lease Revenues Fund on May 15 of any year after the payment of the Lease Payments due on such date, then such amounts shall remain on deposit therein and be applied to subsequent Lease Payments when due.

The obligation of the City to pay Lease Payments shall commence on the first Lease Payment Date; provided, however, that, if only a portion of the Convention Center has been made available for use and occupancy by the City, then Lease Payments shall be paid only to the extent described in Section 4.10(a) hereof. Lease Payments shall be paid to the Trustee for deposit to the Revenue Fund.

(b) Limitation on Lease Payments. Notwithstanding anything to the contrary set forth in the Ground Lease, the Site Lease, this Facility Lease, the Sublease, the Project Implementation Agreement, the Indenture, or any other instrument or agreement relating to the Site, the Convention Center or the Project, the City shall be obligated to make Lease Payments solely from amounts on deposit in the Lease Revenues Fund and from Lease Revenues received which should have been deposited therein in accordance with the provisions of Section 4.4(c) below.

(c) Collection and Deposit of Lease Revenues. There is hereby established a "Lease Revenues Fund" to be held and maintained by the City separate and apart from all other funds and accounts of the City. During the Term, the City shall take such actions as are reasonably necessary to cause the receipt of the Lease Revenues and shall deposit all Lease Revenues received into the Lease Revenues Fund on the dates set forth below for each respective source of Lease Revenues. The City shall withdraw amounts from the Lease Revenues Fund solely to pay Pre-Completion Lease Payments and Lease Payments and not for any other purpose. Deposits to the Lease Revenues Fund shall be made as follows:

(i) MSA Revenue. The City shall deposit MSA Revenue into the Lease Revenues Fund within thirty (30) days following the end of the Quarters beginning on July 1, October 1 and January 1, in an amount equal to one fourth (1/4) of the amount of MSA Revenue for the current Fiscal Year as set forth in Exhibit G hereto.

(ii) Sales and Use Tax Revenue. The City shall deposit all Sales and Use Tax Revenue actually received by the City during each Quarter into the Lease Revenues Fund within thirty (30) days following the end of each Quarter.

(iii) Tax Increment Revenue. The City shall deposit all Tax Increment Revenue into the Lease Revenues Fund as follows: (A) on or before January 31 of each year, the City shall deposit one-half of the Tax Increment Revenue estimated to be received by the City during the current Fiscal Year as set forth in the City's adopted Budget for such Fiscal Year; and (B) on or before June 30 of each year, the City shall deposit the Tax Increment Revenue actually received by the City during the Fiscal Year then ending, less the amount deposited in the Lease Revenues Fund with respect to the preceding January 31. In the event that the amount deposited in the Lease Revenues Fund with respect to Tax Increment Revenue for a Fiscal Year exceeds the actual amount of Tax Increment Revenue for such Fiscal Year, then the amount of the overpayment shall be credited against the amount of Tax Increment Revenue due in the next Fiscal Year until the overpayment amount has been fully credited, or with respect to any credit remaining upon the last day of the Term, such amount shall be paid to the City.

(iv) Transient Occupancy Tax Revenue. The City shall deposit all Transient Occupancy Tax Revenue actually received by the City during a calendar month into the Lease Revenues Fund within thirty (30) days following the end of such calendar month.

(d) Transfer of Lease Revenues to the JEPA Upon Termination. On the last day of the Term (after all Lease Payments and any other amounts required to be paid to the Trustee hereunder have been transferred to the Trustee), the City shall transfer to the JEPA all moneys remaining in the Lease Revenues Fund for deposit into the Revenue Sharing Fund pursuant to the Revenue Sharing Agreement.

(e) Rate on Overdue Payments. In the event the City should fail to apply the Lease Revenues to make all or any portion of any Lease Payments required by this Section 4.4, the unpaid Lease Payments, or portion thereof unpaid, shall continue as an obligation of the City payable solely from amounts in the Lease Revenues Fund until the unpaid amount shall have been fully paid, and the City agrees to pay the same with interest thereon from the date such amount was originally due at the rate equal to \_\_\_ percent (\_\_\_%) per annum.

**Section 4.5 No Withholding.** Notwithstanding any dispute between the JEPA and the City, other than a dispute arising under Section 4.10 hereof as a result of which the City has concluded that it may not legally pay the Lease Payments in dispute, the City shall make all Lease Payments when due and shall not withhold any Lease Payments pending the final resolution of such dispute.

**Section 4.6 Fair Rental Value.** The Lease Payments made following the Convention Center Delivery Date shall be paid by the City in consideration of the right of possession and the continued quiet use and enjoyment (as set forth in Section 7.3, but subject to Section 10.15) of, the Facility during each such period for which said rental is to be paid. The Parties hereto acknowledge and agree, and the City hereby determines, that following the delivery of the entire Facility to the City by the JEPA for use and occupancy, the Facility will have a fair rental value in each Lease Year of an amount not less than the Maximum Lease Payment for such Lease Year. In making such acknowledgment and determination, consideration has been given to the construction cost of the Convention Center, the expected useful life of the Convention Center, the uses and purposes which

may be served by the Facility and the public benefits from the Facility which will accrue to the City and the general public.

**Section 4.7 Budget and Appropriation.** The City covenants to take such action as may be necessary to include all Lease Payments due hereunder in each of its proposed annual budgets and its final adopted annual budgets beginning with the Fiscal Year in which the first Lease Payment Date occurs through the Term and to make the necessary appropriations from the Lease Revenues Fund for such Lease Payments. The City shall furnish to the Trustee within 15 days following adoption of the final budget in each Fiscal Year a certificate of an Authorized Representative of the City stating that the Lease Payments were included in the final budget as adopted.

The covenants on the part of the City herein contained shall be deemed to be and shall be construed to be ministerial duties imposed by law and it shall be the ministerial duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this Facility Lease agreed to be carried out and performed by the City.

The obligation of the City to pay Lease Payments hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City, or the State, or any political subdivision thereof, in contravention of any applicable constitutional or statutory limitation or requirements concerning the creation of indebtedness by the City, the State, or any political subdivision thereof, nor shall anything contained herein constitute a pledge of general revenues, funds or moneys of the City or an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation.

**Section 4.8 Payment to Trustee.** In furtherance of the assignment made in accordance with Section 8.1 hereof and in the Indenture, the JEPA hereby directs the City, and the City hereby agrees, so long as the Bonds are Outstanding under the Indenture, to pay to the Trustee at the Trustee's corporate Trust Office, or to the Trustee at such other place as the Trustee shall direct in writing, all Pre-Completion Lease Payments, all Lease Payments, and any rental interruption insurance proceeds, title insurance proceeds and Net Proceeds payable to the Trustee pursuant to Sections 5.1, 5.2, 5.3 and 6.1 hereof that are received by the City. If the Term continues beyond the date on which Bonds are no longer Outstanding under the Indenture, then the JEPA directs the City, and the City hereby agrees, to pay all Lease Payments and any Net Proceeds and title insurance proceeds received by the City to the JEPA until the end of the Term. Except as otherwise provided pursuant to the terms of this Facility Lease and the Indenture, the JEPA will not assign or pledge the Pre-Completion Lease Payments, the Lease Payments, any Net Proceeds, any rental interruption insurance proceeds or any title insurance proceeds to any other party.

**Section 4.9 Use and Possession; Further Assurances and Corrective Instruments.** The total Lease Payments due in any Fiscal Year shall be for the use and possession of the Facility (or portion thereof, as applicable) for such Fiscal Year. Following the Convention Center Delivery Date, the City shall be entitled to the exclusive use and possession of the Facility (or portion thereof, as applicable) and shall peaceably and quietly have, hold and enjoy all or such portion (as applicable) of the Facility delivered to it, subject only to Permitted Encumbrances and the reservations set forth in Section 2(b) of the Site Lease.

The JEPA and the City shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may

reasonably be required for correcting any inadequate or incorrect description of the Facility hereby leased or intended to be leased or for carrying out the expressed intention of this Facility Lease.

#### **Section 4.10 Abatement of Lease Payments.**

(a) In the Event of Non-Delivery. To the extent that only a portion of the Facility is delivered to the City for use and occupancy on the Convention Center Delivery Date, then the Lease Payments due hereunder shall be abated proportionately, as described below. The amount of such abatement shall be such that the resulting Lease Payments in each Lease Year do not exceed the fair rental value (as determined by an independent real estate appraiser selected by the City, who shall not be an employee of the City) of the portion of the Facility made available to the City for its use and occupancy. Based on the fair rental value determined by the appraiser, the City shall provide the Trustee and the JEPA with a certificate setting forth the amount by which the Maximum Lease Payment will be abated for the current and each subsequent Lease Year until the JEPA delivers the Complete Convention Center to the City for use and occupancy. Such abatement shall continue until the JEPA delivers the Complete Convention Center to the City for use and occupancy.

(b) In the Event of Damage, Destruction, Condemnation or Title Defect.

(i) Abatement Upon Initial Occurrence of Event. The Lease Payments shall be abated proportionately to the extent set forth in this Section 4.10(b) during any period in which there is substantial interference with the City's use or possession of all or a portion of the Facility as a result of condemnation, damage, destruction or title defect. If there is substantial interference with the City's use or possession of all or a portion of the Facility as a result of condemnation, damage, destruction or title defect, then the fair rental value of any portion of the Facility for which no substantial interference has occurred shall be determined by one or more independent appraisers selected by the City, who shall not be employees of the City. If based on such appraisal the fair rental value of the remaining portion of the Facility is less than the Maximum Lease Payment in the current Lease Year, then the Lease Payments shall be abated to an amount equal to such fair rental value as determined by the appraiser unless and until the use and occupancy of the Facility is restored. The amount of such abatement shall be such that the resulting Lease Payments due in any Lease Year do not exceed the fair rental value for the use and possession of the portion of the Facility for which no substantial interference has occurred. Based on the fair rental value determined by the appraiser, the City shall provide the Trustee and the JEPA with a certificate setting forth the amount to which the Lease Payments will be abated for the current and each subsequent Lease Year unless and until the use and occupancy of the Facility is restored. Such abatement shall continue for the period of the substantial interference with the use or possession of the Facility.

(ii) End of Abatement Upon Full Restoration of Use and Occupancy. If in accordance with the provisions of Section 6.1(b) the Facility is restored or repaired to substantially the same condition as existed prior to any damage or destruction of the Facility, then upon the replacement or repair of the Facility to substantially the same condition as existed prior to such event of damage or destruction, the Maximum Lease Payment in each Lease Year shall be as set forth in Exhibit C. If in accordance with the provisions of Section 6.1(d)(iii) the Facility is replaced or repaired to substantially the same condition as existed prior to any partial condemnation of the Facility, then upon the replacement or repair of the Facility to substantially the same condition as existed prior to such partial condemnation, the Maximum Lease Payment in each Lease Year shall be as set forth in Exhibit C. The Lease Payments to be made by the City in the Lease Year in which the

Facility is replaced or repaired shall be prorated for the actual number of days that the Facility is available for use and occupancy by the City.

(iii) Determination of Any Abatement if Use and Occupancy not Fully Restored. If the Facility is not replaced or repaired to substantially the same condition as existed prior to any damage or destruction, condemnation or title defect, then a determination shall be made regarding any partial abatement of Lease Payments as set forth in this Section 4.10(b)(iii). The City shall retain one or more independent appraisers selected by the City, who shall not be employees of the City, to determine the fair rental value of the Facility, or portion thereof, available to the City for use and occupancy following such event of damage or destruction, condemnation or title defect and the redemption of all or a portion of the 2021A Bonds pursuant to Section 2.2(d) of the Indenture as a result of such event. If based on such appraisal the fair rental value of the Facility available for use and occupancy by the City is less than the Maximum Lease Payment as set forth in Exhibit C in the current Lease Year, then the Maximum Lease Payment in the current Lease Year shall be abated to an amount equal to such fair rental value as determined by the appraiser and such Maximum Lease Payment shall increase by two percent (2%) in each subsequent Lease Year. The City shall provide the Trustee and the JEPA with a new schedule in the form of Exhibit C hereto setting forth the Maximum Lease Payment for the current and each subsequent Lease Year computed in accordance with the preceding sentence. Without any further action by the JEPA or the City, such schedule shall replace Exhibit C hereto as the Maximum Lease Payment schedule in effect hereunder.

Notwithstanding anything to the contrary in this Agreement, for any appraisal done in connection with the provisions of this Section 4.10(b) or Article VI, the City shall provide information to the appraiser indicating the method used and all factors that were considered in determining the initial Maximum Lease Payment in effect on the Commencement Date such that the appraiser will have all relevant information prior to commencing work on an appraisal under this Section 4.10(b) or Article VI. In addition, prior to directing an independent appraiser to commence work on an appraisal under this Section 4.10(b) or Article VI, the City shall notify RIDA that an appraisal will be conducted and will provide to the appraiser any information furnished by RIDA to the City with respect to determining the fair rental value of the Facility as described above.

(c) Except as set forth in Sections 4.10(a) and (b) above, the City's obligation to pay Lease Payments as and to the extent required by this Facility Lease shall not be abated or otherwise reduced as a result of use of the Facility by RIDA, RIDA's performance under the Sublease or the status of the Sublease.

(d) In its sole discretion the City may elect to transfer amounts from the Lease Revenues Fund to the Trustee up to the amount of the Lease Payments abated pursuant to Section 4.10(a) or (b) in any Lease Year, but any decision by the City not to authorize such a transfer shall not be an event of default hereunder and the City shall incur no liability for a decision not to authorize such a transfer. If the City elects to authorize a transfer, an Authorized Officer of the City shall provide a certificate to the Trustee stating the amount that is being transferred pursuant to this Section 4.10(d) and directing the Trustee to deposit such amount to the Revenue Fund.

(e) In the event of any interference with use as described in this Section 4.10, except as provided in Sections 6.1(c) and (d)(ii), this Facility Lease shall continue in full force and effect, the City shall remain obligated to make Lease Payments in the amount determined in accordance with Section 4.10 (a) or (b) above, as applicable, and, as and to the extent permitted by law, the City waives the benefits of California Civil Code Section 1932(2) and 1933(4) and Title 11



of the United States Code, and all other rights to terminate this Facility Lease by virtue of any such interference.

#### **Section 4.11 [Reserved].**

**Section 4.12 Pre-Completion Lease Payments.** In further consideration of the JEPA entering into this Facility Lease and constructing the Convention Center, the City agrees to make “Pre-Completion Lease Payments” on each May 15 and November 15 following the Commencement Date in an amount equal to the Existing Revenues then on deposit in the Lease Revenues Fund as and to the extent that the City Council elects, in its sole discretion, to appropriate the Existing Revenues for such purpose. In the event that the City Council does not appropriate the Existing Revenues for Pre-Completion Lease Payments in any Fiscal Year, then the Pre-Completion Lease Payments shall not be made, the City shall not be in default hereunder as a result of such non-appropriation and the City shall incur no liability for a decision not to authorize such a transfer.

The obligation of the City to pay Pre-Completion Lease Payments hereunder shall constitute a contingent obligation and current expense of the City and shall not in any way be construed to be a debt of the City, or the State, or any political subdivision thereof, in contravention of any applicable constitutional or statutory limitation or requirements concerning the creation of indebtedness by the City, the State, or any political subdivision thereof, nor shall anything contained in this Section 4.12 constitute a pledge of general revenues, funds or moneys of the City or an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation.

**Section 4.13 Net-Net-Net Lease.** This Facility Lease is, and shall be deemed and construed to be, a “net-net-net lease” and the City hereby agrees that Pre-Completion Lease Payments and the Lease Payments shall be an absolute net return to the JEPA, free and clear of any expenses, taxes, fees, insurance premiums, rebate payments, reserve deposits, charges, counterclaims, set-offs or other costs associated with the Facility or this Facility Lease, whatsoever.

#### **Section 4.14 “As-Is Lease and Waivers.”**

(a) City’s Acknowledgment. The City acknowledges that prior to entering into this Facility Lease, the JEPA has given the City sufficient opportunity to consider, inspect and review, to the City’s complete satisfaction: (1) any and all rights, appurtenances, entitlements, obligations, and liabilities concerning the Site, including without limitation any Existing Improvements; (2) the physical condition of the Site, including, without limitation, the condition and value of any Existing Improvements and the soils, subsoil media, and ground waters at or under the Site; (3) the risk of climate change and the possible adverse consequences thereof, including, without limitation, rises in sea level and possible damage to and destruction of the Site; (4) the development potential of the Site including, without limitation, as may be affected by the preceding clause (3); (5) the effect of all Laws, including, without limitation, those concerning land use, environmental quality and maintenance, endangered species, and traffic regulation; (6) the financial prospects of the Site and local market conditions; (7) the City’s determination of the feasibility of the City’s intended use and enjoyment of the Site; (8) the presence of any Pre-Existing Hazardous Material and any other contamination of the Site, including any Existing Improvements, soils, groundwater, water adjacent to San Diego Bay and sediment adjacent to San Diego Bay; and (9) all other facts, circumstances, and conditions affecting, concerning or relating to the Site. The land use; the environmental, biological, physical and legal condition of the Site; the risks associated with possible climate change;

the feasibility of the City's intended use and enjoyment of the Site; and such other facts, circumstances and conditions being collectively referred to herein as the "Condition of the Premises"; and, without limitation on any other provision of this Facility Lease, the City expressly assumes the risk that adverse conditions affecting the Site have not been revealed by the City's investigations.

(b) Only the JEPA's Express Written Agreements Binding. The City acknowledges and agrees that no Person acting on behalf of the JEPA is authorized to make, and that except as expressly set forth in this Facility Lease, neither the JEPA nor anyone acting for or on behalf of the JEPA has made, any representation, warranty, agreement, statement, guaranty or promise to the City, or to anyone acting for or on behalf of the City, concerning the Condition of the Premises or any other aspect of the Site. The City 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 the JEPA which is not expressly set forth in this Facility Lease will be valid or binding on the JEPA.

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

(d) Waivers, Disclaimers and Indemnity.

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

(ii) JEPA's Materials. The City 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 the City has received or may hereafter receive from the Facility Lease Landlord Parties (collectively, the "Landlord's Materials") have been furnished without warranty of any kind (other than that the JEPA has delivered true and correct copies of each of the items set forth on Exhibit E attached hereto ("JEPA Documents")) and on the express condition that the City will make its own independent verification of the accuracy, reliability and completeness of such Landlord's Materials and that the City will not rely thereon. Accordingly, subject to terms of Section 4.13(d)(iii) below, the City 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, the Facility Lease 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 the City hereby fully and forever releases, acquits and discharges the Facility Lease 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 the JEPA's breach of its representation and warranty set forth in this Section 4.13(d)(ii) that the JEPA has delivered to the City true and correct copies of each of the JEPA Documents set forth on Exhibit E attached hereto).

(iii) Release and Waiver.

(A) *Release.* Except to the extent of Claims (as defined below) (x) in the case of the JEPA against the JEPA arising from any breach by the JEPA of its covenants and obligations expressly provided in this Facility Lease or the JEPA's representation and warranty set forth in Section 4.13(d)(ii) beyond any applicable cure period, or (y) in the case of the Port any breach by the Port of its covenants and obligations expressly provided in the Site Lease beyond any applicable cure period, the City, on behalf of the City, its successors and assigns, hereby fully and forever releases, acquits and discharges the Facility Lease Landlord Parties 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 the City or any of the City's successors or assigns now has or may have or which may arise or be asserted in the future arising out of, directly or indirectly, or in any way connected with: (i) any act or omission of the JEPA or the Port (or any Person acting for or on behalf of the JEPA or the Port or for whose conduct the JEPA or the Port may be liable), except for Claims arising as a result of the sole negligence of the JEPA or the Port (or any Person acting for or on behalf of the JEPA or the Port or for whose conduct the JEPA or the Port may be liable), as applicable, in connection with prior ownership, maintenance, operation or use of the Facility; (ii) any condition of environmental contamination or pollution at the Facility (including, without limitation, any Pre-Existing Hazardous Material or other contamination or pollution of any soils, subsoil media, surface waters or ground waters at the Site and any clean-up or abatement order effecting the Facility); (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 Facility (including, without limitation, the release or discharge, or threatened release, of any Hazardous Materials into the air at the Facility or into any soils, subsoils, surface waters or ground waters at the Facility); (iv) the violation of, or noncompliance with, any Environmental Law or other applicable Law now or hereafter in effect, however and whenever occurring; (v) the condition of the soil and groundwater at the Site; (vi) the Condition of the Premises, including, without limitation, the condition of any improvements located on the Site including, without limitation, the structural integrity and seismic compliance of such improvements; (vii) any matters which would be shown on an accurate ALTA land survey of the Site (including, without limitation, all existing easements and encroachments, if any); (viii) all applicable Laws now or hereafter in effect; (ix) matters which would be apparent from a visual inspection of the Facility; 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 Facility by the JEPA or the Port (or any Person acting for or on behalf of the JEPA or the Port or for whose conduct the JEPA or the Port may be liable) or any predecessor(s)-in-interest in the Facility of the JEPA or the Port.

(B) The City hereby RELEASES the Facility Lease Landlord Parties from, COVENANTS NOT TO SUE the Facility Lease Landlord Parties for and ASSUMES FOR ITSELF all obligations, requirements and liabilities of City under this Section 4.14, including any claims for contribution, equitable indemnity or otherwise seeking to transfer or limit the obligations, requirements and liabilities of City under this Section 4.14.

(C) *Waiver of Civil Code Section 1542.* With respect to all releases made by the City under or pursuant to Section 7.6, Section 10.2 and this Section 4.14, the City hereby waives the application and benefits of California Civil Code § 1542 and hereby verifies that it has read and understands the following provision of California Civil Code § 1542:

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

City: \_\_\_\_\_

(iv) Limitations. Notwithstanding any other provision in this Section 4.14 to the contrary, City’s waiver, release and covenant not to sue obligations under this Section shall not extend to and shall not prohibit City from asserting a Claim against the Port to the extent of and in response to a claim made by any non-City Party with respect to the physical or legal condition of the Site or the development, operations, alterations or maintenance of the Project by RIDA or Tenant Party or Hotel Operator. Nothing contained in this Facility Lease (except for the limitation set forth in the immediately preceding sentence regarding non-City Party claims only) or in the Sublease, Site Lease, Ground Lease, Project Implementation Agreement, or any other agreement entered into between the City and Port regarding the Project, shall preclude or prohibit the Port from asserting any defense against, or from asserting an affirmative claim against, the City or any non-City Party with respect to the physical or legal condition of the Site or the development, operations, alterations or maintenance of the Project by RIDA or Tenant Party or Hotel Operator. A “City Party” is the City of Chula Vista, its employees, directors, officers, agents, contractors, councilmembers, successors, and assigns.

(v) Survival. The terms of this Section 4.14 shall survive the expiration or earlier termination of this Facility Lease.

**Section 4.15 End of Term.** This Facility Lease shall terminate without further notice to any party hereto or any other person or entity at expiration of the Term.

## ARTICLE V

### INSURANCE

**Section 5.1 Sublease Insurance Provisions.** The City shall cause RIDA to comply with the obligations of the Sublease with respect to maintaining insurance throughout the Term hereof by enforcing the terms of the Sublease in the manner set forth in Section 2.1(h) hereof. If the City receives any notice of the expiration or intended cancelation of any such insurance or reduction of coverage from RIDA pursuant to Section 4.5 of the Sublease, it shall promptly deliver such notice to the JEPA.

**Section 5.2 Rental Interruption Insurance.** The City shall maintain, or cause to be maintained by the JEPA or RIDA as described below, rental interruption insurance with respect to the Facility from and after the Convention Center Delivery Date to the date on which the 2021A Bonds have been paid at maturity or redeemed (including during any period of an abatement pursuant to Section 4.10 hereof), in an amount not less than the Maximum Lease Payments payable in the next twenty-four month period during the Term hereof, to insure against loss of rental income from the Facility caused by perils covered by the all-risk insurance covering the Facility required to be maintained as provided in Section 4.1 of the Sublease (the “Facility Lease Rental Interruption Insurance”). The City may not self-insure with respect to the Facility Lease Rental Interruption Insurance. The Facility Lease Rental Interruption Insurance shall name the City as the insured, the JEPA and the Port as an additional insureds, and the Trustee as loss payee, as their interests appear. The cost of the Facility Lease Rental Interruption Insurance shall be paid out of the Administrative Expense Fund as provided in the Indenture, and any and all proceeds thereof shall be deposited into the Revenue Fund and shall be applied in accordance with Section 4.2 of the Indenture. If the City receives any notice of the expiration or intended cancelation of any such insurance or reduction of coverage from any insurer, it shall promptly deliver such notice to the JEPA and Port. As an alternative to the City obtaining the Facility Lease Rental Interruption Insurance, the City, Port, and the JEPA may determine that is in their mutual best interests to have the JEPA acquire the Facility Lease Rental Interruption Insurance as the named insured, with the City and Port named as an additional insureds and the Trustee as a loss payee. As a further alternative, such insurance may also be provided pursuant to the terms set forth in Section 4.2 of the Sublease.

**Section 5.3 Title Insurance.** The City shall obtain on the Commencement Date, title insurance on the Site, in the form of an ALTA Owner’s/Leasehold Policy with Western Regional Exceptions. The title policy or policies in effect at any time with respect to the Site shall be in an amount at least equal to the Outstanding principal amount of the 2021A Bonds, and be issued by a company of recognized standing duly authorized to issue the same. The title policy or policies shall insure the City’s leasehold estate hereunder, subject only to Permitted Encumbrances. The City shall not maintain title insurance in the form of self-insurance. The title insurance required by this Section 5.3 shall name the City as the insured and the Trustee as loss payee as their interests appear. All proceeds of the title insurance shall be deposited into the Insurance and Condemnation Fund and shall be applied in accordance with Section 4.5 of the Indenture.

## ARTICLE VI

### DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

#### **Section 6.1 Application of Net Proceeds.**

(a) Deposit of Net Proceeds of Insurance in Insurance and Condemnation Fund. Pursuant to Section 4.5 of the Indenture, the JEPA shall direct the Trustee to deposit the Net Proceeds of any insurance paid to the Trustee in accordance with Section 4.4(b) of the Sublease in the Insurance and Condemnation Fund promptly upon receipt thereof. If there is no Trustee or if there is a Trustee but such Trustee declines to act as a trustee for the disbursement of the funds, then the Net Proceeds shall be deposited and disbursed as set forth in Section 5.2(a) of the Sublease and the Project Implementation Agreement. Notwithstanding anything in Section 6.1(a), (b) or (c) to the contrary, prior to making any determination or granting any approval required of the City pursuant to Section 5.2(a) of the Sublease with respect to the use of any Net Proceeds related to the damage or

destruction of the Facility, the City shall notify the JEPA and obtain the JEPA's approval of such determination or approval by the City.

(b) Disbursement for Replacement or Repair of the Facility. In the event that the JEPA receives the certifications described in paragraph (i) below within six months of the date of any damage or destruction of the Facility (or such later date as is consented to by the JEPA), and the JEPA determines that the certifications are complete in the JEPA's reasonable discretion, the JEPA will submit a Request of Authority to the Trustee, in accordance with Section 9.2 of the Project Implementation Agreement to transfer such Net Proceeds from the Insurance and Condemnation Fund to the 2021A Account of the Construction Fund to pay for the cost of repairing or replacing the Facility in accordance with the terms of the Project Implementation Agreement and the Sublease. Such costs of repair or replacement shall be paid for first from any amounts previously on deposit or remaining on deposit in the 2021A Account of the Construction Fund and second from Net Proceeds transferred from the Insurance and Condemnation Fund to, and on deposit in, the 2021A Account of the Construction Fund.

(i) Certifications. RIDA and the City, as applicable, shall have provided to the JEPA and the Trustee the following certifications:

(A) Sufficiency of Net Proceeds. RIDA shall have certified to the City, the JEPA, the Port and the Trustee that based on information available to and reasonably relied upon by RIDA at the time of such certification, RIDA reasonably believes that, as of the date of such certification, the available Net Proceeds, together with any other funds and the stated amount of any Letter of Credit deposited by RIDA with the Trustee for the purpose of replacing or repairing the Facility, are sufficient to replace or repair the Facility to substantially the same condition as existed prior to the event of damage, destruction or taking, or to such other condition as the City, based on and in reliance on the information provided by RIDA, has certified to the JEPA, the Port and the Trustee will have an annual fair rental value in each Lease Year of not less than the Maximum Lease Payment (as adjusted pursuant to Section 4.10(b), if applicable) in each remaining Lease Year; provided, however, as an alternative to the Letter of Credit, RIDA may provide a completion guaranty for the work to be performed in a form acceptable to each of the City, the Port and the JEPA, in their reasonable discretion; and

(B) Timely Completion. In the event that damage, destruction, or taking results in an abatement of Lease Payments pursuant to Section 4.10(b) hereof, the City shall have certified to the JEPA and the Trustee that based on and in reliance on the expected completion date provided by RIDA for such replacement or repair, such work is expected to be fully completed within a period not in excess of the period in which rental interruption insurance proceeds as described in Section 5.2 hereof, together with other legally available funds then on deposit with the Trustee in the Revenue Fund (including any amounts on deposit in the 2021A Capitalized Interest Subaccount therein and any amounts paid to the City by RIDA for deposit therein by the Trustee) and amounts that may be drawn on a Letter of Credit delivered to the Trustee by RIDA for such purpose, will be available to pay, in full, all Lease Payments coming due through the expected completion date of the replacement or repair; and

(C) Payment and Performance Bonds. RIDA shall have certified to the City, the JEPA, the Port and the Trustee that it has obtained payment and performance bonds with respect to the work to be performed to repair or replace the Facility and shall have provided copies to the City, the JEPA, the Port and the Trustee.

(ii) Disposition of Excess Funds. Any balance of the Net Proceeds remaining after such replacement or repair has been completed will be distributed in accordance with Section 5.2(a) of the Sublease to RIDA, as reimbursement of Sublease Advance Rent, or to a Permitted Lender as provided therein.

(c) Disbursement for Redemption of 2021A Bonds. If (1) the certifications required by Section 6.1(b)(i) hereof are not provided to the City, the JEPA, the Port and the Trustee within six months of the date of any damage or destruction arising with respect to the Facility (or such later date as is consented to by the JEPA), or (2) RIDA has satisfied the conditions set forth in Section 5.2 of the Sublease to terminate the Sublease as a result of damage or destruction, then the Available Casualty Amount, together with amounts paid by RIDA to the Trustee pursuant to Section 5.2(b) of the Sublease, will be applied to redeem 2021A Bonds, in whole, as set forth in Section 2.2(d) of the Indenture. Any balance of Net Proceeds remaining after such redemption of the 2021A Bonds will be distributed in accordance with Section 5.2(c) of the Sublease to RIDA, as reimbursement of Sublease Advance Rent, or to a Permitted Lender as provided therein. In the event that the Sublease has been terminated in accordance with Section 5.2 thereof and the 2021A Bonds have been redeemed in whole, then this Facility Lease shall continue in effect until the later of (1) the date on which all Bonds Outstanding under the Indenture have been paid or defeased, or (2) a date to be determined by the JEPA, the City and the Port, in their reasonable discretion, which may be [\_\_\_\_\_, 2058], on which date the Term of this Facility Lease shall end.

(d) Application of Net Proceeds of Condemnation. Any Net Proceeds resulting from any taking by eminent domain or condemnation with respect to the Facility shall be applied in accordance with this Section 6.1(d), Section 5.1 of the Sublease, the Project Implementation Agreement and Section 4.5 of the Indenture. The City and the JEPA shall transfer to the Trustee any Net Proceeds received by the City or JEPA in the event of any taking by eminent domain or condemnation with respect to the Facility, or if there is no Trustee or if there is a Trustee but such Trustee declines to act as a trustee for the disbursement of the funds, then the Net Proceeds shall be deposited and disbursed as set forth in Section 5.1(g) of the Sublease and the Project Implementation Agreement. Such Net Proceeds shall be applied as follows:

(i) Temporary Condemnation. All Net Proceeds related to any Temporary Condemnation (as defined in Section 5.1(f) of the Sublease) shall be deposited to the Revenue Fund.

(ii) Termination of Sublease; Redemption of 2021A Bonds. If as a result of any taking by eminent domain or condemnation the Sublease is terminated pursuant to Section 5.1(d) thereof, then the Available Condemnation Amount, together with any amounts paid to the Trustee by RIDA in accordance with Section 5.1(d) of the Sublease, shall be applied to redeem 2021A Bonds as set forth in Section 2.2(d) of the Indenture. Any balance of Net Proceeds remaining after the redemption of the 2021A Bonds will be distributed to RIDA as reimbursement of Sublease Advance Rent or to the Port as provided in Section 5.1(g) of the Sublease. If the whole of the Facility shall be taken under the power or threat of eminent domain, then the Term of this Facility Lease shall end on the later of the day determined under Code of Civil Procedure Section 1265.140 or the date on which the 2021A Bonds have been defeased in whole with the Available Condemnation Amount, together with any amounts paid to the Trustee by RIDA in accordance with Section 5.1(d) of the Sublease and any other amounts applied in accordance with the terms of the Indenture to redeem the 2021A Bonds.

(iii) Partial Permanent Condemnation. If less than the whole of the Facility shall be taken under the power or threat of eminent domain and the remainder is usable for the purposes for which it was used at the time of such taking and the Sublease has not been terminated as a result thereof, then this Facility Lease shall continue in full force and effect as to such remainder, and the parties waive the benefits of any law to the contrary. In such event, provided that the certifications required by Section 6.1(b)(i) have been delivered following such taking, all or a portion of the Net Proceeds shall be applied to replace, or to restore, the Convention Center to substantially the same condition as existed prior to the partial taking, or if such replacement or restoration is not practicable, then to such other condition as the City (based on information provided by RIDA) has certified to the Trustee will have an annual fair rental value in each Lease Year of not less than the Maximum Lease Payment in each future Lease Year after taking into account any reduction in the Maximum Lease Payment as described in Section 4.10(b) hereof. If the certifications required by Section 6.1(b)(i) cannot be made, or if only a portion of such Net Proceeds are to be applied to repair or restore the Facility, any Net Proceeds (together with other amounts required to be transferred to the Redemption Fund in accordance with the Indenture with respect to such redemption) shall be applied to redeem a portion of the 2021A Bonds as set forth in Section 2.2(d) of the Indenture. In such event the Maximum Lease Payment due in each Lease Year shall be determined in accordance with Section 4.10(b) hereof.

(iv) JEPA's Approval Required. Notwithstanding the foregoing provisions of this Section 6.1(d), prior to making any determination or granting any approval required of the City pursuant to Section 5.1(e) or g(i)(A)(1) or (2) of the Sublease with respect to the use of any Net Proceeds related to an eminent domain or condemnation of the Facility or pursuant to Section 5.2 of the Sublease with respect to the use of any Net Proceeds related to the damage or destruction of the Facility, the City shall notify the JEPA and obtain the JEPA's approval of such determination or approval by the City.

## ARTICLE VII

### COVENANTS WITH RESPECT TO THE FACILITY

**Section 7.1 Use of the Facility; Continuous Operation.** The City represents and warrants that it has an immediate need for all of the Facility, which need is not expected to be temporary or to diminish during the Term. The Facility shall only be used by the City or any sublessee of the City for the Permitted Use. The City agrees to cause the Facility to be in continuous operation as and to the extent required by Section 6.1(c) of the Sublease by enforcing such provision of the Sublease in accordance with the requirements of Section 2.1(h) hereof. The City shall not consent to a new or revised Permitted Use or resolve any dispute under the Sublease regarding Permitted Use without the JEPA's consent. Unless otherwise consented to by the JEPA in writing, the Convention Center shall be operated and managed by the Hotel Operator pursuant to the terms of a Hotel Management Agreement.

**Section 7.2 Leasehold Interest in the Facility; Actions on Termination.**

(a) Actions Regarding Leasehold Interests During Term. During the term of the Site Lease, the JEPA shall hold a leasehold interest in the Site pursuant to the Site Lease and shall be the legal owner of the Convention Center and the City shall hold a leasehold interest in the Facility pursuant to this Facility Lease. The JEPA shall take any and all actions, including but not limited to executing and filing any and all documents, reasonably required to maintain and evidence the JEPA's



leasehold interest in the Site and its ownership of the Convention Center at all times during the Term. The City shall take any and all actions, including but not limited to executing and filing any and all documents, reasonably required to maintain and evidence the City's leasehold interest in the Facility at all times during the Term.

(b) Peaceable Surrender; Vesting on Termination. The City agrees, upon the termination of this Facility Lease, to quit and peaceably surrender the Facility in the same good order and condition as it was in at the time of the completion of construction of the Convention Center, reasonable wear and tear and any improvements permitted by the Site Lease, the Facility Lease, the Sublease or the Project Implementation Agreement excepted (subject to any demolition obligations with respect to any such improvements under the Sublease), and agrees that on termination of this Facility Lease and the Site Lease all interest therein shall vest in the Port free and clear of any interest of the City hereunder. If the City fails to surrender the Facility at the expiration of this Facility Lease or the earlier termination or cancellation thereof in the condition required under this Facility Lease other than as a result of RIDA failing to surrender the Facility as required by the Sublease, in addition to JEPA's other remedies, the City shall defend and indemnify the JEPA from all liability and expense resulting from the delay or failure to surrender, including without limitation any succeeding tenant claims based on the City's failure to surrender or Port's failure to deliver the Site and loss of profits.

(c) Actions on Termination; Release of Encumbrance. Immediately following the end of the Term, the JEPA and the City shall execute, deliver, and cause to be recorded in the Office of the Recorder of San Diego County, all such documents, including but not limited to a quitclaim deed, as are necessary or advisable to fully release, of record, the encumbrance on title to the Facility which is caused by the terms of this Facility Lease and transfer ownership of the Convention Center to the Port; and shall thereafter take such actions and execute such documents as may further be necessary or advisable to fully evidence the termination of this Facility Lease and the release of the JEPA and the City from all of their respective obligations hereunder. The City agrees to cause RIDA to deliver to the City all such documents as are necessary or advisable to fully release, of record, the encumbrance on title to the Facility which is caused by the terms of this Facility Lease and the Sublease, including without limitation any Permitted Encumbrances, transfer ownership of the Convention Center to the Port, including any such documents as are required from RIDA.

(d) Holdover. This Facility Lease shall terminate without further notice at expiration of the Term. Any holding over by the City after either expiration or earlier termination of this Facility Lease without the Port's prior written consent shall be tenancy at-sufferance upon all of the provisions of this Facility Lease, except those pertaining to the Term, [and except that the rent due hereunder shall be 150% of the Rent in effect under the Sublease prior to such expiration or termination.] If the City, with the Port's consent, remains in possession of the Facility after the expiration or earlier termination of this Facility 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 Facility Lease, except those pertaining to the Term, shall apply to the month-to-month tenancy, and the City shall continue to pay all rent required by this Facility Lease. Notwithstanding anything herein to the contrary, in no event shall the Term, together with any holdover period, exceed sixty-six (66) years.

**Section 7.3 Quiet Enjoyment.** Subject only to the Permitted Encumbrances [and Section 10.15], during the Term, the JEPA shall provide the City with quiet use and enjoyment of the Facility, and the City shall during such Term peaceably and quietly have and hold and enjoy the

Facility, without suit, trouble or hindrance from the JEPA, or any person or entity claiming under or through the JEPA, except as expressly set forth in this Facility Lease or the Indenture.

**Section 7.4 No Demolition.** During the Term hereof, the City shall not demolish or permit demolition of the Facility except as required in conjunction with the surrender of the Facility by RIDA in accordance with the terms of the Sublease.

**Section 7.5 Maintenance and Repair; Alterations.**

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

Except in the event where the City may need to undertake work to protect life, public health and safety, and property, or to maintain public services, which constitutes an "emergency development" as defined by the Port's Coastal Development Permit Regulations ("CDP Regulations") and which shall be processed by the Port in accordance with the "Emergency Developments" section of the CDP Regulations, the City shall submit to the JEPA plans and specifications with respect to such repair or replacement, as applicable, and receive the JEPA's written approval thereof, pursuant to the procedures set forth in this Section 7.5 and Section 6.10, as if and to the extent such repair or replacement, as applicable, were an Alteration; provided, however, that the City shall not be required to do so if the City would not be required to obtain the JEPA's approval if such repair or replacement, as applicable, were an Alteration. If such approval is administrative, the JEPA shall not unreasonably reject any plans or specifications with respect to any repair or replacement, as applicable, that, if not performed by the City, would result in an Event of Default. Should RIDA submit a request for Alterations to the City, the City shall provide them to the JEPA for review and approval. If such approval is administrative, the JEPA shall not unreasonably withhold consent. If such approval is not administrative, the City and RIDA shall cooperate in good faith with the JEPA to prepare plans or specifications with respect to any repair or replacement. Pursuant to Section 6.6 of the Sublease, if the City or BPC does not approve a request for such Alterations that RIDA has submitted to the City, then, under circumstances specified in Section 6.6

of the Sublease, RIDA may challenge such decision of the City or BPC, as applicable, through Judicial Reference, as provided in the Sublease. If RIDA so challenges such decision, then (a) City's obligation to repair or replace will be suspended during the pendency of any Judicial Reference, and (b) the JEPA shall be bound by any final, non-appealable Superior Court award confirming an award in such Judicial Reference as if the JEPA were a party in such Judicial Reference.

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

In the event of conflict between the terms of the Hotel Management Agreement and the terms of this Section 7.5(a) with respect to the City's obligations hereunder, the terms of this Section 7.5(a) shall control.

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

(c) Inspection Report. Within sixty (60) days after notice from the JEPA to the City requesting an Inspection Report, which notice shall not be given more than once in any five- (5) year period (unless the JEPA determines that the City may be in default of its obligations under this Section 7.5, in which event such time limitation shall not apply), the City, at the City's sole expense, shall provide to the JEPA a detailed inspection report listing any known defects, required repairs or deferred maintenance items in the Facility and recommendations for work to be performed to ensure that the condition of the Facility is in full compliance with this Facility Lease, including the standard of condition set forth in this Section 7.5 (the "Inspection Report"). If the JEPA requests an Inspection Report more than once in any Lease Period, then the JEPA shall pay the City for any reasonable costs incurred by the City in connection with such Inspection Report unless such Inspection Report demonstrates that the City is in default of its obligations under this Section 7.5. The Inspection Report shall be (i) prepared by an unrelated third-party inspector licensed in the State of California selected by the City, (ii) certified to the JEPA, to the best knowledge of the Person conducting the inspection, as complete and accurate, and (iii) in a form reasonably acceptable to the JEPA. Without limitation of the City's obligations or the JEPA's remedies hereunder, the City shall commence work to comply with the recommendations set forth in such Inspection Report within thirty (30) days of receipt of same and diligently pursue such work to completion within not later than one hundred eighty (180) days of receipt of such Inspection Report.

Notwithstanding the requirement in this Section 7.5(c) that the City provide the JEPA with an Inspection Report within sixty (60) days after notice from the JEPA, so long as there is no Event of Default under the Sublease and the Convention Center is operated pursuant to a Hotel Management Agreement under an Acceptable Brand, and such Hotel Management Agreement requires RIDA to maintain and repair the Facility in accordance with such Hotel Management Agreement and requires there to be established a reserve for repair and maintenance of the Facility, including without limitation, the furniture, trade fixtures and equipment, and such repair and maintenance occur in accordance with the requirements of such Hotel Management Agreement, Section 7.5(a) and Section 7.5(b), then the foregoing Inspection Reports shall not be required.

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

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

(f) Major Alterations. The term “Major Alterations” means all Alterations other than Minor Alterations, the Initial Project Improvements and the Existing Improvements. The City 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. The City may not make any Major Alterations without the prior written consent of the JEPA. The JEPA’s consent will not be unreasonably withheld. The foregoing is not intended to limit the City’s discretion when the City is exercising its police or regulatory powers as a Governmental Authority or is considering issuing any discretionary approval. The JEPA may condition its approval of a Major Alteration on compliance with the Laws and the City, or its designee, obtaining insurance coverages in addition to those required under Article 5 if such additional coverage is customarily obtained in connection with work similar in scope to the Major Alteration. All Major Alterations shall be in accordance with plans and specifications, including but not limited to working drawings (collectively, “Alteration Plans”) submitted to and approved by the JEPA in its reasonable discretion in writing prior to the commencement of the Major Alterations. Following approval by the JEPA, any changes in the Alteration Plans shall be subject to the JEPA’s approval, in the JEPA’s sole discretion. If the JEPA approves the Alteration Plans, and if the City elects to proceed with the Major Alterations, then the City 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.

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

(h) Diligent Construction; Continuous Operations. Once construction of any Alteration is commenced, the City shall diligently prosecute construction of the Alterations to Completion. During the course of the construction of the Major Alterations, the City shall continue to use and operate the Site and the Improvements (other than the Existing Improvements) to the

extent required by Section 7.1. Once an Alteration is Complete, the City shall use and operate the Alteration as part of the Site and the Improvements, as applicable, throughout the Term.

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

(j) Percent for Art. The City acknowledges and agrees that any requests for proposed Alterations during the Term may be conditioned on the payment of additional commissions or purchases of artwork and/or in-lieu contributions based on BPC Policies.

(k) JEPA Notice to Repair. If the JEPA determines, or receives notice from the Port, that the Facility is not in the condition required pursuant to the terms of this Facility Lease and the Sublease, the JEPA shall deliver such notice to the City and the City shall deliver written notice to RIDA detailing the items to be corrected and cause RIDA to undertake the necessary maintenance, alteration, repair, replacement and rebuilding work necessary to remedy the issues set forth in the JEPA's notice to be commenced within ten (10) days after written notice from the City to RIDA and cause RIDA to diligently pursue such work to completion, as and to the extent required pursuant to the terms of the Sublease.

(l) Compliance. So long as the Sublease remains in effect, the City's obligation under this Section 7.5 will be satisfied by the City diligently enforcing the provisions of Sections 6.6 and 6.10 of the Sublease against RIDA. In the event that RIDA fails to comply with the applicable provisions of the Sublease related to maintenance and repair or Alterations of the Facility, then the City shall notify the JEPA and the Port, in writing, within ten (10) days of learning of the RIDA's failure to comply and enforcement thereof shall be carried out pursuant to the terms of the Sublease.

## **Section 7.6 Hazardous Materials.**

(a) City's Use of Hazardous Materials. The City shall not cause or permit any Hazardous Materials Activity in or about the Facility by the City or its agents, or any Tenant Party, during the Term unless expressly approved, at the JEPA's sole discretion, in writing by the JEPA after submittal by the City of information requested by the JEPA regarding the Hazardous Material. Approval by the JEPA of any Hazardous Materials Activity shall not create or impose any liability or obligation on the JEPA with respect to such Hazardous Material or Hazardous Materials Activity and the City shall assume all liability and obligations related thereto. All Hazardous Materials Activity shall be in strict compliance with all applicable Laws and other requirements in effect during the Term, including, without limitation, Environmental Laws. The City shall comply at all times with all Environmental Laws. Provided that the City is in compliance with Environmental Laws, the City shall not be required to obtain the JEPA's consent to generate, store or use reasonable and customary quantities of Hazardous Materials for cleaning materials or supplies, construction materials or supplies, food service materials or supplies, paint, auto supplies (including, without limitation, gasoline, oil and other supplies incidental to motorized vehicles) or office materials or supplies reasonably required to be used in the normal course of the Permitted Use.

(b) Notice of Release or Inquiry. If the City becomes aware of (i) any actual or threatened release that occurs during the Term of any Hazardous Material on, in, under, from, or about the Facility or (ii) any notice, inquiry, investigation, proceeding, or claim by any government agency or other Person regarding the presence that occurs during the Term of any Hazardous Material on, in, under, from or about the Facility (collectively, an “Inquiry”), the City shall give the JEPA and the Port written notice of such release or Inquiry within twenty-four (24) hours after the City learns that there has been a release or Inquiry and shall simultaneously furnish to the JEPA and the Port copies of any notices of inquiry or investigation, claims, notices of violation, reports, warning or other writings received by the City that concern such release or Inquiry. Unless the JEPA or the Port receives separate notice, the City shall provide the JEPA and the Port 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 Section 7.6, 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. The JEPA and the Port shall be entitled to have their representatives attend and participate in any and all such meetings. If the government agency brings up Hazardous Material on, in, under, from, or about the Facility in any other scheduled meeting, the City shall suggest that a separate meeting should be scheduled so that the JEPA and the Port can participate in such meeting.

(c) Port Right to Inspect and Data. If Hazardous Materials Activity has occurred during the Term or is ongoing, the Port or its designated representatives, at the Port’s sole discretion, may, but are not obligated to, enter upon the Facility and make any inspections, non-intrusive tests or measurements that the Port deems necessary or desirable to determine if a release or discharge of Hazardous Materials has occurred. The Port shall furnish to the City a minimum of twenty-four (24) hours’ notice prior to conducting any inspections or tests, unless, in the Port’s reasonable judgment, circumstances require otherwise. If the Port reasonably suspects a possible release of Hazardous Materials or a use of Hazardous Materials in violation of Environmental Law, then the Port shall describe the concern to the City, and may require the City, at the City’s sole expense, to have additional investigation for such Hazardous Materials conducted on, under or about the Facility by an environmental consultant or engineering firm designated by the Port; provided, however, that the City’s obligation to conduct such investigation shall terminate if the City can demonstrate to the Port’s reasonable satisfaction that there was neither any release of Hazardous Materials, nor any use of Hazardous Materials during the Term in violation of Environmental Law. Such tests may include, without limitation, any area outside the Facility that may have been contaminated, including but not limited to surface and groundwater. The City shall provide to the Port, as soon as reasonable after they become available to the City, access to all non-privileged information reports and data obtained, generated or learned as a result of sampling or testing activities on the City, including raw and verified lab data and consultant reports. The City shall be permitted to have representatives present during any sampling or testing on or at the Facility, 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 Facility. Access to any non-privileged consultant reports issued by or on behalf of the City concerning the Facility shall be provided to the Port as soon as reasonable after such reports are finalized. Any environmental reports issued by or on behalf of the City regarding the Facility or Hazardous Materials Activities related thereto shall first be generated in draft form and furnished to the Port for review and comment, except in the case when any resulting delay in producing a final environmental report would violate any Laws or any

order of any government agency. Except in the case when any resulting delay in producing a final environmental report would violate any Laws or any order of any government agency, no such report shall be made final until the Port has had reasonable opportunity to review the draft and to identify any factual inaccuracies therein; provided, however, that if Port fails to comment on a draft report within thirty (30) days after the City provides the Port with the final draft report and any information needed by the PORT to complete its review, the City shall provide the Port with notice to deliver any comments to the draft report within fifteen (15) days of the delivery of the notice. If Port does not respond after the second notice, the City may complete and submit the report. Notwithstanding the foregoing, under no circumstance shall any report submitted by the City pursuant to this Section 7.6(c) bind the Port or contain any representation from Port. The Port's failure to inspect, test or take other actions pursuant to this Section 7.6(c) shall in no way relieve the City of any responsibility for a release of a Hazardous Material.

(d) Environmental Cleanup Obligations. If, during the Term, any Hazardous Material has been released by a Tenant Party, or any Pre-Existing Hazardous Material is exacerbated by a Tenant Party and thereby violates any Environmental Laws and/or results in (i) any investigation mandated by any government agency, (ii) any clean-up order by any government agency, (iii) any third-party claim or demand against the JEPA, (iv) any material increase in the JEPA's liability or (v) 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 the City shall promptly take all necessary actions, at the City'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"). The City 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 the City's Material Exacerbation, and the extent of the City's obligation to undertake such Environmental Cleanup shall be limited to that required as a result of the Material Exacerbation. The City shall provide notice to the JEPA prior to performing any removal or remedial action. In the event that an Environmental Cleanup conducted or required of the City interferes with the current or future use of the Facility, or other property of the JEPA, the City shall promptly alter or amend the Environmental Cleanup (whether such is completed or not and regardless of the time period elapsed between the cleanup activities and the JEPA's request to alter the Environmental Cleanup because of the interference), upon notice from the JEPA, as necessary to prevent and/or eliminate such interference. The City shall not propose, and the JEPA 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 7.6(d). Unless otherwise agreed in writing by the JEPA, an Environmental Cleanup required under this Section 7.6(d) shall avoid and not include the use of additional restrictive covenants or other institutional controls. To the extent the JEPA incurs any costs or expenses in performing the City's obligation to conduct an Environmental Cleanup which is the City's obligation under this Facility Lease or under Environmental Law, the City shall reimburse the JEPA for all such costs and expenses in accordance with the Reimbursement Procedure; provided, however, that the City's obligations to reimburse the JEPA pursuant to this provision shall be limited to the extent City receives reimbursement or payment from RIDA, on behalf of the City, pursuant to Section 6.20 of the Sublease. This provision does not limit the indemnification obligation set forth in Section 2.1(e) hereof.

(e) City Compliance. The City's obligation under this Section 7.6 will be satisfied by the City diligently enforcing the terms of the Sublease related to Hazardous Materials

against RIDA. In the event that RIDA has failed to comply with the Hazardous Materials provisions of the Sublease, then the City shall notify the JEPA and the Port and the enforcement terms of the Sublease shall govern.

### **Section 7.7 Liens.**

(a) Encumbrances. The City shall not, directly or indirectly, create, incur, assume, suffer to exist or consent to any mortgage, pledge, liens, charges, encumbrances or claims on or with respect to the Facility, other than Permitted Encumbrances.

(b) No Right to Bind the JEPA. The City shall have no power or authority to do any act or thing, or to make any contract or agreement which shall bind the JEPA in any way whatsoever, and the JEPA shall have no responsibility to the City or other Person who performs, causes to perform, engages in or participates in any construction of any work on the Facility at the request of the City or other Persons. The JEPA shall not be required to take any action to satisfy any such contract or agreement or to remove or satisfy any lien resulting therefrom. Nothing herein shall imply any consent on the part of the JEPA to subject the JEPA's estate to liability under any mechanics' lien or other lien.

(c) JEPA's Right to Pay. If the City or RIDA shall be in default in paying any charge for which a lien claim has been filed, and if such lien has not been contested in accordance with the terms of this Facility Lease or the Sublease, then the JEPA 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 the City to the JEPA, together with interest on the full amount thereof at the Default Rate from the date of the JEPA's payments until paid; provided, however, the City shall only be required to pay such amounts from monies paid by RIDA to the City.

(d) Notice of Liens. Should any claims of lien be filed against the Facility or any action affecting the title to the Facility be commenced of which the City has notice, the City shall give the JEPA written notice thereof within five (5) Business Days of receipt. The City shall provide to the JEPA any notice of a lien given pursuant to Section 6.11 of the Sublease.

### **Section 7.8 Tax Expenses, Property Expenses and Property Tax Expenses.**

(a) The City shall cause all Tax Expenses, Property Expenses and Property Tax Expenses to be paid; provided, however, subject to the last sentence of this Section 7.8, the City shall only be required to pay such amounts from monies paid to the City by RIDA pursuant to Sections 6.16, 6.18 and 6.19 of the Sublease. The City's obligation under this Section 7.8 will be satisfied by the City diligently enforcing the terms of Sections 6.16, 6.18 and 6.19 of the Sublease related to Tax Expenses, Property Expenses and Property Tax Expenses against RIDA in accordance with the requirements of Sections 2.1(h) and 10.2 hereof. Notwithstanding anything to the contrary in this Facility Lease, the limitation on the City's requirement to pay Tax Expenses, Property Expenses and Property Tax Expenses from monies paid to it by RIDA shall not apply to such expenses that the City has agreed to pay pursuant to Sections 6.16, 6.18 and 6.19 of the Sublease without any express right to reimbursement.

(b) The City shall pay any taxes which are imposed on the City based on income or profit of the City related to the Facility.



(c) In the event that RIDA fails to comply with the applicable provisions of the Sublease related to Tax Expenses, Property Expenses and Property Tax Expenses, then the City shall notify the JEPA and the Port, in writing, within ten (10) days of learning of RIDA's failure to comply and the terms of the Sublease shall govern.

## **Section 7.9 Equal Employment Opportunity/Nondiscrimination and OFAC.**

(a) Nondiscrimination. The City 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, the City shall be solely responsible for such compliance and required programs, and there shall be no allocation of any such responsibility between the JEPA and the City. Each subtenant of the City of the Site shall comply with the requirements of this Section 7.9.

(b) Compliance with Employment and Labor Requirements. The City 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. The City shall also comply with the National Labor Relations Act, including the provisions with respect to the rights of employees to organize.

(c) OFAC Compliance. The City represents and warrants that (i) the City is not now a Person with whom the Port, the JEPA 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 the City's knowledge, none of the funds or other assets of the City constitute property of, or are beneficially owned, directly or indirectly, by any Prohibited Persons (iii) to the best of the City's knowledge, no Prohibited Person directly or indirectly Controls (as defined in the Project Implementation Agreement) the City, and (iv) to the best of the City's knowledge, none of the funds of the City have been derived from any unlawful activity with the result that the investment in the City is prohibited by Laws or that this Facility Lease is in violation of Laws. The City covenants and agrees that at no time during the Term shall the City be a Prohibited Person. The City shall reimburse the JEPA for all reasonable costs, including, without limitation, attorneys' fees, resulting from the City's failure to comply with this Section 7.9. If the City receives written notice that the City is a Prohibited Person, then the City shall promptly use the City's best and reasonable efforts to cease being a Prohibited Person. Notwithstanding any limits set forth in this Section 7.9, any Person who is blocked under the USA

Patriot Act shall be blocked to the full extent required under the USA Patriot Act and any regulations promulgated thereunder.

**Section 7.10 Consent to Naming Rights.** The City shall not consent to the sale of any naming rights for the Convention Center under Section 6.21 of the Sublease without the consent of the JEPA.

**Section 7.11 Prevailing Wage.** The City acknowledges and agrees that:

(a) Any construction, alteration, demolition, installation or repair work, in each case for the Facility, required or performed under this Facility Lease constitutes “public work” under California Prevailing Wage Law, including Labor Code §§ 1720 through 1861, et seq. (“**PWL**”), and obligates the City 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) The City shall cause all Persons performing “public work” for the Facility under this Facility Lease to comply with all applicable provisions of the PWL and other applicable wage Laws.

(c) The JEPA hereby notifies the City, and the City 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) The City acknowledges that its obligations under the PWL with respect to the Facility 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 the City shall determine and use whatever form the DIR requires.

(e) Neither the JEPA nor the Port shall be responsible for the City's failure to comply with any applicable provisions of the PWL.

(f) Notwithstanding anything in this Facility Lease to the contrary, the City shall not be responsible for any Person's failure to comply with any applicable provisions of the PWL with respect to any work performed by, or on behalf of, any Public Agency Party other than by the City.

### **Section 7.12 Inspection of Facility and Access to Records.**

(a) The JEPA shall have the right, but not the obligation, to enter upon and inspect the portions of the Facility where the operation of the Facility and any alteration is ongoing, during normal business hours and upon three (3) Business Days' prior notice to the City and RIDA (except in the case of an emergency in which case no prior notice shall be required but in each such case the JEPA shall notify RIDA prior to entering the Facility) and the JEPA shall, and shall cause each of its agents and representatives going to the Facility to: (a) comply with all applicable security and safety procedures of RIDA of which RIDA informs the JEPA in writing and with which such agent and representative can reasonably comply, and (b) use commercially reasonable efforts to minimize any interference with RIDA's operation and use of the Facility while at the Facility. Notwithstanding the foregoing, nothing herein shall limit the JEPA's right to enter the Facility at any time to exercise its police powers.

(b) Records. The JEPA shall have the right to examine all records of the City related to the Facility and this Facility Lease including all records required to be maintained under the Sublease and to which the City has the right of access.

**Section 7.13 JEPA's Disclaimer of Warranties.** THE JEPA MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE CITY OF THE FACILITY OR ANY PORTION THEREOF. THE CITY ACKNOWLEDGES THAT THE JEPA IS NOT A MANUFACTURER OF THE FACILITY OR OF ANY PORTION THEREOF, AND IS NOT A DEALER THEREIN, AND THAT THE CITY IS LEASING THE FACILITY AS IS. In no event shall the JEPA be liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Facility Lease, the Project Implementation Agreement, the Site Lease, the Loan Agreement or the Indenture for the existence, furnishing, functioning or City's use and possession of the Facility.

## ARTICLE VIII

### ASSIGNMENT, SUBLEASING AND AMENDMENT

**Section 8.1 Assignment by the JEPA.** The JEPA will be irrevocably assigning the Assigned Rights to the Trustee as and to the extent set forth in the Indenture and the City hereby consents to such assignment. Except for the foregoing assignment under the Indenture, the JEPA shall not assign this Facility Lease, or its interest in the Assigned Rights without the consent of the City, the Port, the Trustee and RIDA.

**Section 8.2 Assignment and Subleasing by the City.**

- (a) Assignment. This Facility Lease may not be assigned by the City.
- (b) Consent to Sublease. The JEPA consents to the subleasing of the Facility by the City to RIDA pursuant to the Sublease.
- (c) Limitation on Additional Subleasing. Except for the Sublease and any further sublease or assignment permitted by the terms of Article X of the Sublease or Section 8.2(d) below, the City shall not consent to or permit any other sublease of the Facility or any portion thereof without the prior written consent of the Port and the JEPA. The City's obligation under this Section 8.2 will be satisfied by the City diligently enforcing the provisions of Article X of the Sublease in accordance with the requirements of Section 2.1(h) hereof. In the event that RIDA fails to comply with the provisions of Article X of the Sublease related to subleasing the Facility, then the City shall notify RIDA, the JEPA and the Port, in writing, within ten (10) days of learning of RIDA's failure to comply.
- (d) Subleasing Following Termination of Sublease. If the Sublease is terminated and the Term of this Facility Lease is continuing, then the City shall cooperate with the JEPA and the Port to find another sublessee and operator for the Facility as soon as possible and neither the City nor the JEPA shall serve as the operator of the Facility.

**Section 8.3 Amendments and Modifications.** This Facility Lease may be amended or any of its terms modified only in writing, in accordance with Section 5.9 of the Indenture and Section 26.19 of the Project Implementation Agreement and with the written consent of the Trustee, the City, the Port, the JEPA.

## ARTICLE IX

### EVENTS OF DEFAULT AND REMEDIES

**Section 9.1 Events of Default Defined.** The following shall be "events of default" under this Facility Lease and the terms "events of default" and "default" shall mean, whenever they are used in this Facility Lease, any one or more of the following events:

- (a) Payment Default. Failure by the City to apply amounts in the Lease Revenues Fund to (i) pay any Lease Payments required to be paid hereunder on the date such payments are due hereunder, and (ii) pay any Pre-Completion Lease Payments for which the City has adopted an appropriation in accordance with Section 4.12 hereof. .

(b) Covenant Default. Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto, other than as referred to in clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the JEPA, the Trustee or, subject to the provisions of Section 8.2 of the Indenture, the Owners of not less than a majority of the aggregate principal amount of Bonds then Outstanding; provided, however, if the failure stated in the notice can be corrected but not within the 30 days, then no event of default shall have occurred so long as corrective action is promptly instituted by the City within the 30-day period and the default is corrected within 60 days, or such longer period as is consented to by the Trustee with respect to any covenant, condition or agreement relating to the Assigned Rights and by the JEPA with respect to any other covenant, condition or agreement hereunder.

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

**Section 9.2 Remedies on Default.** Whenever any event of default referred to in Section 9.1 hereof shall have happened and be continuing, the JEPA may, subject to Section 9.8 hereof, exercise any and all remedies available pursuant to Laws, equity and granted pursuant to this Facility Lease; provided, however, that notwithstanding anything herein or in the Indenture to the contrary, THERE SHALL BE NO RIGHT UNDER ANY CIRCUMSTANCES TO TERMINATE THIS FACILITY LEASE, ACCELERATE THE LEASE PAYMENTS OR OTHERWISE DECLARE ANY LEASE PAYMENTS NOT THEN DUE OR PAST DUE TO BE IMMEDIATELY DUE AND PAYABLE NOR SHALL THE JEPA OR ITS ASSIGNEE HAVE ANY RIGHT TO REENTER THE FACILITY OR RELET THE FACILITY. THE JEPA'S SOLE REMEDIES ARE DESCRIBED IN THIS ARTICLE IX.

The treatment of this Facility Lease and the amounts payable hereunder under any reorganization or liquidation plan with respect to the City must be acceptable to the JEPA, the Port, and the Trustee.

So long as any event of default exists hereunder, the JEPA and its assignee may exercise any and all remedies available or granted to it pursuant to law or equity, including, but not limited to, specific performance or a writ of mandamus to require the City to perform City's obligations and comply with the covenants under this Facility Lease. Without limiting the foregoing, the JEPA and its assignee shall also have the right to require the City to enforce the City's rights and RIDA's obligations under the Sublease or to directly enforce the City's rights and RIDA's obligations under the Sublease on behalf of the City or as applicable, as a third party beneficiary of those rights and obligations as described herein. Under the Sublease: (a) the JEPA will be a third party beneficiary of certain covenants that RIDA has made for the benefit of the City, the JEPA, and the Port (the "JEPA Sublease Third Party Beneficiary Provisions") and the Port will be a third party beneficiary of certain covenants that RIDA has made for the benefit of the City, the JEPA and the Port (the "Port Sublease Third Party Beneficiary Provisions"), (b) the JEPA and/or the Port will be permitted to exercise its respective third party beneficiary rights with respect to any breach of a JEPA Sublease Third Party Beneficiary Provision or a Port Sublease Third Party Beneficiary Provision, as applicable, either in conjunction with the City or on its own behalf subject to the terms and conditions of this Section 9.2 and Section 11.8 of the Sublease. The JEPA or the Port will be permitted to exercise its respective third party beneficiary rights with respect to any breach of a JEPA Sublease Third Party Beneficiary Provision or a Port Sublease Third Party Beneficiary Provision, respectively, only if (a) the JEPA or the Port, as applicable, consults with the City regarding the exercise of their respective third party rights prior to the commencement of any action to enforce such rights and (b) the JEPA or the Port,

as applicable, delivers written notice to RIDA of the JEPA's or the Port's, as applicable, intention to exercise such rights against RIDA (such notice, the "Third Party Beneficiary Notice"), If the JEPA or the Port, as applicable, delivers a Third Party Beneficiary Notice to RIDA with respect to a breach of a Sublease Third Party Beneficiary Provision and the City exercises remedies with respect to such breach of such Sublease Third Party Beneficiary Provision, then the JEPA or the Port, as applicable, must undertake (for the benefit of RIDA and the City) to cooperate and coordinate with the City, and City shall cooperate and coordinate with the JEPA or the Port, as applicable, so that all statements and positions taken by the JEPA, the Port or the City with respect to any dispute related to such breach in communications with RIDA or in any dispute resolution procedure will be joint statements or positions, as applicable, to the maximum extent possible. The Parties recognize that to the extent the interests of the JEPA and the City, or the Port and the City, as applicable, diverge with respect to the enforcement of any remedies for breach as described in this section, it may not be feasible for the Parties to take joint positions or issue joint statements, and the Parties reserve their rights to take differing positions with regard to such enforcement of such remedies. The intention of this process is that to the maximum extent possible in connection with the breach of any covenant under the Sublease, RIDA will negotiate with the City, the JEPA and the Port jointly.

The City hereby exempts and agrees to save harmless the JEPA from any costs, loss or damage whatsoever arising or occasioned by any exercise of the rights and remedies of the JEPA under this Section 9.2. The City hereby waives any and all claims for damages caused, or which may be caused, by the JEPA or its assignee exercising its rights and remedies under this Section 9.2 other than damages caused by the negligence of the JEPA, or its assignee.

Upon the occurrence of an event of default under this Facility Lease, the Trustee may exercise any remedies available to the JEPA under the Site Lease or in this Facility Lease that have been assigned to the Trustee.

**Section 9.3 No Remedy Exclusive.** No remedy conferred herein upon or reserved to the JEPA and its assignee is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Facility Lease. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the JEPA and its assignee to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

**Section 9.4 Limitation on Remedies.** Notwithstanding anything to the contrary herein or in the Site Lease or the Indenture, the exercise of any remedy herein or therein shall in no event be contrary to the limitations in Section 10.2 or disturb the tenancy or occupancy of the Facility by RIDA pursuant to the Sublease, except to the extent set forth in the Sublease or the Project Implementation Agreement.

**Section 9.5 No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Facility Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 9.6 Application of the Proceeds Following Default.** The JEPA shall direct the Trustee to deposit all amounts received by the City or the JEPA under this Article with respect to a

default in the payment of Lease Payments in the Revenue Fund for application in accordance with Section 4.2 or 8.3 of the Indenture, as applicable. Any other amounts received by the JEPA with respect to an event of default shall be applied for the reimbursement of costs and expenses incurred by the JEPA and the Trustee in connection with such event of default not previously reimbursed and thereafter shall be applied to cure any covenant default by the City hereunder and any remaining balance shall be retained by the JEPA.

### **Section 9.7 Bankruptcy.**

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

(b) Assignment/Assumption. Any Person to which this Facility 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 Facility Lease on and after the date of such an assignment, and any such assignee shall upon request by the JEPA execute and deliver to the JEPA an instrument confirming such assumption in a form acceptable to the JEPA. If the City desires to assign this Facility Lease under the Bankruptcy Code to any Person who shall have made a bona fide offer, then the City shall give the JEPA written notice of such proposed assignment and assumption (which notice shall set forth the name and address of such Person, all of the terms and conditions of such offer, and the adequate assurance to be provided the JEPA to assure such Person's future performance under this Facility Lease) prior to the date the JEPA shall make application to the appropriate court for authority and approval to enter into such assignment and assumption. The JEPA shall thereupon have the prior right and option, to be exercised by notice to the City given at any time prior to the effective date of such proposed assignment and assumption, to accept an assignment and assumption of this Facility 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 Facility Lease. If the City fails to assume or assume and assign this Facility 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 this Facility Lease shall be deemed rejected and the JEPA shall have all rights and remedies available to it pursuant to this Facility Lease.

(c) Adequate Assurances. In the event the City or proposed assignee under Section 9.7(b) proposes under the Bankruptcy Code to cure any default under this Facility Lease or to assume or assign this Facility Lease and is obliged to provide adequate assurance to the JEPA that (a) a default shall be cured, (b) the JEPA shall be compensated for its damages arising from any breach of this Facility Lease and (c) future performance of the City's obligations under this Facility Lease shall occur, then such adequate assurances shall include all of the following, as designated by the JEPA in its sole and absolute discretion:

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

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

(iii) The assumption or assignment of all of the City’s interest and obligations under this Facility Lease.

**Section 9.8 Trustee and Bond Owners to Exercise Rights.** The rights and remedies as are given to the JEPA under this Article IX are being assigned by the JEPA to the Trustee with respect to the Assigned Rights as and to the extent provided in the Indenture, to which assignment the City hereby consents. Such rights and remedies shall be exercised by the Trustee and/or the Bond Owners as provided in Article VIII of the Indenture, subject to Section 9.4 hereof.

## ARTICLE X

### MISCELLANEOUS

**Section 10.1 Notices.** All notices, certificates or other communications required hereunder to the JEPA and City shall be in writing and shall be sufficiently given and shall be deemed given when delivered to the parties listed below or mailed by first class mail, postage prepaid, return receipt requested, on the third day after deposit in the U.S. Mail, to the parties listed below:

To the JEPA: Bayfront Facilities Financing Authority  
[insert new address]  
Chula Vista, California 91910  
Attention: Executive Director

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

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

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

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



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

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

and

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

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

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

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

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

and

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

To the Trustee: Wilmington Trust, National Association  
650 Town Center Drive, Suite 800,  
Costa Mesa, CA 92626  
Attention: Corporate Trust Services  
Fax No.: (714) 384-4151

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

Director, Real Estate Department  
San Diego Unified Port District  
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Port Attorney  
San Diego Unified Port District  
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With a copy to: RIDA Chula Vista, LLC  
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Houston, Texas 77010  
Attention: Ira Mitzner

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

and

Latham & Watkins  
12670 High Bluff Drive  
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To the Port: Executive Director  
San Diego Unified Port District  
Post Office Box 120488  
San Diego, CA 92112-0488

With a copy to: Director, Real Estate Department  
San Diego Unified Port District  
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Port Attorney  
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Houston, Texas 77010  
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San Diego, CA 92130  
Attention: Steven Levine

To RIDA: RIDA Chula Vista, LLC  
1777 Walker Street, Suite 501  
Houston, Texas 77010  
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Executive Director  
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Port Attorney  
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San Diego, CA 92112-0488

Notices to the Trustee may be given by electronic mail but shall not be deemed delivered until delivered by first class mail, postage prepaid. The JEPA, the City, the Port, RIDA, and the Trustee, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

## **Section 10.2 Limitation on Liability.**

(a) Of City. All liabilities under this Facility Lease on the part of the City shall be solely liabilities of the City, and the JEPA hereby releases each and every director, officer and employee of the City of and from any personal or individual liability under this Facility Lease. No director, officer or employee of the City shall at any time or under any circumstances be individually or personally liable under this Facility Lease to the JEPA or to any other party whomsoever for anything done or omitted to be done by the JEPA hereunder.

Notwithstanding anything to the contrary set forth in this Facility Lease: (i) except for liability related to the City's sole negligence, willful misconduct or breach by the City of its obligations under this Facility Lease, liability for payment and performance of any and all of its obligations hereunder is a limited liability of the City payable in the case of Lease Payments only from Lease Revenues deposited to the Lease Revenues Fund, and as to all other amounts payable only from amounts paid to the City by RIDA under the Sublease or paid to the City as Administrative Expenses under the Indenture, and the City shall have no obligation to appropriate amounts from any other source of funds to pay any amount due hereunder or to perform any covenant herein; (ii) where the City has an obligation herein to cause RIDA to perform under the Sublease, the City's obligation is limited to (1) diligently enforcing the provisions of the Sublease by demanding timely performance by RIDA, (2) providing simultaneous written notice of any failure by RIDA to perform to the JEPA, the Port and the Trustee; and (3) where the Port or the JEPA is a third party beneficiary of a provision of the Sublease, cooperating with all reasonable requests made by the Port or the JEPA, as applicable, to enforce such provisions.

(b) Of JEPA and Port. All liabilities under this Facility Lease on the part of the JEPA shall be solely liabilities of the JEPA as a joint powers authority, and the City hereby releases each and every officer, director, member of the BPC, employee, partner, affiliate, agent, or contractor of the Port and every officer, director, employee of the JEPA of and from any personal or individual liability under this Facility Lease. No officer, director, member of the BPC, employee, partner, affiliate, agent, or contractor of the Port or any member, officer or employee of the JEPA shall at any time or under any circumstances be individually or personally liable under this Facility Lease to the City or to any other party whomsoever for anything done or omitted to be done by the JEPA or the Port hereunder.

**Section 10.3 Binding Effect.** Each of the provisions of this Facility Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of the City and of the JEPA, but also of their respective heirs, successors or assigns, provided this clause shall not permit any assignment by the City contrary to the provisions of Section 8.2(a) of this Facility Lease.

**Section 10.4 Entire Agreement.** It is understood and acknowledged that there are no oral agreements between the JEPA and the City affecting this Facility Lease and this Facility Lease supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the JEPA and the City with respect to the subject matter hereof, except for the Prior Agreements, the Contemporaneous Agreements, and Approved Agreements.

This Facility Lease contains all of the terms, covenants, conditions, warranties and agreements of the JEPA and the City relating in any manner to the rental, use and occupancy of the Facility and shall be considered to be the only agreement between the JEPA and the City and their representatives and agents, with respect to the subject matter hereof, except for the applicable Prior Agreements, the Contemporaneous Agreements and the applicable Approved Agreements. All negotiations and oral agreements acceptable to the JEPA and the City have been merged into and are included herein. However, the City acknowledges and agrees that other documents may restrict the City's use of the Facility or impose other obligations not specifically referenced in this Facility Lease, including, but not limited to, conditions of approval of a CDP or mitigation measures under CEQA.

**Section 10.5 Waiver.** No waiver of any provision of this Facility 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 Facility 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 the JEPA from the City after the termination of this Facility Lease shall in any way alter the length of the Term or of the City's right of possession hereunder or after the giving of any notice shall reinstate, continue or extend the Term or affect any notice given the City prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit or after final judgment for possession of the Facility, the JEPA may receive and collect any rent due, and the payment of said rent shall not waive or affect said notice, suit or judgment. The JEPA shall have the power and authority to waive any requirement of the City under this Facility Lease and the City shall have no authority to waive any requirement of RIDA under the Sublease without first obtaining the JEPA's prior written consent to such waiver; provided, however, that the JEPA may elect to obtain approval of its governing board as a condition to exercising its rights under this Section 10.5.

**Section 10.6 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 the JEPA 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.

**Section 10.7 Transaction Costs.** To the extent the City requests any approval, consent or other action by the JEPA with respect to this Facility Lease, the City shall pay or reimburse the JEPA upon written demand therefor, all of such party's reasonable attorneys' fees and other third party costs incurred in connection therewith, together with the JEPA's then current processing or cost recovery fee for similar transactions consistent with any schedule of such fees then utilized by the JEPA. The JEPA shall provide the City or RIDA, to the extent RIDA is responsible for payment of such fees under the Sublease, with a copy of any such fee schedule following written request therefor from the City or RIDA, as applicable. Such costs and fees shall be payable to the JEPA, whether or not the JEPA grants such approval or consent, or undertakes the action requested by the City or RIDA. The City acknowledges and agrees that the costs and fees payable by the City may include third party costs, including, without limitation, those costs of the JEPA and the Port which may be reimbursable on terms agreed to by the City, the JEPA and the Port.

**Section 10.8 Drafting Presumption; Review Standard.** The parties acknowledge that this Facility Lease has been agreed to by both the parties, that both the JEPA and the City have

consulted with attorneys with respect to the terms of this Facility Lease and that no presumption shall be created against the drafting party. Any deletion of language from this Facility Lease prior to its execution by the JEPA and the City 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 Facility Lease, any approval or consent to be given by the JEPA or its governing board may be given or withheld in the JEPA's or governing board's sole and absolute discretion.

**Section 10.9 Constitutional Rights and Compliance with Laws.** Nothing in this Facility Lease is intended to limit any rights that the City 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 Laws, by the City or any other Governmental Authority, including, without limitation, any claim for a taking, and this Facility Lease shall be construed as to give effect to such intent. Whenever this Facility Lease requires the City to comply with the requirements of any Laws, then the City will be deemed in compliance with such Laws if each applicable Governmental Authority has provided a written variance from or waiver of compliance therewith.

**Section 10.10 Dispute Resolution.** Except as otherwise provided in this Facility Lease to the contrary, any controversy or claim arising out of or relating to this Facility 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 convention center ground leases within the County of San Diego. 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.

**Section 10.11 Brokers.** The City and the JEPA 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 Facility Lease. The City shall be solely responsible for the payment of any fee or commission due to any broker and agrees to indemnify and defend and hold the JEPA and the Port 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 the JEPA or the Port.

**Section 10.12 Partial Invalidity.** If any one or more of the terms, provisions, covenants or conditions of this Facility Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Facility Lease shall be affected thereby, and each and every other provision, covenant or condition of this Facility Lease shall be valid and enforceable to the fullest extent permitted by Laws.

**Section 10.13 Execution in Counterparts.** This Facility Lease may be executed in any number of counterparts, each of which shall be an original, but all together shall constitute but one and the same instrument.

**Section 10.14 Governing Law; Compliance with Laws; Venue.**

(a) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(b) Compliance with Laws. The City shall in all activities on or in connection with the Facility, and in all uses thereof, including without limitation the Permitted Use and any construction of the Convention Center or the making of any Alterations, abide by and comply with, and cause RIDA to abide by and comply with, and enforce the requirement under the Sublease to have RIDA, Tenant Party and the Hotel Operator to comply with, all Laws at RIDA's sole cost and expense, and the JEPA shall not have any obligations or responsibilities to comply with any Laws as to the Facility or any use thereby by the City, RIDA, Tenant Party or Hotel Operator. In particular and without limitation, the City shall have the sole and exclusive obligation and responsibility 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 22, (iv) any CDP (including any conditions of approval or mitigation measures or project changes pursuant to the environmental review under the CEQA) or any other California Coastal Commission regulations or local, state or federal requirements now or hereafter affecting the Facility, including the use or development thereof, (v) the Port Master Plan ("PMP"), (vi) any other development permits or approvals accepted by the Port, and (vii) the policies adopted by the BPC.

(c) Venue. Venue for any legal proceeding shall be in San Diego County, California.

**Section 10.15 Landlord Transfer.** The City acknowledges that, subject to the Port Act and the oversight of the California State Lands Commission, the Port may be required by applicable law to transfer all or any portion of its interest in the Site and in the Site Lease, and the City agrees that in the event of any such transfer and the express assumption of the Port's obligations under the Site Lease and under each of the documents set forth on Exhibit F attached to the Site Lease (a "Landlord Transfer"), the Port shall automatically be released from all liability under the Site Lease for periods on and after the date of such Landlord Transfer, and the City agrees to look solely to such transferee for the performance of the Port's obligations thereunder that arise on or after the date of such Landlord Transfer. The City further acknowledges that each landlord under the Site Lease shall be liable only for those obligations arising during its period of ownership of the Site and shall be released from further obligations after it completes a Landlord Transfer.

**Section 10.16 Captions.** The captions or headings in this Facility Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Facility Lease.

**Section 10.17 No Merger.** If both the JEPA's and the City's estate under this or any other lease relating to the Facility or any portion thereof shall at any time by any reason become vested in one owner, this Facility Lease and the estate created hereby shall not be destroyed or terminated by the doctrine of merger, unless (i) the City so elects as evidenced by recording a written declaration so stating, and, unless and until the City so elects, the City shall continue to have and enjoy all of its rights and privileges as to the separate estates, and (ii) RIDA, the Port, the JEPA and the Trustee have provided written consent to such election.

**Section 10.18 Time of Essence.** Time is of the essence with respect to this Facility Lease and each of its provisions.

**Section 10.19 Third-Party Beneficiary.** To the extent that this Facility Lease confers upon or gives or grants to the Trustee any right, remedy or claim under or by reason of this Facility Lease, the Trustee is hereby explicitly recognized as being a third-party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder. The Port is a third party beneficiary of Sections 2.1(h), 4.1, 4.14(d)(ii) and (iii), 6.1(b)(i), 6.1(d)(ii), 7.2(b), 7.2(c), 7.2(d), 7.5(k), 7.5(l), 7.6, 7.8(c), 7.11(e) Article VIII, Section 10.2(b), 10.11 10.15 and 10.21 (the “Port Facility Lease Third Party Beneficiary Provisions”) and hereof. RIDA is a third party beneficiary of Article VI and Sections 4.10, 8.1, 8.3 and 10.20 hereof (the “RIDA Facility Lease Third Party Beneficiary Provisions”). The Parties agree that permitting any third party beneficiary under this Facility Lease to bring its own breach of contract action is consistent with the objectives of this Facility Lease and the reasonable expectations of the City and the JEPA. As such, in order to induce the Port to consent to the execution of the Sublease by the City and this Facility Lease and by the JEPA, and to induce RIDA to enter into the Sublease, (x) the Port shall be a third party beneficiary of this Facility Lease as it relates to any Port Facility Lease Third Party Beneficiary Provision and may enforce any right, remedy or claim conferred given or granted under any Port Facility Lease Third Party Beneficiary Provision, and (y) RIDA shall be a third party beneficiary of this Facility Lease as it relates to any RIDA Facility Lease Third Party Beneficiary Provision and may enforce any right, remedy or claim conferred given or granted under any RIDA Facility Lease Third Party Beneficiary Provision.

**Section 10.20 Effect of Discharge of all Bonds and Additional Bonds.** In the event that all Bonds and Additional Bonds issued under the Indenture shall be deemed to have been paid and discharged in accordance with Section 9.3 of the Indenture (the “Discharge of the Bonds”), then all references herein to the Bonds, Additional Bonds, Owners of the Bonds, Trustee, the Indenture and the Assigned Rights shall be of no force and effect as of the effective date of the Discharge of the Bonds. On the effective date of the Discharge of the Bonds, the Assigned Rights shall revert to the JEPA without any further action on the part of the Trustee, the JEPA, the City or the Port, any amounts that were to have been paid to the Trustee shall be paid to the JEPA, except for any Net Proceeds and amounts payable by RIDA to the Trustee pursuant to Section 6.1 hereof which shall be held pursuant to the terms of the Sublease and distributed in accordance with the provisions of this Facility Lease, the Sublease and the Project Implementation Agreement and, subject to the provisions of this Facility Lease, the Sublease and the Project Implementation Agreement, the Revenue Sharing Agreement, or any other agreement between the Port, the City, the JEPA and RIDA governing the distribution of such amounts, and all rights granted to the Trustee and the Owners of the Bonds hereunder, including, but not limited to, the Assigned Rights, the right to enforce any remedies, to provide consent and to receive notice, shall be of no further force and effect.

