

**DRAFT**

**SAN DIEGO UNIFIED PORT DISTRICT**

**ORDINANCE xxxx**

**ORDINANCE APPROVING AGREEMENT FOR AMENDMENT OF LEASE AMENDMENT NO. 1 WITH THE BRIGANTINE, INC. DBA PORTSIDE PIER AT 1360 NORTH HARBOR DRIVE IN THE CITY OF SAN DIEGO TO: RETROACTIVELY MODIFY MINIMUM ANNUAL RENT FROM \$733,333 TO \$550,000 FOR LEASE YEAR 2 FROM MAY 1, 2019 THROUGH APRIL 30, 2020, MODIFY MINIMUM ANNUAL RENT FROM \$1,100,000 TO \$1,130,000 FOR LEASE YEARS 3 TO 10 FROM MAY 1, 2020 TO APRIL 30, 2029, EXTEND THE CONSTRUCTION COMPLETION DEADLINE FROM DECEMBER 31, 2019 TO AUGUST 31, 2020; AND TENANT TO PAY FOR THE REMOVAL OR RELOCATION OF UTILITY IMPROVEMENTS**

**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 I (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 of the Port Act requires that all grants, franchises, leases, permits or privileges for more than five (5) years shall be made by ordinance; and

**WHEREAS**, on April 27, 2018, the District entered into a 40-year lease with The Brigantine Inc., a California corporation, dba Portside Pier (Brigantine), for property located at 1360 North Harbor Drive in the City of San Diego; and

**WHEREAS**, on May 1, 2018, Brigantine began construction on its pilings and platform substructure and two-story overwater restaurant structure which will include four dining concepts, a public viewing deck, and an expanded dock and dine facility (Portside Pier); and

**WHEREAS**, the lease requires that Brigantine complete construction by December 31, 2019, and while Brigantine has been making a good faith effort to

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complete construction on schedule, there have been circumstances outside of their control that have delayed the expected completion until mid-2020; and

**WHEREAS**, R.E. Staite, Brigantine's pilings and platform substructure contractor, experienced unforeseeable challenges due to: (1) limited availability of specialized, in-water work equipment, (2) limited construction days due to conflicts with the cruise season, and (3) an unexpected number of rainy days, inhibiting consistent concrete cure due to temperature and moisture levels; and

**WHEREAS**, R.E. Staite completed the pilings and platform work in May 2019; and

**WHEREAS**, since then the construction project has transitioned to Brigantine's general contractor, Pacific Building Group (PBG), to complete construction of the two-story overwater restaurant structure, an expanded dock and dine facility, and the adjacent public promenade improvements and is expected to stay on schedule and be completed by mid-2020; and

**WHEREAS**, the original rent structure was negotiated to account for fair market value rent during construction based on anticipated completion by December 2019; and

**WHEREAS**, since construction completion is anticipated to be delayed by six months due to the challenges related to the pilings and platform construction, Brigantine has requested an adjustment in rent for Lease Year 2 to align with the restaurant opening in mid-2020; and

**WHEREAS**, the rent schedule in the lease currently has minimum annual rent of \$733,333 in Year 2, and \$1,100,000 in Years 3 to 10; and

**WHEREAS**, staff recommends the adjusted rent structure, which is above fair market rent, where the District would receive an additional \$56,666 in guaranteed rent over the first ten years of the lease by setting rent at \$550,000 in Lease Year 2 to account for the above described construction delay and longer construction rent period and increasing the annual operating period rent to \$1,130,000 in Lease Years 3 to 10; and

**WHEREAS**, the revised rent structure, like the original rent structure, is an above fair market rent deal, and would result in an increase of \$2,634 in Net Present Value to the District; and

**WHEREAS**, the current lease requires that construction completion occur by December 31, 2019; and

**WHEREAS**, given that Brigantine has made good faith efforts to expeditiously construct Portside Pier, staff recommends an amendment to the

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lease that would extend the construction completion deadline to August 31, 2020; and

**WHEREAS**, as part of constructing Portside Pier, adequate electrical and natural gas utilities are necessary to operate the kitchen equipment, lighting, and elevators; and

**WHEREAS**, consistent with the parties' intentions when executing the lease, in order to supply the necessary electrical and natural gas utilities to the project, San Diego Gas and Electric (SDG&E) will require a utility easement enabling access for the installation, service, and maintenance of its facilities throughout the term of the Brigantine's lease; and

**WHEREAS**, the easement covers approximately 470 square feet of tideland area located adjacent to 1360 Harbor Drive in San Diego, California and would be located outside of the leasehold; and

**WHEREAS**, as part of the amendment to the lease, Brigantine would be responsible for the costs associated with any future relocation or removal of any utility improvements associated with the SDG&E easement, which would be for approximately 38 years, commencing January 11, 2020 and terminating April 30, 2058 to be coterminous with the lease.

**NOW, THEREFORE**, the Board of Port Commissioners of the San Diego Unified Port District (Board) does ordain as follows:

1. The Agreement for Amendment of Lease Amendment No. 1 to the lease with The Brigantine, Inc. dba Portside Pier (Brigantine) (Amendment No. 1) at 1360 North Harbor Drive in the City of San Diego to: retroactively modify Minimum Annual Rent from \$733,333 to \$550,000 for lease year 2 from May 1, 2019 through April 30, 2020; modify Minimum Annual Rent from \$1,100,000 to \$1,130,000 for lease years 3 to 10 from May 1, 2020 to April 30, 2029; extend the construction completion deadline from December 31, 2019 to August 31, 2020; and Brigantine to pay for the removal or relocation of utility improvements, is hereby approved.
2. The Executive Director or her designated representative is hereby directed to execute said Amendment No. 1.
3. This Ordinance shall take effect on the 31<sup>st</sup> day from its passage by the Board.

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APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

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By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10<sup>th</sup> day of December 2019, by the following vote: