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SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE xxxx

**ORDINANCE GRANTING A 40-YEAR LEASE WITH
THE BRIGANTINE, INC., DBA PORTSIDE PIER
FOR A RESTAURANT LOCATED AT 1360 NORTH
HARBOR DRIVE**

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, on May 12, 2015, Board of Port Commissioners (BPC) directed staff to issue an Request for Proposals (RFP) for the development and operation of the Iconic Waterfront Restaurant Site at 1360 North Harbor Drive (Location); and

WHEREAS, on May 20, 2015, staff issued the RFP for the Location and received six proposals; and

WHEREAS, on August 11, 2015, the BPC advanced Fish Market, Sunroad, and The Brigantine Inc., dba Portside Pier (The Brigantine) proposals to a second round and allowed them to issue a supplement to their original proposals; and

WHEREAS, the proposed rent structure for The Brigantine lease would result in projected net present value (NPV) of \$10.5 million (using a 6% discount rate) in rent to the District over the first ten years of the lease and is the most competitive of the final three rent proposals; and

WHEREAS, beginning in year four of the lease, The Brigantine will pay 5% of both gross food and beverage sales which will be the highest percentage rental rates paid by any restaurant on tidelands; and

WHEREAS, the Portside Pier restaurant project (Portside Pier) will be for the construction of a two-story restaurant structure, pilings and platform, and dock and dine to accommodate up to 12 vessels; and

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WHEREAS, The Brigantine proposes four restaurant concepts at the Location that will collectively be known as Portside Pier; and

WHEREAS, there will be three features open to the public during their business hours including: (1) a second level viewing deck; (2) a second level perimeter walkway; and (3) an expanded dock and dine; and

WHEREAS, all three public features will be maintained solely by The Brigantine at no cost to the District; and

WHEREAS, on November 17, 2015, the BPC authorized staff to enter into exclusive negotiations with The Brigantine for the Location; and

WHEREAS, at the December 13, 2016 BPC meeting, after taking the appropriate California Environmental Quality Act actions, the BPC adopted Resolution No. 2016-205, which authorized issuance of the Non-Appealable Coastal Development Permit (CDP) to The Brigantine for the Portside Pier Restaurant Redevelopment Project; and

WHEREAS, after the BPC's December 2016 actions, California Coastal Commission (CCC) staff expressed concerns about the Portside Pier Project and requested changes to the CDP; and

WHEREAS, District staff worked collaboratively with CCC staff to clarify the Portside Pier Project, revised certain conditions and added new conditions to the CDP with The Brigantine as a partner in the collaborative discussions; and

WHEREAS, The Brigantine was no longer proposing demolition of the Existing Structure and as supported by the entire record, in the long-term, the Existing Structure posed public health and safety issues, requiring its demolition; and

WHEREAS, therefore, on July 11, 2017, the BPC approved Rescinding Board Resolution No. 2016-205, which authorized issuance of the Non-Appealable CDP to The Brigantine for the Portside Pier Restaurant Redevelopment Project; and

WHEREAS, thereafter, on July 11, 2017, the BPC approved Resolution No. 2017-110, which authorizes the issuance of a Non-Appealable CDP to the District for Demolition of the Existing Structure; and

WHEREAS, The Brigantine's proposed project now excludes the demolition of the Existing Site (Reduced Project), but the remaining components are basically the same as the Portside Pier Project, with alterations to the public walkway, signage and parking, and accordingly, District staff is

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recommending issuance of a new CDP for the Reduced Project (Proposed CDP); and

WHEREAS, accordingly, on July 11, 2017, the BPC approved Resolution No. 2017-109, which authorized issuance of a CDP to The Brigantine, Inc. for construction of the Portside Pier Project; and

WHEREAS, as a successful local family restaurant developer and operator, The Brigantine demonstrates the best balance of activating the Location through increased public access as well as maximizing revenues to the District; and

WHEREAS, staff recommends the BPC approve an ordinance granting a 40-year lease to The Brigantine.

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

1. That the District grant a new 40-year lease with The Brigantine, Inc., dba Portside Pier at 1360 North Harbor Drive.
2. The Executive Director or her designated representative is hereby directed to execute said Lease on behalf of the District.
3. This Ordinance shall take effect on the 31st day from its passage by the Board of Port Commissioners.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10th day of October 2017, by the following vote: