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RESOLUTION 20xx-xxx

RESOLUTION APPROVING, SUBJECT TO APPROVAL OF THE CITY OF SAN DIEGO, A PURCHASE AND SALE AGREEMENT (PSA) BY AND AMONG THE CITY OF SAN DIEGO (CITY), FIFTH AVENUE LANDING, LLC (FAL) AND THE SAN DIEGO UNIFIED PORT DISTRICT (DISTRICT) FOR: (1) THE DISTRICT TO PURCHASE FROM FAL ITS INTEREST IN THE PROPERTY LOCATED AT FIFTH AVENUE LANDING AND MARINA PARK WAY (SITE) FOR UP TO \$33.2 MILLION, SUBJECT TO TITLE CONDITIONS AND RECEIPT OF THE CITY'S PAYMENTS TO THE DISTRICT; THE CITY TO PURCHASE FROM THE DISTRICT LEASEHOLD INTEREST AND AN OPTION IN THE SITE FOR \$28.2 MILLION IN ANTICIPATION OF THE SAN DIEGO CONVENTION CENTER PHASE III EXPANSION, SUBJECT TO THE PASSAGE OF THE "FOR A BETTER SAN DIEGO" CITIZEN'S BALLOT MEASURE, (COLLECTIVELY, ALTERNATIVE A CLOSING) OR (2) IF THE ALTERNATIVE A CLOSING DOES NOT OCCUR, FOR THE DISTRICT TO ENTER INTO LEASE AMENDMENTS AND AGREEMENTS WITH FAL, SUBJECT TO CERTAIN TITLE CONDITIONS (COLLECTIVELY, ALTERNATIVE B CLOSING)

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

WHEREAS, Section 87(b) of the Port Act grants authority to the District to lease the tidelands or submerged lands, or parts thereof, for limited periods, not exceeding 66 years, for purposes consistent with the trusts upon which those lands are held, by the State of California; and

WHEREAS, Section 21(e) of the Port Act requires that all grants franchises, leases, permits, rights, or privileges for more than five years shall be made by ordinance adopted by the Board of Port Commissioners (BPC); and

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WHEREAS, in 1984, the District and Fifth Avenue Landing, LLC (FAL) entered into a lease that included an area that would later become the San Diego Convention Center (SDCC) Phase III Expansion site; and

WHEREAS, in 2010, the District and FAL split FAL's original lease into two separate leases: (1) an Amended and Restated and Combined Lease between the San Diego Convention Center Corporation (SDCCC), as lessee and District, as lessor (ARC Lease) with an option for the SDCC Phase III Expansion built into Paragraph 49 of the ARC Lease (Expansion Option) (District Document No. 56486) and (2) a lease between FAL, as lessee and District, as lessor for the continued operation of a marina and water transportation center (WTC) on the adjacent site (Marina Lease) (District Document No. 56494); and

WHEREAS, the Marina Lease includes water parcels and an approximate 25,000 square foot land parcel (Marina Landside Area) and the SDCC Phase III Expansion site includes the majority of the ARC Lease premises, the Marina Landside Area and a portion of the adjacent park, which is currently part of the Hilton Bayfront Hotel premises and is subject to that certain Exclusive Negotiating Agreement (ENA) (District Document No. 58932); and

WHEREAS, the ENA includes a process for the City of San Diego (City) to obtain the portion of the park that is part of the SDCC Phase III Expansion site; and

WHEREAS, as a separate, but related transaction, SDCCC and FAL entered into a purchase and sale agreement where SDCCC agreed to pay FAL \$13.5 million to permanently acquire the ARC Lease and the interest therein, and that deal included a promissory note issued by SDCCC that was secured by a Deed of Trust, which encumbered the ARC Lease; and

WHEREAS, on September 19, 2012, the BPC approved Amendment No. 1 to the ARC Lease, which allowed the transfer and assignment of the Expansion Option to the City and memorialized agreements between the SDCC and the City (District Document No. 59467); and

WHEREAS, on September 19, 2012, the BPC also certified the Final Environmental Impact Report (Final EIR) for the San Diego Convention Center Phase III Expansion and Expansion Hotel Project and Port Master Plan Amendment (SCH #2010121004, UPD-83356-EIR-855), adopted Findings of Fact, a Statement of Overriding Considerations and a Mitigation Monitoring Reporting Program, and approved the associated San Diego Port Master Plan Amendment #6-PSD-MAJ-45-13 (PMPA); and

WHEREAS, on October 11, 2013, the California Coastal Commission (CCC) unanimously certified the PMPA, on March 4, 2014, District approved an

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Addendum to the Final EIR and adopted the CCC's certification of the PMPA and on May 28, 2015, the CCC accepted District's March 4, 2014 action; and

WHEREAS, the Final EIR and Addendum have been made available to the BPC prior to consideration of this ordinance and analyzed the SDCC Phase III Expansion, a 500-room hotel tower located adjacent to the Hilton Bayfront and relocation of the WTC to a parcel on the ARC Lease premises (Flag Lot); and

WHEREAS, in 2014, a financing mechanism to fund the SDCC Phase III Expansion was overturned by the California Court of Appeal and due to budget constraints, SDCCC could not pay the remaining amount under the promissory note and on June 19, 2015, SDCCC transferred all interests in the ARC lease to FAL by an assignment of leasehold interest in-lieu of foreclosure and FAL assumed all rights to the ARC Lease on November 18, 2015; and

WHEREAS, pursuant to Paragraph 50(f) of the ARC Lease, FAL submitted a proposal to the District for the development of an 830-850 room market-rate hotel, and while not required under the ARC Lease, FAL's proposal also included a 565-bed low cost visitor serving hotel, retail use and a marina expansion (FAL Project); and

WHEREAS, on April 13, 2017, the District found FAL's application for the FAL Project complete and has been diligently and in good faith been processing FAL's Project in accordance with Paragraph 50(f) of the ARC Lease; and

WHEREAS, the City continues to pursue development of the SDCC Phase III Expansion and in anticipation of a citywide vote in November 2018 on a proposed special tax measure/initiative titled the "For a Better San Diego" that has been launched by coalition of business and labor organizations (Initiative and once placed on the ballot, Ballot Measure) desires to have control of the ARC Lease premises (excluding the Flag Lot) and Marina Landside Area; and

WHEREAS, the Ballot Measure proposes to increase the City's transient occupancy tax and dedicate the resulting increased tax revenues for specified public benefits, including financing construction of the SDCC Phase III Expansion and modernization of the SDCC; and

WHEREAS, if authorized by the BPC and conditioned on the City's approval of the same, the District, City and FAL would enter into a Purchase and Sale Agreement (PSA), which has been structured to allow for two alternative closings – Alternative A Closing and Alternative B Closing – dependent on the occurrence of certain conditions; and

WHEREAS, the Alternative A Closing includes two transactions: (1) the District would make a \$5 million released option payment (Released Initial Option Payment) and three approximate \$9.4 million option payments (District Option

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Payments) to FAL to purchase its interest in the ARC Lease and Marina Landside Area for a total purchase price of \$30 million and up to \$3.2 million in reimbursement to FAL for costs related to the FAL Project and (2) the City would make three option payments of approximately \$9.4 million each to acquire from the District the ARC Lease and Expansion Option, both with extended terms, for a total purchase price of up to \$28.2 million; and

WHEREAS, payment of each District Option Payment to FAL is contingent on the City making the corresponding City Option Payment first; and

WHEREAS, the passage of the Ballot Measure by voters and clean title are conditions precedent to the Alternative A Closing; and

WHEREAS, once all documents have been delivered by each party into escrow and once certain conditions have been met, the District would pay FAL the \$5 million Released Initial Option Payment, secured by a promissory note, (see Exhibit E of the PSA), issued by the City to the District (Promissory Note); and