**Section 10.21 Consents.** Notwithstanding anything herein to the contrary, in no event shall the JEPA provide consent for any request under this Facility Lease unless such consent has been approved by the Port, in each case, not to be unreasonably withheld, conditioned or delayed unless another standard is specifically provided herein for the JEPA’s consent.



IN WITNESS WHEREOF, the authorized representatives of the JEPA and the City have caused this Facility Lease to be executed, as of the date first above written.

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

By: \_\_\_\_\_  
Its: Executive Director

APPROVED AS TO FORM AND LEGALITY:

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

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

CITY OF CHULA VISTA, a charter city

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

ATTEST:

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

## CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed under the foregoing to the City of Chula Vista, a body corporate and politic, is hereby accepted by the undersigned officer or agent on behalf of the City Council of the City, pursuant to authority conferred by resolution of said City Council adopted on \_\_\_\_\_, 2021, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_, [2021]

CITY OF CHULA VISTA

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

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE SITE**

**EXHIBIT "A"**

**CONVENTION CENTER LEASE PARCEL**

BEGINNING AT STATION NO. 107 ON THE MEAN HIGH TIDE LINE OF THE BAY OF SAN DIEGO, AS SAID MEAN HIGH TIDE LINE IS SHOWN ON MISCELLANEOUS MAP NO. 217, FILED IN THE RECORDER'S OFFICE OF THE COUNTY OF SAN DIEGO; THENCE ALONG SAID MEAN HIGH TIDE LINE SOUTH 58°27'22" EAST (RECORD SOUTH 58°28'01" EAST), 105.95 FEET TO THE INTERSECTION WITH THE RIGHT-OF-WAY OF MARINA PARKWAY, FORMERLY TIDELANDS AVENUE AS DEDICATED PER DOCUMENT RECORDED OCTOBER 10, 1966 AS FILE NO. 163052 AND THE BEGINNING OF A NON TANGENT 20.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY, A RADIAL LINE TO SAID CURVE BEARS NORTH 33°15'14" WEST; THENCE ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 49° 04' 34" A DISTANCE OF 17.13 FEET TO THE **TRUE POINT OF BEGINNING**. THENCE CONTINUING SOUTHERLY ALONG SAID CURVE AND RIGHT-OF-WAY OF MARINA PARKWAY THROUGH A CENTRAL ANGLE OF 22°02'58" A DISTANCE OF 7.70 FEET; THENCE CONTINUING ALONG SAID RIGHT OF WAY THE FOLLOWING THREE COURSES: 1) SOUTH 14°22'45" EAST, 269.73 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 4,740.00 FEET; 2) THENCE ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 03°32'06" A DISTANCE OF 292.44 FEET; 3) THENCE SOUTH 17°54'50" EAST, 705.69 FEET; THENCE LEAVING SAID RIGHT-OF-WAY SOUTH 72°12'12" WEST, 14.67 FEET;

THENCE SOUTH 67°45'00" WEST, 64.39 FEET;  
 THENCE SOUTH 72°12'12" WEST, 72.20 FEET;  
 THENCE NORTH 88°19'10" WEST, 23.16 FEET;  
 THENCE NORTH 78°16'38" WEST, 13.37 FEET;  
 THENCE NORTH 74°05'34" WEST, 21.14 FEET;  
 THENCE NORTH 79°25'36" WEST, 27.73 FEET;  
 THENCE NORTH 87°11'55" WEST, 23.86 FEET;  
 THENCE NORTH 03°28'36" EAST, 8.00 FEET;  
 THENCE NORTH 87°00'15" WEST, 23.79 FEET;  
 THENCE NORTH 88°14'32" WEST, 31.74 FEET;  
 THENCE NORTH 89°22'43" WEST, 32.40 FEET;  
 THENCE SOUTH 89°25'59" WEST, 24.07 FEET;  
 THENCE SOUTH 88°15'34" WEST, 32.25 FEET;  
 THENCE NORTH 37°33'31" WEST, 5.60 FEET;  
 THENCE NORTH 56°17'05" WEST, 8.85 FEET;  
 THENCE NORTH 76°31'40" WEST, 12.98 FEET;  
 THENCE NORTH 86°10'39" WEST, 16.09 FEET;  
 THENCE NORTH 86°35'34" WEST, 18.27 FEET;  
 THENCE NORTH 80°35'22" WEST, 17.55 FEET;  
 THENCE NORTH 72°42'50" WEST, 19.41 FEET;  
 THENCE NORTH 62°34'06" WEST, 24.53 FEET;  
 THENCE NORTH 63°24'30" WEST, 68.58 FEET;  
 THENCE NORTH 70°41'58" WEST, 17.06 FEET;  
 THENCE NORTH 84°56'52" WEST, 14.79 FEET;  
 THENCE SOUTH 85°45'23" WEST, 11.10 FEET;  
 THENCE SOUTH 74°10'06" WEST, 9.39 FEET;  
 THENCE NORTH 17°34'06" WEST, 22.65 FEET;  
 THENCE NORTH 72°52'32" EAST, 14.25 FEET;  
 THENCE NORTH 17°34'06" WEST, 346.24 FEET;

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

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

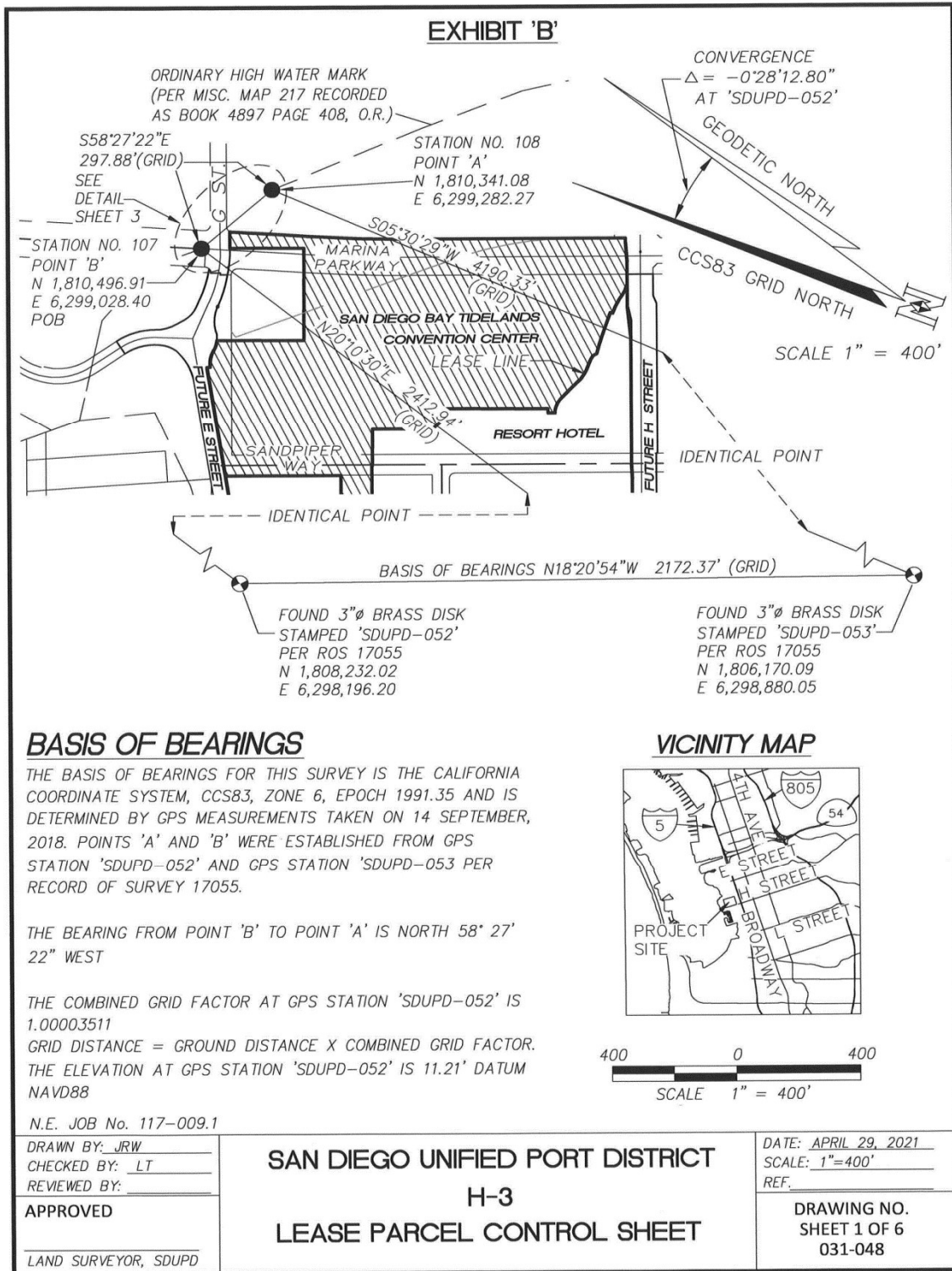


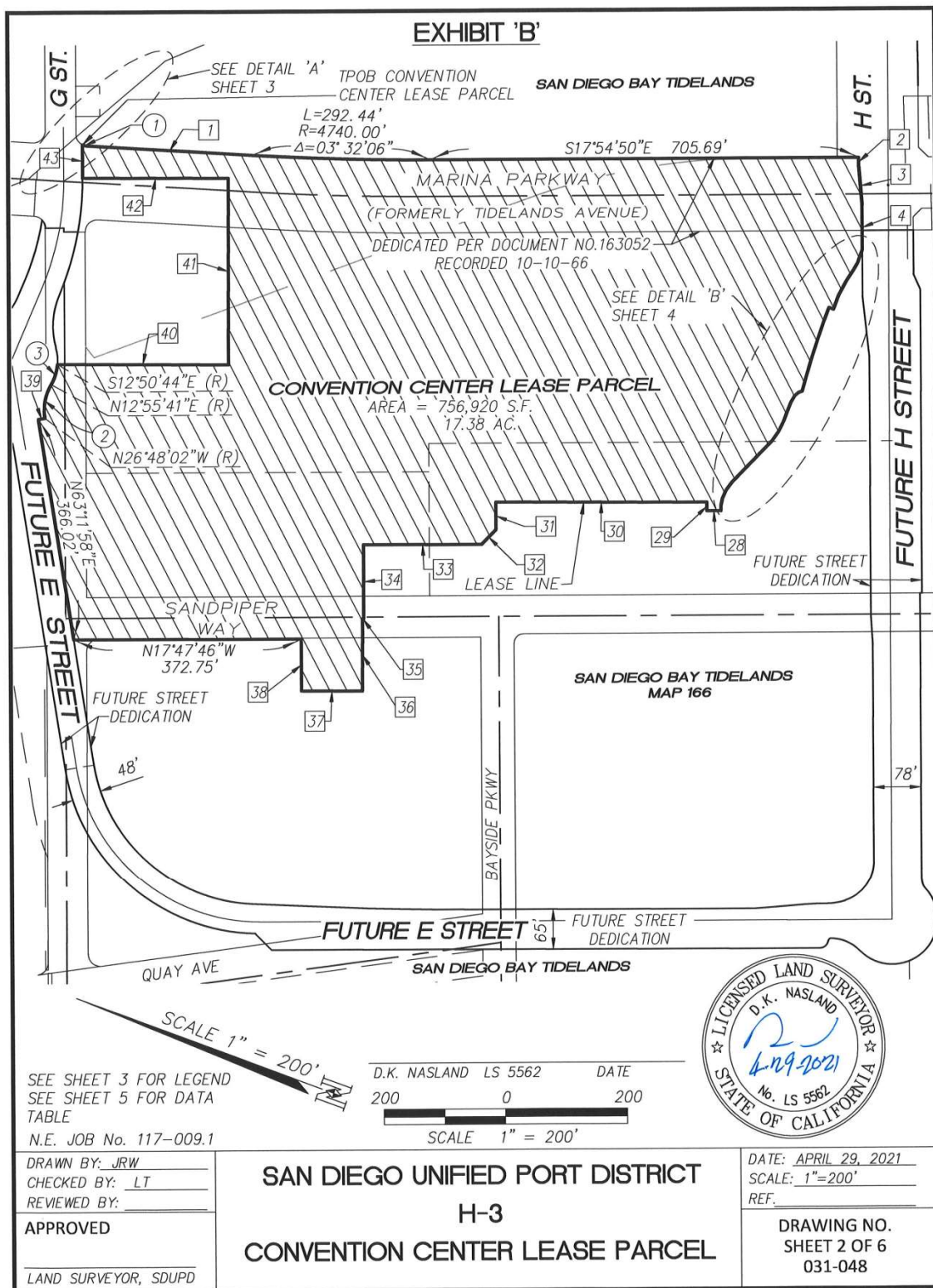

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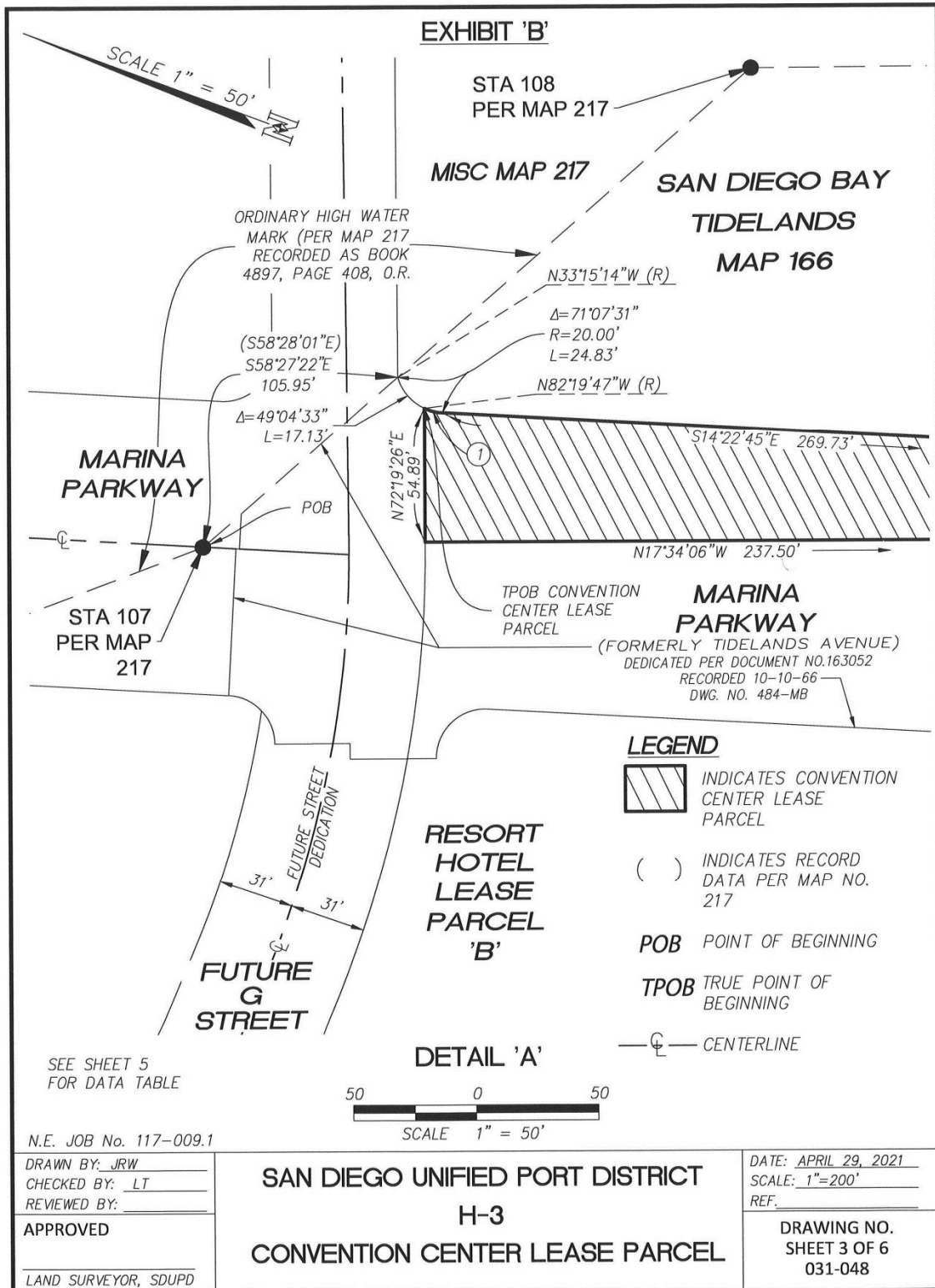
D.K. NASLAND LS 5562

# EXHIBIT B

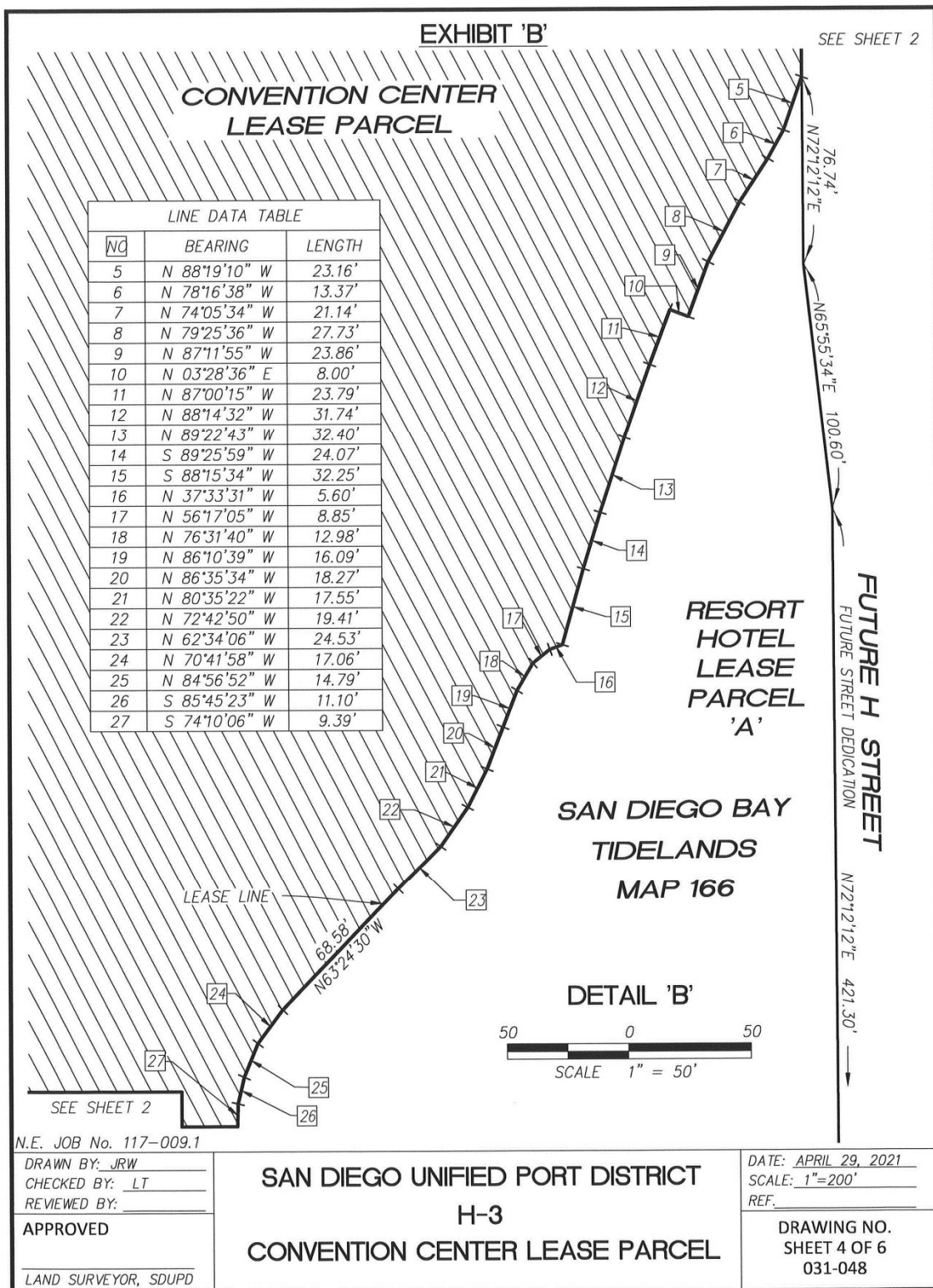
## PLAT MAP OF THE SITE













**EXHIBIT 'B'**

LINE DATA TABLE		
NO	BEARING	LENGTH
1	S 14°22'45" E	269.73'
2	S 72°12'12" W	14.67'
3	S 67°45'00" W	64.39'
4	S 72°12'12" W	72.20'
28	N 17°34'06" W	22.65'
29	N 72°52'32" E	14.25'
30	N 17°34'06" W	346.24'
31	S 72°45'10" W	45.60'
32	N 62°34'06" W	33.81'
33	N 17°47'38" W	193.43'
34	S 72°26'06" W	121.66'
35	N 17°34'06" W	1.81'
36	S 72°25'54" W	118.07'
37	N 17°34'06" W	100.27'
38	N 72°25'54" E	84.95'
39	S 26°48'02" E	11.00'
40	S 17°34'06" E	279.27'
41	N 72°25'54" E	305.50'
42	N 17°34'06" W	237.50'
43	N 72°19'26" E	54.89'

CURVE DATA TABLE			
NO	DELTA	RADIUS	LENGTH
1	22°02'58"	20.00'	7.70'
2	39°43'43"	83.00'	57.55'
3	25°46'25"	77.00'	34.64'

N.E. JOB No. 117-009.1

DRAWN BY: JRW

CHECKED BY: LT

REVIEWED BY:

APPROVED

LAND SURVEYOR, SDUPD

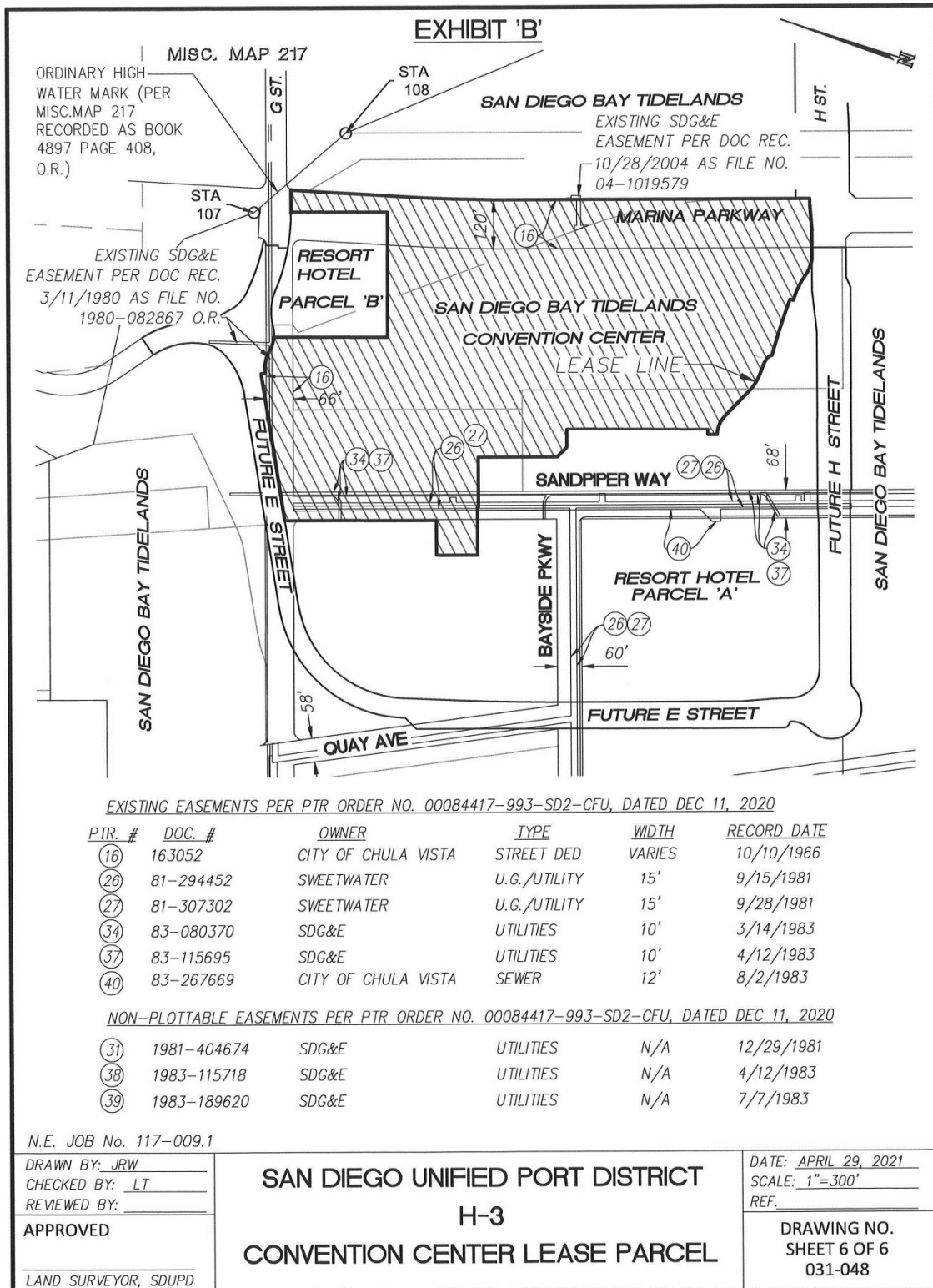
**SAN DIEGO UNIFIED PORT DISTRICT**  
**H-3**  
**CONVENTION CENTER LEASE PARCEL**

DATE: APRIL 29, 2021

SCALE: 1"=200'

REF:

DRAWING NO.  
 SHEET 5 OF 6  
 031-048



**EXHIBIT C**

**SCHEDULE OF LEASE PAYMENTS**

<i>Lease Year<sup>(1)</sup></i>	<i>Maximum Lease Payment</i>
1	\$26,000,000
2	26,520,000
3	27,050,400
4	27,591,408
5	28,143,236
6	28,706,101
7	29,280,223
8	29,865,827
9	30,463,144
10	31,072,407
11	31,693,855
12	32,327,732
13	32,974,287
14	33,633,772
15	34,306,448
16	34,992,577
17	35,692,428
18	36,406,277
19	37,134,402
20	37,877,090
21	38,634,632
22	39,407,325
23	40,195,471
24	40,999,381
25	41,819,368
26	42,655,756
27	43,508,871
28	44,379,048
29	45,266,629
30	46,171,962
31	47,095,401
32	48,037,309

(1) The first Lease Year commences on the Convention Center Delivery Date and ends on the May 14 thereafter. If such commencement date is other than May 15 of a year, the Maximum Lease Payment for the first Lease Year shall be prorated based on the number of days of use and occupancy by the City in the first Lease Year .

**EXHIBIT D****Attachment E to Agenda File 2021-0248****S ADDENDUM<sup>1</sup>**

“Affiliate” means 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.

“Approved Agreements” has the meaning set forth in Section 7.5(e) of this Facility Lease.

“Assigned Rights” has the meaning set forth in the Indenture.

“Authority Administrative Expenses” has the meaning set forth in the Indenture.

“Authorized Officer of the City” means the City Manager or the Director of Finance of the City or any other Person authorized by the City to perform an act or sign a document on behalf of the City for purposes of this Facility Lease.

“Available Condemnation Amount” has the meaning set forth in Section 5.1(d) of the Sublease.

“Available Casualty Amount” has the meaning set forth in Section 5.2(b) of the Sublease.

“Bankruptcy Code” means the United States Bankruptcy Code (11 U.S.C. § 101, et seq.), as amended, and any successor statute.

“Bankruptcy Event” means the occurrence with respect to the City of any of the following: (a) appointment of a receiver or custodian for any property of such Person, or the institution of a foreclosure or attachment action upon any property of such Person; (b) filing by such Person of a voluntary petition under the provisions of the Bankruptcy Code; or (c) such Person making or consenting to an assignment for the benefit of creditors or a composition of creditors.

“Bonds” means the \$\_\_\_\_\_ Chula Vista Bayfront Facilities Financing Authority Revenue Bonds (Chula Vista Bayfront Convention Center) Series 2021A (Federally Taxable) (the “2021A Bonds”), and the \$\_\_\_\_\_ Chula Vista Bayfront Facilities Financing Authority Revenue Bonds (Chula Vista Bayfront Convention Center) Series 2021B (Tax-Exempt) (the “2021B Bonds”), issued by the JEPA pursuant to the Indenture.

“BPC” means the Board of Port Commissioners.

“Business Day” means a day (other than a Saturday or Sunday) on which banks in San Diego County, California are open for ordinary banking business.

“CEQA” means the California Environmental Quality Act.

“CDP” means a Coastal Development Permit issued by the Port.

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<sup>1</sup> NTD: All definitions to be updated and conformed once leases are in agreed form.

“Closing Date” means the date on which the Bonds are issued in accordance with the Indenture.

“Commencement Date” means the Closing Date.

“Complete” has the meaning set forth in the Project Implementation Agreement.

“Convention Center” means all Improvements located on the Site, other than the Existing Improvements.

“Convention Center Construction Outside Completion Date” means forty-eight (48) months after the Outside Convention Center Construction Commencement Date, as such date may be extended by one day for each day that a Force Majeure Event delays Completion of the Convention Center.

“Convention Center Delivery Date” means the date on which the JEPA delivers the Complete Convention Center to the City, or the date on which the JEPA delivers any portion thereof to the City in a condition which allows for use and occupancy by the City of the portion delivered to it.

“Contemporaneous Agreements” means agreements executed on or around the date hereof by the Parties or their Affiliates with respect to the Site, including, but not limited to, the Project Implementation Agreement, the Site Lease, the Ground Lease and the Sublease.

“Default Rate” means 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 JEPA and City shall reasonably agree upon if such rate ceases to be published), plus four (4) percentage points, and (ii) the highest rate permitted by applicable Laws.

“Environmental Cleanup” has the meaning set forth in Section 7.6(d) hereof.

“Environmental Laws” means Laws and other requirements in effect during the Term that regulate Hazardous Materials or otherwise relate to public health and safety or the protection of the environment.

“Existing Improvements” means any improvements located on, in, over or under the Site (including utilities, storm drains and park ways) that are in existence as of the Commencement Date, whether constructed by the JEPA, the City, the Port, a prior tenant or another third party.

“Existing Revenues” means the MSA Revenue and the Transient Occupancy Tax Revenue attributable to the RV Park Lease deposited to the Lease Revenues Fund prior to the Convention Center Delivery Date.

“Facility” has the meaning set forth in the recitals hereto.

“Facility Lease” has the meaning set forth in the first paragraph hereof.

“Facility Lease Advance Rent Notice” means a notice, delivered pursuant to Section 2.1(i) of this Facility Lease, specifying the amount of Sublease Advance Rent which the City must pay to the JEPA. A form of Facility Lease Advance Rent Notice is attached here to as Exhibit H-1.

“Facility Lease Landlord Parties” means the JEPA, the Port, their respective officers, directors, employees, partners, affiliates, agents, contractors, consultants, successors and assigns, the members of the Board of Port Commissioners and the members of the Board of Directors of the JEPA.

“Financing District” means the Bayfront Project Special Tax Financing District created pursuant to Chapter 3.61 of the Chula Vista Municipal Code.

“First Class Condition” has the meaning set forth in the Sublease.

“Fiscal Year” means the fiscal year of the City, as it may be modified from time to time, currently July 1 through June 30.

“Force Majeure Event” has the meaning set forth in Section 6.13 of the Sublease.

“Governmental Authority” means each and every governmental agency, authority, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Site (or any activity this Facility Lease allows), including without limitation, the Port and the City, United States federal government, the State and County governments and their subdivisions and municipalities, and all applicable government agencies, governmental authorities, and subdivisions thereof.

“Ground Lease” has the meaning set forth in recitals hereto.

“Ground Lease Property” has the meaning set forth in recitals hereto.

“Hazardous Materials” any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, including, without limitation, asbestos and oil and petroleum products, which is a “Hazardous Material” or “Hazardous Substance” within the meaning of any applicable Law (including, but not limited to, hazardous substances as defined by Cal. Health & Safety Code § 25316 and anything that may result in contamination or pollution as defined by Cal. Water Code § 13050), and at any concentration that is subject to regulation under any Law relating to such Hazardous Material or Hazardous Substance. Notwithstanding any exclusion from the definition of hazardous substance or hazardous material in any applicable Law, Hazardous Material as defined herein includes any hydrocarbons, petroleum, petroleum products or waste and any other chemical, substance or waste, that is regulated by, or may form the basis of liability under, any Environmental Laws.

“Hazardous Materials Activity” generation, bringing, use, storage, emission, release, or disposal of any Hazardous Material, or products or materials which include any hazardous substance as a component.

“Hazardous Substances” means any substance, waste, pollutants, or contaminants now or hereafter included in such (or any similar) term under any federal, state or local code, statute, regulation or ordinance now in effect or hereafter enacted or amended.

“Hotel” has the meaning set forth in recitals hereto.

“Hotel Management Agreement” has the meaning set forth in the Sublease.

“Hotel Operator” means RIDA’s counterparty to a Hotel Management Agreement that is in effect in accordance with the Sublease.

“Improvements” means the Existing Improvements and those buildings, structures and other improvements (including vaults, utilities and other underground improvements) now or hereafter (including the Convention Center, Alterations, and any other ancillary improvements constructed during the Term) located on, in, over or under the Site.

“Indenture” has the meaning set forth in Section 1.1.

“Independent Counsel” means an attorney duly admitted to the practice of law before the highest court of the State and who is not an employee or officer of the JEPA or the City.

“Insurance and Condemnation Fund” that certain fund established by the Trustee and administered pursuant to the Indenture.

“Inquiry” has the meaning set forth in Section 7.6.

“Laws” means all of the following to the extent (i) applicable to the Site, the Facility, the Improvements or any activity under this Facility 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 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 Site is located, including the building code thereof, and any permits and approvals by any Governmental Authority, the City, and the Port, including, without limitation, any California Coastal Development Permit, applicable to the Site, the Facility or the use or development thereof.

“Lease Payment Date” means each May 15 and November 15, commencing on the first May 15 or November 15 following the Convention Center Delivery Date.

“Lease Payments” means those payments made by the City to the JEPA as a portion of the annual rental for the use and possession of the Facility as set forth in Section 4.4 (a) hereof.

“Lease Revenues Fund” means the fund established pursuant to Section 4.4(c) hereof.

“Lease Revenues” the MSA Revenue, Sales and Use Tax Revenue, Tax Increment Revenue, and Transient Occupancy Tax Revenue.

“Lease Year” the period beginning on each May 15 and ending on the following May 14.

“Letter of Credit” an irrevocable stand-by letter of credit issued by Wells Fargo Bank, N.A. or another bank that has a Moody’s Long Term Letter of Credit rating of “A-” or higher and a Moody’s Long Term Deposit rating of “A-” or higher. The principal sum of the Letter of Credit shall be made payable to Trustee or order. Each Letter of Credit provided during the Term shall be valid for a minimum of twelve (12) months from date of issuance

“Loan Agreement” means that certain Loan Agreement dated as of \_\_\_\_\_, [2021] by and among the Financing District, the JEPA and the Trustee with respect to the Financing District public infrastructure loan being made pursuant to the Indenture on the Closing Date.

“Material Exacerbation / Materially Exacerbate/ Materially Exacerbated” has the meaning set forth in Section 7.6(d).

“Maximum Lease Payment” means with respect to each Lease Year the amount set forth in Exhibit C hereto in the column entitled “Maximum Lease Payment,” or such lesser amount as is determined by the City for any Lease Year in accordance with the provisions of Section 4.10 or Section 6.1(d) hereof.

“MSA Revenue” means an amount equal to \$986,625, increasing 3% on July 1 of each years, commencing July 1, 2017, which amount is based on the payment made by the Port to the City in fiscal year 2016 pursuant to that certain Municipal Services Agreement No. 88-2012 between the City and the Port providing for Police, Fire and Emergency Medical Services.

“Outside Convention Center Construction Commencement Date” means ten (10) days after the Commencement Date.

“Permitted Encumbrances” means as of any particular time: (1) liens for general ad valorem taxes and assessments, if any, (x) not then delinquent, (y) which RIDA may, pursuant to Section 6.19 of the Sublease, permit to remain unpaid or (z) being contested in good faith by appropriate proceedings and otherwise in accordance with this Facility Lease; (2) the Sublease; (3) this Facility Lease; (4) the Site Lease; [(5) any right or claim of any mechanic, laborer, materialman, supplier or vendor filed or perfected in the manner prescribed by law after the Commencement Date which is being contested in accordance with this Facility Lease or the Sublease; (6) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the Commencement Date; (7) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the Commencement Date, to which the Port, the JEPA and RIDA consent, in writing, and which the City certifies will not materially impair the use of the Facility for its intended purpose and will not, in and of itself, result in abatement of Lease Payments under this Facility Lease, or any extensions, renewals or permitted replacement thereof;] and (8) any pledges contained in the Indenture; (12) the Permitted Financing Encumbrances; and (13) encumbrances on the Site of the type permitted by Section 2(d) of the Site Lease.

“Permitted Financing Encumbrance” has the meaning set forth in Section 9.2 of the Sublease.

“Permitted Use” has the meaning set forth in the Sublease.

“Person” means any individual, partnership, firm, joint venture, association, corporation, limited liability company, Government Agency or any other form of business entity.



“Phase 1A Infrastructure Improvements” means the public infrastructure set forth in the Project Implementation Agreement to be constructed with proceeds of the 2021B Bonds and the County Funds (as defined in the Project Implementation Agreement).

“Port” has the meaning set forth in the first paragraph of this Facility Lease.

“Port Act” has the meaning set forth in the Sublease.

“Port Support Agreement” means that certain Support Agreement, dated as of \_\_\_\_\_, [2021], by and between the JEPA and the Port, as it may be amended, amended and restated, supplemented or otherwise modified from time to time.

“Prior Agreements” has the meaning set forth in Section 33 of the Site Lease.

“Pre-Completion Lease Payments” has the meaning set forth in Section 4.12.

“Pre-Existing Hazardous Material” means any Hazardous Material located on or under the Site prior to the Commencement Date, whether known or unknown, and any Hazardous Material located outside the Site (including any premises owned by the Port) prior to the Commencement Date that migrates onto the Site thereafter.

“Project” means the Convention Center and the Phase 1A Infrastructure Improvements.

“Project Implementation Agreement” has the meaning set forth in recitals hereto.

“Property Expenses” means, without limitation, all costs and expenses of any nature incurred or payable, or arising in connection with, the ownership, management, maintenance, construction, repair, replacement, restoration or operation of the Facility, including, without limitation, any amounts paid for: (i) the cost of supplying any utilities, the cost of operating, maintaining, repairing, renovating and managing any utility systems, mechanical systems, communications systems, sanitary and storm drainage systems, and the cost of supplies and equipment and maintenance and service contracts in connection therewith; (ii) the cost of licenses, certificates, permits and inspections; (iii) intentionally omitted; (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 Facility; (v) payments under any easement, license, permit, operating agreement, declaration, or covenant or instrument pertaining to the Site that exist as of the commencement of the Term or that are created or consented to by the City; and (vi) the cost of any Improvements, capital repairs, capital alterations, or capital equipment, required by Laws, or otherwise required under this Facility Lease. Notwithstanding anything to the contrary in this Facility Lease, Property Expenses shall not include Property Tax Expenses.

“Property Tax Expenses” means property taxes and assessments with respect to the Facility including, without limitation, real estate taxes, possessory interest taxes, general and special taxes and assessments, leasehold taxes or taxes based upon the City’s receipt of rent, but excluding all taxes imposed upon net income or gain.

“Quarter” means, during the Term, each three (3) calendar month period commencing January 1, April 1, July 1 and October 1, except that the first Quarter shall commence on the Closing Date and shall end on \_\_\_\_\_.

“Related Costs” means any costs, damages (of all kinds including punitive damage, diminution in value and loss of use), claims, liabilities, expenses (including reasonable attorneys’, consultants’ and experts’ fees), losses, fines, penalties and court costs related to the subject matter of the Related Costs and amounts paid in settlement of any claims or actions related to the subject matter of the Related Costs.

“Reimbursement Procedure” has the meaning set forth in Section 3.5(d) of the Sublease.

“Rent” has the meaning set forth in the Sublease.

“Revenue Sharing Agreement” means that certain Third Amended and Restated Revenue Sharing Agreement by and between the City and Port, dated \_\_\_\_\_, [2021] as it may be amended, amended and restated, supplemented or otherwise modified from time to time.

“Revenues” has the meaning set forth in the Indenture.

“RIDA” has the meaning set forth in recitals hereto.

“RIDA Sublease Payments” means the Base Rent and Additional Rent required to be paid by RIDA in accordance with Sections 3.5 of the Sublease.

“Rohr” means Rohr, Inc., a United Technologies Aerospace Systems Company, together with its successors and assigns.

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

“Sales and Use Tax” means that portion of use and sales taxes levied pursuant to the Bradley-Burns Uniform Local Use and Sales Tax Law (California Revenue and Taxation Code Section 7000, *et seq.*) and allocated to the City pursuant to applicable law which is attributable to the RV Park Lease, the Convention Center and the Hotel, exclusive of any amount so levied and allocated to the City pursuant to voter approval by the electors of the City, which portion is currently one percent (1%) of taxable transactions.

“Sales and Use Tax Revenue” means revenues collected from the levy of the Sales and Use Tax.”

“Site” has the meaning set forth in recitals hereto.

“Site Lease” has the meaning set forth in recitals hereto.

“Sublease” has the meaning set forth in recitals hereto.

“Sublease Advance Rent” means the Advance Rent as defined in the Sublease to be paid by RIDA in accordance with Section 3.4 of the Sublease.

“Sublease Advance Rent Notice” means an Advance Rent Notice (as defined in the Sublease). A form of Sublease Advance Rent Notice is attached hereto as Exhibit H-2.

“Tax-Exempt Bonds” means the 2021B Bonds and any Additional Bonds issued under the Indenture the interest on which is excluded from gross income for federal income tax purposes.

“Tax Increment Revenue” means that portion of *ad valorem* property taxes levied by or allocated to the City, and that are actually received by the City and available in the City’s general fund for unrestricted use, calculated by applying the tax rate levied by the City to the increase in assessed value of the Ground Lease Property over the assessed value shown upon the assessment roll last equalized prior to the effective date of this Facility Lease. Tax Increment Revenue shall include that portion of the *ad valorem* property tax revenue generated by the Ground Lease Property that is annually allocated to the City pursuant to Section 97.70 of the Revenue and Taxation Code. Tax Increment Revenue shall not include any moneys not actually allocated to and received by the City, such as moneys deposited into the Redevelopment Property Tax Trust Fund of the Successor Agency to the Redevelopment Agency of the City of Chula Vista (the “Successor Agency”) that are deposited into the Successor Agency’s Recognized Obligation Retirement Fund pursuant to Part 1.85 of Division 24 of the California Health and Safety Code.

“Tax Expenses” means, 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 the City’s receipt of rent, including gross receipts or sales taxes applicable to the City’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 the City in connection with the Facility) and any taxes and assessments relating to the business or other activities of the City upon or in connection with the Facility. Tax Expenses also shall include, without limitation:

- (i) Any tax on the JEPA’s receipt of Rent, right to Rent or other revenue from the Facility other than any tax payable based on income or profit of the JEPA;
- (ii) Any assessment, tax, fee, levy or charge in addition to, or in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property tax, possessory interest tax or use tax or other Tax Expenses, and any assessments, taxes, fees, levies and charges that may be imposed by a Governmental Authority for services such as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants. It is the intention of the City and the JEPA 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 Facility Lease; and
- (iii) Any assessment, tax, fee, levy, or charge, which is levied or assessed based upon the area of the Facility or the rent payable hereunder, including, without limitation, any gross receipts tax upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by the City of the Facility, or any portion thereof.

Notwithstanding anything to the contrary in this Facility Lease, Tax Expenses shall not include any taxes payable based on income or profit of the JEPA, Port or City, and their respective

officers, directors, members of their respective governing boards, employees, partners, affiliates, agents, contractors, successors and assigns of the JEPA, Port or City, as applicable, in each case, when acting only in the capacity of a Public Entity Party, whether based upon the taxable income generated by the JEPA, Port or City or otherwise.

“Tenant Party” means RIDA, and the agents, employees, representatives, contractors, subcontractors, suppliers, materialmen, workmen, licensees, concessionaires, Affiliates and successors and assigns of RIDA, and Subtenants, and the agents, employees, representatives, contractors, subcontractors, suppliers, materialmen, workmen, concessionaires, licensees, Affiliates and successors and assigns of each of such Subtenants, in each case, when acting only in the capacity of a Tenant Party.

“Term” means the term of this Facility Lease as established by Section 4.2 hereof.

“Transient Occupancy Taxes” means the transient occupancy taxes levied pursuant to Chula Vista Municipal Code Chapter 3.40, attributable to the Convention Center, the Hotel and the RV Park Lease.

“Transient Occupancy Tax Revenue” means those revenues collected and actually received by the City through the imposition of the Transient Occupancy Taxes.

**EXHIBIT E**  
**JEPA DOCUMENTS**

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

**EXHIBIT F**  
**FORM OF SUBLEASE**

**EXHIBIT G****SCHEDULE OF MSA PAYMENTS**

<b><u>Annual Escalator</u></b>	<b><u>3%</u></b>
<b>Fiscal Year</b>	<b>Amount</b>
2018	\$1,046,710
2019	1,078,112
2020	1,110,455
2021	1,143,769
2022	1,178,082
2023	1,213,424
2024	1,249,827
2025	1,287,322
2026	1,325,941
2027	1,365,720
2028	1,406,691
2029	1,448,892
2030	1,492,359
2031	1,537,130
2032	1,583,243
2033	1,630,741
2034	1,679,663
2035	1,730,053
2036	1,781,954
2037	1,835,413
2038	1,890,476
2039	1,947,190
2040	2,005,605
2041	2,065,774
2042	2,127,747
2043	2,191,579
2044	2,257,327
2045	2,325,046
2046	2,394,798
2047	2,466,642
2048	2,540,641
2049	2,616,860
2050	2,695,366
2051	2,776,227
2052	2,859,514
2053	2,945,299
2054	3,033,658
2055	3,124,668
2056	3,218,408
2057	3,314,960
2058	3,414,409

**EXHIBIT H-1**

**FORM OF FACILITY LEASE ADVANCE RENT NOTICE**

Chula Vista Bayfront Facilities Financing Authority  
276 Fourth Avenue  
Chula Vista, California 91910

*[insert date]*

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

Re: Facility Lease Advance Rent Notice

We refer to that certain Facility Lease (Chula Vista Bayfront Convention Center), dated as of \_\_\_\_\_, [2021] (as amended, restated, supplemented or otherwise modified from time to time, the “Facility Lease”), by and among the Chula Vista Bayfront Facilities Financing Authority, a California joint exercise of powers authority (the “JEPA” or “we”) established and existing pursuant to the JEPA Agreement (as defined in the Facility Lease) and the City of Chula Vista, a California charter city (the “City” or “you”). Capitalized terms used but not defined herein shall have the meanings set forth in the Facility Lease.

This letter constitutes a Facility Lease Advance Rent Notice under the Facility Lease. The amount of RIDA Advance Rent to be paid pursuant to this Facility Lease Advance Rent Notice is \$[ ● ] (the “Advance Rent Amount”). Pursuant to Section 2.1(i), you shall submit a Sublease Advance Rent Notice to RIDA for the Advance Rent Amount.

[Signature Page Follows]



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

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

Copies to:

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

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

San Diego Unified Port District  
Post Office Box 120488  
San Diego, CA 92112-0488  
Attention: Executive Director and Director, Real Estate Department, Port Attorney

**EXHIBIT H-2**

**FORM OF SUBLEASE ADVANCE RENT NOTICE**

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

*[insert date]*

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

Re: Sublease Advance Rent Notice

We refer to that certain Sublease Agreement (Chula Vista Bayfront Convention Center), dated as of \_\_\_\_\_, [2021] (as amended, restated, supplemented or otherwise modified from time to time, the “Sublease”), by and among the City of Chula Vista, a California charter city (the “City” or “we”), and RIDA Chula Vista, LLC, a Delaware limited liability company (“RIDA” or “you”). Capitalized terms used but not defined herein shall have the meanings set forth in the Sublease.

This letter constitutes a Sublease Advance Rent Notice under the Sublease and a Sublease Advance Rent Notice under and as defined in the Facility Lease. The amount of Sublease Advance Rent to be paid pursuant to this Sublease Advance Rent Notice is \$[ ● ].

[Signature Page Follows]

CITY OF CHULA VISTA, as Sublessor

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

Copies to:

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

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

San Diego Unified Port District  
Post Office Box 120488  
San Diego, CA 92112-0488  
Attention: Executive Director and Director, Real Estate Department, Port Attorney

## **EXHIBIT I**

### **APPROVED AGREEMENTS**

1. CVBMP Documents
2. Approved Title Exceptions
3. Plans

[Insert all other documents, including financings documents, that are approved prior to the Closing Date.]

(to be revised / completed prior to execution.)

**EXHIBIT J****MEMORANDUM OF LEASE**

RECORDING REQUESTED BY:

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(Above Space for Recorder's Use Only)

**MEMORANDUM OF LEASE**

This Memorandum of Lease, hereinafter "**Memorandum**," is dated \_\_\_\_\_, 20\_\_, between CHULA VISTA BAYFRONT FACILITIES FINANCING AUTHORITY, a California joint exercise of powers authority ("**Landlord**") and the CITY OF CHULA VISTA, a California charter city ("**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 (together with all improvements located and to be located thereon, 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 Facility Lease of even date herewith by and between Landlord and Tenant (the "Facility 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 Facility Lease, and, subject to the terms of Section 4.1 of the Facility 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 Facility Lease is incorporated in this Memorandum by this reference.

The term of the Facility Lease is [up to] sixty-six (66) years, beginning \_\_\_\_\_, 20\_\_, and ending \_\_\_\_\_, 20\_\_ as set forth in Sections 4.2 and 4.3 of the Facility Lease.

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

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

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

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

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Co-Counsel, Thomas A. Russell, General  
Counsel of the San Diego Unified Port District

\_\_\_\_\_  
Co-Counsel, Glen Googins, City Attorney of  
the City of Chula Vista

CITY OF CHULA VISTA, a charter city

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

ATTEST:

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

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

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

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

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

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

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

WITNESS my hand and official seal.

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

### OPTIONAL

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

#### CAPACITY CLAIMED BY SIGNER

- ☐ Individual  
☐ Corporate Officer

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

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

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

#### DESCRIPTION OF ATTACHED DOCUMENT

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

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

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

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