WHEREAS, FAL will retain the Released Initial Option Payment even if the Alternative A Closing does not occur, as consideration for the deal structure and either giving up the FAL Project or putting it on hold pending the vote on the Ballot Measure; and

WHEREAS, in accordance with the Promissory Note and PSA, the City will deposit the \$5 million plus three (3) percent interest due under the Promissory Note in a separate escrow account, which shall be released to the District if the Alternatives A does not occur; and

WHEREAS, several supporting transactions and agreements are required for the Alternative A Closing, which are attached to the PSA as Exhibits D-1 (Assignment and Assumption of Lease (ARC Lease)), D-2 (Guarantor Consent to Assignment and Assumption), D-3 (Quitclaim Deed), L (ARC Lease Expansion Amendment), M-1 (Amended Marina Lease (Alternative A)), M-2 (Guarantor Consent to Amended Marina Lease (Alternative A)), P (Tidelands Use and Occupancy Permit), Q (Memorandum of ARC Lease Expansion Amendment), R (Memorandum of Amended Marina Lease (Alternative A)) and U (Release of ARC Lease Guaranty) and are more particularly described in the PSA; and

WHEREAS, if the Alternative A Closing does not close escrow subject to the terms of the PSA and the PSA is not terminated for the reasons as specified therein, the Alternative B Closing will occur; and

WHEREAS, under the Alternative B Closing, FAL will (1) not sell its interest in the ARC Lease and Marina Landside Area, (2) keep the Initial

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Released Option Payment if released, subject to the Promissory Note, and (3) retain any District Option Payments paid to FAL; and

WHEREAS, under the Alternative B Closing and subject to its reservation of discretion, the BPC will expeditiously consider the FAL Project and, expedite the entitlement process for the FAL Project; and

WHEREAS, several supporting transactions and agreements are required for the Alternative B Closing, which are attached to the PSA as Exhibits N-1 (Amended Marina Lease (Alternative B)), N-2 (Guarantor Consent to Amended Marina Lease (Alternative B)), O-1 (Amended FAL ARC Lease), O-2 (Guarantor Consent to Amended FAL ARC Lease), S (Memorandum of Amended Marina Lease (Alternative B)) and T (Memorandum of Amended FAL ARC Lease (Alternative B)) and are more particularly described in the PSA; and

WHEREAS, regardless which closing occurs, FAL has agreed to indemnify and hold the District and City harmless for third-party claims that may result from the approval of the PSA and supporting transactions and agreement (see New Indemnity Agreement, Exhibit K-1) and the New Indemnity Agreement is secured by a Guaranty (see Exhibit K-2); and

WHEREAS, regardless which closing occurs, the City and District are granted options by FAL in the PSA and to obtain title information Exhibits F-1 (Memorandum of District Option) and F-2 (Memorandum of City Option) are required and the option pro forma policies (Exhibits G-1 and G-2) and final pro forma policies (Exhibits H-1 and H-2) will be administratively attached to the PSA at a later date; and

WHEREAS, as part of the transaction, the City, SDCCC and FAL will enter into a Settlement Agreement (Exhibit C to the PSA) to settle litigation among those parties and the District is not a party to the litigation or Settlement Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners (BPC) of the San Diego Unified Port District as follows:

The BPC finds that the PSA and contemplated transactions therein have been analyzed in the Final EIR and Addendum and are within the scope of the Final EIR and Addendum. The BPC further finds that the California Environmental Quality Act Guidelines Sections 15162 and 15163 have not been triggered and therefore, no supplemental or subsequent environmental review is required.

Conditioned on the approval of the City of San Diego, the BPC hereby approves the PSA and the Executive Director or her designated representative is hereby authorized and directed to enter into a Purchase and Sale Agreement, attached

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to the corresponding agenda sheet, as Exhibit B, and deliver it to escrow in accordance with the PSA.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Senior/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 12th day of June 2018, by the following vote: