

**PURCHASE AND SALE AGREEMENT
AND ESCROW INSTRUCTIONS**

by and among

FIFTH AVENUE LANDING, LLC, a California limited liability company,

SAN DIEGO UNIFIED PORT DISTRICT, a public corporation

and

CITY OF SAN DIEGO, a municipal corporation

Dated as of _____, 2018

TABLE OF CONTENTS

Section 1 - Recitals	1
Section 2 - Agreement of Sale; Option Price; Released Initial Option Payment	6
Section 3 - District's Deliveries to Escrow Agent - Alternative A Closing	17
Section 4 - FAL's Deliveries to Escrow Agent - Alternative A Closing	18
Section 5 - City's Deliveries to Escrow Agent - Alternative A Closing	20
Section 6 - Conditions Precedent to Alternative A Closing	21
Section 7 - Additional Covenants of the Parties – Alternative A	21
Section 8 - Alternative B Closing Covenants	24
Section 9 - Alternative Closings	24
Section 10 - Rent, Taxes, Fees, Costs and Insurance	26
Section 11 - Distribution of Funds and Documents	27
Section 12 - Maintenance of Property	31
Section 13 - Representations, Warranties, Acknowledgments and Indemnities	31
Section 14 - Casualty Damage to the FAL Premises	38
Section 15 - Remedies; Damages; Termination	38
Section 16 - Other Events for Termination of Agreement	39
Section 17 - Notices	41
Section 18 - Exculpatory Provisions	43
Section 19 - General Provisions	44

EXHIBITS

<u>IDENTIFICATION</u>	<u>TITLE</u>
A-1	LEGAL DESCRIPTION OF THE MARINA LANDSIDE AREA
A-2	LEGAL DESCRIPTION OF THE EXISTING ARC LEASE PREMISES
A-3	LEGAL DESCRIPTION OF SAN DIEGO CONVENTION CENTER PHASE III EXPANSION PREMISES
A-4	LEGAL DESCRIPTION OF THE FLAG LOT
A-5	LEGAL DESCRIPTION OF THE NEW ARC LEASE PREMISES
A-6	LEGAL DESCRIPTION OF THE WTC RELOCATION PREMISES
B	INTENTIONALLY OMITTED
C	SETTLEMENT AGREEMENT (CITY AND FAL)
D-1	ASSIGNMENT AND ASSUMPTION OF LEASE (ARC LEASE) AND CONSENT TO ASSIGNMENT (FAL AND DISTRICT)
D-2	REAFFIRMATION OF GUARANTY AND GUARANTOR CONSENT TO ASSIGNMENT AND ASSUMPTION (GUARANTORS TO DISTRICT)
D-3	QUITCLAIM DEED (MARINA LEASE – MARINA LANDSIDE AREA) (FAL TO DISTRICT)
E	CITY PROMISSORY NOTE (CITY TO DISTRICT)
F-1	MEMORANDUM OF DISTRICT OPTION (DISTRICT AND FAL)
F-2	MEMORANDUM OF CITY OPTION (DISTRICT AND CITY)
G-1	DISTRICT’S OPTION PRO FORMA POLICY
G-2	CITY’S OPTION PRO FORMA POLICY
H-1	DISTRICT’S FINAL PRO FORMA POLICY
H-2	CITY’S FINAL PRO FORMA POLICY
I	RATIFICATION OF AMENDMENT NO. 1 TO ARC LEASE (FAL)
J	RECONVEYANCE OF EXISTING DEED OF TRUST (FAL)
K-1	NEW INDEMNITY AGREEMENT (FAL TO DISTRICT AND CITY)
K-2	NEW GUARANTY (GUARANTORS TO DISTRICT AND CITY)
L	AMENDMENT NO. 2 OF ARC LEASE (CITY AND DISTRICT)
M-1	AMENDMENT NO. 1 OF MARINA LEASE (ALTERNATIVE A) (FAL AND DISTRICT)
M-2	REAFFIRMATION OF GUARANTY AND CONSENT TO AMENDMENT NO. 1 OF MARINA LEASE (ALTERNATIVE A) (GUARANTORS TO DISTRICT)
N-1	AMENDMENT NO. 1 OF MARINA LEASE

N-2	(ALTERNATIVE B) (FAL AND DISTRICT) REAFFIRMATION OF GUARANTY AND CONSENT TO AMENDMENT NO. 1 OF MARINA LEASE
O-1	(ALTERNATIVE B) (GUARANTORS TO DISTRICT) AMENDMENT NO. 2 OF ARC LEASE (AMENDED FAL ARC LEASE) (FAL AND DISTRICT)
O-2	REAFFIRMATION OF GUARANTY AND CONSENT TO AMENDMENT NO. 2 OF ARC LEASE (ALTERNATIVE B) (GUARANTORS TO DISTRICT)
P	TIDELANDS USE AND OCCUPANCY PERMIT (FAL AND DISTRICT)
Q	MEMORANDUM OF ASSIGNMENT AND ASSUMPTION AND LEASE AMENDMENT NO. 2 (ALTERNATIVE A)
R	MEMORANDUM OF LEASE AMENDMENT NO. 1 (ALTERNATIVE A)
S	MEMORANDUM OF LEASE AMENDMENT NO. 1 (ALTERNATIVE B)
T	MEMORANDUM OF LEASE AMENDMENT NO. 2 (ALTERNATIVE B)
U	RELEASE OF ARC LEASE GUARANTY (DISTRICT TO GUARANTORS) – AT ALTERNATIVE A CLOSING ONLY

TABLES

IDENTIFICATION

A
B

TITLE

ALTERNATIVE A CLOSING DOCUMENTS
ALTERNATIVE B CLOSING DOCUMENTS

DEFINED TERMS

Whenever used in this Agreement, the following terms will have the meaning ascribed to them in the Section identified:

<u>Term</u>	<u>Section in Which Defined</u>
Agreement	Preamble
Alternative A	1.6
Alternative A Closing	9.1.1
Alternative A Closing Date	2.1
Alternative A Transactions	1.6
Alternative B	1.7
Alternative B Closing	9.2
Alternative B Closing Date	9.2
Amended FAL ARC Lease	2.4.11
Amended Marina Lease (Alternative A)	2.4.9
Amended Marina Lease (Alternative B)	2.4.10
Amendment No. 1	1.1.4
Applicable Title Commitment	2.3.5
Approving Final Title Notice	2.3.5
ARC Lease	1.1.4
ARC Lease Expansion Amendment	2.4.8
Assignment and Assumption	2.4.2
Ballot Measure	1.8
Ballot Qualification	1.8
Board	1.11
Business Day	19.5
Cash	2.2.1
CCC	1.3
CEQA	8.2
City	Preamble
City Clerk	1.8
City Council	6.1.2
City Dispute	7.3
City Option	2.7
City Option Payment[s]	2.7
City Option Policy	2.5.3
City Promissory Note	2.4.4
City Releasing Parties	13.8
City Title Policy	9.1.3
City's Final Pro Forma Policy	2.3.5
City's Option Pro Forma Policy	2.3.5
City's Title Commitment	2.3.5
Commencement of Construction	1.12
Condemnation Law	19.23

Consent to Amended FAL ARC Lease	2.4.11
Consent to Amended Marina Lease (Alternative A)	2.4.9
Consent to Amended Marina Lease (Alternative B)	2.4.10
Contingent Obligation	19.22
Cost Reimbursement	2.2.1
Deed of Trust	1.1.3
Discretionary Actions	19.17
District	Preamble
District/City Transaction	1.6.1
District/FAL Transaction	1.6.2
District Option	2.8
District Option Payment[s]	2.8
District Option Policy	2.5.3
District Title Policy	9.1.2
District's Final Pro Forma Policy	2.3.5
District's Option Pro Forma Policy	2.3.5
District's Title Commitment	2.3.5
Document Delivery Date	2.4
Effective Date	Preamble
ENA	1.3
Environmental Laws	13.4.3
Escrow	1.5
Escrow Agent	1.5
Escrow Opening Date	19.1
Existing ARC Lease Premises	1.1.3
Existing WTC	1.11
Expansion	1.3
Expansion Leasehold Interest	2.6
Expansion Property	1.6.1
Expansion Property Total Price	2.7
FAL	Preamble
FAL Costs	7.3
FAL's Knowledge	13.4
FAL Premises	1.6.2
FAL Project	1.4
FAL Property	1.6.2
FAL Property Option Price	2.2.1
FAL Property Total Price	2.2.1
FAL Releasing Parties	13.7
FAL/SDCCC Assignment	1.1.1
FEIR	1.3
Final Title Notice	2.3.5
Financial Ability	2.3.3
Financial Review Meeting	2.3.3
Financial Statements	2.3.3
First City Option Payment	2.7

First District Option Payment	2.8
Flag Lot	1.11
Guarantor Consent to Assignment and Assumption	2.4.2
Guarantor[s]	2.3.2
Hazardous Substances	13.4.3
Initial Document Delivery Date	2.4
Initial Title Notice	2.3.5
Initiative	1.8
Intended Lease Transaction	7.11
Joint Verified Cost Instruction	7.3
LCVS Hotel	1.4
Litigation	1.9
Long-Term Expansion Lease	1.11
Management Agreement	1.11
Marina Expansion	1.4
Marina Lease	1.1.2
Marina Landside Area	1.1.2
Market Rate Hotel	1.4
Memorandum of Amended FAL ARC Lease (Alternative B)	2.4.14
Memorandum of Amended Marina Lease (Alternative A)	2.4.14
Memorandum of Amended Marina Lease (Alternative B)	2.4.14
Memorandum of ARC Lease Expansion Amendment	2.4.13
Memorandum of City Option	2.4.5
Memorandum of District Option	2.4.5
Merger Event	7.11
Natural Hazard Disclosure	13.3
New ARC Lease Premises	1.6.1
New City Lease	7.11
New Guaranty	2.3.2
New Indemnity Agreement	2.3.2
New Lawsuit	16.3
No Material Change Notice	2.8
Note Escrow Account	2.4.4
Official Records	2.3.2
Original ARC Lease	1.1.3
Party[ies]	Preamble
Personal Property	7.5
Phase 3 PMPA	1.3
Prevailing Party	19.11
Prior Lease	1.1.1
Pro Forma Policy	2.3.5
Prohibited Person	13.4.7
Quitclaim Deed	2.4.3

Ratification	1.1.4
Reconveyance	2.3.2
Release of ARC Lease Guaranty	2.4.15
Released Initial Option Payment	2.2.2
Released Parties	13.7
Relocation Law	19.23
San Diego Convention Center Phase III Expansion Premises	1.3
SDCCC	1.1.1
Second City Option Payment	2.7
Second District Option Payment	2.8
Settlement Agreement	2.4.1
Special Funds	19.22
Structures	1.12
Third City Option Payment	2.7
Third District Option Payment	2.8
Third-Party Claim	2.3.5
Title Approval Milestone	2.3.5
Title Insurer	2.3.5
Title Resolution Notice	2.3.5
Title Resolution Period	2.3.5
Title Response Notice	2.3.5
Title Reviewing Party[ies]	2.3.5
TUOP	1.12
Verified FAL Costs	7.3
Vote Count	1.8
Voter Approval	1.8
WTC	1.11

PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (this “**Agreement**”), dated as of _____, 2018, being the date inserted by Escrow Agent (as defined below) pursuant to Section 2.3.4 of this Agreement (“**Effective Date**”), is made by and among FIFTH AVENUE LANDING, LLC, a California limited liability company (“**FAL**”), the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (“**District**”), and the CITY OF SAN DIEGO, a municipal corporation (“**City**”) (individually, a “**Party**,” and collectively, the “**Parties**”). This Agreement is entered into with reference to the recitals set forth below.

Section 1 - Recitals

1.1 ARC Lease and Marina Lease.

1.1.1 In 1984, District, as ground lessor, entered into a ground lease, as subsequently amended, with Sea Group Construction, Inc., predecessor in interest to FAL, for premises located bayward of Convention Way and Marina Park Way in the City of San Diego, California (“**Prior Lease**”). In 2010, FAL assigned its rights as ground lessee under the Prior Lease with respect to a portion of the Prior Lease premises to the San Diego Convention Center Corporation, Inc., a California nonprofit corporation (“**SDCCC**”) pursuant to an Assignment and Assumption of Lease Agreement (“**FAL/SDCCC Assignment**”) on file in the Office of the District Clerk bearing Document No. 56484.

1.1.2 Substantially concurrently with the FAL/SDCCC Assignment, District, as ground lessor, and FAL, as ground lessee, entered into a lease dated May 7, 2010, on file in the Office of the District Clerk bearing Document No. 56494, for portions of the Prior Lease premises comprised of approximately 25,643 square feet of land area, legally described on **Exhibit A-1** (“**Marina Landside Area**”), and approximately 155,428 square feet of water area, each adjacent to the Existing ARC Lease Premises (as defined below), approved for the uses specified therein (“**Marina Lease**”).

1.1.3 Substantially concurrently with the FAL/SDCCC Assignment, District and SDCCC entered into that certain Amended, Restated and Combined Lease to SDCCC dated April 6, 2010, on file in the Office of the District Clerk bearing Document No. 56486 (“**Original ARC Lease**”), for portions of the Prior Lease premises comprised of approximately 193,232 square feet of tideland area located bayward of Convention Way and Marina Park Way, more particularly described in **Exhibit A-2** (“**Existing ARC Lease Premises**”). The Original ARC Lease was subject to a Deed of Trust and Assignment of Rents dated May 6, 2010, which encumbered SDCCC’s leasehold interest in the Original ARC Lease, on file in the Office of the District Clerk bearing Document No. 56485 (“**Deed of Trust**”).

1.1.4 In 2012, District and SDCCC entered into that certain Amendment No. 1 to Amended, Restated and Combined Lease to SDCCC, dated September 19, 2012, on file in the Office of the District Clerk bearing Document No. 59467 (“**Amendment No. 1**”). Unless otherwise specified, all references to Sections and exhibits of the ARC Lease (as defined below) shall refer to the Section numbers and exhibits, respectively, set forth in the Original ARC Lease, as amended by Amendment No. 1 (as so amended, the “**ARC Lease**”). FAL shall, as a condition precedent to the transactions set forth in this Agreement, sign the Ratification of Amendment No. 1 to ARC Lease in the form and content of the instrument attached as **Exhibit I** (“**Ratification**”).

1.2 Assignment to FAL; City Pursuit of Expansion. SDCCC remained the lessee of record under the ARC Lease until or about June 19, 2015, when it transferred all of its interest in the ARC Lease to FAL by an assignment in lieu of foreclosure of the Deed of Trust. Notwithstanding the assignment in lieu of foreclosure, City desires to pursue development of the Expansion (as defined below) and acknowledges that (i) it has considered various alternatives to acquire FAL's interest in the Existing ARC Lease Premises including, without limitation, condemnation of FAL's interest in the Existing ARC Lease Premises and (ii) the negotiations leading to this Agreement were under the threat of condemnation. District acknowledges the importance of the Expansion (as defined below) to District, City and the San Diego region as an economic driver and to the future of large conventions in San Diego.

1.3 Phase 3 PMPA. On or about September 19, 2012, District certified the Final Environmental Impact Report for the San Diego Convention Center Phase III Expansion ("**Expansion**") and Expansion Hotel Project and Port Master Plan Amendment (SCH #2010121004, UPD-83356-EIR-855) ("**FEIR**"), adopted Findings of Fact and a Statement of Overriding Considerations and a Mitigation Monitoring Reporting Program and approved San Diego Port Master Plan Amendment #6-PSD-MAJ-45-13 ("**Phase 3 PMPA**"), which, among other things, designated the land uses and described development requirements for the Expansion in District's Port Master Plan. On or about October 11, 2013, the California Coastal Commission ("**CCC**") certified the Phase 3 PMPA, on or about March 4, 2014, District approved an Addendum to the FEIR and adopted the CCC's certification of the Phase 3 PMPA and on or about May 28, 2015, the CCC accepted District's March 4, 2014 action. The Phase 3 PMPA identifies the property on which the Expansion is approved to be constructed, which is more particularly described on **Exhibit A-3** ("**San Diego Convention Center Phase III Expansion Premises**") and is comprised of (i) the Marina Landside Area, which is part of the leasehold interest of FAL under the Marina Lease, (ii) a portion of the Existing ARC Lease Premises excluding the Flag Lot (as defined below and more particularly described on **Exhibit A-4**) and (iii) a portion of the Hilton leasehold premises to the southeast, as shown on Exhibit "A" of the Exclusive Negotiation Agreement dated April 10, 2012, between District and One Park Boulevard, LLC, a Delaware limited liability company, on file in the Office of the District Clerk bearing Document No. 58932 ("**ENA**"), which is not the subject of either the ARC Lease or the Marina Lease.

1.4 FAL Project. On January 6, 2016, as required by Paragraph 50(f) of the ARC Lease, FAL, as the applicant, submitted a proposal to District to develop an 830 to 850 room, four star hotel ("**Market Rate Hotel**"). Additionally, as part of its submittal, although not required by the ARC Lease, FAL submitted a 560 bed low cost visitor serving hotel ("**LCVS Hotel**") on the Existing ARC Lease Premises along with a two phased marina expansion on and beyond the Marina Lease premises ("**Marina Expansion**"). The Market Rate Hotel, LCVS Hotel and Marina Expansion are referred to collectively as the "**FAL Project**," which is more particularly described in the Draft Environmental Impact Report for Fifth Avenue Landing Project and Port Master Plan Amendment (SCH#2016081053). On or about April 13, 2017, District found FAL's application complete and has been diligently and in good faith processing the FAL Project.

1.5 Alternative Transactions. Two potential alternative transactions, Alternative A and Alternative B (each as defined below), are set forth in this Agreement. Each of those transactions provides escrow instructions to Chicago Title Insurance Company, National

Commercial Services, 701 B Street, Suite 1120, San Diego, CA 92101: Attention Renee Marshall, (“**Escrow Agent**”), and shall be carried out by Escrow Agent pursuant to Escrow No. 87490-RM1 (“**Escrow**”).

1.6 Alternative A. “**Alternative A**” is comprised of a two-step transaction involving the District/FAL Transaction and the District/City Transaction (each as defined below) for purposes of construction of the Expansion and culminating in the Alternative A Closing (as defined below). The District/FAL Transaction and the District/City Transaction are sometimes collectively called the “**Alternative A Transactions**.” The Alternative A Closing (as defined below) is conditioned on payment by City of the City Option Payments (as defined below), payment by District of the District Option Payments (as defined below) and satisfaction of the conditions precedent in Sections 6.1.1, 6.1.2, 9.1.2 and 9.1.3.

1.6.1 District/City Transaction. Under the “**District/City Transaction**,” District and City have agreed, subject to the terms and conditions of this Agreement, that upon satisfaction of the conditions precedent in Sections 6.1.1, 6.1.2, 9.1.2 and 9.1.3, the timely payment of the City Option Payments by City, exercise by City of the City Option and the concurrent closing of the District/FAL Transaction (as defined below), then, among other things, District and City shall sign and deliver the ARC Lease Expansion Amendment (as defined below) that amends the ARC Lease to name City as the lessee, modify the leased premises to include the Marina Landside Area and exclude the Flag Lot (as defined below) and include a future option in favor of City for a lease of the real property described in Section 1.3(iii) subject to the terms and conditions of the ENA and Paragraph 49 of the ARC Lease, such that the ARC Lease, as so amended, shall be between District, as the lessor, and City, as the lessee, regarding the real property more particularly described in Exhibit A-5 (“**New ARC Lease Premises**”) and all Structures (as defined below) thereon at the expiration of the TUOP (as defined below), which Structures, together with the New ARC Lease Premises, are referred to in this Agreement as the “**Expansion Property**”.

1.6.2 District/FAL Transaction. Under the “**District/FAL Transaction**,” District and FAL have agreed, subject to the terms and conditions of this Agreement, that upon the satisfaction of the conditions precedent in Sections 6.1.1, 6.1.2, 9.1.2 and 9.1.3, the timely payment of the District Option Payments by District, exercise by District of the District Option and the concurrent closing of the District/City Transaction, then, among other things, (i) FAL shall assign to District all of its right, title and interest in and to the ARC Lease, pursuant to the Assignment and Assumption (as defined below) by and between FAL and District; (ii) FAL shall release and quitclaim all of its right, title and interest in and to the Marina Landside Area under the Marina Lease, pursuant to the Quitclaim Deed (as defined below); (iii) District and FAL shall sign and deliver the Amended Marina Lease (Alternative A) (as defined below); and (iv) FAL shall cause Guarantors (as defined below) to sign and deliver the Consent to Amended Marina Lease (Alternative A) (as defined below) and the Guarantor Consent to Assignment and Assumption. The Existing ARC Lease Premises under the ARC Lease and the Marina Landside Area under the Marina Lease are collectively called the “**FAL Premises**” and FAL’s leasehold interest in the FAL Premises is referred to as the “**FAL Property**”.

1.7 Alternative B. Alternative B (as defined below) takes place only if the conditions to the Alternative A Closing are not satisfied on or before the Alternative A Closing Date and the additional conditions to the Alternative B Closing set forth in this Agreement, including without limitation Section 9.2, are satisfied. “**Alternative B**” is comprised of a transaction between

District and FAL as further set forth in Sections 8 and 9 below, in which, among other things, (i) District and FAL shall sign and deliver the Amended FAL ARC Lease (as defined below); (ii) FAL shall cause Guarantors to sign and deliver the Consent to Amended FAL ARC Lease (as defined below); (iii) District and FAL shall sign and deliver the Amended Marina Lease (Alternative B) (as defined below); and (iv) FAL shall cause Guarantors to sign and deliver the Consent to Amended Marina Lease (Alternative B) (as defined below).

1.8 TOT Initiative. In or about January 2018, a coalition of business and labor organizations launched a petition for a proposed special tax measure titled the “For a Better San Diego” initiative (“**Initiative**”) to increase City’s transient occupancy tax and dedicate the resulting increased tax revenues for specified public benefits, including to finance construction of the Expansion and modernization of the San Diego Convention Center. It is anticipated that, if the Clerk of the City of San Diego (“**City Clerk**”) certifies that the Initiative petition contains sufficient valid signatures to qualify for submittal to the City’s voters (“**Ballot Qualification**”), the City’s voters will decide in a citywide election on November 6, 2018, whether to pass the ballot measure resulting from the Initiative petition (“**Ballot Measure**”). It is further anticipated that passage of the Ballot Measure will require an affirmative vote by two-thirds of the Vote Count (as defined below), although it is possible that a court opinion will confirm that passage of the Ballot Measure requires an affirmative vote by only a simple majority of the Vote Count (as applicable, “**Voter Approval**”). “**Vote Count**” shall mean the total votes cast on the Ballot Measure of all legally registered voters residing within City’s municipal limits.

1.9 Settlement of Litigation. In anticipation of the citywide vote on the Ballot Measure in the November 2018 citywide election and to settle a lawsuit brought by FAL against City and SDCCC in San Diego Superior Court Case No. 37-2017-00037528-CU-BC-CTL (“**Litigation**”) and all claims related to City’s threat of condemnation regarding the FAL Property, FAL is willing to (i) waive Paragraphs 50(b) and (c) of the ARC Lease and the timetable contemplated in Exhibit F to the ARC Lease, (ii) delay District’s consideration of the FAL Project until the Alternative B Closing (as defined below), if applicable; (iii) if the Alternative A Closing (as defined below) takes place, withdraw its application for the FAL Project and forego District’s consideration of the FAL Project, (iv) sign a binding Settlement Agreement (as defined below) that will dismiss the Litigation with prejudice, including a mutual release of all claims between City and FAL, (v) memorialize certain other agreements of City and FAL, and District and FAL, subject to the terms and conditions of this Agreement, and (vi) take all other actions described in this Agreement.

1.10 District/FAL Transaction; District Support. District acknowledges the importance of the Expansion and is willing to enter into this Agreement providing it the option to purchase the FAL Property from FAL upon the Alternative A Closing and satisfaction of all conditions precedent thereto, make a conditional contribution in the amount of the Released Initial Option Payment (as defined below) towards the Expansion upon City’s issuance of a certificate of occupancy for the Expansion as described in the City Promissory Note (as defined below) and delay or forego consideration of the FAL Project in order to facilitate City’s continued pursuit of the Expansion. The Parties agree that District will, at the Alternative A Closing, if applicable: (i) terminate its consideration of the FAL Project, and (ii) grant City the ARC Lease Expansion Amendment. If the Alternative A Closing does not take place then, under certain circumstances as described in this Agreement, the Alternative B Closing (as defined below) may occur and the FAL Project will be promptly docketed in accordance with Section 8.2 of this Agreement.

1.11 Marina Landside Area and Flag Lot. The Marina Landside Area is currently improved with a ticket booth, parking, restrooms and other improvements (“**Existing WTC**”) supporting the operations of the Fifth Avenue Landing water transportation center (“**WTC**”) and berthing operations within the balance of the Marina Lease. The Marina Lease grants FAL, as the lessee, the option to lease an additional 207,600 square feet of water area immediately adjacent to the premises of the Marina Lease for the construction and operation of development as specified therein. Exhibit E to the ARC Lease, titled Expansion Lease Term Sheet, states that on the date the Board of Port Commissioners (“**Board**”) approves an amendment to the existing Management Agreement by and between District and City on file in the Office of the District Clerk bearing Document No. 37944, as amended (“**Management Agreement**”) to extend the term and other provisions of the Management Agreement for the Expansion (“**Long-Term Expansion Lease**”), the Marina Landside Area shall be incorporated into the Long-Term Expansion Lease. Exhibit E to the ARC Lease also states that City has the option to cause the Existing WTC landside and underground improvements to be moved to a mutually agreeable location within the vicinity of the New ARC Lease Premises subject to certain conditions precedent, including, without limitation, City bearing the cost of planning and constructing the relocated WTC space and underground improvements consistent with the scope and magnitude of the current design of the Existing WTC, and the relocated WTC space will include administrative offices and ticket booths facing the promenade, twelve (12) parking spaces and a bus turnaround, a mutually agreeable size (not to exceed 16,296 square feet in the aggregate) and location and appropriate easements for ingress and egress. Exhibit E to the ARC Lease also states that during the WTC relocation, City shall provide FAL with a mutually agreeable temporary space and uninterrupted utilities. Exhibit C to the ARC Lease shows the Flag Lot (as defined below) as the mutually agreeable location for the relocated WTC. Upon the Alternative A Closing and consistent with the ARC Lease, District is willing to grant FAL as the lessee under the Marina Lease certain WTC relocation rights on 25,643 square feet of the Existing ARC Lease Premises comprising the parcel legally described on Exhibit A-6, which is a portion of a parcel known now as the “**Flag Lot**,” and an option to lease the remaining portion of the Flag Lot with a cumulative total of up to 35,000 square feet, as described in the Amended Marina Lease (Alternative A). The relocation of the WTC to the Flag Lot was analyzed in the FEIR and the Addendum to the FEIR.

1.12 TUOP. If the Alternative A Closing occurs, District and City will allow FAL to remain in possession of the FAL Premises pursuant to a Tidelands Use and Occupancy Permit (“**TUOP**”) until the earlier of five (5) years after the Alternative A Closing Date (as defined below) or the date of Commencement of Construction (as defined below) of the Expansion, with rent and other economic terms materially identical to the ARC Lease while permitting City reasonable access to the FAL Premises for Expansion-related predevelopment activities. “**Commencement of Construction**” means the earlier of (i) the issuance of a demolition permit for the improvements on the Expansion Property in connection with the construction of the Expansion or (ii) City’s commencement of work to relocate any utilities or streets, including Convention Way, to facilitate construction of the Expansion. The TUOP shall govern ownership and removal of all Personal Property (as defined below) from the New ARC Lease Premises. The TUOP provides that all structures, improvements, and buildings on the New ARC Lease Premises as of the Alternative A Closing (collectively, “**Structures**”) shall remain on the New ARC Lease Premises at the expiration or earlier termination of the TUOP.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged and in consideration of the mutual promises and covenants contained in this Agreement, and having determined that the foregoing recitals are true and correct and should be and are incorporated into this Agreement, the Parties agree as follows:

**Section 2 - Agreement of Sale; Option Price;
Released Initial Option Payment**

2.1 Purchase and Sale of FAL Property. Subject to the terms and conditions of this Agreement, FAL grants to District the District Option (as defined below) pursuant to which FAL agrees to sell to District, and District may elect to purchase from FAL, the FAL Property, which sale shall take place upon the Alternative A Closing Date. The “**Alternative A Closing Date**” will be five (5) Business Days following the last to occur of: (i) the satisfaction of the conditions precedent described in Sections 6.1.1, 6.1.2, 9.1.2 and 9.1.3 (or written waiver by the Party to be benefitted by the applicable condition) and (ii) payment by City to Escrow of the Third City Option Payment in accordance with Section 2.7, provided that each of the First City Option Payment and the Second City Option Payment have then been paid. Notwithstanding the foregoing, the Alternative A Closing shall not occur later than October 31, 2019, unless the Parties mutually agree in writing to extend the Alternative A Closing Date beyond October 31, 2019.

2.2 Purchase Price for FAL Property and Released Initial Option Payment.

2.2.1 FAL Property Total Price. The purchase price for the FAL Property will be equal to the sum of (i) **THIRTY MILLION DOLLARS (\$30,000,000.00)** Cash (“**FAL Property Option Price**”) plus (ii) a Cash amount (“**Cost Reimbursement**”) equal to the lesser of (a) the amount of the Verified FAL Costs determined in accordance with Section 7.3 or (b) **THREE MILLION TWO HUNDRED THOUSAND (\$3,200,000.00)**, for a total purchase price not to exceed **THIRTY THREE MILLION TWO HUNDRED THOUSAND DOLLARS (\$33,200,000.00)** Cash (“**FAL Property Total Price**”). “**Cash**” means (y) checks currently dated, payable to Escrow Agent, and honored upon presentation for payment or (z) amounts credited by wire-transfer into Escrow Agent’s bank account. Payments to FAL for the FAL Property Option Price and the Cost Reimbursement shall be made, if at all, in installments as specified in Section 2.8 of this Agreement.

2.2.2 Released Initial Option Payment. Provided that all documents specified in Section 2.3 have been delivered by the Parties when required and all documents and funds specified in Sections 2.4.1 through 2.4.16 have been delivered on or prior to the Document Delivery Date (as defined below), then five (5) Business Days after the Document Delivery Date, District will deliver to Escrow Agent, as part of the FAL Property Option Price, the sum of **FIVE MILLION DOLLARS (\$5,000,000.00)** Cash (“**Released Initial Option Payment**”).

2.3 Deliveries of Parties Before Opening of Escrow.

2.3.1 City and District Deliveries. City and District shall sign and deliver to Escrow, within three (3) Business Days after their respective governing bodies have approved this Agreement, three (3) originals of this Agreement.

2.3.2 FAL Deliveries. FAL shall deliver to Escrow, within three (3) Business Days after the respective governing bodies of City and District have approved this Agreement, (i) three (3) originals of this Agreement signed by FAL; (ii) if not then previously delivered to District, two (2) originals of the Ratification signed by FAL; (iii) three (3) originals of the Indemnity Agreement in favor of District and City signed by FAL in the form and content of the instrument attached as **Exhibit K-1** (“**New Indemnity Agreement**”); (iv) three (3) originals of the Guaranty to Indemnity Agreement in favor of District and City signed by Raymond Carpenter, Arthur Engel, David Engel and Herbert Engel (each a “**Guarantor**” and, collectively, “**Guarantors**”) in the form and content of the instrument attached as **Exhibit K-2** (“**New Guaranty**”); and (v) a conformed copy of the Request for Full Reconveyance in the form and content of the instrument attached as **Exhibit J** (“**Reconveyance**”) signed and acknowledged by FAL and recorded in the official records of the San Diego County Recorder (“**Official Records**”).

2.3.3 District and City Approval of Financial Statements. FAL has caused Guarantors to prepare and make available for review by District and City personal and business financial statements of all of the individual Guarantors (“**Financial Statements**”). District and City completed the review of the Financial Statements during a meeting (“**Financial Review Meeting**”) held at the principal offices of District. During the Financial Review Meeting, FAL caused: (i) each Guarantor to prepare their respective Financial Statements in reasonable detail and in accordance with accepted financial standards, bring at least two copies to the Financial Review Meeting and permit the Financial Statements to be examined by District and City representatives throughout the duration of the Financial Review Meeting, and (ii) each Guarantor to attend personally or through their respective accountants or financial representatives for the full duration of the Financial Review Meeting to respond to District’s and City’s questions regarding the Financial Statements. District and City agreed not to duplicate any portion of the Financial Statements provided during the Financial Review Meeting. By signing this Agreement, District and City affirm that, as of the date of the Financial Review Meeting and based on the information presented during the Financial Review Meeting, each has determined that Guarantors (acting collectively and not individually) have the financial ability to meet the aggregate obligations of Guarantors under all of the guaranties provided by such Guarantors (individually and collectively) to District and City (including, without limitation, under the ARC Lease, the Marina Lease and other leases held by or under control of the individual Guarantors with District and City) and under the New Indemnity Agreement (“**Financial Ability**”).

2.3.4 Escrow Agent Deliveries. Within one (1) Business Day after Escrow Agent has received all of the documents identified in Sections 2.3.1 and 2.3.2, Escrow Agent shall (i) insert on the cover page of this Agreement and in the preamble on page 1 of this Agreement the date upon which all conditions set forth in this Section 2.3 are satisfied and (ii) deliver (a) to each of the Parties, one original copy of this Agreement, the New Indemnity Agreement and the New Guaranty and (b) to District, one original copy of the Ratification and a conformed copy of the Reconveyance.

2.3.5 Title Review and Approval.

(i) The Parties acknowledge that, before the Effective Date, Chicago Title Insurance Company, acting as title insurer (“**Title Insurer**”) has delivered to the Parties the

following documents: (a) a title commitment showing District's fee title ownership of the San Diego Convention Center Phase III Expansion Premises and the Flag Lot ("**District's Title Commitment**"); and (b) a title commitment showing City's leasehold interest in the New ARC Lease Premises ("**City's Title Commitment**"). For purposes of this Section 2.3.5 only, (x) District and City are referred to collectively as the "**Title Reviewing Parties**" and individually as a "**Title Reviewing Party**"; (y) whenever District is acting as the Title Reviewing Party, "**Applicable Title Commitment**" refers to District's Title Commitment; and (z) whenever City is acting as the Title Reviewing Party, "**Applicable Title Commitment**" refers to City's Title Commitment.

(ii) Within three (3) Business Days after the Effective Date, each Title Reviewing Party shall deliver, to the other Parties and Escrow Agent, written notice (each, an "**Initial Title Notice**") identifying (a) any title exceptions in the Applicable Title Commitment to which such Title Reviewing Party objects, (b) the list of insurance endorsements requested by such Title Reviewing Party and (c) any proposed corrections to reconcile any discrepancies or errors in each legal description. If either Title Reviewing Party fails to timely deliver the Initial Title Notice, such Title Reviewing Party shall be deemed to disapprove the condition of title to the property interest(s) shown in the Applicable Title Commitment. Given that the Long-Term Expansion Lease from District to City will include a leasehold interest in the real property described in Section 1.3(iii) subject to the terms and conditions of the ENA and Paragraph 49 of the ARC Lease, District shall consult with City regarding the condition of title shown in District's Title Commitment before District delivers its Initial Title Notice.

(iii) Within three (3) Business Days after the delivery date of each Initial Title Notice or the expiration date for delivery of each Initial Title Notice without delivery of such notice, FAL shall deliver, to the other Parties and Escrow Agent, written notice (each, a "**Title Response Notice**") in which FAL: (w) agrees to cause the removal of some or all of the title exceptions in the Applicable Title Commitment to which the Title Reviewing Party has objected or is deemed to have objected; (x) agrees to provide some or all the insurance endorsements requested by the Title Reviewing Party; (y) agrees to some or all of the Title Reviewing Party's proposed corrections to each legal description; or (z) elects not to take either action described in clauses (w), (x) or (y) above. If FAL fails to timely deliver any Title Response Notice, FAL shall be deemed to elect not to take any action in response to the applicable Initial Title Notice.

(iv) Within five (5) Business Days after the earlier of the delivery date of the applicable Title Response Notice or the expiration date for delivery of the applicable Title Response Notice, Escrow Agent shall deliver to each Party a pro forma policy that reflects the condition of title to the property interest(s) shown in the Applicable Title Commitment, which excludes any title exceptions for which FAL has agreed in the Title Response Notice to cause removal, includes any insurance endorsements that FAL has agreed in the Title Response Notice to provide, and reflects any corrections to each legal description to which FAL has agreed in the Title Response Notice (so long as Title Insurer will be able to issue title insurance based on the corrected legal description). The pro forma policies to be attached to this Agreement pursuant to this Section 2.3.5 upon approval by the Parties of the terms and conditions thereof (each, a "**Pro Forma Policy**") will include: (a) a pro forma ALTA option policy, with liability in the amount of the FAL Property Total Price (as defined below), reflecting District's fee title ownership of

the Existing ARC Lease Premises and Marina Landside Area and showing the District Option vested solely in District (“**District’s Option Pro Forma Policy**”); (b) a pro forma ALTA policy of title insurance, with liability in the amount of the FAL Property Total Price, insuring that District holds fee title to the San Diego Convention Center Phase III Expansion Premises and the Flag Lot at the Alternative A Closing without exception for the leasehold interest of FAL as to the FAL Premises (“**District’s Final Pro Forma Policy**”); (c) a pro forma ALTA option policy, with liability in the amount of the Expansion Property Total Price (as defined below), showing the City Option (as defined below) vested solely in City (“**City’s Option Pro Forma Policy**”); and (d) a pro forma ALTA policy of title insurance, in the amount of the Expansion Property Total Price, insuring that leasehold title to the New ARC Lease Premises pursuant to the ARC Lease Expansion Amendment will vest in City at the Alternative A Closing (“**City’s Final Pro Forma Policy**”).

(v) Within five (5) Business Days after the delivery date of each Pro Forma Policy, each Title Reviewing Party shall deliver, to the other Parties and Escrow Agent, written notice (each, a “**Final Title Notice**”) either approving the legal descriptions, condition of title and endorsements shown in the applicable Pro Forma Policy (as to each Pro Forma Policy, an “**Approving Final Title Notice**”) or disapproving any one or more of the legal descriptions, condition of title or endorsements. If either Title Reviewing Party fails to timely deliver the Final Title Notice, such Title Reviewing Party shall be deemed to disapprove the legal descriptions, condition of title and endorsements shown in the applicable Pro Forma Policy.

(vi) Notwithstanding that any Title Reviewing Party has delivered an Approving Final Title Notice, if as to any Pro Forma Policy an Approving Final Title Notice is not delivered, then the Approving Final Title Notice(s) previously delivered shall be deemed withdrawn and of no further force and effect, each Title Reviewing Party shall be deemed to have disapproved the legal descriptions, condition of title and endorsements shown in all of the Pro Forma Policies and the Parties shall meet and confer in good faith with each other for a period of up to five (5) Business Days (“**Title Resolution Period**”) in an effort to resolve any disputed items and to cause Escrow Agent to deliver revised Pro Forma Polic(ies), if required, to reflect the resolution achieved by the Parties. If the meet and confer process applies to more than one Pro Forma Policy, then the Title Resolution Period shall be automatically extended until five (5) Business Days after the date on which the last of the Pro Forma Policies has been referred to the meet and confer process. If the Parties satisfactorily resolve all disputed items in each Pro Forma Policy during the meet and confer process, each Party shall deliver, before the Title Resolution Period expires, written notice to the other Parties and Escrow Agent confirming the satisfactory resolution (each, a “**Title Resolution Notice**”). If each Party has not delivered a Title Resolution Notice before the Title Resolution Period expires, then this Agreement shall automatically terminate, and the Parties and Escrow Agent shall act in accordance with Section 16.1.

(vii) All title matters relating to the Alternative A Transactions shall be deemed resolved in favor of proceeding with the Alternative A Transactions (subject to all applicable conditions to the Alternative A Closing set forth in this Agreement) if, as to all Pro Forma Policies, either (a) each Title Reviewing Party has timely delivered an Approving Final Title Notice or (b) each Party has timely delivered a Title Resolution Notice. Satisfaction of either clause (a) or clause (b) above as to all of the Pro Forma Policies is referred to as the “**Title**

Approval Milestone". If the Parties have timely achieved the Title Approval Milestone, then the Parties agree that the Pro Forma Policies (in the condition approved by the Approving Final Title Notice or the Title Resolution Notice, as applicable) shall be automatically included as exhibits to this Agreement as follows, without the necessity of any further actions by the Parties: (a) District's Option Pro Forma Policy shall become **Exhibit G-1**; (b) City's Option Pro Forma Policy shall become **Exhibit G-2**; (c) District's Final Pro Forma Policy shall become **Exhibit H-1**; and (d) City's Final Pro Forma Policy shall become **Exhibit H-2**.

(viii) The Parties acknowledge that the Applicable Title Commitments may include one or more title exceptions related to any third party or parties asserting a claim or claims as an optionee, contract vendee or otherwise ("**Third-Party Claim**"). The Parties agree that, notwithstanding the content of each Initial Title Notice, any Third-Party Claim included as a title exception in the Applicable Title Commitments will be included as a title exception in the applicable Pro Forma Policies and will not be referred to the meet and confer process during the Title Resolution Period (if any), provided that this circumstance shall not operate as a waiver by District or City of the requirement to remove all Third-Party Claims exceptions when required: (a) as a condition to funding as described in Section 2.8 or (b) to satisfy the conditions precedent to the Alternative A Closing set forth in Sections 9.1.2 and 9.1.3, respectively.

(ix) In an effort to achieve the Title Approval Milestone as promptly as possible, the Parties agree that all written notices contemplated under this Section 2.3.5 shall be delivered by email as permitted by Section 17.1, and the Parties agree to waive delivery of a follow-up hard copy of all written notices delivered by email under this Section 2.3.5.

2.4 Deliveries of Parties Before Release of Released Initial Option Payment. Provided that all documents required by Section 2.3 are delivered, Escrow Agent has fully complied with the terms of Section 2.3 and the Title Approval Milestone has timely occurred, the Parties intend that all documents required to close the Alternative A Closing or the Alternative B Closing (each as defined below), if applicable, comprised of the documents listed in Sections 2.4.1 through 2.4.16 below, shall be placed in Escrow on or before the Document Delivery Date (as defined below) and that such documents be signed by authorized signatories, in recordable form and acknowledged where required. Certain documents, as specified in Section 2.5, shall be delivered by Escrow Agent concurrently with the disbursement by Escrow Agent of the Released Initial Option Payment to FAL. The remaining documents listed below shall be retained by Escrow Agent and delivered and recorded in accordance with the Alternative A Closing procedures set forth in Sections 9.1 and 11.1 or, if applicable, the Alternative B Closing procedures set forth in Sections 9.2 and 11.2 or as otherwise provided in this Agreement. The funds listed in Section 2.4.4 below shall be retained in Escrow Agent's bank account and disbursed in accordance with the Alternative A Closing procedures set forth in Section 11.1.4(iii) or, if applicable upon a termination of Escrow for the Alternative A Transactions, in accordance with Section 19.2.1. Unless this Agreement is previously terminated pursuant to Section 16.1 or 16.3 and subject to Section 16.3, each Party shall make the deliveries required of it under this Section 2.4 on or before the date that is forty (40) calendar days after the Effective Date ("**Initial Document Delivery Date**"). No later than five (5) Business Days after such Initial Document Delivery Date, Escrow Agent will provide written notice to each Party either confirming that all documents have been delivered or attaching a list of all documents not then in Escrow. Thereafter, subject to Section 16.3 and on or before the date that is sixty (60) calendar days from

the Effective Date as the same may be extended pursuant to Section 16.3 (“**Document Delivery Date**”), each Party shall have delivered any documents that were not delivered as of the Initial Document Delivery Date. Subject to Section 16.3, the Document Delivery Date shall not be subject to extension without the prior written consent of all of the Parties.

2.4.1 Settlement Agreement. Three (3) originals of the Settlement Agreement and Mutual Release, in the form and content of the instrument attached as **Exhibit C** (“**Settlement Agreement**”) with counterparts signed by City, SDCCC and FAL.

2.4.2 Assignment of ARC Lease. One (1) original of the Assignment and Assumption of Lease (ARC Lease) and Consent to Assignment, in the form and content of the instrument attached as **Exhibit D-1** (“**Assignment and Assumption**”), with counterparts signed by FAL and with certificate of acceptance signed by District, acknowledged and in recordable form; and two (2) originals of the Reaffirmation of Guaranty and Consent to Assignment and Assumption signed by Guarantors in the form and content of the instrument attached as **Exhibit D-2** (“**Guarantor Consent to Assignment and Assumption**”).

2.4.3 Quitclaim Deed. One (1) original of the Quitclaim Deed (Marina Lease – Marina Landside Area), in the form and content of the instrument attached as **Exhibit D-3** (“**Quitclaim Deed**”) with counterparts signed by FAL, acknowledged and in recordable form and with certificate of acceptance signed by District.

2.4.4 City Promissory Note. One (1) original promissory note in the original principal amount of **FIVE MILLION DOLLARS (\$5,000,000.00)** signed by City in the form and content of the instrument attached as **Exhibit E** (“**City Promissory Note**”), together with City’s delivery to Escrow Agent of **FIVE MILLION THREE HUNDRED THOUSAND DOLLARS (\$5,300,000.00)** Cash for delivery into a sub-escrow account designated as Escrow No. 87490A-RM1 (“**Note Escrow Account**”), which shall apply to the District/City Transaction and shall be administered by Escrow Agent with respect to City’s potential payment of the principal amount of, and accrued interest on, the City Promissory Note to District in accordance with Section 1 of the City Promissory Note.

2.4.5 Memoranda of Options.

(i) One (1) original of the Memorandum of Option in Favor of San Diego Unified Port District Under Purchase and Sale Agreement with counterparts signed by FAL and District in the form and content of the instrument attached as **Exhibit F-1** (“**Memorandum of District Option**”), acknowledged and in recordable form.

(ii) One (1) original of the Memorandum of in Favor of City of San Diego Under Purchase and Sale Agreement with counterparts signed by City and District in the form and content of the instrument attached as **Exhibit F-2** (“**Memorandum of City Option**”), acknowledged and in recordable form.

2.4.6 FIRPTA Certificate. One (1) original certificate signed by FAL pursuant to Internal Revenue Code Section 1445, certifying that FAL is not a nonresident alien or foreign corporation, foreign partnership, foreign trust or foreign estate.

2.4.7 IRS Form W-9. One (1) original certificate signed by FAL of an Internal Revenue Service Form W-9 (or Escrow Agent’s equivalent form), completed, signed

and dated by FAL, to be used by Escrow Agent to comply with Internal Revenue Code Section 6045(e).

2.4.8 ARC Lease Expansion Amendment. Two (2) originals of the San Diego Unified Port District Amendment No. 2 to Amended, Restated and Combined Lease to City of San Diego of Property Located at Fifth Avenue Landing and Marina Park Way, San Diego, California, in the form and content of the instrument attached as **Exhibit L** (“**ARC Lease Expansion Amendment**”) with counterparts signed by District and City.

2.4.9 Amended Marina Lease and Consent to Amended Marina Lease (Alternative A). Two (2) originals of the Amendment No. 1 to San Diego Unified Port District Lease to Fifth Avenue Landing, LLC of Property Located at Fifth Avenue Landing and Marina Park Way, San Diego, California in the form and content of the instrument attached as **Exhibit M-1** (“**Amended Marina Lease (Alternative A)**”) with counterparts signed by FAL and District and two (2) originals of the Reaffirmation of Guaranty and Consent to Amendment No. 1 of Marina Lease (Alternative A) signed by Guarantors in the form and content of the instrument attached as **Exhibit M-2** (“**Consent to Amended Marina Lease (Alternative A)**”).

2.4.10 Amended Marina Lease and Consent to Amended Marina Lease (Alternative B). Two (2) originals of the Amendment No. 1 to San Diego Unified Port District Lease to Fifth Avenue Landing, LLC of Property Located at Fifth Avenue Landing and Marina Park Way, San Diego, California in the form and content of the instrument attached as **Exhibit N-1** (“**Amended Marina Lease (Alternative B)**”) with counterparts signed by FAL and District and two (2) originals of the Reaffirmation of Guaranty and Consent to Amendment No. 1 to Marina Lease (Alternative B), signed by Guarantors in the form and content of the instrument attached as **Exhibit N-2** (“**Consent to Amended Marina Lease (Alternative B)**”).

2.4.11 Amended FAL ARC Lease and Consent to Amended FAL ARC Lease (Alternative B). Two (2) originals of the San Diego Unified Port District Amendment No. 2 to Amended, Restated and Combined Lease to San Diego Convention Center Corporation of Property Located at Fifth Avenue Landing and Marina Park Way, San Diego, California in the form and content of the instrument attached as **Exhibit O-1** (“**Amended FAL ARC Lease**”), with counterparts signed by FAL and District, and with two (2) originals of the Reaffirmation of Guaranty and Consent to Amendment No. 2 of ARC Lease (Alternative B) signed by Guarantors in the form and content of the instrument attached as **Exhibit O-2** (“**Consent to Amended FAL ARC Lease**”).

2.4.12 Tidelands Use and Occupancy Permit (TUOP). Two (2) originals of the TUOP in the form and content of the instrument attached as **Exhibit P**, with counterparts to the TUOP signed by FAL and District, and three (3) originals of the License Agreement (attached as Exhibit B to the TUOP), with counterparts signed by FAL and City, and the consent to the License Agreement signed by District.

2.4.13 Memorandum of Assignment and Assumption and ARC Lease Expansion Amendment. One (1) original of the Memorandum of Assignment and Assumption and Lease Amendment No. 2 with counterparts signed by City and District in the form and content of the instrument attached as **Exhibit Q** (“**Memorandum of ARC Lease Expansion Amendment**”), acknowledged and in recordable form.

2.4.14 Memoranda of FAL Leases. One (1) original of each of the following memoranda with counterparts signed by FAL, District and Guarantors, acknowledged and in recordable form:

(i) Memorandum of Lease Amendment No. 1 (Alternative A) in the form and content of the instrument attached as **Exhibit R** (“**Memorandum of Amended Marina Lease (Alternative A)**”).

(ii) Memorandum of Lease Amendment No. 1 (Alternative B) in the form and content of the instrument attached as **Exhibit S** (“**Memorandum of Amended Marina Lease (Alternative B)**”).

(iii) Memorandum of Lease Amendment No. 2 (Alternative B) in the form and content of the instrument attached as **Exhibit T** (“**Memorandum of Amended FAL ARC Lease (Alternative B)**”).

2.4.15 Release of ARC Lease Guaranty. Two (2) originals of the Release of Guarantors signed by District, in the form and content of the instrument attached as **Exhibit U** (“**Release of ARC Lease Guaranty**”).

2.4.16 General. Such other documents as may reasonably be requested by Escrow Agent or necessary to close Escrow with respect to the Alternative A Transactions or the Alternative B Closing, if applicable.

2.5 Delivery of Released Initial Option Payment to FAL. Upon the later of the (i) Document Delivery Date or (ii) the delivery of the Released Initial Option Payment to Escrow by District, Escrow Agent will release the Released Initial Option Payment to FAL provided that Escrow Agent has then received from each Party all of the funds described in Section 2.2.2 and the documents listed in Section 2.4 on or before the Document Delivery Date, the Agreement is not then terminated, and further provided that upon the date of the release of the Released Initial Option Payment to FAL:

2.5.1 No Default. No Party has provided written notice pursuant to Section 17.1 that another Party is then in default under this Agreement; and

2.5.2 Document Dates. Escrow Agent is prepared to and concurrently with the release of the Released Initial Option Payment to FAL does (i) insert in the upper right hand corner of the City Promissory Note the date upon which all conditions set forth in this Section 2.5 are satisfied and deliver to District the wet-signature original of the City Promissory Note signed by City, and with a copy to City, (ii) insert in the preamble on page 1 of the Settlement Agreement the date upon which all conditions set forth in this Section 2.5 are satisfied and deliver to City two (2) wet-signature originals, and to FAL one wet-signature original, of the Settlement Agreement signed by FAL, City and SDCCC, and with a copy to District, and (iii) cause the Memorandum of District Option and the Memorandum of City Option to be recorded in the Official Records and promptly thereafter a conformed copy of each such instrument to be delivered to the Parties; and

2.5.3 Title Insurance. Title Insurer issues the following policies of title insurance, paid for by FAL: (i) to District, an ALTA option policy in form and content identical to the District’s Option Pro Forma Policy in the form to be attached as **Exhibit G-1** (“**District**

Option Policy"); and (ii) to City, an ALTA option policy in form and content identical to the City's Option Pro Forma Policy in the form to be attached as **Exhibit G-2 ("City Option Policy")**. For the avoidance of doubt and as provided in Section 2.3.5(viii) and subject to Section 2.8 (but only as Section 2.8 applies to the Released Initial Option Payment), the District Option Policy and the City Option Policy may include one or more title exceptions related to any Third-Party Claim (as defined below).

2.6 Purchase and Sale of Expansion Leasehold Interest. Subject to the terms and conditions of this Agreement, District grants to City the City Option (as defined below) pursuant to which District agrees to sell to City, and City may elect to purchase from District, the leasehold interest in the ARC Lease as amended by the terms of the ARC Lease Expansion Amendment which amendment shall include, among other things, a modification to the leasehold premises to include only the New ARC Lease Premises and an extended term to be coterminous with the Management Agreement and the Paragraph 49 option to lease extended to December 31, 2028 (collectively, "**Expansion Leasehold Interest**"), which sale shall take place upon the Alternative A Closing Date. District acknowledges that, upon expiration of the TUOP, City will acquire the balance of the Expansion Property, which includes the related property interests identified in Section 1.6.1.

2.7 Purchase Price for Expansion Leasehold Interest. Upon signing and delivery of this Agreement, satisfaction of the covenants and conditions in Sections 2.3 and 2.4 and release of the Released Initial Option Payment pursuant to Section 2.5, City shall have the option to acquire from District the Expansion Leasehold Interest ("**City Option**") for a purchase price of **THIRTY MILLION DOLLARS (\$30,000,000.00)** plus the amount of the Cost Reimbursement, for a total price not to exceed **THIRTY THREE MILLION TWO HUNDRED THOUSAND DOLLARS (\$33,200,000.00)** ("**Expansion Property Total Price**"). The amount of **FIVE MILLION DOLLARS (\$5,000,000.00)**, which is the principal amount of the City Promissory Note delivered by City to Escrow Agent in accordance with Section 2.4, shall be credited against the Expansion Property Total Price at the Alternative A Closing. Subject to Section 19.22, the balance of the Expansion Property Total Price shall be paid by City to District in the following option payments, and shall be paid, if at all, in the following Cash installments (each a "**City Option Payment**" and collectively, the "**City Option Payments**"):

(i) On or before April 1, 2019, the amount of **NINE MILLION FOUR HUNDRED THOUSAND DOLLARS (9,400,000.00)** ("**First City Option Payment**").

(ii) On or before July 1, 2019, the amount of **NINE MILLION FOUR HUNDRED THOUSAND DOLLARS (9,400,000.00)** ("**Second City Option Payment**").

(iii) On or before October 1, 2019, the amount of **NINE MILLION FOUR HUNDRED THOUSAND DOLLARS (9,400,000.00)** ("**Third City Option Payment**").

If City does not deliver any City Option Payment upon the date for payment set forth in this Section, and such failure continues for a period of ten (10) Business Days following City's receipt of written notice from a Party not then in default under this Agreement, such non-payment shall be deemed a termination by City of the Alternative A Closing and in such event the Alternative B Closing shall occur if and only if authorized by this Agreement. Neither District nor FAL shall have any remedy in law or equity to require City to make any City Option Payments. If City elects to make any City Option Payment, then the payment of such City

Option Payment shall, together with all other City Option Payments made, be applied as a credit against the Expansion Property Total Price at the Alternative A Closing.

2.8 District Payment of FAL Property Total Price. Upon signing and delivery of this Agreement, satisfaction of the covenants and conditions in Sections 2.3 and 2.4 and release of the Released Initial Option Payment pursuant to Section 2.5, District shall have the option to acquire from FAL the FAL Property for the FAL Property Total Price (“**District Option**”) in accordance with this Agreement. When authorized by this Section 2.8, Escrow Agent shall make the payments described in Sections 2.8(a) through (c) to FAL (each a “**District Option Payment**” and collectively, the “**District Option Payments**”), which shall, together with the Released Initial Option Payment, be applied as a credit against the FAL Property Total Price at the Alternative A Closing:

(a) Within two (2) Business Days following the later of receipt by Escrow Agent of the First City Option Payment and satisfaction of the conditions set forth in Sections 2.8(i) and 3.2(i), payment of the amount of **NINE MILLION FOUR HUNDRED THOUSAND DOLLARS (9,400,000.00)** to FAL (“**First District Option Payment**”);

(b) Within two (2) Business Days following the later of receipt by Escrow Agent of the Second City Option Payment and satisfaction of the conditions set forth in Sections 2.8(i) and 3.2(i), payment of the amount of **NINE MILLION FOUR HUNDRED THOUSAND DOLLARS (9,400,000.00)** to FAL (“**Second District Option Payment**”); and

(c) On the Alternative A Closing Date, and provided that (x) all covenants set forth in Sections 2, 3, 4, 5 and 7 of this Agreement have been performed, all other conditions in this Agreement to the Alternative A Closing have been satisfied, including without limitation, Sections 9.1.2 and 9.1.3, and neither FAL nor City are then in default under this Agreement, and (y) Escrow Agent has previously received the City Option Payments and has disbursed to FAL the First District Option Payment and the Second District Option Payment, then unless otherwise notified by a Party in writing, Escrow Agent shall proceed to close Escrow pursuant to Alternative A and at the Alternative A Closing, Escrow Agent shall pay to FAL or order, the balance of the Cash portion of the FAL Property Total Price including the Cost Reimbursement to which FAL will be entitled (less any debits against FAL authorized by this Agreement) (“**Third District Option Payment**”) which amount may be less than, but shall not exceed the amount of the Third City Option Payment unless authorized by District in writing. If the Cost Reimbursement, as verified in accordance with Section 7.3, paid to FAL is less than **THREE MILLION TWO HUNDRED THOUSAND DOLLARS (\$3,200,000.00)**, then the difference between \$3,200,000.00 and the actual Cost Reimbursement payable to FAL shall be refunded to City at the Alternative A Closing, after deducting therefrom any debits against City authorized by this Agreement.

Notwithstanding any other provision of this Agreement, but subject to Section 2.9.2, District and FAL agree that Escrow Agent shall retain in Escrow, and shall not make either the First District Option Payment or the Second District Option Payment to FAL, unless each of the following is satisfied: (i) Title Insurer is prepared to and does issue an updated District Option Policy or a date down endorsement to the originally issued District Option Policy and an updated City Option Policy or a date down endorsement to the originally issued City Option Policy, each paid for by FAL and each effective as of the date of Escrow Agent’s release of the applicable payment, which shall have no exceptions related to any Third-Party Claim and no other

exceptions to title or modifications, unless approved by District or City, respectively, each in its sole discretion, and (ii) Escrow Agent has not, before the applicable release date of the First District Option Payment and the Second District Option Payment to FAL, received written notice from any other Party not then in default under this Agreement that another Party is then in default under this Agreement. Within three (3) Business Days prior to City's deposit into Escrow of the First City Option Payment and the Second City Option Payment to FAL, FAL shall deliver written notice to District and City, signed by a managing member of FAL, certifying that, after FAL's completion of due and diligent inquiry, none of Guarantors have experienced any event, change, circumstance, effect or other matter that has, or could reasonably be expected to have, either individually or in the aggregate with all other events, changes, circumstances, effects or other matters, with or without notice, lapse of time or both, a material adverse effect on the Financial Ability of Guarantors from and after the completion of the Financial Review ("**No Material Change Notice**"); provided, however, if the updated District Option Policy or date down endorsement and the updated City Option Policy or date down endorsement show no exceptions related to any Third-Party Claim, then notwithstanding any other provision of this Agreement, FAL shall have no obligation to issue a No Material Change Notice.

2.9 Payments Voluntary; Effect of Non-Payment.

2.9.1 City Option Payments; Effect of Non-Payment. City may elect to make the City Option Payments (or not to make the City Option Payments) in its sole discretion. If City elects not to acquire the Expansion Leasehold Interest after the conditions precedent to Alternative A Closing set forth in Sections 6.1.1, 6.1.2, 9.1.2 and 9.1.3 have become satisfied, payments of the City Option Payments made to District pursuant to Section 2.7 will be independent consideration for the City Option and shall be non-refundable to City, and City shall make all payments owed to District under the terms of the City Promissory Note. Except as set forth in the City Promissory Note, in no event shall City be declared in default or have any liability to District or FAL with respect to non-payment of a City Option Payment and, except as set forth in Sections 4.3, 16.2 and 16.4, City shall have no right to reimbursement from District or FAL of any portion of the City Option Payment if the Alternative A Closing does not occur.

2.9.2 District Option Payments; Effect of Non-Payment. Subject to Section 2.10, and the sole benefit granted to City therein, and Section 15.3, District may elect to make the District Option Payments (or not to make the District Option Payments) in its sole discretion. In addition, payment of each District Option Payment under Section 2.8 is fully contingent upon (i) full compliance by City and FAL with all terms and conditions of this Agreement; (ii) satisfaction of all conditions to such payments set forth in Section 2.8; (iii) as to the Third Option Payment, satisfaction of all conditions to the Alternative A Closing set forth in this Agreement, and (iv) payment by City of the corresponding City Option Payment set forth in Section 2.7. In no event shall District be declared in default or have any liability to FAL as a result of the non-payment by City of any City Option Payments or non-payment by District of any District Option Payments, and FAL shall have no remedy in law or equity to require District to make any of the District Option Payments to FAL specified in Section 2.8 if City fails to make one of the City Option Payments or otherwise. FAL's sole remedy upon an election by City not to make a City Option Payment and/or an election by District not to make a District Option Payment shall be to retain the Released Initial Option Payment and any additional District Option Payments previously paid by Escrow Agent to

FAL pursuant to Section 2.8 and, if applicable, to proceed to the Alternative B Closing in accordance with this Agreement. In no event shall District be declared in default or, subject to Section 2.10, have any liability to City with respect to non-payment of a District Option Payment.

2.10 District and City Agreement Regarding District Option Payments. District shall have no obligation to make any payment under Section 2.8 unless City has made a corresponding City Option Payment to Escrow pursuant to Section 2.7. District's obligation under this Section 2.10 is fully contingent upon (i) full compliance by City and FAL with all terms and conditions of this Agreement and (ii) Section 2.8. Provided City or FAL is not then in default under the terms of this Agreement, District agrees, solely for the benefit of City, that District shall make to FAL each District Option Payment corresponding to each City Option Payment. City's sole remedy if City makes a City Option Payment to District, but District fails to make a corresponding District Option Payment to FAL, is to seek specific performance of the payment. FAL shall have no right to enforce the provisions of this Section 2.10 against District or to require City to take such action. At the earliest opportunity after District believes that District may be unable or unwilling to make a District Option Payment to FAL (assuming City will make the corresponding City Option Payment to District), District shall deliver written notice to City and FAL regarding this circumstance and explaining the basis for District's anticipated nonpayment. If City disagrees with the basis for District's anticipated nonpayment, District and City will immediately submit the disagreement to final, binding arbitration under the rules of the American Arbitration Association and will seek in good faith to obtain a final, binding arbitration ruling before the due date for City to make the applicable City Option Payment under Section 2.7 or, if applicable, the due date for District to make the applicable District Option Payment under Section 2.8 provided, however, such arbitration shall not extend or delay the due date for payments described in Sections 2.7 or 2.8. District and City agree to abide by the final, binding arbitration ruling and, if such ruling states that District must make the applicable District Option Payment to FAL, then District shall promptly make the applicable District Option Payment to FAL (assuming City makes the corresponding City Option Payment to District). This Section 2.10 is for the sole benefit of City. FAL agrees that it shall not use this Section 2.10 as evidence, in a court of law or otherwise, that any District Option Payments are not optional as to FAL.

Section 3 - District's Deliveries to Escrow Agent **- Alternative A Closing**

3.1 Intentionally Omitted.

3.2 Released Initial Option Payment and District Option Payments. District shall pay the Released Initial Option Payment to Escrow when required by Section 2.2.2. Escrow Agent shall retain the Released Initial Option Payment in Escrow until it is able to confirm in writing to District that all conditions to release of the Released Initial Option Payment set forth in Section 2.5 are satisfied. Subject to Sections 2.9.2 and 2.10, District shall pay the District Option Payments when required by Section 2.8. Escrow shall hold the District Option Payments in Escrow until it is able to confirm in writing to District that (i) with respect to the First District Option Payment and the Second District Option Payment only, all conditions to release of those two payments set forth in Section 2.8 are satisfied and (ii) at the Alternative A Closing, whether or not Title Insurer was able to issue an updated District Option Policy or date down

endorsement and an updated City Option Policy or date down endorsement to allow the release of the First District Option Payment and the Second District Option Payment pursuant to Section 2.8, the requirements of Sections 9.1.2 and 9.1.3 are satisfied.

3.3 District Deliveries Before Alternative A Closing Date. Provided that City makes the Third City Option Payment and neither City nor FAL is then in default under this Agreement, then no later than two (2) Business Days prior to the Alternative A Closing Date, District shall make the deliveries required by Sections 3.3.2 and 3.3.3, and no later than 3:00 p.m. of the last Business Day before the Alternative A Closing Date, District shall make the payment required by Section 3.3.1:

3.3.1 District Charges. In Cash, District's charges described in Section 10.1.2.

3.3.2 Document Deliveries. All documents required to be delivered by District as a condition to the Alternative A Closing and which are not required to be earlier delivered pursuant to Section 2.4.

3.3.3 General. Such other documents as may reasonably be requested by Escrow Agent or necessary in connection with the Alternative A Transactions; provided that District shall have no obligation to deliver an owner's affidavit to Escrow.

3.4 Non-Delivery. Except with respect to Section 2 (which contains its own cure provisions), or as otherwise set forth in this Section 3.4, if any delivery required to be made by District is not performed within the time periods set forth in this Agreement, District shall be in default, but such default shall be cured if the obligation is performed within ten (10) Business Days following receipt of written notice from any Party not then in default under this Agreement. In the event of a District default which is not cured within the applicable cure period set forth in this Agreement, at FAL's or City's election and upon provision of written notice of cancellation by either such Party delivered pursuant to Section 17, the Alternative A Closing will be canceled. In such event, and provided FAL has then performed all of its covenants and obligations under this Agreement, (i) FAL shall have the right to retain the District Option Payments released to FAL by Escrow Agent pursuant to Sections 2.5 or 2.8 of this Agreement to the date of the notice of cancellation of the Alternative A Closing, which shall be the sole remedy of FAL for the failure of the Alternative A Closing (except as provided in the Settlement Agreement in relation to City) and (ii) if Escrow Agent retains any City Option Payments without having disbursed the corresponding District Option Payment as provided in Section 2.8, Escrow Agent shall disburse to City any City Option Payments retained by Escrow Agent. Except for termination of this Agreement as provided in Section 16 or as otherwise set forth in Sections 4.3 or 9.3, upon the cancellation of the Alternative A Closing, if all terms and conditions to the Alternative B Closing have been satisfied, Escrow Agent shall thereupon proceed to the Alternative B Closing in accordance with Section 11.2 below.

Section 4 - FAL's Deliveries to Escrow Agent **- Alternative A Closing**

4.1 Intentionally Omitted.

4.2 FAL Deliveries Before Alternative A Closing Date. Provided that City makes the Third City Option Payment and neither City nor District is then in default under this Agreement,

then no later than two (2) Business Days prior to the Alternative A Closing Date, FAL shall make the deliveries required by Sections 4.2.2, 4.2.3 and 4.2.4, and no later than 3:00 p.m. of the last Business Day before the Alternative A Closing Date, FAL shall make the payment required by Section 4.2.1:

4.2.1 Cash to Discharge Encumbrances and Pay FAL's Charges. If the District Option Payments deposited with Escrow Agent are insufficient to (i) discharge all monetary encumbrances and (ii) pay FAL's charges described in Section 10.1.1, FAL will deliver to Escrow Agent sufficient funds and instruments to discharge and pay such encumbrances and charges, including, without limitation, those described in Section 10.1.1.

4.2.2 Document Deliveries. All documents required to be delivered by FAL as a condition to the Alternative A Closing and which are not required to be earlier delivered pursuant to Section 2.4.

4.2.3 Title Insurer Requirements. An owner's affidavit required by Title Insurer in a form approved by FAL to insure title to District and such documents, indemnities, affirmations and undertakings as required by Title Insurer to issue the District Title Policy with the condition of title for the FAL Premises identical to that shown in the District's Final Pro Forma Policy attached as **Exhibit H-1** but without any exception related to any Third-Party Claim, and the City Title Policy with the condition of title for the New ARC Lease Premises identical to that shown in the City's Final Pro Forma Policy attached as **Exhibit H-2** but without any exception related to any Third-Party Claim.

4.2.4 General. Such other documents as may reasonably be requested by Escrow Agent or necessary in connection with the Alternative A Transactions.

4.3 Non-Delivery. Except with respect to Section 2 (which contains its own cure provisions), if FAL fails to make any delivery or perform any obligation under this Agreement by the date or within the time set forth for such delivery or performance in this Agreement, FAL shall be in default, but such default shall be cured if the obligation is performed within ten (10) Business Days following receipt of written notice from any Party not then in default under this Agreement. In the event of an FAL default which is not cured within the applicable cure period set forth in this Agreement, at District's or City's election and upon provision of written notice of cancellation by either such Party delivered pursuant to Section 17, the Alternative A Closing will be canceled. In such an event, (i) FAL shall pay the full amount of Escrow Agent's charges, (ii) FAL shall retain the Released Initial Option Payment if released in accordance with Section 2.5, (iii) District shall be entitled to any District Option Payments made to FAL pursuant to subsection 2.8, whether retained in Escrow or previously paid to FAL and FAL shall promptly pay all such sums to District, and (iv) District shall, upon receipt of any such funds, promptly pay such funds to City. In no event shall District have any obligation to City for payment if FAL fails to repay such sums and District shall have no obligation to pursue FAL for repayment of such sums. Notwithstanding the foregoing, District and FAL acknowledge and agree that if District determines not to pursue District's remedies, City shall have the right to pursue such remedies against FAL on behalf and in the place of District. In addition to the remedies that City and District shall have under Section 15.2, the Alternative A Closing shall be canceled and District shall have the right, in its sole discretion, to determine whether or not to proceed with the Alternative B Closing. District shall notify FAL and Escrow Agent in writing of its election. If District elects, in its sole discretion, not to cancel the Alternative B Closing, FAL and District

shall proceed to the Alternative B Closing pursuant to Section 11.2 and if all terms and conditions to the Alternative B Closing have been satisfied, Escrow Agent shall thereupon proceed to the Alternative B Closing in accordance with Section 11.2 below. If District elects to cancel the Alternative B Closing pursuant to this Section 4.3, Escrow Agent shall proceed in accordance with Section 11.3 below.

Section 5 - City's Deliveries to Escrow Agent
- Alternative A Closing

5.1 Intentionally Omitted.

5.2 City Deliveries Before Alternative A Closing Date. Provided that City makes the Third City Option Payment and neither FAL nor District is then in default under this Agreement, then no later than two (2) Business Days prior to the Alternative A Closing Date, City shall make the deliveries required by Sections 5.2.2 and 5.2.3, and no later than 3:00 p.m. of the last Business Day before the Alternative A Closing Date, City shall make the payment required by Section 5.2.1:

5.2.1 City's Charges. In Cash, City's charges described in Section 10.1.3.

5.2.2 Document Deliveries. All documents required to be delivered by City as a condition to the Alternative A Closing and which are not required to be earlier delivered pursuant to Section 2.4.

5.2.3 General. Such other documents as may reasonably be requested by Escrow Agent or necessary in connection with the Alternative A Transactions.

5.3 Non-Delivery. Except with respect to Section 2 (which contains its own cure provisions), if any delivery required to be made by City pursuant to this Agreement is not performed within the time periods set forth in this Agreement, City shall be in default, but such default shall be cured if the obligation is performed within ten (10) Business Days following receipt of written notice from any Party not then in default under this Agreement. In the event of a City default which is not cured within the applicable cure period set forth in this Agreement or upon cancellation pursuant to Section 6.3, at FAL's or District's election and upon provision of written notice of cancellation by either such Party delivered pursuant to Section 17, the Alternative A Closing will be canceled. In such event, and provided FAL has then performed all of its covenants and obligations under this Agreement, FAL shall have the right to retain any sums paid to it pursuant to Sections 2.5 or 2.8 of this Agreement to the date of the notice of cancellation of the Alternative A Closing, which shall be the sole remedy of FAL for the failure of the Alternative A Closing (except as provided in the Settlement Agreement). Upon the cancellation of the Alternative A Closing under this Section 5.3, City shall pay the full amount of Escrow Agent's charges, and Escrow Agent shall disburse the funds in the Note Escrow Account in accordance with Section 19.2. Upon the cancellation of the Alternative A Closing, if all terms and conditions to the Alternative B Closing have been satisfied, Escrow Agent shall thereupon proceed to the Alternative B Closing in accordance with Section 11.2, subject to Sections 4.3 and 9.3.

Section 6 - Conditions Precedent to Alternative A Closing

6.1 Conditions Precedent to Alternative A Closing. In addition to the special conditions precedent in Section 9.1, the following are conditions precedent to the Alternative A Closing.

6.1.1 Clerk's Certification of Initiative. City's delivery to District, FAL and Escrow Agent no later than August 20, 2018, of a copy of the City Clerk's written certification that Ballot Qualification of the Initiative petition has occurred.

6.1.2 City Council's Resolution Declaring Election Results. City's delivery to District, FAL and Escrow Agent no later than March 15, 2019, of a copy of a resolution adopted by the City of San Diego City Council ("**City Council**"), which declares the results of the November 2018 citywide election and confirms that Voter Approval of the Ballot Measure has occurred.

6.2 Obligations. The obligations of City with respect to each of the conditions precedent set forth in Section 6.1 are set forth in Sections 7.2.1 and 7.2.2.

6.3 Termination. If any of the conditions precedent in Section 6.1 is not timely satisfied, District or FAL may cancel the Alternative A Closing in accordance with Section 5.3.

6.4 Remedies of Parties Not Affected. Subject to Section 15, none of (i) the exercise of the right of termination, (ii) delay in the exercise of such right or (iii) the return of funds and documents will affect the right of the Party giving the notice of termination to pursue legal or equitable remedies, as specified in this Agreement, for any other Party's breach of this Agreement.

Section 7 - Additional Covenants of the Parties - Alternative A

7.1 Limitations. Except as set forth in Sections 7.2, 7.3 and 7.8, Escrow Agent will have no concern with, nor liability or responsibility for this Section.

7.2 Covenants Regarding Conditions Precedent.

7.2.1 Sufficiency of Initiative Petition. With reference to Section 6.1.1, City shall deliver to District, FAL and Escrow Agent, no later than August 20, 2018, a copy of the City Clerk's written certification that Ballot Qualification of the Initiative Petition has occurred, or if Ballot Qualification has not occurred, written confirmation to that effect.

7.2.2 Election Outcome on Ballot Measure. With reference to Section 6.1.2, City shall deliver to District, FAL and Escrow Agent, within two Business Days after adoption of the pertinent resolution, but in any event no later than March 15, 2019, a copy of the City Council's adopted resolution certifying the results of the November 2018 citywide election with respect to the Ballot Measure.

7.3 Cost Reimbursement. FAL has and will continue to incur third-party consultant costs from May 7, 2015 through the date that is twenty (20) Business Days prior to the Alternative A Closing Date for land use entitlement and environmental services, legal fees, design and other costs relating to the FAL Project and this Agreement ("**FAL Costs**"). In connection with the Cost Reimbursement, no later than twenty (20) Business Days prior to the Alternative A Closing Date, FAL shall deliver to City and Escrow Agent, copies of invoices substantiating the FAL Costs and evidence of payment of such invoices. City shall have ten (10)

Business Days to review the FAL Costs for the following: (i) they were actually incurred; (ii) they are related to the FAL Project and (iii) they were paid. In relation to any attorneys' fees, the corresponding attorney shall sign an affidavit evidencing that the fees are for the FAL Project. If City verifies the FAL Costs ("**Verified FAL Costs**"), it shall notify District, and District and FAL will sign a joint instruction to Escrow Agent, to disburse the Cost Reimbursement amount at the Alternative A Closing ("**Joint Verified Cost Instruction**"). Alternatively, City may dispute any of the FAL Costs ("**City Dispute**") by written notice to FAL and Escrow Agent prior to or on the eleventh (11th) Business Day after receipt of the documents substantiating the FAL Costs. Failure of City to provide such written notice within such time frame shall be deemed City approval of the FAL Costs as Verified FAL Costs. If there is a City Dispute, City and FAL shall try to informally resolve the City Dispute in good faith. If City and FAL are able to resolve the City Dispute through such informal resolution on or before the day that is three (3) Business Days prior to the Alternative A Closing Date, each shall sign a Joint Verified Cost Instruction to Escrow and Escrow Agent shall close Escrow utilizing the amount set forth thereon as the Verified FAL Costs. If City and FAL do not issue a Joint Verified Cost Instruction on or before such date, Escrow Agent shall proceed to and consummate the Alternative A Closing in any case, but shall retain in Escrow from the Third District Option Payment the sum of Three Million Two Hundred Thousand Dollars (\$3,200,000) comprising the maximum amount of the Cost Reimbursement and the dispute regarding the amount of Verified FAL Costs will be submitted to binding arbitration under the rules of the American Arbitration Association. The prevailing party in such arbitration will be entitled to reasonable attorney fees and costs incurred in enforcing any arbitration award or engaging in any court proceedings to enforce the arbitration award. If the Alternative A Closing does not occur by cancellation or otherwise, District shall have no responsibility to pay any of the FAL Costs. Upon resolution of binding arbitration, Escrow Agent shall disburse to FAL the additional amount of Verified FAL Costs, if any, determined at arbitration to be owed to FAL and shall disburse the balance of the Cost Reimbursement Amount to City. In no event shall District have any obligation or liability with respect to the allocation or payment of the Cost Reimbursement Amount.

7.4 Effect of Alternative A Closing. If the Alternative A Closing occurs, all covenants in this Section 7 other than those set forth in Sections 7.3 (only if a Verified Cost Instruction is not issued prior to Alternative A Closing), 7.5 and 7.7 shall be of no further force or effect and each Party, on behalf of itself and its successor and assigns, waives any and all right it may have to bring any claim and/or to enforce any breach or violation of the provisions of this Section 7 occurring prior to the Alternative A Closing.

7.5 Removal of Personal Property. The TUOP, solely for the benefit of District, shall address FAL's removal from the FAL Premises of all furniture, fixtures, equipment, machines, and other tangible personal property (collectively, "**Personal Property**") at the expiration or earlier termination of the TUOP.

7.6 District Due Diligence; License. FAL grants to District and City and their respective elected and appointed officials, employees, representatives, agents, contractors and consultants, a non-exclusive license to enter the FAL Premises for purposes of conducting investigations, studies, and environmental site assessments, including without limitation, soil sampling, sediment sampling, ground water sampling, air testing, boring, drilling any other types of environmental testing, and geotechnical evaluation(s), whether intrusive, invasive or not, on across, above and beneath the FAL Premises, including any Improvements, and/or to evaluate

any other aspects of the FAL Premises. This license shall commence on the Effective Date and shall terminate upon the earlier of (i) the Alternative A Closing or (ii) the termination of this Agreement. This license shall include without limitation the right of District and/or City to contract for and conduct Phase 1 and Phase 2 analysis, to conduct environmental testing, sampling, invasive testing, and/or boring upon provision of not less than 48 hours advance telephonic or electronic mail notice to FAL. Within five (5) calendar days after any written request from District or City, FAL shall make available for inspection and copying by the requesting Party and its respective attorneys, environmental specialists, and other representatives all of FAL's files and materials relating to the environmental condition of the FAL Premises.

7.7 Payment by FAL of Supplemental Taxes. If any supplemental real estate taxes are, pursuant to the California Revenue and Taxation Code, levied for any period preceding the Alternative A Closing with respect to the FAL Property, FAL will, immediately after the applicable closing, or the issuance of the supplemental real estate tax bill (whichever last occurs), pay, in Cash, without interest and to the date of the Alternative A Closing, the supplemental real estate taxes shown by said bill. All supplemental taxes attributable to the time period up to and including the Alternative A Closing or the Alternative B Closing, as the case may be, will be FAL's obligation.

7.8 Performance of Obligations under Agreement, New Indemnity Agreement and New Guaranty. At all times prior to the Alternative A Closing, there shall be no default by FAL with respect to this Agreement or the New Indemnity Agreement and no default by Guarantors with respect to the New Guaranty or the guaranties contained in the ARC Lease and Marina Lease and FAL shall have timely satisfied its respective covenants and obligations set forth therein.

7.9 Confirmation and Delivery of Title. FAL shall deliver to Title Insurer such documents, affirmations, indemnities and undertakings required by Title Insurer to issue such endorsements, commitments and policies in connection with Title Insurer's issuance of the District Title Policy and the City Title Policy described in Sections 9.1.2 and 9.1.3, respectively, at the Alternative A Closing.

7.10 Access to District Real Property Records. District shall provide Title Insurer access to District's real property records as reasonably required by Title Insurer to issue such endorsements, commitments and policies in connection with Title Insurer's issuance of (i) the District Option Policy and the City Option Policy described in Section 2.5.3 and the updated policies or date down endorsements to such policies described in Section 2.8, and (ii) the District Title Policy and City Title Policy described in Sections 9.1.2 and 9.1.3, respectively, at the Alternative A Closing.

7.11 Merger of Property Interests. The Assignment and Assumption includes a provision confirming the mutual intent of District and FAL that, as a result of the Assignment and Assumption, (i) no merger of District's fee simple interest in the Existing ARC Lease Premises and District's rights and interests in the ARC Lease will occur and (ii) no extinguishment of the leasehold interest created by the ARC Lease will occur. If, despite the contrary intent of the Parties, the merger doctrine or any similar or other legal principle is applied to cause a merger of District's fee simple interest in the Existing ARC Lease Premises and District's rights and interests in the ARC Lease or to extinguish the leasehold interest created by the ARC Lease ("**Merger Event**"), District acknowledges that the ARC Lease Expansion

Amendment will be insufficient to convey from District to City the property rights and interests envisioned by the ARC Lease, as intended to be amended by the ARC Lease Expansion Amendment (“**Intended Lease Transaction**”) upon the Alternative A Closing, and that City’s tender of a claim under the City Title Policy after the Alternative A Closing may not result in City acquiring the property rights and interests necessary to pursue the Expansion. Accordingly, if the intent of the Parties to effectuate the Intended Lease Transaction and to confer upon City the benefits of the Intended Lease Transaction is frustrated or impaired due to a Merger Event, District and City shall, after their respective approvals and subject to the ENA, promptly sign and deliver to each other all documents reasonably necessary to convey from District to City the property rights and interests identical to the Intended Lease Transaction (collectively, “**New City Lease**”) with the identical terms and conditions as set forth in the ARC Lease, as amended by ARC Lease Expansion Amendment with a provision in the New City Lease ratifying the performance by City and District of all material obligations that occurred in accordance with the Intended Lease Transaction before the effectiveness of the New City Lease. District agrees that, if a Merger Event occurs, City’s payment of the Expansion Property Total Price to District includes adequate consideration for District’s entry into the New City Lease with City. This Section 7.11 is a material part of the consideration to City in paying the Expansion Property Total Price to District. If District fails to comply with its obligation to enter into the New City Lease with City promptly after a Merger Event occurs, City’s sole remedy is to seek specific performance of such obligation. In addition, if a Merger Event occurs, then within three (3) Business Days after City’s written request, District and City shall sign and deliver to each other a Tidelands Use and Occupancy Permit or similar document in District’s customary form that allows City to retain possession of the New ARC Lease Premises in a manner consistent with the Intended Lease Transaction pending the approval and signature of the New City Lease.

7.12 Negotiation of Leases. Immediately following the Document Delivery Date, District and FAL shall promptly commence compliance with the first sentence of Paragraph 50(h) of the Amended FAL ARC Lease.

Section 8 – Alternative B Closing Covenants

8.1 Limitations. Escrow Agent will have no concern with, or liability or responsibility for, this Section 8.

8.2 Docketing of FAL Project. Following the Alternative B Closing, District will promptly notice and docket a hearing for the consideration of the FAL Project before the Board and conduct such hearing at the earliest regularly scheduled meeting of the Board following such closing and completion of all legal notice requirements and the mailing of the FAL Final Environmental Impact Report, as required pursuant to the California Environmental Quality Act (“**CEQA**”), the State CEQA guidelines or District’s CEQA guidelines. District will timely publish and distribute all notices and documents required by law, regulation or policy to permit consideration and approval of the FAL Project on the hearing date described in the preceding sentence. If District shall fail to do so, the sole remedy of FAL shall be specific performance.

8.3 Performance of Obligations under Agreement, New Indemnity Agreement and New Guaranty. At all times prior to the Alternative B Closing, there shall be no default by FAL with respect to this Agreement or the New Indemnity Agreement and no default by Guarantors with respect to the New Guaranty or the guaranties contained in the ARC Lease and Marina

Lease and FAL shall have timely satisfied its respective covenants and obligations set forth therein.

Section 9 - Alternative Closings

9.1 Alternative A Closing.

9.1.1 Special Conditions to Alternative A Closing. Escrow Agent will close Escrow on the Alternative A Closing Date by (i) dating and causing to be recorded in the Official Records the Assignment and Assumption, the Quitclaim Deed, the Memorandum of ARC Lease Expansion Amendment, and the Memorandum of Amended Marina Lease (Alternative A); (ii) delivering funds and documents to the Parties (as set forth in Sections 11.1 and 11.4) (the completion of such actions is called the “**Alternative A Closing**”) when and only when each of the following conditions has been satisfied:

(a) Deliveries. All funds and documents described in Sections 2, 3, 4 and 5, including without limitation, those specified in **Table A**, have been signed, where applicable, and delivered to Escrow Agent; and

(b) Conditions Precedent to Alternative A Closing. Each of the conditions set forth in Section 6 has been satisfied in the manner specified in Section 6; and

(c) Title Conditions Precedent. Each of the conditions set forth in Sections 9.1.2 and 9.1.3 has been satisfied in the manner specified in said Sections.

9.1.2 District Title Policy. Escrow Agent can procure an ALTA extended owner’s policy of title insurance (“**District Title Policy**”) from Title Insurer, with liability in the amount of the FAL Property Total Price, insuring fee title to the FAL Property vests in District, with such policy being in the form and content of the District’s Final Pro Forma Policy attached as **Exhibit H-1** and subject only to the matters described therein, and the District Title Policy shall exclude any and all exceptions related to Third-Party Claims. FAL will be solely responsible to timely supply to Title Insurer, at FAL’s sole cost, any ALTA survey required by Title Insurer as a condition to the issuance of the District Title Policy.

9.1.3 City Title Policy. Escrow Agent can procure an ALTA extended leasehold owner’s policy of title insurance (“**City Title Policy**”) from Title Insurer, with liability in the amount of the Expansion Property Total Price, insuring that leasehold title to the New ARC Lease Premises pursuant to the ARC Lease Expansion Amendment vests in City subject only to the matters described in the City’s Final Pro Forma Policy attached as **Exhibit H-2**, including the TUOP but excluding any and all exceptions related to Third-Party Claims. City will be solely responsible to timely supply to Title Insurer, at City’s sole cost, any ALTA survey required by Title Insurer as a condition to the issuance of the ALTA policy.

9.1.4 Removal of Title Exceptions. From the Effective Date and continuing through the earlier of (i) the Alternative A Closing Date or (ii) the termination of this Agreement, FAL shall endeavor expeditiously, diligently and in good faith to cause any exception related to any Third-Party Claim to be removed from the District Title Policy and the City Title Policy. FAL acknowledges that this Section 9.1.4 is a material part of the total consideration exchanged

among the Parties under this Agreement and that City and District would not have signed this Agreement without the inclusion of this Section 9.1.4.

9.2 Alternative B Closing. The “**Alternative B Closing Date**” will be five (5) Business Days after (i) each of the following occurs: (a) on or before the Document Delivery Date, each Party complies with the provisions of Sections 2.3 and 2.4 applicable to it such that Escrow Agent is in possession of all signed documents required for the Alternative B Closing, including without limitation as set forth on **Table B**; (b) District delivers the Released Initial Option Payment to Escrow in accordance with Section 2.2.2; (c) Escrow Agent is able to and does comply with the requirements of Section 2.5 with respect to the release of the Released Initial Option Payment; (ii) the Alternative A Closing does not occur because: (x) either of the conditions precedent in Sections 6.1.1 or 6.1.2 fails to become satisfied; (y) City fails to pay any one of the City Option Payments within the time periods set forth in Section 2.7 or (z) any other conditions to Alternative A are not satisfied; (iii) none of the occurrences described in Sections 4.3 or 9.3 have occurred; and (iv) District provides prompt written notice to Escrow Agent that the conditions precedent to the Alternative B Closing have occurred. Upon delivery of such notice, Escrow Agent shall close Escrow by (1) dating and filing for record the Memorandum of Amended Marina Lease (Alternative B) and Memorandum of Amended FAL ARC Lease (Alternative B); and (2) dating and delivering documents and delivering funds to the Parties as set forth in Section 11.2 (the completion of such actions is called the “**Alternative B Closing**”).

9.3 New Indemnity Agreement; Title Policies. If (i) FAL is in default under this Agreement, including without limitation, under Sections 4.2.3, 7.8 or 7.9, or the New Indemnity Agreement; (ii) Guarantors have breached any of their respective covenants or obligations under the New Guaranty; or (iii) Title Insurer is unable to deliver the District Title Policy and the City Title Policy in the condition required by Sections 9.1.2 or 9.1.3, respectively, then notwithstanding that all of the preconditions to the Alternative B Closing set forth in Section 9.2 have been or can be satisfied, the Alternative B Closing shall not take place, unless otherwise agreed by District in its sole and absolute discretion.

9.4 Possession at Alternative A Closing. Unless otherwise permitted by the TUOP and subject to the terms thereof, at District’s option, FAL shall cause possession of the FAL Property to be delivered to District immediately upon the Alternative A Closing in clean condition, free and clear of all contracts (including service contracts), leases, tenancies and occupancies, and subject only to the exceptions to title approved by District as set forth on **Exhibit H-1**.

Section 10 - Rent, Taxes, Fees, Costs and Insurance

10.1 Charges for Alternative A Closing. At the Alternative A Closing, any due and unpaid rent from FAL to District under the ARC Lease and for the Marina Landside Area shall be paid to District under the terms of the TUOP. The Parties shall each be responsible for the following charges:

10.1.1 FAL’s Charges. FAL will pay (i) the premium for the City Option Policy and the District Option Policy, (ii) the premium for the District Title Policy and all endorsements to such policies ordered by District, including the cost of any plat or survey required in connection with an extended coverage title policy, (iii) the premium of a standard coverage City Title Policy, (iv) one-third of Escrow Agent’s fee, (v) usual seller’s documentary

transfer tax, drafting and recording charges (with respect to the District/FAL Transaction), (vi) any rent due and unpaid under the ARC Lease as set forth in Section 10.1, (vii) all real estate taxes and assessments, including supplemental taxes and assessments, due for the period prior to the Alternative A Closing Date, and (viii) any special assessments that are a lien as of the Alternative A Closing Date.

10.1.2 District's Charges. District will pay (i) one-third of Escrow Agent's fee, (ii) usual buyer's document drafting and recording charges (with respect to the District/FAL Transaction) and (iii) usual seller's document drafting and recording charges (with respect to District/City Transaction), to the extent applicable.

10.1.3 City's Charges. City will pay (i) one-third of Escrow Agent's fee, (ii) the extra premium for any ALTA extended coverage City Title Policy or endorsements (ordered by City in the manner permitted by the terms of this Agreement) over and above that of the premium of a standard coverage City Title Policy, including the cost of any survey required in connection with an extended coverage title policy, and (iii) usual buyer's document drafting and recording charges (with respect to the District/City Transaction).

10.1.4 Prepaid/Free Rent. With respect to the Alternative A Closing, all deposits, including, without limitation, the security deposit under the ARC Lease and impounds on account of utilities, taxes, insurance and bonds related to the FAL Property, Structures and Personal Property, shall be maintained as a requirement of the TUOP. Upon expiration of the TUOP, City shall replace any such deposits and impounds if necessary for FAL to obtain a refund of FAL's deposits and impounds; provided, however, District shall be responsible for refunding FAL's security deposit in accordance with the terms of the ARC Lease, and City shall deposit with District the amount specified in the ARC Lease Expansion Amendment as a security deposit.

10.2 Charges for Alternative B Closing. At the Alternative B Closing, District and FAL shall each be responsible for the following charges:

10.2.1 FAL's Charges. FAL will pay (i) one-half of Escrow Agent's fee and (ii) all recording charges.

10.2.2 District's Charges. District will pay one-half of Escrow Agent's fee.

Section 11 - Distribution of Funds and Documents

11.1 Alternative A

11.1.1 Retention of Cash. Except as otherwise provided in this Agreement, Cash received by Escrow Agent will be, until the Alternative A Closing, kept on deposit with other escrow funds in Escrow Agent's general escrow bank account(s), in any state or national bank, and may be transferred to any other such general escrow bank account(s).

11.1.2 Interest. Escrow Agent will pay no interest on Cash received by it.

11.1.3 Disbursements. All disbursements by Escrow Agent will be by its checks or wire transfer pursuant to applicable wire transfer instructions.

11.1.4 Additional Instructions. Upon the Alternative A Closing Date, Escrow Agent shall date each of the documents in its possession for the Alternative A Closing, as identified in **Table A**, attach the correct legal description(s) to the FIRPTA Certificate delivered

by FAL, comply with any additional instructions jointly given by the Parties, and if all conditions to the Alternative A Closing are satisfied, Escrow Agent shall proceed as follows:

(i) Return After Recording. Escrow Agent will cause to be recorded in the Official Records, and to be mailed to District after recording, the following: (a) Assignment and Assumption; (b) Quitclaim Deed; (c) Memorandum of ARC Lease Expansion Amendment; (d) Memorandum of Amended Marina Lease (Alternative A); and (e) each additional instrument which is, in this Agreement, expressed to be, or by general usage is, recorded.

(ii) Delivery of Instruments. Escrow Agent will, at the Alternative A Closing, by United States mail (or hold for personal pickup, if requested), deliver the following:

(a) To District. One complete original of the following to District: (1) ARC Lease Expansion Amendment; (2) Amended Marina Lease (Alternative A); (3) TUOP and related License Agreement; (4) Guarantor Consent to Assignment and Assumption; (5) Consent to Amended Marina Lease (Alternative A); and (6) Release of ARC Lease Guaranty. One conformed copy of the following recorded documents to District: (w) Assignment and Assumption; (x) Quitclaim Deed; (y) Memorandum of ARC Lease Expansion Amendment; and (z) Memorandum of Amended Marina Lease (Alternative A).

(b) To FAL. One complete original of the following to FAL: (1) Amended Marina Lease (Alternative A); (2) TUOP and related License Agreement; (3) Guarantor Consent to Assignment and Assumption; (4) Consent to Amended Marina Lease (Alternative A); and (5) Release of ARC Lease Guaranty. One conformed copy of the following recorded documents to FAL: (x) Assignment and Assumption; (y) Quitclaim Deed; and (z) Memorandum of Amended Marina Lease (Alternative A).

(c) To City. One complete original of the following to City: (1) ARC Lease Expansion Amendment; and (2) License Agreement related to TUOP. One conformed copy of the following recorded documents to City: (y) Assignment and Assumption; and (z) Memorandum of ARC Lease Expansion Amendment. One copy of the TUOP.

(iii) Delivery of Cash. Escrow Agent will, at the Alternative A Closing, deliver by United States mail or wire transfer (or hold for personal pickup), as requested, (a) to FAL, or order, the balance of the Cash portion of the FAL Property Total Price, if any, to which FAL will be entitled, and (b) to District, or order, any excess funds delivered to Escrow Agent by District and (c) to City, or order, the entire balance of Cash in the Note Escrow Account, as well as any excess funds delivered to Escrow Agent by City.

(iv) Return of Alternative B Closing Instruments (Undelivered). At the Alternative A Closing, Escrow Agent shall return to each original signatory Party all counterpart originals signed by it of the following documents:

(a) To District. All counterpart originals of the following documents signed by District: (1) Amended FAL ARC Lease; (2) Amended Marina Lease (Alternative B); (3) Memorandum of Amended FAL ARC Lease (Alternative B); and (4) Memorandum of Amended Marina Lease (Alternative B).

(b) To FAL. All counterpart originals of the following documents signed by FAL or Guarantors: (1) Amended FAL ARC Lease; (2) Amended Marina

Lease (Alternative B); (3) Memorandum of Amended FAL ARC Lease (Alternative B); (4) Memorandum of Amended Marina Lease (Alternative B); (5) Consent to Amended Marina Lease (Alternative B); and (6) Consent to Amended FAL ARC Lease.

11.2 Alternative B.

11.2.1 Alternative B Closing. If Escrow Agent is authorized by this Agreement to close the Alternative B Closing, then on the Alternative B Closing Date, Escrow Agent will close the subject escrow when all conditions have been satisfied or waived unless Escrow Agent receives a written notice to cancel the Alternative B Closing from a Party who, at the time the notice is delivered, is not in default under this Agreement and has authority to provide such instruction pursuant to Section 9.2 of this Agreement; provided, however that if FAL is the Party requesting cancellation of the Alternative B Closing, or the failure of FAL to perform its covenants and obligations is the cause of such request for cancellation of the Alternative B Closing, Escrow Agent shall not terminate Escrow unless and until FAL has repaid all District Option Payments to District.

11.2.2 Retention of Cash. Except as otherwise provided in this Agreement, Cash received by Escrow Agent will be, until the Alternative B Closing, kept on deposit with other escrow funds in Escrow Agent's general escrow bank account(s), in any state or national bank, and may be transferred to any other such general escrow bank account(s).

11.2.3 Interest. Escrow Agent will pay no interest on Cash received by it.

11.2.4 Disbursements. All disbursements by Escrow Agent will be by its checks or wire transfer pursuant to applicable wire transfer instructions.

11.2.5 Additional Instructions. Upon the Alternative B Closing Date, Escrow Agent shall date each of the documents in its possession for the Alternative B Closing, as identified in **Table B**, shall comply with any additional instructions jointly given by FAL and District, and when Escrow Agent holds all of the instruments specified in Section 2.4 applicable to the Alternative B Closing and all conditions to the Alternative B Closing are satisfied, Escrow Agent shall proceed in accordance with the following:

(i) Return After Recording. Escrow Agent will cause to be recorded in the Official Records, and to be mailed to District after recording, the following: (a) Memorandum of Amended FAL ARC Lease (Alternative B); (b) Memorandum of Amended Marina Lease (Alternative B); and (c) each additional instrument which is, in this Agreement, expressed to be, or by general usage is, recorded.

(ii) Delivery of Instruments. Escrow Agent will, at the Alternative B Closing, date and deliver by United States mail (or hold for personal pickup, if requested), the following:

(a) One complete original of the following to District: (1) Amended FAL ARC Lease; (2) Amended Marina Lease (Alternative B); (3) Consent to Amended FAL ARC Lease, (4) Consent to Amended Marina Lease (Alternative B). One conformed recorded copy of the following to District: (y) Memorandum of Amended FAL ARC Lease (Alternative B); and (z) Memorandum of Amended Marina Lease (Alternative B).

(b) One original of the following to FAL: (1) Amended FAL ARC Lease; (2) Amended Marina Lease (Alternative B); (3) Consent to Amended Marina

Lease (Alternative B), and (4) Consent to Amended FAL ARC Lease. One conformed recorded copy of the following to FAL: (y) Memorandum of Amended FAL ARC Lease (Alternative B); and (z) Memorandum of Amended Marina Lease (Alternative B).

(iii) Delivery of Cash. Escrow Agent will, at the Alternative B Closing, deliver by United States mail or wire transfer (or hold for personal pickup), as requested, (a) to FAL, or order, any excess funds delivered to Escrow Agent by FAL, and (b) to District, or order, any excess funds delivered to Escrow Agent by District.

(iv) Return of Alternative A Closing Instruments (Undelivered). At the Alternative B Closing, Escrow Agent shall return to each Party all counterpart originals signed by it of the following documents:

(a) To District. All counterpart originals of the following documents signed by District: (1) Assignment and Assumption; (2) ARC Lease Expansion Amendment; (3) Amended Marina Lease (Alternative A); (4) Memorandum of ARC Lease Expansion Amendment; (5) Memorandum of Amended Marina Lease (Alternative A); (6) Release of ARC Lease Guaranty; (7) Quitclaim Deed and (8) TUOP and related License Agreement.

(b) To FAL. All counterpart originals of the following documents signed by FAL or Guarantors: (1) Assignment and Assumption; (2) Amended Marina Lease (Alternative A); (3) Quitclaim Deed; (4) Memorandum of Amended Marina Lease (Alternative A); (5) Consent to Amended Marina Lease (Alternative A); (6) Guarantor Consent to Assignment and Assumption; (7) Release of ARC Lease Guaranty; and (7) TUOP and related License Agreement.

(c) To City. All counterpart originals of the following documents signed by City: (1) ARC Lease Expansion Amendment; (2) Memorandum of ARC Lease Expansion Amendment; and (3) License Agreement related to TUOP.

11.3 Cancellation of Both Closings; Termination of Escrow. If any Party or Parties are authorized, and pursuant to this Agreement, send notice to Escrow Agent of cancellation of the Closings for both Alternative A and Alternative B, such notice shall be deemed a notice of termination of Escrow. Escrow Agent will have no liability or responsibility for determining that a Party giving a notice of termination is not in default under this Agreement. Within two (2) Business Days after receipt of a termination notice from one Party, Escrow Agent will deliver a copy of the notice to the other Parties. Unless written objection to termination of Escrow is received by Escrow Agent within ten (10) calendar days after Escrow Agent delivers the notice to the other Parties, Escrow will promptly terminate and Escrow Agent will comply with Section 19.2. If written objection to the termination of Escrow is delivered to Escrow Agent by any Party within the ten (10) calendar day period, Escrow Agent is authorized to hold all funds and documents delivered to it in connection with Escrow, and Escrow Agent may, in Escrow Agent's sole discretion, take no further action until otherwise directed, either by the Parties' mutual written instructions or by a final order or final judgment of a court of competent jurisdiction. Unless otherwise provided by this Agreement, any Escrow fees due and payable at the time of termination will be paid by the Party requesting the termination of Escrow. The provisions of this Section 11.3 shall not apply to a termination pursuant to Section 16.

11.4 Reporting of Transaction. At close of Escrow pursuant to Alternative A or Alternative B, Escrow Agent will take all steps necessary to report the applicable completed transaction to the Internal Revenue Service as required by Section 6045 of the Internal Revenue Code of 1986. The Parties will provide Escrow Agent with all documents reasonably required by Escrow Agent to satisfy this reporting requirement.

Section 12 – Maintenance of Property

12.1 Limitations. Escrow Agent will have no concern with, nor liability or responsibility for, this Section 12.

12.2 Maintenance by FAL. FAL will comply with its obligations set forth in the ARC Lease and the Marina Lease prior to the Alternative A Closing Date including, without limitation, maintenance of the FAL Premises, Structures and Personal Property, and maintenance of required insurance policies.

12.3 No Third Party Rights. Between the Effective Date and the Alternative A Closing Date, except for special events as allowed in the ARC Lease, FAL shall not allow or consent to either of the following circumstances without first obtaining the written consent of both District and City: (i) any third party rights of physical access or occupancy to all or any portion of the FAL Premises or affecting the FAL Property that will remain in effect after the Alternative A Closing Date; or (ii) the recording of any documents, including any liens, against all or any portion of the FAL Premises or affecting the FAL Property, except as may be necessary to satisfy the conditions related to title in Sections 9.1.2 or 9.1.3.

12.4 No New or Amended Contracts. Between the Effective Date and the Alternative A Closing Date, FAL shall not enter into any new or amended contracts with third parties regarding the use, operation, occupancy, sale, or development of all or any portion of the FAL Premises or affecting the FAL Property that will remain in effect after the Alternative A Closing Date, without first obtaining the written consent of both District and City.

Section 13 - Representations, Warranties, Acknowledgments and Indemnities

13.1 Limitations. Escrow Agent will have no concern with, nor liability or responsibility for, this Section 13.

13.2 Acknowledgement of Threat of Condemnation. City acknowledges that (i) it considered acquiring FAL's interest in the FAL Property through the exercise of City's condemnation authority, (ii) FAL learned of City's consideration of acquiring FAL's interest in the Existing ARC Lease Premises through the exercise of City's condemnation authority prior to the commencement of negotiations of this Agreement and (iii) FAL had reasonable grounds to conclude that City may take FAL's interest in the FAL Property through City's condemnation authority if a voluntary sale was not arranged.

13.3 Natural Hazard Disclosure Requirement Compliance. FAL has commissioned an affiliate of Title Insurer to prepare a natural hazard disclosure statement ("**Natural Hazard Disclosure**") including the matters required by that certain Article 1.7 of the California Civil Code (currently Section 1103 through 1103.14) and has caused the Natural Hazard Disclosure to be delivered to District and City prior to the Effective Date. District and City acknowledge that the Natural Hazard Disclosure satisfies any and all disclosure requirements relating to the matters referenced in the Natural Hazard Disclosure. FAL does not warrant or represent either

the accuracy or completeness of the information in the Natural Hazard Disclosure, and District and City will use same merely as a part in their overall investigation of the FAL Premises.

13.4 FAL's Representations and Warranties. FAL represents and warrants to District and City that except as set forth below, each of the following statements are true as of the Effective Date to FAL's Knowledge and further warrants and covenants that each of the following statements will be true to FAL's Knowledge on the Alternative A Closing Date or Alternative B Closing Date, if applicable. Wherever the term "**FAL's Knowledge**" is used in this Agreement it will mean the actual knowledge of any one of Ray A. Carpenter and Art Engel on the date on which the representations and warranties set forth in Section are made or required by the terms of this Agreement to be true and correct, after due and diligent inquiry. If, prior to the Alternative A Closing or Alternative B Closing, FAL learns, or has reason to believe, that any of said representations and warranties have ceased to be true, FAL will immediately deliver written notice thereof to District and City. FAL will have until the Alternative A Closing Date or Alternative B Closing Date, if applicable, to cure such defects.

13.4.1 Authorization; Authority. This Agreement has been duly authorized, signed and delivered by FAL and all documents required in this Agreement to be signed by FAL pursuant to this Agreement shall be, at such time as they are required to be signed by FAL, duly authorized, signed and delivered by FAL. The individual(s) signing this Agreement on behalf of FAL have the power, right and authority to (i) enter into this Agreement, (ii) bind FAL to this Agreement, and (iii) consummate all transactions contemplated by this Agreement. FAL has all requisite power and authority required to enter into this Agreement and the instruments referenced in this Agreement, to consummate the transaction contemplated in this Agreement and to take any steps contemplated in this Agreement or any of the instruments referenced in this Agreement, and to perform its obligations hereunder and thereunder. FAL has obtained all required consents in connection with entering into this Agreement and the instruments and documents referenced in this Agreement to which FAL is or shall be a party and the consummation of the transactions contemplated in this Agreement. All documents required by this Agreement to be signed by FAL are or shall be, at such time as the same are required to be signed hereunder, valid, legally binding obligations of and enforceable against FAL in accordance with their terms, except as enforceability may be limited by bankruptcy laws or other similar laws affecting creditors' rights.

13.4.2 Brokers, Finders. FAL has not incurred any obligation, in connection with any transaction contemplated by this Agreement, for broker's commission or finder's fee for which District or City will be liable. FAL agrees to indemnify and hold District and City and their respective elected and appointed officials, officers, employees and representatives harmless from any losses and liabilities arising from or in any way related to any claim by any broker, agent, or finder retained by FAL regarding this Agreement, the development of the FAL Project, the Alternative A Transactions or the Alternative B transactions identified in this Agreement.

13.4.3 Hazardous Substances. FAL or any of its predecessor-in-interest have not introduced or in any way exacerbated (i) any chemical, compound, material, mixture or substance that is now or hereafter regulated by any Environmental Law (as defined below); (ii) to the extent not covered by clause (i) above, any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws (as defined below) as a "hazardous substance," "hazardous material," "hazardous waste," "extremely hazardous waste," "infectious waste," "toxic substance," "toxic

pollutant” or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity or “ep toxicity”; or (iii) to the extent not covered by clauses (i) or (ii) above, any petroleum, natural gas, liquified natural gas and synthetic gas, usable for fuel (or mixtures of natural gas such as synthetic gas), ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources (collectively clauses (i), (ii), and (iii) are defined as “**Hazardous Substances**”) in, on, under or adjacent to the FAL Premises. “**Environmental Laws**” shall mean any federal, state, and/or local laws, rules, regulation, orders or requirements that govern or are in any way related to environmental protection, pollution, contamination, remediation, restoration or property use, including but not limited to, the Endangered Species Act, the Federal Water Pollution Control Act, the Federal Resource Conservation and Recovery Act, the U.S. Environmental Protection Agency Regulation at 40 C.F.R., Part 261, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Resources Conservation and Recovery Act of 1976, as amended, the Clean Water Act, the Safe Drinking Water Act, the Hazardous Materials Transportation Act, the Toxic Substance Control Act, and regulations promulgated under any of the foregoing, as well as any similar or analogous law, rule, regulation, order or requirement issued by the state of California, the County of San Diego County, the City of San Diego, and the San Diego Unified Port District.

13.4.4 Pending or Threatened Litigation; No Adverse Condition or Circumstance. Other than a potential claim as disclosed to City and District in writing prior to the Effective Date, there are no claims or litigation pending in any court of applicable jurisdiction that affects or will affect the FAL Premises or the FAL Property, the ARC Lease, the Marina Lease or this Agreement and, except as set forth above to FAL’s Knowledge, (i) no litigation that affects the FAL Premises, the FAL Property, the ARC Lease, the Marina Lease or this Agreement has been threatened and (ii) there are no adverse conditions or circumstances, governmental action, or other condition which could prevent or materially impair City’s ability to develop the Expansion on the New ARC Lease Premises or District’s ability to potentially entitle a future development on the Flag Lot. Notwithstanding the foregoing, by entering into this Agreement and the transactions contemplated by this Agreement, (y) City and District are not interfering with any contract between FAL and a third party, and (z) FAL is not and will not be in default or in breach of any contract between FAL and a third party.

13.4.5 Contracts; Licenses; Agreements. Except as disclosed to District in writing, there are no leases, subleases, option agreements, purchase and sale agreements, operating contracts, licenses or other agreements regarding or affecting the FAL Premises, the FAL Property, the ARC Lease or the Marina Landside Area of the Marina Lease that will remain in effect following the Alternative A Closing.

13.4.6 Off-Record Property Rights. There are no possessory rights to all or any portion of the FAL Premises or the FAL Property. Except as expressly permitted by the TUOP, no possessory rights or interests shall remain in effect following the Alternative A Closing.

13.4.7 OFAC. Neither FAL nor any of FAL’s affiliates, nor any of their respective brokers or other agents acting in any capacity in connection with the transactions

contemplated by this Agreement, is or will be (i) conducting any business or engaging in any transaction or dealing with any person appearing on the U.S. Treasury Department's OFAC list of prohibited countries, territories, "specifically designated nationals" or "blocked person" (each a "**Prohibited Person**") (which lists can be accessed at the following web address: <http://www.ustreas.gov/offices/enforcement/ofac/>), including the making or receiving of any contribution of funds, goods or services to or for the benefit of any such Prohibited Person; (ii) engaging in certain dealings with countries and organizations designated under Section 311 of the USA PATRIOT Act as warranting special measures due to money laundering concerns; (iii) dealing in, or otherwise engaging in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224 dated September 24, 2001, relating to "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism"; (iv) a foreign shell bank or any person that a financial institution would be prohibited from transacting with under the USA PATRIOT Act; or (v) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempting to violate, any of the prohibitions set forth in (a) any U.S. anti-money laundering law, (b) the Foreign Corrupt Practices Act, (c) the U.S. mail and wire fraud statutes, (d) the Travel Act, (e) any similar or successor statutes or (f) any regulations promulgated under the foregoing statutes.

13.4.8 Records. FAL has, prior to the Effective Date, provided District and City with copies of all plans, reports, studies, investigations and other materials FAL may have in its possession that are pertinent to the FAL Premises and the FAL Property; provided that FAL makes no representation, warranty or guaranty regarding the completeness or accuracy of such plans, reports, studies, investigations and other materials.

13.4.9 Absence of Fraud and Misleading Statements. No representation, warranty or statement of FAL in this Agreement, or any document, certificate or schedule furnished or to be furnished by FAL to District or City pursuant to this Agreement or in connection with the transactions contemplated by this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements or facts contained therein false or misleading.

13.4.10 No Violation or Breach. Neither the execution or delivery of this Agreement or the documents referenced in this Agreement, nor the incurring of the obligations set forth in this Agreement and the certificates, declarations and other documents referenced in this Agreement, nor the consummation of the transactions in this Agreement contemplated, nor compliance with the terms of this Agreement and the documents referenced in this Agreement, will violate any provision of law or any order of any court or governmental entity to which FAL is subject or conflict with or result in the breach of any terms, conditions, or provisions of, or constitute a default under any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which FAL or any of its members are a party and which affect the ARC Lease, the Marina Lease, the FAL Premises, the FAL Property or the transactions contemplated by this Agreement.

13.4.11 Contingent Obligations; Contracts; Proceedings. FAL does not have any contingent obligations or any other contracts the performance or nonperformance of which could affect the ability of FAL to carry out its obligations hereunder. No attachments, execution

proceedings, assignments of benefit to creditors, bankruptcy, reorganization or other proceedings are pending or, to FAL's Knowledge, threatened against FAL or its members.

13.4.12 Processing of FAL Project. District has abided by all the terms and conditions of the ARC Lease and its obligations thereunder, including Paragraph 50 and has diligently and in good faith processed the FAL Project and all the terms and conditions of the Marina Lease and its obligations thereunder.

13.5 District's Representations and Warranties. District represents and warrants to FAL and City as set forth below. If, prior to the Alternative A Closing, the Executive Director of District learns, or has reason to believe, that any of said representations and warranties have ceased to be true, District will immediately deliver written notice thereof to FAL and City. District will have until the Alternative A Closing Date to cure such defects. Each of said representations and warranties is material to FAL and City and is now and will be at the Alternative A Closing Date true and correct. Said representations and warranties are as follows:

13.5.1 Authority. The individual(s) signing this Agreement on behalf of District have the power, right and authority to (i) enter into this Agreement, (ii) bind District to this Agreement, and (iii) consummate all transactions contemplated by this Agreement.

13.5.2 Brokers, Finders. District has not incurred any obligation, in connection with any transaction contemplated by this Agreement, for broker's commission or finder's fee for which FAL or City will be liable. District agrees to indemnify and hold FAL and City and their respective elected and appointed officials, officers, employees and representatives harmless from any losses and liabilities arising from or in any way related to any claim by any broker, agent, or finder retained by District regarding this Agreement or the Alternative A Transactions or Alternative B transactions identified in this Agreement.

13.5.3 Absence of Fraud and Misleading Statements. No representation, warranty or statement of District in this Agreement or any document, certificate or schedule furnished or to be furnished to FAL or City pursuant to this Agreement or in connection with the transactions contemplated by this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements or facts contained therein false or misleading.

13.6 City's Representations and Warranties. City represents and warrants to District and FAL as set forth below. If, prior to the Alternative A Closing, City learns, or has reason to believe, that any of said representations and warranties have ceased to be true, City will immediately deliver written notice thereof to District and FAL. City will have until the Alternative A Closing Date to cure such defects. Each of said representations and warranties is material to District and FAL and is now and will be at the Alternative A Closing Date true and correct. Said representations and warranties are as follows:

13.6.1 Authority. The individual(s) signing this Agreement on behalf of City have the power, right and authority to (i) enter into this Agreement, (ii) bind City to this Agreement, and (iii) consummate all transactions contemplated by this Agreement.

13.6.2 Brokers, Finders. City has not incurred any obligation, in connection with any transaction contemplated by this Agreement, for broker's commission or finder's fee for which District or FAL will be liable. City agrees to indemnify and hold FAL and District and their respective elected and appointed officials, officers, employees and representatives harmless

from any losses and liabilities arising from or in any way related to any claim by any broker, agent, or finder retained by City regarding this Agreement or the Alternative A Transactions or Alternative B transactions identified in this Agreement.

13.6.3 Absence of Fraud and Misleading Statements. No representation, warranty or statement of City in this Agreement or any document, certificate or schedule furnished or to be furnished to District or FAL pursuant to this Agreement or in connection with the transactions contemplated by this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements or facts contained therein false or misleading.

13.7 FAL Releases of District; Waivers - Civil Code Sections 1542 and 3306. Except as set forth in this Section 13.7 with respect to the waiver of California Civil Code Section 3306, from and after the Alternative A Closing or the Alternative B Closing, as the case may be, FAL, on behalf of itself and its representatives, agents, employees, consultants, officers, directors, attorneys, shareholders, affiliates, subsidiaries and members and every person or entity claiming by, through or under FAL (collectively, the “**FAL Releasing Parties**”), agrees to release District, and its past and present commissioners, appointed officials, officers, directors, representatives, agents, employees, consultants, attorneys, contractors, affiliates and successors and assigns (“**Released Parties**”) from any and all claims, losses, damages, liability or other relief of any sort that were made or pursued or that could have been made or pursued by FAL or any of the FAL Releasing Parties with respect to the ARC Lease, the Marina Lease, the FAL Premises, the FAL Property, the FAL Project, Third-Party Claim, the Deed of Trust, the Litigation and/or condemnation or pre-condemnation damage claims, damages, liability or other relief of any sort that may be asserted by FAL or any other person or entity in connection with the foregoing. FAL covenants not to sue District with respect to any matter within the scope of the release in this Section 13.7. FAL specifically waives the provision of California Civil Code Section 1542, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

On the Effective Date of this Agreement, FAL specifically waives the provision of California Civil Code Section 3306, which provides as follows:

“THE DETRIMENT CAUSED BY THE BREACH OF AN AGREEMENT TO CONVEY AN ESTATE IN REAL PROPERTY, IS DEEMED TO BE THE PRICE PAID, AND THE EXPENSES PROPERLY INCURRED IN EXAMINING THE TITLE AND PREPARING THE NECESSARY PAPERS, THE DIFFERENCE BETWEEN THE PRICE AGREED TO BE PAID AND THE VALUE OF THE ESTATE AGREED TO BE CONVEYED AT THE TIME OF THE BREACH, THE EXPENSES PROPERLY INCURRED IN PREPARING TO ENTER UPON THE LAND, CONSEQUENTIAL DAMAGES ACCORDING TO PROOF, AND INTEREST.”

In this connection and to the extent permitted by law, FAL on behalf of itself and the other Releasing Parties agrees, represents and warrants, which representation and warranty shall survive the Alternative A Closing, the Alternative B Closing and the termination of this

Agreement and shall not be merged with any quitclaim deed, assignment, amended lease, bill of sale or other document, that (i) it realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to claims or controversies which are presently unknown, unanticipated and unsuspected, (ii) the waivers and releases in this Section 13.7 have been negotiated and agreed upon in light of that realization and (iii) FAL on behalf of itself and the other FAL Releasing Parties, nevertheless intends to release, discharge and acquit the Released Parties from any such unknown claims and controversies to the extent set forth above and acknowledges that such release is a material portion of the consideration given to District by FAL in exchange for District's performance hereunder.

BY INITIALING THIS PROVISION IN THE SPACE BELOW, FAL, ON BEHALF OF ITSELF AND THE OTHER FAL RELEASING PARTIES, AFFIRMS THE AGREEMENTS CONTAINED IN THIS SECTION 13.7 AND AGREES THAT (A) IT HAS READ AND FULLY UNDERSTANDS THE PROVISIONS OF THIS SECTION, (B) IT HAS HAD THE CHANCE TO ASK QUESTIONS OF ITS COUNSEL ABOUT ITS MEANING AND SIGNIFICANCE, AND (C) IT HAS ACCEPTED AND AGREED TO THE TERMS SET FORTH IN THIS SECTION.

FAL: _____

13.8 City Release of District; Waiver of Civil Code Section 1542. City, on behalf of itself and its elected and appointed officials, representatives, agents, employees, consultants, officers, directors, attorneys, affiliates and every person or entity claiming by, through or under City (collectively, the "**City Releasing Parties**"), agrees to release District and the Released Parties from all past and present claims, damages, liability or other relief of any sort that were made or pursued or that could have been made or pursued by City or any of the City Releasing Parties with respect to the ARC Lease or the Deed of Trust, except to the extent any such claims, damages, liability or other relief arise from any gross negligence, malfeasance, or contractual default or breach of District or the Released Parties. The foregoing release will not affect or discharge the obligations of City or District under the ARC Lease Expansion Amendment or any other document to be signed and delivered to Escrow Agent in accordance with Section 2.4. City covenants not to sue District with respect to any matter within the scope of the release in this Section 13.8. City specifically waives the provision of California Civil Code Section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

In this connection and to the extent permitted by law, City, on behalf of itself, and the other City Releasing Parties agrees, represents and warrants, which representation and warranty shall survive the Alternative A Closing and the termination of this Agreement and shall not be merged with any grant of leasehold interest, that (i) it realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to claims or controversies which are presently unknown, unanticipated and unsuspected, (ii) the waivers and releases in this Section 13.8 have been negotiated and agreed upon in light of that realization and (iii) City on behalf of itself and the other City Releasing Parties, nevertheless intends to release, discharge and acquit the Released Parties from any such unknown claims and controversies to the extent

set forth above and acknowledges that such release is a material portion of the consideration given to District by City in exchange for District's performance hereunder.

BY INITIALING THIS PROVISION IN THE SPACE BELOW, CITY, ON BEHALF OF ITSELF AND THE OTHER CITY RELEASING PARTIES, AFFIRMS THE AGREEMENTS CONTAINED IN THIS SECTION 13.8 AND AGREES THAT (A) IT HAS READ AND FULLY UNDERSTANDS THE PROVISIONS OF THIS SECTION, (B) IT HAS HAD THE CHANCE TO ASK QUESTIONS OF ITS COUNSEL ABOUT ITS MEANING AND SIGNIFICANCE, AND (C) IT HAS ACCEPTED AND AGREED TO THE TERMS SET FORTH IN THIS SECTION.

City: _____

13.9 Survival of Provisions. Subject to Section 19.7, the provisions of Sections 7.3, 7.4, 7.5, 7.7, 7.11, 8.2, 9.4, 10.1.4, 11.3, 13.4, 13.5, 13.6, 13.7, 13.8, 14.2, 15.2, 15.3, 15.4, 16, 19.2.1, 19.20 and 19.23 shall survive the termination of this Agreement and the Alternative A Closing or Alternative B Closing, as the case may be, and shall not merge into any lease, agreement or other document signed and delivered pursuant to this Agreement.

Section 14 - Casualty Damage to the FAL Premises

14.1 Limitation on Escrow Agent's Responsibilities. Escrow Agent will have no concern with, or liability or responsibility for, this Section 14.

14.2 Risk of Loss. FAL will bear all risk of loss until the Alternative A Closing, and upon delivery of the TUOP to FAL at Alternative A Closing, will bear the risk of loss after Alternative A Closing through the term of the TUOP. To the extent there is any casualty or damage affecting the FAL Premises or the Structures prior to the Alternative A Closing or during the TUOP term, FAL shall be obligated to restore any damaged property to the condition that existed prior to the damage, but there shall not be a reduction in the FAL Property Total Price as a result of such casualty or damage.

Section 15 - Remedies; Damages; Termination

15.1 Limitations. Escrow Agent will have no concern with, or liability or responsibility for, this Section 15.

15.2 Remedies. Except where expressly limited by this Agreement, the Parties shall have all remedies available at law or in equity and the rights and remedies of the Parties are cumulative, and the exercise by any of the Parties of one or more such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default. Unless otherwise set forth in this Agreement, damages for breach of this Agreement shall be limited to direct (actual) damages for the default of another Party, and each of the Parties, on behalf of itself and its successors and assigns, expressly waives, releases and relinquishes any and all right to any expectation, anticipation, indirect, consequential, exemplary or punitive damages.

15.3 Limitation on Damages Payable by District. Notwithstanding any other provision of this Agreement, City and FAL acknowledge that District would not have entered into this Agreement if District could become liable for damages under or with respect to this Agreement. Consequently, and notwithstanding any other provision of this Agreement, except for the

payment of attorneys' fees and court costs in accordance with Section 19.11, District shall not be liable in damages under this Agreement to FAL, any of the FAL Releasing Parties, or City or any of the City Releasing Parties. FAL, on behalf of itself and the FAL Releasing Parties, and City, on behalf of itself and the City Releasing Parties, each waive any and all rights to claim damages of any kind or nature from District arising from or related to (i) the negotiations and the actions or inactions of District in entering into this Agreement, including without limitation pre-condemnation or condemnation damages, and (ii) this Agreement or the instruments or transactions described in this Agreement, including without limitation pre-condemnation or condemnation damages. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to preclude City from seeking payment for amounts which District is obligated to pay to FAL or deliver to Escrow Agent pursuant to this Agreement, provided that neither FAL nor City shall be entitled to any damages in addition to the actual amounts owed by District to FAL pursuant to this Agreement.

15.4 Limitation on Damages Payable by City. Notwithstanding any other provision of this Agreement, unless otherwise provided in any agreement or instrument delivered pursuant to this Agreement, District and FAL acknowledge that City would not have entered into this Agreement if City could become liable for damages under or with respect to this Agreement. Consequently, and notwithstanding any other provision of this Agreement, except for the payment of attorneys' fees and court costs in accordance with Section 19.11, City shall not be liable in damages under this Agreement to FAL, any of the FAL Releasing Parties, or District. FAL, on behalf of itself and the FAL Releasing Parties, and District, each waive any and all rights to claim damages of any kind or nature from City. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to preclude FAL or District from seeking payment for amounts which City is obligated to pay to FAL or District or deliver to Escrow Agent pursuant to this Agreement, provided that FAL shall not be entitled to any damages in addition to the actual amounts owed by City to FAL pursuant to this Agreement.

Section 16 – Other Events for Termination of Agreement

16.1 Termination under Certain Provisions in Section 2. Notwithstanding any other provision of this Agreement, this Agreement shall automatically terminate if: (i) any Party fails to deliver to Escrow all documents to be delivered by it pursuant to Section 2.4 on or before the Document Delivery Date; (ii) District does not deliver the Released Initial Option Payment on or before the date set forth in Section 2.2.2 or City does not deliver the sums required to be delivered in Section 2.4.4 and either such failure continues for ten (10) calendar days following District's or City's, as applicable, receipt of written notice from any Party not then in default; (iii) any Party fails to deliver a Title Resolution Notice before the Title Resolution Period expires as set forth in Section 2.3.5, if the Title Resolution Period is triggered under Section 2.3.5; or (iv) Title Insurer or Escrow Agent cannot comply with any of the conditions in Section 2.5. Upon occurrence of any of the foregoing termination events, (a) Escrow shall automatically terminate; (b) the Parties shall equally divide among themselves the Escrow fees and shall pay such sums to Escrow Agent; (c) Escrow Agent shall return the Released Initial Option Payment and any other funds delivered by District (if in Escrow Agent's possession) to District; (d) Escrow Agent shall return all original counterpart documents listed in Section 2.4 to the signatory Party of same as further described in Section 19.2.1; and (e) Escrow Agent shall administer the Note Escrow Account, if then established, in accordance with Section 19.2.1.

16.2 Termination under Section 2.8. Notwithstanding any other provision of this Agreement, this Agreement shall terminate if FAL, on behalf of Guarantors, fails to timely issue a No Material Change Notice in accordance with Section 2.8; provided, however, City and District may collectively waive, in writing, the requirement for any No Material Change Notice, in which case termination shall not occur under this Section 16.2. Upon occurrence of the foregoing termination event, (a) Escrow shall automatically terminate; (b) FAL shall pay all the Escrow fees and shall pay such sums to Escrow Agent; (c) FAL shall return to Escrow Agent all District Option Payments made to FAL and Escrow Agent shall with respect to all District Option Payments retained in Escrow and upon receipt, all District Option Payments repaid by FAL return such funds to City to reimburse City for all City Option Payments then made; (d) Escrow Agent shall return all original counterpart documents listed in Section 2.4 to the signatory Party of same as further described in Section 19.2.1; and (e) Escrow Agent shall administer the Note Escrow Account in accordance with Section 19.2.1.

16.3 Termination in Response to New Lawsuit. District and City, or either of them, shall have the right to terminate this Agreement by delivering a written notice of termination to the other Parties and Escrow Agent if on or before the Document Delivery Date, any litigation is filed (i) challenging approval of this Agreement, (ii) challenging any related ordinance or resolution approved by District or City, or (iii) that either City or District believes could affect or frustrate the purpose of this Agreement (each a “**New Lawsuit**”), subject to the following conditions: (a) District and City may mutually agree that either or both of them will deliver a written notice of termination if they concur that they are unwilling to defend the New Lawsuit; (b) if District determines it does not want to defend the New Lawsuit but City wants to defend the New Lawsuit, District may tender the defense of the New Lawsuit to City, and if City agrees in writing to defend and indemnify District and hold District harmless with respect to the New Lawsuit, District shall not have any right of termination under this Section 16.3 with respect to such New Lawsuit; or (c) if City determines it does not want to defend the New Lawsuit but District wants to defend the New Lawsuit, City may tender the defense of the New Lawsuit to District, and if District agrees in writing to defend and indemnify City and hold City harmless with respect to the New Lawsuit, City shall not have any right of termination under this Section 16.3 with respect to such New Lawsuit; and (d) the Document Delivery Date shall be automatically extended for ten (10) Business Days if any New Lawsuit is filed, which time extension will allow District and City to decide the proper course of action under clauses (a), (b), or (c) above; provided that no right of termination shall exist under this Section 16.3 if the New Lawsuit is within the scope of the indemnity and hold harmless provisions in the ARC Lease or the Marina Lease or the New Indemnity Agreement and FAL accepts tender of the New Lawsuit (if any tender is made by District or City) under any such provision or agreement. If termination occurs in accordance with this Section 16.3, (v) Escrow shall automatically terminate; (w) the Parties shall equally divide among themselves the Escrow fees and shall pay such sums to Escrow Agent; (x) if previously delivered to Escrow, Escrow Agent shall return the Released Initial Option Payment to District; (y) Escrow Agent shall return all original counterpart documents listed in Section 2.4 to the signatory Party of same as further described in Section 19.2.1; and (z) Escrow Agent shall administer the Note Escrow Account, if then established, in accordance with Section 19.2.1.

16.4 Termination under Section 9. Notwithstanding any other provision of this Agreement, unless each such condition is waived by the benefited Party, this Agreement shall automatically terminate if Escrow Agent cannot produce the District Title Policy and the City

Title Policy in accordance with the requirements of Sections 9.1.2 and 9.1.3 by the Alternative A Closing Date. Upon occurrence of any of the foregoing termination events, (a) Escrow shall automatically terminate; (b) FAL shall pay all the Escrow fees and shall pay such sums to Escrow Agent; (c) Escrow Agent shall return to District all District Option Payments then made; and (d) Escrow Agent shall return to City all City Option Payments then made; (e) Escrow Agent shall return all original counterpart documents listed in Section 2.4 to the signatory Party of same as further described in Section 19.2.1; and (f) Escrow Agent shall administer the Note Escrow Account in accordance with Section 19.2.1.

Section 17- Notices

17.1 **Delivery.** Any and all notices and communications pursuant to or as required by this Agreement must be in writing and may be sent by (i) messenger for immediate personal delivery; (ii) nationally recognized delivery service guaranteeing overnight delivery (i.e., United Parcel Service, Federal Express, etc.); (iii) registered or certified United States mail, postage prepaid, return receipt requested, to the address of the recipient Party, or (d) facsimile or other form of electronic transmission, including email (which shall be followed by a hard copy delivered in accordance with one of the preceding clauses (i) through (iii) or via regular U.S. mail, unless the hard copy is waived by reply email from the recipient in response to a notice email). Any notice shall be deemed received by the addressee, on the Business Day that the notice is sent by messenger for immediate personal delivery and received at the notice address before 5:30 p.m. Pacific Time, on the Business Day the notice is transmitted electronically and received at the notice address before 5:30 p.m. Pacific Time, one (1) Business Day after delivery to a nationally recognized overnight delivery service, or two (2) Business Days after the notice is placed in the United States mail (regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt). Any attorney representing a Party may give any notice on behalf of such Party.

17.2 **Addresses.** The notice addresses for the Parties and Escrow Agent, as of the Effective Date, are as follows:

If to FAL:	Mr. Ray A. Carpenter Fifth Avenue Landing, LLC 2145 E Belt St. San Diego, CA 92113 Telephone: (619) 233-0178 Email: rayc@restaite.net
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With a copy to:	Art E. Engel San Diego California Properties, LLC 1311 First Street Coronado, CA. 92118 Telephone: (619) 992-7311 Email: aeengel8@gmail.com
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With a copy to: Charles E. Black, Esq.
8125 Auberge Circle
San Diego, CA 92127
Telephone: (619) 993-6503
Email: cblack@cburbandevelopment.com

If to District: Ms. Randa Coniglio
President/CEO
San Diego Unified Port District
3165 Pacific Highway
San Diego, CA 92101
Telephone: (619) 686-6200
Email: rconiglio@portofsandiego.org

With a copy to: Thomas Russell, Esq.
General Counsel
Rebecca S. Harrington, Esq.
Senior Deputy General Counsel
Office of the General Counsel
San Diego Unified Port District
3165 Pacific Highway
San Diego, CA 92101
Telephone: (619) 686-6219
Email: rharrington@portofsandiego.org
trussell@portofsandiego.org

If to City: Kris Michell
Chief Operating Officer
City of San Diego
202 C Street, MS 9A
San Diego, CA 92101
Telephone No.: (619) 235-5806
Email: kmichell@sandiego.gov

With a copy to: Kevin Reisch, Esq.
Senior Chief Deputy City Attorney
1200 Third Avenue, Suite 1100
San Diego, CA 92101
Telephone No.: (619) 236-7722
Email: kreisch@sandiego.gov

If to Escrow Agent: Renee Marshall
Chicago Title Insurance Company
National Commercial Services
701 B Street, Suite 1120
San Diego, CA 92101
Telephone No.: (619) 230-6356
Email: marshallunit@ctt.com

If to Title Insurer: Chris E. Ghio
Vice President/Sales Manager
Chicago Title Insurance Company
Commercial & Builder Services
2365 Northside Drive, Suite 600
San Diego, CA 92108
Telephone No.: (619) 521-3524
Email: ghioc@ctt.com

17.3 Changes. Each Party shall promptly deliver written notice to the other Parties and Escrow Agent regarding any change in such Party's notice address.

17.4 Simultaneous Delivery. Any notice, demand or other communication given hereunder delivered by any Party to the other Parties will also be simultaneously delivered to Escrow Agent and any notice, demand or other communication given under this Agreement by any Party to Escrow Agent will be simultaneously delivered to the other Parties.

Section 18 - Exculpatory Provisions

18.1 Form, Validity, Authority. Escrow Agent will not be responsible for (i) the sufficiency or correctness as to form or the validity of any document deposited with Escrow Agent, (ii) the manner of execution of any deposited document, unless such execution occurs in Escrow Agent's premises and under its supervision, or (iii) the identity, authority or rights of any person executing any document deposited with Escrow Agent.

18.2 Conflicting Instructions. Upon receipt of any conflicting instructions, Escrow Agent will have the right to take no further action until otherwise directed, either by the Parties' mutual written instructions or order of an arbitrator(s) or judge.

18.3 Interpleader. Escrow Agent will have the absolute right, at its election, to file an action in interpleader requiring the Parties to answer and litigate their several claims and rights among themselves, and Escrow Agent is authorized to deposit with the clerk of the court all documents and funds held in Escrow. If such action is filed, the Parties will jointly and severally pay Escrow Agent's termination charges and costs and reasonable attorneys' fees which Escrow Agent is required to expend or incur in the interpleader action; the amount thereof will be fixed and judgment therefor will be rendered by the court. Upon the filing of such action, Escrow Agent will be and become fully released and discharged from all obligations to perform any further obligations imposed by this Agreement.

18.4 Miscellaneous. Recordation of any instruments delivered through Escrow, if necessary or proper in the issuance of the District Title Policy or the City Title Policy, as the case

may be, is authorized. Unless Escrow Agent is otherwise specifically requested by written instructions to do so, no examination as to the applicability, amount or payment of any personal property tax, imposed by any local, city or county ordinance or otherwise, is required through Escrow; the payment of such tax, if any, will be agreed upon by the Parties by separate written agreement.

Section 19 - General Provisions

19.1 **Opening of Escrow.** Escrow for the transactions contemplated by this Agreement will be deemed opened when (i) Escrow Agent has received all fully signed, where required, instruments required by Section 2.3 of this Agreement to be delivered to Escrow Agent by the Parties and Guarantors, including, without limitation, delivery of signed copies of this Agreement by the Parties, and (ii) Escrow Agent has signed the “Consent of Escrow Agent” attached to this Agreement. The first date on which all of the preceding events have been completed with respect to each Escrow will be called the “**Escrow Opening Date.**”

19.2 **Automatic Termination.** If Escrow is terminated pursuant to the terms of this Agreement, the following will apply:

19.2.1 **Return of Funds and Documents; Escrow Agent’s Fee.** Escrow Agent will return all funds and documents held by it to the Party depositing the same, except that Escrow Agent may retain such funds and documents usually retained by escrow agents in accordance with standard escrow termination procedures, and Escrow Agent shall administer the Note Escrow Account as follows:

(i) If Escrow for the Alternative A Transactions is terminated before Escrow Agent disburses the Released Initial Option Payment to FAL (and Escrow Agent returns to District the entire amount of the Released Initial Option Payment, if actually paid by District before Escrow is terminated), Escrow Agent shall return to City the entire balance of Cash in the Note Escrow Account.

(ii) If Escrow for the Alternative A Transactions is terminated before the Alternative A Closing due to an Escrow Terminating Event (as defined in Section 1(a) of the City Promissory Note) and, by the Escrow termination date, the Released Initial Option Payment has been disbursed to FAL, District and City shall calculate the amount due and payable under the City Promissory Note, and upon written notice by City and District of the amount due under the City Promissory Note, Escrow Agent shall disburse Cash held in the Note Escrow Account as follows: (a) to District, the amount due and payable to District under the City Promissory Note; and (b) to City, the balance (if any) of Cash in the Note Escrow Account.

19.2.2 **No Further Action by Escrow Agent.** Escrow Agent will be entitled to take no further action until directed to do so, either by the Parties’ mutual written instructions or by a final order or judgment of a court of competent jurisdiction.

19.3 **Prompt Performance.** Time is of the essence of each covenant and condition set forth in this Agreement.

19.4 **Gender, Number.** Whenever the context requires, the use in this Agreement of (i) the neuter gender includes the masculine and the feminine gender and (ii) the singular number includes the plural number.

19.5 Business Day. “**Business Day**” shall mean any day other than Saturday, Sunday, any federal holiday, any holiday in the state of California or any holiday observed by District or City. If any period expires or action is to be taken on a day that is not a Business Day, the time frame for the same shall be extended until the next Business Day.

19.6 Time. Any reference in this Agreement to a particular time of day (e.g., 5:00 p.m.) will refer to Pacific Time (daylight or standard time as may then be in effect).

19.7 Survival of Provisions, Non-Merger. The representations, warranties, agreements, acknowledgments, releases and indemnities set forth in this Agreement will be deemed material and will survive the expiration or sooner termination of this Agreement, the Alternative A Closing and Alternative Closing B, as the case may be, provided, however, that FAL’s representations and warranties set forth in Section 13.4 above shall survive the Alternative A Closing and Alternative B Closing for the applicable statute of limitation for District to bring a claim against FAL and any claim by District based on a breach thereof must be brought, if at all, within such period. Each of the covenants and agreements between FAL and City will survive the consummation of the transactions contemplated by this Agreement.

19.8 Captions. Captions in this Agreement are inserted for convenience of reference only and will not affect the construction or interpretation of this Agreement.

19.9 Entire Agreement. This Agreement and all exhibits referred to in this Agreement contain the entire agreement between the Parties relating to the transactions contemplated by those agreements, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into and superseded by those agreements.

19.10 Modification. No modification, amendment, change, waiver, or discharge of this Agreement will be valid unless it is in writing and signed by the Party against which the enforcement of the modification, waiver, amendment, change, or discharge is or may be sought.

19.11 Attorneys’ Fees and Costs. If any of the Parties commence any action or proceeding for the interpretation, reformation, enforcement or rescission of this Agreement, the Prevailing Party will be entitled to recover from the other Party(ies) reasonable attorneys’ fees and court and other litigation costs incurred, including but not limited to service of process, filing fees, court and court reporter costs, investigative costs, expert witness fees, and the cost of any bonds, whether taxable or not, and the Parties agree that such recoverable fees and costs will be included in any judgment or final order issued in that proceeding; provided that the aggregate amount recoverable by one Party from any other Party under this Section 19.11 shall not exceed One Hundred Fifty Thousand Dollars (\$150,000.00). The “**Prevailing Party**” means the Party determined by the court or arbiter to be the “prevailing party” after all appeals. Except as set forth in this Section, each Party shall be responsible to pay its own attorneys’ fees and costs.

19.12 Successors. All terms of this Agreement will be binding upon, inure to the benefit of and be enforceable by, the Parties and their respective administrators or executors, successors and assigns.

19.13 Invalidity. If any material covenant, condition or provision of this Agreement is held to be invalid, void or unenforceable by a final order or judgment of a court of competent jurisdiction, this Agreement will become rescinded unless the Party benefited by such covenant, condition or provision delivers to the other Parties and Escrow Agent, within thirty (30) calendar

days after the judgment becomes final, a written waiver of the covenant, condition or provision, in which case the remainder of this Agreement will be enforceable.

19.14 Counterparts. This Agreement may be signed in any number of counterparts, each of which will be deemed an original, and of which together will constitute one instrument.

19.15 Further Assurances. The Parties agree to cooperate with each other and sign and deliver any documents reasonably necessary to carry out the intent and purpose of this Agreement.

19.16 Applicable Law. This Agreement will be construed and enforced in accordance with the laws of the State of California. All actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the Superior Court of the County of San Diego, State of California or in any other appropriate court of that county.

19.17 Discretionary Actions. The Parties acknowledge that certain of the actions called for under this Agreement may require by law the exercise of discretion, which District and City cannot lawfully commit to by contract (collectively, “**Discretionary Actions**”). Nothing in this Agreement shall impair the right of District or City, as applicable, to evaluate, each in its sole discretion, and to approve or disapprove, with or without cause, any Discretionary Actions required from District or City with respect to matters requiring its approval. In addition, FAL acknowledges the requirements of CEQA and confirms that each of District and City, as applicable, shall have the sole discretion with respect to matters under consideration by each, to require environmental review in accordance with CEQA prior to taking any Discretionary Actions, and City and District may adopt mitigation measures, conditions, alternatives, including a “no project” alternative, adopt a Statement of Overriding Considerations, if applicable, or decide not to approve any Discretionary Actions. Such reservation of discretion will apply to all contemplated legislative and quasi-judicial actions including, without limitation, approval of land-use entitlements and permits, lease amendments, CEQA compliance, code enforcement or the making of findings and determinations required by law.

19.18 Exhibits. Unless otherwise indicated, references in this Agreement to Sections, paragraphs, clauses, exhibits, attachments and tables are to the same contained in or attached to this Agreement, and all exhibits, attachments and tables referenced in this Agreement are incorporated in this Agreement by this reference as though fully set forth in this Section 19.18.

19.19 Suspension of Litigation Activities. From the Effective Date of this Agreement until the earlier of (i) the termination of Escrow for the Alternative A Closing or (ii) Escrow Agent’s delivery of the Released Initial Option Payment to FAL (which coincides with the effectiveness of the Settlement Agreement), City and FAL shall hold the Litigation in complete abeyance, shall mutually request an appropriate continuance of any court hearings on any pending motions or other requests filed in the Litigation, and shall not file or pursue any new motions, discovery or the like in the Litigation. During the time period specified in the preceding sentence, FAL shall not contribute any funding, directly expend any funds, or take any actions to oppose implementation of the Expansion.

19.20 Inadmissibility of Evidence. FAL agrees that neither the existence of this Agreement nor any provision of this Agreement will form the basis of, or be admissible in, any action or proceeding by FAL (or any person or entity affiliated with FAL) against District, City or SDCCC, including without limitation an action for pre-condemnation or condemnation

damages. In addition, FAL agrees that all documents and other written or testimonial evidence presented at or before any public hearing for approval of this Agreement, or disclosed publicly by District, City or SDCCC in response to a Public Records Act request or otherwise, related to the value of the FAL Property or the New ARC Lease Premises (or any portion thereof), including, without limitation, appraisals, economic studies and analyses of financial values, shall be inadmissible as evidence in any action or proceeding by FAL (or any person or entity affiliated with FAL). The foregoing prohibition on admissibility of evidence will not preclude the admission of evidence of this Agreement or its contents in any action involving a Third-Party Claim or an action by a third party against District and/or City defended by FAL pursuant to its indemnity obligations under this Agreement or the New Indemnity Agreement.

19.21 Assignment by FAL, District or City. FAL may not assign to any person FAL's rights under this Agreement without the prior written consent of District, which may be withheld in District's sole discretion, with or without cause. District may not assign to any person District's rights under this Agreement without the prior written consent of FAL, which may be withheld in FAL's sole discretion, with or without cause. City may not assign to any person City's rights under this Agreement without the prior written consent of District, which may be withheld in District's sole discretion, with or without cause. Any assignment of a Party's rights made or attempted without said prior written consent will be void. Notwithstanding the foregoing, District or City will have the right to assign this Agreement to an entity controlled by District or City with the exception of SDCCC. Any assignment permitted by the preceding sentence will not release District or City from its obligations under this Agreement and will be conditioned upon the proposed assignee signing an assumption of said obligation under this Agreement. In the case of a District assignment, said assignment shall be in form and content acceptable to FAL in its sole discretion. In the case of a City assignment, said assignment shall be in form and content acceptable to District in its sole discretion.

19.22 City Appropriation of Funds. To the extent this Agreement imposes on City any financial obligation or payment obligation (except with respect to funds in the Note Escrow Account and as provided in paragraphs (a) and (b) of Section 1 of the City Promissory Note), and notwithstanding any other provision of this Agreement, City's performance of such obligation is subject to and contingent upon the City Council's appropriation of funds in any fiscal year to pay such obligation (each a "**Contingent Obligation**"). If the City Council does not appropriate funds in any fiscal year to fulfill any Contingent Obligation due in such fiscal year, City shall not be required to perform the Contingent Obligation and shall not incur any resulting monetary penalty, liability, or expense, but City's nonperformance of the Contingent Obligation may result in termination of certain rights in City's favor under this Agreement as specified in the applicable provision of this Agreement. Contingent Obligations shall be payable solely from eligible moneys held in a special fund and segregated from the City's General Fund ("**Special Funds**") for purposes related to the Expansion. Special Funds may only be used to pay Contingent Obligations if and when appropriated for that purpose. City shall not be obligated to pay Contingent Obligations from the City's General Fund or from tax revenues of City that would otherwise be deposited in the General Fund. Special Funds may include transient occupancy tax revenues dedicated to a special fund for the Expansion and other Convention Center purposes under the Ballot Measure, if Voter Approval occurs. City shall use best efforts to obtain the City Council's timely appropriation of funds with respect to each Contingent Obligation. However, the City Council has no obligation to make funding appropriations for any Contingent Obligation, in light of City's other funding priorities and budget constraints in the

applicable future fiscal year. All City budget decisions are subject to the discretion of the Mayor and the City Council. City shall notify the other Parties in writing at the earliest possible date if City determines that funds will not be timely appropriated for any Contingent Obligation. This Agreement is subject to the budget and fiscal provisions of the San Diego Charter. No Contingent Obligation shall constitute a debt of City within the meaning of any debt limitation or restriction in state or local law, including the San Diego Charter.

19.23 Relocation Benefits and Compensation. The provisions of this Section 19.23 shall not apply if Escrow for the Alternative A Closing is terminated for any reason. In addition, nothing in this Section 19.23 shall diminish or affect City's obligations under Section 2.9 of the Settlement Agreement. FAL acknowledges and agrees that FAL has no right or claim to receive compensation from City or District arising from or relating to District's acquisition of the FAL Property in excess of the FAL Property Total Price under either: (a) the California Relocation Assistance Law, Government Code Section 7260 *et seq.*, and the implementing regulations set forth in California Code of Regulations, Title 25, Chapter 6, Section 6000 *et seq.* (collectively, "**Relocation Law**"), for relocation assistance or benefits, moving expenses, reestablishment expenses or other expenses or losses associated with District's acquisition of the FAL Property or FAL's cost of moving persons or property from the FAL Property; or (b) the California Eminent Domain Law, California Code of Civil Procedure Section 1230.010 *et seq.* ("**Condemnation Law**"), for just compensation, severance damages, compensation for loss of goodwill, litigation expenses, attorneys' fees and costs, damages for inverse condemnation, damages for unreasonable pre-condemnation delay, damages for unreasonable pre-condemnation activities or other expenses or losses associated with District's acquisition of the FAL Property. FAL further acknowledges and agrees that neither FAL nor any person or entity claiming by or through FAL, as of the Effective Date, has any alleged or actual claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, attorneys' fees and costs), or any judgment against FAL arising from or in any way related to District's acquisition or use of the FAL Property or for moving persons or property from the FAL Property, whether pursuant to the Relocation Law or the Condemnation Law, whether known or unknown, or whether foreseeable or unforeseeable as of the Effective Date. FAL agrees that its initialed waiver in Section 13.7 with respect to California Civil Code Section 1542 applies fully to the provisions of this Section 19.23.

19.24 Legal Descriptions. If any of the legal descriptions in any of the exhibits to this Agreement are found incorrect after the Effective Date, the corrected legal description(s), as agreed to by the Parties, shall be administratively substituted in place of any of the incorrect legal description(s).

{SIGNATURES APPEAR ON NEXT PAGE}

IN WITNESS WHEREOF, this Agreement has been signed on the dates set forth below.

FAL:

FIFTH AVENUE LANDING, LLC,
a California limited liability company

By: _____
Ray A. Carpenter
Its: Managing Member

By: San Diego California Properties, LLC,
Its: Managing Member

By: _____
Art E. Engel
Its: Managing Member

Date: June __, 2018

CITY:

CITY OF SAN DIEGO,
a municipal corporation

By: _____
Name: _____

Its: _____
Date: June __, 2018

Approved as to form:
MARA W. ELLIOTT, City Attorney

By: _____
Kevin Reisch
Senior Chief Deputy City Attorney

DISTRICT:

SAN DIEGO UNIFIED PORT DISTRICT,
a Public Corporation

By: _____
Name: _____

Its: _____
Date: June __, 2018

Approved as to form and legality:

GENERAL COUNSEL

By: _____
Name: _____
Assistant/Senior Deputy
General Counsel

CONSENT OF ESCROW AGENT

The undersigned Escrow Agent agrees to (i) accept the foregoing Agreement, (ii) be escrow agent under the Agreement, and (iii) to be bound by the Agreement in the performance of its duties as Escrow Agent. However, the undersigned will have no obligation, liability or responsibility under (x) this consent or otherwise, unless and until the Agreement, fully signed by the Parties, has been delivered to the undersigned, or (y) any amendment to the Agreement unless and until the amendment is accepted by the undersigned in writing.

Dated: _____, 201__

CHICAGO TITLE INSURANCE COMPANY

By: _____
Escrow Officer

Table A
Alternative A Closing Documents

PSA Exhibit	Documents Full Title	Document Definition in PSA	Parties to Document	No. of Pages	Recordation Required
Exhibit D-1	Assignment and Assumption of Lease (ARC Lease) and Consent to Assignment	Assignment and Assumption	District and FAL	16	Yes
Exhibit D-2	Reaffirmation of Guaranty and Consent to Assignment and Assumption	Guarantor Consent to Assignment and Assumption	Raymond Carpenter, Arthur Engel, David Engel and Herbert Engel	7	No
Exhibit D-3	Quitclaim Deed (Marina Lease – Marina Landside Area)	Quitclaim Deed	FAL (and Certificate of Acceptance by District)	13	Yes
Exhibit L	San Diego Unified Port District Amendment No. 2 to Amended, Restated and Combined Lease to City of San Diego of Property Located at Fifth Avenue Landing and Marina Park Way, San Diego, California	ARC Lease Expansion Amendment	District and City	34	No
Exhibit M-1	Amendment No. 1 to San Diego Unified Port District Lease to Fifth Avenue Landing, LLC of Property Located at Fifth Avenue Landing and Marina Park Way, San Diego, California	Amended Marina Lease (Alternative A)	District and FAL	30	No

Exhibit M-2	Reaffirmation of Guaranty and Consent to Amendment No. 1 of Marina Lease (Alternative A)	Consent to Amended Marina Lease (Alternative A)	Raymond Carpenter, Arthur Engel, David Engel and Herbert Engel	6	No
Exhibit P	Tidelands Use and Occupancy Permit	TUOP	District and FAL	42	No
Exhibit B to Exhibit P	License Agreement	N/A	City and FAL with District consent	11	No
Exhibit Q	Memorandum of Assignment and Assumption and Lease Amendment No. 2	Memorandum of ARC Lease Expansion Amendment	District and City	10	Yes
Exhibit R	Memorandum of Lease Amendment No. 1 – Alternative A	Memorandum of Amended Marina Lease (Alternative A)	District and FAL	9	Yes
Exhibit U	Release of Guarantors	Release of ARC Lease Guaranty	District and Raymond Carpenter, Arthur Engel, David Engel and Herbert Engel	3	No
N/A	FIRPTA Certificate	N/A	FAL	1	No
N/A	IRS Form W-9	N/A	FAL	1	No

Table A – Alternative A Closing Documents

Table B
Alternative B Closing Documents

PSA Exhibit	Documents Full Title	Document Definition in PSA	Parties to Document	No. of Pages	Recordation Required
Exhibit N-1	Amendment No. 1 to San Diego Unified Port District Lease to Fifth Avenue Landing, LLC of Property Located at Fifth Avenue Landing and Marina Park Way, San Diego, California	Amended Marina Lease (Alternative B)	District and FAL	6	No
Exhibit N-2	Reaffirmation of Guaranty and Consent to Amendment No. 1 to Marina Lease (Alternative B)	Guarantor Consent to Amended Marina Lease (Alternative B)	Raymond Carpenter, Arthur Engel, David Engel and Herbert Engel	6	No
Exhibit O-1	San Diego Unified Port District Amendment No. 2 to Amended, Restated and Combined Lease to San Diego Convention Center of Property Located at Fifth Avenue Landing and Marina Park Way, San Diego, California	Amended FAL ARC Lease	District and FAL	11	No
Exhibit O-2	Reaffirmation of Guaranty and Consent to Amendment No. 2 of ARC Lease (Alternative B)	Consent to Amended FAL ARC Lease	Raymond Carpenter, Arthur Engel, David Engel and Herbert Engel	7	No
Exhibit S	Memorandum of Lease Amendment No. 1 (Alternative B)	Memorandum of Amended Marina Lease (Alternative B)	District and FAL	10	Yes
Exhibit T	Memorandum of Lease Amendment No. 2 (Alternative B)	Memorandum of Amended FAL ARC Lease (Alternative B)	District and FAL	10	Yes

Table B – Alternative B Closing Documents

EXHIBIT A-1**LEGAL DESCRIPTION OF THE MARINA LANDSIDE AREA PREMISES**

ALL THAT CERTAIN PORTION OF LAND CONVEYED TO THE SAN DIEGO UNIFIED PORT DISTRICT BY THAT CERTAIN ACT OF LEGISLATURE OF THE STATE OF CALIFORNIA PURSUANT TO CHAPTER 67, STATUTES OF 1962, FIRST EXTRAORDINARY SESSION, AS AMENDED, AND DELINEATED ON THAT CERTAIN MISCELLANEOUS MAP NO. 564, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER ON MAY 28, 1976, FILE NO. 76-164686, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL NO. 1 (LAND AREA)

COMMENCING AT A 3" DIAMETER BRASS DISK MONUMENT STAMPED S.D.U.P.D. NO. 14 AS SHOWN ON R.O.S. NO. 16668, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY JULY 25, 2000; THENCE LEAVING SAID MONUMENT SOUTH 39°31'53" EAST A DISTANCE OF 74.59 FEET (CALCULATED) SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT 556.00 FOOT RADIUS CURVE, CONCAVE TO THE NORTH, A RADIAL TO SAID POINT BEARS SOUTH 00°22'28" EAST FROM THE CENTER OF SAID CURVE; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 04°42'58" AN ARC DISTANCE OF 45.77 FEET TO A POINT OF REVERSE CURVATURE, THE COMMON RADIAL OF WHICH BEARS SOUTH 05°05'26" EAST FROM THE CENTER OF SAID CURVE; THENCE SOUTHEASTERLY ALONG THE ARC OF A 32.00 FOOT RADIUS CURVE CONCAVE TO THE SOUTHWEST THROUGH A CENTRAL ANGLE OF 44°46'18" AN ARC DISTANCE OF 25.01 FEET TO A POINT ON THE SOUTHWESTERLY FACE OF CURB OF A STREET COMMONLY KNOWN AS CONVENTION WAY; THENCE ALONG SAID FACE OF CURB LINE SOUTH 50°19'08" EAST A DISTANCE OF 427.66 FEET TO A POINT THE **TRUE POINT OF BEGINNING OF PARCEL NO. 1**; THENCE ALONG CONVENTION WAY CURB FACE SOUTH 50°19'08" EAST A DISTANCE OF 196.62 FEET; THENCE LEAVING SAID FACE OF CURB LINE SOUTH 39°40'52" WEST A DISTANCE OF 193.00 FEET TO A POINT ON THE ABOVE DESCRIBED U.S. BULKHEAD LINE AS SAID U.S. BULKHEAD LINE; THENCE LEAVING SAID U.S. BULKHEAD LINE AND CONTINUING SOUTH 39°40'52" WEST A DISTANCE OF 1.00 FOOT; THENCE PARALLEL WITH SAID U.S. BULKHEAD LINE NORTH 50°19'08" WEST A DISTANCE OF 84.00 FEET; THENCE NORTH 39°40'52" EAST A DISTANCE OF 1.00 FOOT TO SAID U.S. BULKHEAD LINE; THENCE LEAVING SAID U.S. BULKHEAD LINE NORTH 39°40'52" EAST A DISTANCE OF 110.00 FEET; THENCE NORTH 50°19'08" WEST A DISTANCE OF 112.62 FEET; THENCE NORTH 39°40'52" EAST A DISTANCE OF 83.00 FEET TO THE **TRUE POINT OF BEGINNING OF PARCEL NO. 1**, CONTAINING 25,643 SQUARE FEET OR 0.59 ACRE OF TIDELANDS AREA.

EXHIBIT A-2**LEGAL DESCRIPTION OF THE EXISTING ARC LEASE PREMISES**

ALL THAT CERTAIN PORTION OF LAND CONVEYED TO THE SAN DIEGO UNIFIED PORT DISTRICT BY THAT CERTAIN ACT OF LEGISLATURE OF THE STATE OF CALIFORNIA PURSUANT TO CHAPTER 67, STATUTES OF 1962, FIRST EXTRAORDINARY SESSION, AS AMENDED, AND DELINEATED ON THAT CERTAIN MISCELLANEOUS MAP NO. 564, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER ON MAY 28, 1976, FILE NO. 76-164686, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL NO. 1 (LAND AREA)

COMMENCING AT A 3" DIAMETER BRASS DISK MONUMENT STAMPED S.D.U.P.D. NO. 14 AS SHOWN ON R.O.S. NO. 16668, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY JULY 25, 2000; THENCE LEAVING SAID MONUMENT SOUTH 39°31'53" EAST A DISTANCE OF 74.59 FEET (CALCULATED) TO THE **TRUE POINT OF BEGINNING OF PARCEL NO. 1**, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT 556.00 FOOT RADIUS CURVE, CONCAVE TO THE NORTH, A RADIAL TO SAID POINT BEARS SOUTH 00°22'28" EAST FROM THE CENTER OF SAID CURVE; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 04°42'58" AN ARC DISTANCE OF 45.77 FEET TO A POINT OF REVERSE CURVATURE, THE COMMON RADIAL OF WHICH BEARS SOUTH 05°05'26" EAST FROM THE CENTER OF SAID CURVE; THENCE SOUTHEASTERLY ALONG THE ARC OF A 32.00 FOOT RADIUS CURVE CONCAVE TO THE SOUTHWEST THROUGH A CENTRAL ANGLE OF 44°46'18" AN ARC DISTANCE OF 25.00 FEET TO A POINT ON THE SOUTHWESTERLY FACE OF CURB OF A STREET COMMONLY KNOWN AS CONVENTION WAY; THENCE ALONG SAID FACE OF CURB LINE SOUTH 50°19'08" EAST A DISTANCE OF 427.66 FEET TO A POINT HEREINAFTER KNOWN AS POINT "A"; THENCE LEAVING SAID FACE OF CURB LINE SOUTH 39°40'52" WEST A DISTANCE OF 83.00 FEET; THENCE SOUTH 50°19'08" EAST A DISTANCE OF 112.62 FEET; THENCE SOUTH 39°40'52" WEST A DISTANCE OF 110.00 FEET TO A POINT ON THE U.S. BULKHEAD LINE AS SAID U.S. BULKHEAD LINE IS NOW ESTABLISHED FOR THE BAY OF SAN DIEGO AND DELINEATED ON MAP ENTITLED "HARBOR LINES, SAN DIEGO BAY, CALIFORNIA FILE NO. (D.O. SERIES) 426" APPROVED BY THE SECRETARY OF THE ARMY, APRIL 29, 1963, AND FILED IN THE OFFICE OF THE DISTRICT ENGINEER, LOS ANGELES, CALIFORNIA; THENCE LEAVING SAID U.S. BULKHEAD LINE AND CONTINUING SOUTH 39°40'52" WEST A DISTANCE OF 1.00 FOOT; THENCE PARALLEL WITH SAID U.S. BULKHEAD LINE NORTH 50°19'08" WEST A DISTANCE OF 297.61 FEET; THENCE SOUTH 39°40'52" WEST A DISTANCE OF 1.00 FOOT; THENCE PARALLEL WITH SAID U.S. BULKHEAD LINE NORTH 50°19'08" WEST A DISTANCE OF 179.41 FEET; THENCE SOUTH 39°40'52" WEST A DISTANCE OF 198.00 FEET; THENCE NORTH 50°19'08" WEST A DISTANCE OF 177.32 FEET TO A POINT ON THE SOUTHEASTERLY FACE OF CURB LINE OF A

STREET COMMONLY KNOWN AS MARINA PARK WAY; THENCE ALONG SAID FACE OF CURB LINE NORTH 39°40'52" EAST A DISTANCE OF 200.00 FEET TO A POINT ON SAID U.S. BULKHEAD LINE; THENCE LEAVING SAID U.S. BULKHEAD LINE AND CONTINUING ALONG SAID FACE OF CURB NORTH 39°40'52" EAST A DISTANCE OF 28.85 FEET TO THE BEGINNING OF A 162.00 FOOT RADIUS CURVE, CONCAVE TO THE SOUTHEAST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 49°56'40" AN ARC DISTANCE OF 141.21 FEET TO THE **TRUE POINT OF BEGINNING** OF PARCEL NO. 1, CONTAINING 147,642 SQUARE FEET OR 3.39 ACRES OF TIDELANDS AREA.

PARCEL NO. 2 (LAND AREA)

COMMENCING AT THE ABOVE DESCRIBED POINT "A"; THENCE CONTINUING ALONG SAID CONVENTION WAY FACE OF CURB SOUTH 50°19'08" EAST A DISTANCE OF 196.62 FEET TO THE **TRUE POINT OF BEGINNING OF PARCEL NO. 2**; THENCE CONTINUING ALONG SAID FACE OF CURB SOUTH 50°19'08" EAST A DISTANCE OF 235.00 FEET; THENCE LEAVING SAID FACE OF CURB SOUTH 39°40'52" WEST A DISTANCE OF 193.00 FEET TO THE ABOVE MENTIONED U.S. BULKHEAD LINE; THENCE LEAVING SAID U.S. BULKHEAD LINE AND CONTINUING SOUTH 39°40'52" WEST A DISTANCE OF 1.00 FEET; THENCE PARALLEL WITH SAID U.S. BULKHEAD LINE NORTH 50°19'08" WEST A DISTANCE OF 235.00 FEET; THENCE NORTH 39°40'52" EAST A DISTANCE OF 1.00 FEET TO SAID U.S. BULKHEAD LINE; THENCE LEAVING SAID U.S. BULKHEAD LINE AND CONTINUING NORTH 39°40'52" EAST A DISTANCE OF 193.00 FEET TO THE **TRUE POINT OF BEGINNING** OF PARCEL NO. 2, CONTAINING 45,590 SQUARE FEET OR 1.05 ACRES OF TIDELANDS AREA.

ALSO: RESERVING THEREFROM A CITY OF SAN DIEGO WATER EASEMENT 15.00 FEET IN WIDTH LYING WITHIN PARCEL NO. 1 AS DELINEATED AND DESCRIBED AS EASEMENT NO. 2 ON SHEETS 2 AND 4 OF DRAWING 019-063.

ALSO: RESERVING THEREFROM A CITY OF SAN DIEGO STORM DRAIN EASEMENT 20.00 FEET IN WIDTH LYING WITHIN PARCEL NO. 1 AS DELINEATED AND DESCRIBED AS EASEMENT NO. 3 ON SHEETS 2 AND 4 OF DRAWING NO. 019-063.

ALSO: RESERVING THEREFROM AN EASEMENT FOR PUBLIC PEDESTRIAN ACCESS 25.00 FEET IN WIDTH LYING WITHIN PARCEL NO.'S 1 AND 2 AS DELINEATED AND DESCRIBED AS EASEMENT NO. 4 ON SHEETS 2 AND 4 OF DRAWING 019-063.

ALSO: RESERVING THEREFROM A CITY OF SAN DIEGO WATER EASEMENT 30.00 FEET IN WIDTH AS SHOWN ON CITY OF SAN DIEGO DRAWING NO. 11558-35-D AND LYING WITHIN PARCEL NO.'S 1 AND 2 AS DELINEATED AND DESCRIBED AS EASEMENT NO. 5 ON SHEETS 2 AND 4 OF DRAWING NO. 019-063.

EXHIBIT A-3**LEGAL DESCRIPTION OF
SAN DIEGO CONVENTION CENTER PHASE III EXPANSION PREMISES**

ALL THAT CERTAIN PORTION OF LAND CONVEYED TO THE SAN DIEGO UNIFIED PORT DISTRICT BY THAT CERTAIN ACT OF LEGISLATURE OF THE STATE OF CALIFORNIA PURSUANT TO CHAPTER 67, STATUTES OF 1962, FIRST EXTRAORDINARY SESSION, AS AMENDED, AND DELINEATED ON THAT CERTAIN MISCELLANEOUS MAP NO. 564, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER ON MAY 28, 1976, FILE NO. 76-164686, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL NO. 1 (LAND AREA)

COMMENCING AT A 3" DIAMETER BRASS DISK MONUMENT STAMPED S.D.U.P.D. NO. 14 AS SHOWN ON R.O.S. NO. 16668, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY JULY 25, 2000; THENCE LEAVING SAID MONUMENT SOUTH 39°31'53" EAST A DISTANCE OF 74.59 FEET (CALCULATED) TO THE **TRUE POINT OF BEGINNING OF PARCEL NO. 1**; THENCE NORTH 00°22'28" WEST 52.04 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 504.00 FEET A RADIAL LINE TO SAID POINT BEARS SOUTH 00°22'28" EAST; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 11°29'16" A DISTANCE OF 101.05 FEET; THENCE SOUTH 50°19'08" EAST 947.95 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 100.00 FEET; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 58°16'23" A DISTANCE OF 101.71 FEET; THENCE NORTH 71°24'29" EAST 78.37 FEET; THENCE NORTH 68°52'55" EAST 24.27 FEET; THENCE SOUTH 62°08'59" WEST 232.94 FEET; THENCE NORTH 50°19'08" WEST 118.28 FEET; THENCE SOUTH 39°40'52" WEST 185.00 FEET TO A POINT ON THE U.S. BULKHEAD LINE AS SAID U.S. BULKHEAD LINE IS NOW ESTABLISHED FOR THE BAY OF SAN DIEGO AND DELINEATED ON MAP ENTITLED "HARBOR LINES, SAN DIEGO BAY, CALIFORNIA FILE NO. (D.O. SERIES) 426" APPROVED BY THE SECRETARY OF THE ARMY, APRIL 29, 1963, AND FILED IN THE OFFICE OF THE DISTRICT ENGINEER, LOS ANGELES, CALIFORNIA; THENCE ALONG SAID BULKHEAD LINE NORTH 50°19'08" WEST 973.34 FEET TO A POINT ON THE SOUTHEASTERLY FACE OF CURB LINE OF A STREET COMMONLY KNOWN AS MARINA PARK WAY; THENCE LEAVING SAID U.S. BULKHEAD LINE AND ALONG SAID FACE OF CURB NORTH 39°40'52" EAST A DISTANCE OF 28.84 FEET TO THE BEGINNING OF A 162.00 FOOT RADIUS CURVE, CONCAVE TO THE SOUTHEAST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 49°56'37" AN ARC DISTANCE OF 141.21 FEET TO THE **TRUE POINT OF BEGINNING OF PARCEL NO. 1**, CONTAINING 262,639 SQUARE FEET OR 6.029 ACRES OF TIDELANDS AREA.

EXHIBIT A-4**LEGAL DESCRIPTION OF THE FLAG LOT**

ALL THAT CERTAIN PORTION OF LAND CONVEYED TO THE SAN DIEGO UNIFIED PORT DISTRICT BY THAT CERTAIN ACT OF LEGISLATURE OF THE STATE OF CALIFORNIA PURSUANT TO CHAPTER 67, STATUTES OF 1962, FIRST EXTRAORDINARY SESSION, AS AMENDED, AND DELINEATED ON THAT CERTAIN MISCELLANEOUS MAP NO. 564, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER ON MAY 28, 1976, FILE NO. 76-164686, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL NO. 1 (LAND AREA)

COMMENCING AT A 3" DIAMETER BRASS DISK MONUMENT STAMPED S.D.U.P.D. NO. 14 AS SHOWN ON R.O.S. NO. 16668, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY JULY 25, 2000; THENCE LEAVING SAID MONUMENT ALONG A TIE LINE SOUTH 34°17'50" WEST A DISTANCE OF 168.06 FEET (CALCULATED) TO A POINT ON THE SOUTHWESTERLY FACE OF CURB OF A STREET COMMONLY KNOWN AS CONVENTION WAY, SAID POINT ALSO BEING THE **TRUE POINT OF BEGINNING OF PARCEL NO. 1**; THENCE ALONG SAID SOUTHWESTERLY FACE OF CURB OF CONVENTION WAY AND PARALLEL WITH THE U.S. BULKHEAD LINE AS SAID U.S. BULKHEAD LINE AS IS NOW ESTABLISHED FOR THE BAY OF SAN DIEGO AND DELINEATED ON MAP ENTITLED "HARBOR LINES, SAN DIEGO BAY, CALIFORNIA FILE NO. (D.O. SERIES) 426" APPROVED BY THE SECRETARY OF THE ARMY, APRIL 29, 1963, SOUTH 50°19'08" EAST A DISTANCE OF 177.32 FEET; THENCE LEAVING SAID FACE OF CURB SOUTH 39°40'52" WEST A DISTANCE OF 198.00 FEET; THENCE NORTH 50°19'08" WEST A DISTANCE OF 92.27 FEET; THENCE NORTH 39°40'52" EAST A DISTANCE OF 111.31 FEET; THENCE NORTH 50°19'08" WEST A DISTANCE OF 85.05 FEET; THENCE NORTH 39°40'52" EAST A DISTANCE OF 86.69 FEET TO THE **TRUE POINT OF BEGINNING OF PARCEL NO. 1**, CONTAINING 25,643 SQUARE FEET OR 0.59 ACRE OF TIDELANDS AREA.

PARCEL NO. 4 (LAND AREA)

COMMENCING AT THE TRUE POINT OF BEGINNING OF PARCEL NO. 1; THENCE SOUTH 39°40'52" WEST A DISTANCE OF 86.69 FEET TO THE TRUE POINT OF BEGINNING OF PARCEL NO. 4; THENCE SOUTH 50°19'08" EAST A DISTANCE OF 85.05 FEET; THENCE SOUTH 39°40'52" WEST A DISTANCE OF 111.31 FEET; THENCE NORTH 50°19'08" WEST A DISTANCE OF 85.05 FEET; THENCE NORTH 39°40'52" EAST A DISTANCE OF 111.31 FEET TO THE TRUE POINT OF BEGINNING OF PARCEL NO. 4, CONTAINING 9,467 SQUARE FEET OF TIDELANDS AREA.

EXHIBIT A-5**LEGAL DESCRIPTION OF THE NEW ARC LEASE PREMISES**

ALL THAT CERTAIN PORTION OF LAND CONVEYED TO THE SAN DIEGO UNIFIED PORT DISTRICT BY THAT CERTAIN ACT OF LEGISLATURE OF THE STATE OF CALIFORNIA PURSUANT TO CHAPTER 67, STATUTES OF 1962, FIRST EXTRAORDINARY SESSION, AS AMENDED, AND DELINEATED ON THAT CERTAIN MISCELLANEOUS MAP NO. 564, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER ON MAY 28, 1976, FILE NO. 76-164686, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL NO. 1 (LAND AREA)

COMMENCING AT A 3" DIAMETER BRASS DISK MONUMENT STAMPED S.D.U.P.D. NO. 14 AS SHOWN ON R.O.S. NO. 16668, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY JULY 25, 2000; THENCE LEAVING SAID MONUMENT SOUTH 39°31'53" EAST A DISTANCE OF 74.59 FEET (CALCULATED) TO THE **TRUE POINT OF BEGINNING OF PARCEL NO. 1**, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT 556.00 FOOT RADIUS CURVE, CONCAVE TO THE NORTH, A RADIAL TO SAID POINT BEARS SOUTH 00°22'28" EAST FROM THE CENTER OF SAID CURVE; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 04°42'58" AN ARC DISTANCE OF 45.77 FEET TO A POINT OF REVERSE CURVATURE, THE COMMON RADIAL OF WHICH BEARS SOUTH 05°05'26" EAST FROM THE CENTER OF SAID CURVE; THENCE SOUTHEASTERLY ALONG THE ARC OF A 32.00 FOOT RADIUS CURVE CONCAVE TO THE SOUTHWEST THROUGH A CENTRAL ANGLE OF 44°46'18" AN ARC DISTANCE OF 25.01 FEET TO A POINT ON THE SOUTHWESTERLY FACE OF CURB OF A STREET COMMONLY KNOWN AS CONVENTION WAY; THENCE ALONG SAID FACE OF CURB LINE SOUTH 50°19'08" EAST A DISTANCE OF 427.66 FEET TO A POINT HEREINAFTER KNOWN AS POINT "A"; THENCE LEAVING SAID FACE OF CURB LINE SOUTH 39°40'52" WEST A DISTANCE OF 83.00 FEET; THENCE SOUTH 50°19'08" EAST A DISTANCE OF 112.62 FEET; THENCE SOUTH 39°40'52" WEST A DISTANCE OF 110.00 FEET TO A POINT ON THE U.S. BULKHEAD LINE AS SAID U.S. BULKHEAD LINE IS NOW ESTABLISHED FOR THE BAY OF SAN DIEGO AND DELINEATED ON MAP ENTITLED "HARBOR LINES, SAN DIEGO BAY, CALIFORNIA FILE NO. (D.O. SERIES) 426" APPROVED BY THE SECRETARY OF THE ARMY, APRIL 29, 1963, AND FILED IN THE OFFICE OF THE DISTRICT ENGINEER, LOS ANGELES, CALIFORNIA; THENCE LEAVING SAID U.S. BULKHEAD LINE AND CONTINUING SOUTH 39°40'52" WEST A DISTANCE OF 1.00 FOOT; THENCE PARALLEL WITH SAID U.S. BULKHEAD LINE NORTH 50°19'08" WEST A DISTANCE OF 297.61 FEET; THENCE SOUTH 39°40'52" WEST A DISTANCE OF 1.00 FOOT; THENCE PARALLEL WITH SAID U.S. BULKHEAD LINE NORTH 50°19'08" WEST A DISTANCE OF 356.73 FEET TO A POINT ON THE SOUTHEASTERLY FACE OF CURB LINE OF A STREET COMMONLY KNOWN AS MARINA PARK WAY; THENCE ALONG SAID FACE OF CURB LINE NORTH 39°40'52"

EAST A DISTANCE OF 2.04 FEET TO A POINT ON SAID U.S. BULKHEAD LINE; THENCE LEAVING SAID U.S. BULKHEAD LINE AND CONTINUING ALONG SAID FACE OF CURB NORTH 39°40'52" EAST A DISTANCE OF 28.81 FEET TO THE BEGINNING OF A 162.00 FOOT RADIUS CURVE, CONCAVE TO THE SOUTHEAST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 49°56'40" AN ARC DISTANCE OF 141.21 FEET TO THE **TRUE POINT OF BEGINNING** OF PARCEL NO. 1, CONTAINING 112,534 SQUARE FEET OR 2.58 ACRES OF TIDELANDS AREA.

PARCEL NO. 2 (LAND AREA)

COMMENCING AT THE ABOVE DESCRIBED POINT "A"; THENCE CONTINUING ALONG SAID CONVENTION WAY FACE OF CURB SOUTH 50°19'08" EAST A DISTANCE OF 196.62 FEET TO THE **TRUE POINT OF BEGINNING OF PARCEL NO. 2**; THENCE CONTINUING ALONG SAID FACE OF CURB SOUTH 50°19'08" EAST A DISTANCE OF 235.00 FEET; THENCE LEAVING SAID FACE OF CURB SOUTH 39°40'52" WEST A DISTANCE OF 193.00 FEET TO THE ABOVE MENTIONED U.S. BULKHEAD LINE; THENCE LEAVING SAID U.S. BULKHEAD LINE AND CONTINUING SOUTH 39°40'52" WEST A DISTANCE OF 1.00 FEET; THENCE PARALLEL WITH SAID U.S. BULKHEAD LINE NORTH 50°19'08" WEST A DISTANCE OF 235.00 FEET; THENCE NORTH 39°40'52" EAST A DISTANCE OF 1.00 FEET TO SAID U.S. BULKHEAD LINE; THENCE LEAVING SAID U.S. BULKHEAD LINE AND CONTINUING NORTH 39°40'52" EAST A DISTANCE OF 193.00 FEET TO THE **TRUE POINT OF BEGINNING** OF PARCEL NO. 2, CONTAINING 45,590 SQUARE FEET OR 1.05 ACRES OF TIDELANDS AREA.

PARCEL NO. 3 (LAND AREA)

COMMENCING AT THE ABOVE DESCRIBED POINT "A", SAID POINT ALSO BEING THE **TRUE POINT OF BEGINNING OF PARCEL NO. 3**; THENCE ALONG CONVENTION WAY CURB FACE SOUTH 50°19'08" EAST A DISTANCE OF 196.62 FEET; THENCE LEAVING SAID FACE OF CURB LINE SOUTH 39°40'52" WEST A DISTANCE OF 193.00 FEET TO A POINT ON THE ABOVE DESCRIBED U.S. BULKHEAD LINE AS SAID U.S. BULKHEAD LINE; THENCE LEAVING SAID U.S. BULKHEAD LINE AND CONTINUING SOUTH 39°40'52" WEST A DISTANCE OF 1.00 FOOT TO; THENCE PARALLEL WITH SAID U.S. BULKHEAD LINE NORTH 50°19'08" WEST A DISTANCE OF 84.00 FEET; THENCE NORTH 39°40'52" EAST A DISTANCE OF 1.00 FOOT TO SAID U.S. BULKHEAD LINE; THENCE LEAVING SAID U.S. BULKHEAD LINE NORTH 39°40'52" EAST A DISTANCE OF 110.00 FEET; THENCE NORTH 50°19'08" WEST A DISTANCE OF 112.62 FEET; THENCE NORTH 39°40'52" EAST A DISTANCE OF 83.00 FEET TO THE **TRUE POINT OF BEGINNING** OF PARCEL NO. 3, CONTAINING 25,643 SQUARE FEET OR 0.59 ACRE OF TIDELANDS AREA.

ALSO: RESERVING THEREFROM A CITY OF SAN DIEGO WATER EASEMENT 15.00 FEET IN WIDTH LYING WITHIN PARCEL NO. 1 AS DELINEATED AND DESCRIBED AS EASEMENT NO. 2 ON SHEETS 2 AND 4 OF DRAWING 019-063.

ALSO: RESERVING THEREFROM A CITY OF SAN DIEGO STORM DRAIN EASEMENT 20.00 FEET IN WIDTH LYING WITHIN PARCEL NO. 1 AS DELINEATED AND DESCRIBED AS EASEMENT NO. 3 ON SHEETS 2 AND 4 OF DRAWING 019-063.

ALSO: RESERVING THEREFROM AN EASEMENT FOR PUBLIC PEDESTRIAN ACCESS 25.00 FEET IN WIDTH LYING WITHIN PARCEL NO.'S 1 AND 2 AS DELINEATED AND DESCRIBED AS EASEMENT NO. 4 ON SHEETS 2 AND 4 OF DRAWING 019-063.

ALSO: RESERVING THEREFROM A CITY OF SAN DIEGO WATER EASEMENT 30.00 FEET IN WIDTH AS SHOWN ON CITY OF SAN DIEGO DWG. NO. 11558-35-D AND LYING WITHIN PARCEL NO.'S 1 AND 2 AS DELINEATED AND DESCRIBED AS EASEMENT NO. 5 ON SHEETS 2 AND 4 OF DRAWING 019-063.

ALSO: RESERVING THEREFROM A CITY OF SAN DIEGO STORM DRAIN EASEMENT 30.00 FEET IN WIDTH LYING WITHIN PARCEL NO. 1 AS DELINEATED AND DESCRIBED AS EASEMENT NO. 6 ON SHEETS 2 AND 4 OF DRAWING 019-063.

ALSO: RESERVING THEREFROM AN EASEMENT FOR PUBLIC PEDESTRIAN ACCESS 24.00 FEET IN WIDTH LYING WITHIN PARCEL NO. 2 AS DELINEATED AND DESCRIBED AS EASEMENT NO. 8 ON SHEETS 2 AND 4 OF DRAWING 019-063.

ALSO: RESERVING THEREFROM A PUBLIC PEDESTRIAN ACCESS EASEMENT 35.00 FEET IN WIDTH LYING WITHIN PARCEL NO.'S 1 AND 2 AS DELINEATED AND DESCRIBED AS EASEMENT NO. 9 ON SHEETS 2 AND 4 OF DRAWING 019-063.

THE ABOVE DESCRIBED TIDELANDS LEASE AND RESERVATION AREAS ARE THOSE DELINEATED ON SAN DIEGO UNIFIED PORT DISTRICT DRAWING NO. 019-063 DATED 15 MAY 2018, AND MADE A PART OF THIS AGREEMENT.

ALL BEARINGS AND DISTANCES IN THE ABOVE LEGAL DESCRIPTION ARE GRID, AND BASED UPON THE CALIFORNIA COORDINATE SYSTEM, ZONE 6, N.A.D. 83, EPOCH 1991.35.

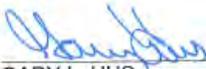

GARY L. HUS 05-18-2018
LS 7019 DATE



EXHIBIT C

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (this “**Agreement**”), dated _____, 2018 (“**Effective Date**”), is between FIFTH AVENUE LANDING, LLC, a California limited liability company (“**FAL**”), and the CITY OF SAN DIEGO, a municipal corporation (“**City**”) (individually, a “**Party**,” and collectively, the “**Parties**”).

Section 1 - Recitals

1.1 ARC Lease. FAL is the lessee under that certain *Amended, Restated and Combined Lease to San Diego Convention Center Corporation*, with the San Diego Unified Port District, a public corporation (“**District**”), dated April 6, 2010, on file in the Office of the District Clerk bearing Document No. 56486, as amended by *Amendment No. 1 to Amended, Restated and Combined Lease to San Diego Convention Center Corporation*, dated September 19, 2012, on file in the Office of the District Clerk bearing Document No. 59467 (collectively, “**ARC Lease**”). FAL’s leasehold interest under the ARC Lease includes approximately 193,232 square feet of tideland area located in the vicinity of Convention Way and Marina Park Way in the City of San Diego, California, more particularly described and delineated in Exhibit “A” to the ARC Lease (“**Existing ARC Lease Premises**”).

1.2 Assignment to SDCCC. FAL assigned its interest in the ARC Lease to the San Diego Convention Center Corporation, Inc., a California nonprofit public benefit corporation (“**SDCCC**”) on May 6, 2010.

1.3 Phase 3 PMPA. District approved San Diego Port Master Plan Amendment #6-PSD-MAJ-45-13 (Convention Center Expansion III) on or about September 20, 2012 (“**Phase 3 PMPA**”), which, among other things, approved the development and construction of a Phase III expansion of the San Diego Convention Center (“**Expansion**”). On or about October 11, 2013, the California Coastal Commission (“**CCC**”) certified the Phase 3 PMPA. On or about March 4, 2014, District adopted the CCC’s certification of the Phase 3 PMPA and on or about May 28, 2015, the CCC accepted District’s March 4, 2014 action.

1.4 Assignment to FAL. SDCCC remained the lessee of record under the ARC Lease until June 19, 2015, when it transferred all of its interest in the ARC Lease back to FAL by an assignment in lieu of foreclosure.

1.5 FAL Project. On January 6, 2016, as required by the ARC Lease, FAL submitted a proposal to District to develop an 830 to 850 room, four star hotel and 560 bed low cost visitor serving hotel on the Existing ARC Lease Premises, along with an expansion to the Marina Lease (defined below), as described in the proposed Port Master Plan Amendment and the *Draft Environmental Impact Report (EIR) for Fifth Avenue Landing Project and Port Master Plan Amendment (SCH#2016081053)* (collectively, “**FAL Project**”).

1.6 Litigation. In October 2017, FAL filed a complaint against City and SDCCC for declaratory and injunctive relief and damages as Case No. 37-2017-00037528-CU-BC-CTL in San Diego Superior Court (“**Litigation**”).

1.7 City Pursuit of Expansion. Notwithstanding SDCCC’s assignment of the ARC Lease back to FAL in June 2015 as referenced in Section 1.4, City desires to pursue development of the Expansion and acknowledges that (i) it has considered various alternatives to acquire FAL’s interest in the Existing ARC Lease Premises including, without limitation, condemnation of FAL’s interest in the Existing ARC Lease Premises and (ii) the negotiations leading to the Purchase Agreement (defined below) and this Agreement were under the threat of condemnation.

1.8 TOT Initiative. In or about January 2018, a coalition of business and labor organizations launched a petition for a proposed special tax measure titled the “For a Better San Diego” initiative (“**TOT Initiative**”) to increase the City’s transient occupancy tax and dedicate the resulting increased tax revenues for specified public benefits, including to finance construction of the Expansion and modernization of the San Diego Convention Center. It is anticipated that, if the TOT Initiative petition receives sufficient valid signatures to qualify for submittal to the City’s voters, the City’s voters will decide in a citywide election on November 6, 2018, whether to pass the ballot measure resulting from the TOT Initiative petition.

1.9 Purchase Agreement. The Parties and District have entered into the Purchase and Sale Agreement and Escrow Instructions dated June __, 2018 (“**Purchase Agreement**”) with respect to the Existing ARC Lease Premises and other matters. The Purchase Agreement, among other things, outlines two potential alternative transactions, Alternative A and Alternative B. Alternative A is a two-step transaction among the Parties and District, which will cause (i) the transfer from FAL to District of the Existing ARC Lease Premises, as well as other leased premises defined in the Purchase Agreement as the Marina Landside Area (collectively, “**FAL Property**”) and (ii) the transfer from District to City of a portion of the FAL Property defined in the Purchase Agreement as the “**New ARC Lease Premises**” and related property interests (collectively, “**Expansion Property**”), for construction of the Expansion. Closing of the Alternative A transaction is conditioned upon, among other things, the approval of the ballot measure described in Section 1.8. The Alternative B closing takes place only if the conditions to the Alternative A closing are not satisfied and will not result in the transfer of the Expansion Property to City for construction of the Expansion.

1.10 Adequate Consideration. The Parties acknowledge that this Agreement is a material part of the Purchase Agreement and that the Parties intend the Purchase Agreement (including this Agreement) to memorialize a global resolution of all past and present disputes between them related to the Litigation, the Existing ARC Lease Premises, the Expansion, the FAL Project, and all other matters addressed in the Purchase Agreement (including this Agreement). The Parties further acknowledge that they will exchange fair and adequate consideration with respect to the global resolution memorialized in the Purchase Agreement (including this Agreement). The fair and adequate consideration is based on various terms described in this Agreement and the Purchase Agreement, including, but not limited to: (a) FAL is agreeing to dismiss, with prejudice, the Litigation in accordance with this Agreement, and if the Litigation had not

been dismissed, the Parties acknowledge the Litigation could have resulted in a significant award of money damages, in a to-be-determined amount, against City or SDCCC, or both; (b) the Parties are agreeing to mutually release each other from claims as described in this Agreement; (c) under the Purchase Agreement, FAL is agreeing to sell/quitclaim the FAL Property to District in exchange for District's payment of a negotiated purchase price that is within a reasonable range of the current fair market value for the FAL Property, and City is agreeing to purchase the Expansion Property from District at the same negotiated purchase price; and (d) also under the Purchase Agreement, District (using funds made available by City) is agreeing to reimburse FAL's land use entitlement costs related to the FAL Project, which FAL incurred in fulfilling its obligations under the ARC Lease after SDCCC transferred the ARC Lease back to FAL in June 2015.

The Parties desire to enter into this Agreement to dismiss the Litigation with prejudice, provide a mutual release of all claims between the Parties, and memorialize certain other agreements of the Parties (as well as SDCCC with respect to Section 2.6 below). For good and valuable consideration, the receipt and sufficiency of which are acknowledged, and in consideration of the mutual covenants and promises of the Parties set forth in this Agreement and the Purchase Agreement, the Parties agree as follows:

Section 2 - Agreement

2.1 Conditions Precedent. The effectiveness of this Agreement is conditioned upon and subject to the following events: (a) the San Diego City Council's approval of both this Agreement and the Purchase Agreement; (b) the signature and delivery of this Agreement by the Parties in accordance with Section 2.4.1 of the Purchase Agreement; (c) the signature and delivery of the Purchase Agreement by the Parties and District; and (d) the release of the Released Initial Option Payment to FAL in accordance with Section 2.5 of the Purchase Agreement. If any of the foregoing events fails to occur for any reason, this Agreement will have no force or effect. The Effective Date of this Agreement will be the date that Escrow Agent (as defined in the Purchase Agreement) delivers the fully signed original of this Agreement to the Parties in accordance with Section 2.5.2 of the Purchase Agreement.

2.3 Dismissal of Litigation. On the Effective Date, FAL shall dismiss the Litigation with prejudice and shall deliver a copy of the dismissal to City.

2.4 Additional Necessary Actions. The Parties shall take such additional actions, including preparing and signing such additional documents, as necessary to implement and carry out this Agreement.

2.5 Attorneys' Fees and Costs. Each Party shall bear its own attorneys' fees and costs incurred in connection with the Litigation.

2.6 Mutual Releases.

2.6.1 For purposes of this Section 2.6 only, the word "Parties" shall include FAL, on the one hand, and the City and SDCCC, on the other hand. The Parties release each other and each of their respective past and present officials, representatives, agents, employees, consultants, officers, directors, attorneys, shareholders, affiliates and subsidiaries from all past and present claims, damages, liability or other relief of any sort

arising from facts or circumstances relating to the Litigation, the FAL Project, the Expansion, or any threats or acts in furtherance of condemnation of any property, including without limitation claims based on information disclosed by any Party to any other Party during the course of the Litigation, except: (i) such claims or rights as are reserved or created under this Agreement or the Purchase Agreement; and (ii) such contractual obligations created under this Agreement or the Purchase Agreement that are required to be fulfilled after such agreements become effective under their respective terms. The Parties covenant not to sue, or sue further, each other with respect to any matter within the scope of the mutual release in this Section 2.6.

2.6.2 The Parties specifically waive the provisions of California Civil Code Section 1542, which states as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

2.6.3 In connection with the release in Section 2.6.1 and to the extent permitted by law, each Party agrees that (i) it realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to claims or controversies which are presently unknown, unanticipated and unsuspected, (ii) the release in Section 2.6.1 has been negotiated and agreed upon in light of that realization, and (iii) each Party nevertheless intends to effectuate the release in Section 2.6.1 and acknowledges that such release is a material portion of the consideration given by each Party under this Agreement.

BY INITIALING THIS PROVISION IN THE SPACES BELOW, EACH PARTY AFFIRMS THE AGREEMENTS CONTAINED IN THIS SECTION 2.6 AND AGREES THAT THE (A) IT HAS READ AND FULLY UNDERSTANDS THE PROVISIONS OF THIS SECTION 2.6, (B) IT HAS HAD THE CHANCE TO ASK QUESTIONS OF ITS COUNSEL ABOUT ITS MEANING AND SIGNIFICANCE, AND (C) IT HAS ACCEPTED AND AGREED TO THE TERMS SET FORTH IN THIS SECTION 2.6.

FAL: _____ **CITY:** _____ **SDCCC:** _____

2.7 Jurisdiction to Enforce. This Agreement may be enforced by the San Diego Superior Court pursuant to California Code of Civil Procedure section 664.6. The Parties agree to request the Court to retain jurisdiction, notwithstanding dismissal of the Litigation with prejudice including, without limitation, enforcement of Section 2.8, below.

2.8 EFFECT OF FAILURE OF ALTERNATIVE A CLOSING. THE PARTIES ACKNOWLEDGE THAT THE ALTERNATIVE A CLOSING AS DEFINED IN THE PURCHASE AGREEMENT COULD FAIL TO OCCUR AS A RESULT OF FAL'S DEFAULT UNDER THE PURCHASE AGREEMENT. FOR EXAMPLE, THE ALTERNATIVE A CLOSING COULD FAIL TO OCCUR IF FAL FAILS TO PERFORM ANY COVENANT OR OTHER PERFORMANCE OBLIGATION UNDER

THE PURCHASE AGREEMENT, OR IF ANY CIRCUMSTANCES ARISE THAT CAUSE ANY OF FAL'S REPRESENTATIONS AND WARRANTIES IN THE PURCHASE AGREEMENT TO BE UNTRUE. AS USED IN THIS SECTION 2.8, EACH OF THE FOLLOWING EVENTS IS A "CARVE-OUT EVENT": (I) FAL'S DEFAULT UNDER THE PURCHASE AGREEMENT; (II) THE INABILITY OF TITLE INSURER TO ISSUE TITLE INSURANCE POLICIES TO DISTRICT AND CITY IN COMPLIANCE WITH SECTIONS 9.1.2 OR 9.1.3 OF THE PURCHASE AGREEMENT; OR (III) THE INABILITY OR FAILURE OF FAL TO TIMELY DELIVER ANY NO MATERIAL CHANGE NOTICE IN ACCORDANCE WITH SECTION 2.8 OF THE PURCHASE AGREEMENT. IF THE ALTERNATIVE A CLOSING FAILS TO OCCUR OTHER THAN AS A RESULT OF A CARVE-OUT EVENT, THEN SECTIONS 2.8.1 AND 2.8.2 SHALL APPLY AS FOLLOWS:

2.8.1 NO PURSUIT OF EXPANSION PROJECT ON EXISTING ARC LEASE PREMISES. ALTHOUGH FAL WILL BE ENTITLED TO RETAIN ALL OF THE DISTRICT OPTION PAYMENTS IT ACTUALLY RECEIVES PURSUANT TO THE PURCHASE AGREEMENT, FAL WILL NOT BE ENTITLED TO RECEIVE ADDITIONAL DAMAGES FROM CITY BECAUSE MONEY DAMAGES ARE NOT AN ADEQUATE REMEDY AND BECAUSE FAL'S DAMAGES FOR CITY'S BREACH CANNOT BE MEASURED, COMPENSATED, RESTORED OR REPAIRED. THEREFORE, IF THE ALTERNATIVE A CLOSING FAILS TO OCCUR OTHER THAN AS A RESULT OF A CARVE-OUT EVENT, IN ADDITION TO FAL'S RETENTION OF ALL OF THE DISTRICT OPTION PAYMENTS IT ACTUALLY RECEIVES PURSUANT TO THE PURCHASE AGREEMENT, COMMENCING ON THE EFFECTIVE DATE AND CONTINUING UNTIL DECEMBER 31, 2026, CITY AND ITS OFFICERS, AGENTS, EMPLOYEES AND CONSULTANTS (EACH ACTING IN THEIR OFFICIAL CAPACITIES) WILL CEASE AND DESIST FROM ALL ACTIONS IN FURTHERANCE OF DEVELOPING, CONSTRUCTING, FINANCING AND OPERATING THE EXPANSION ON THE EXISTING ARC LEASE PREMISES INCLUDING, WITHOUT LIMITATION, (I) ALL DESIGN AND PRECONSTRUCTION ACTIVITIES RELATED TO THE EXPANSION ON THE EXISTING ARC LEASE PREMISES, (II) THE ISSUANCE OF REQUESTS FOR QUALIFICATIONS OR PROPOSALS FOR ARCHITECTS, GENERAL CONTRACTORS AND CONSTRUCTION MANAGERS AT RISK AND OTHER DESIGN AND CONSTRUCTION SKILL SETS RELATED TO THE EXPANSION ON THE EXISTING ARC LEASE PREMISES, (III) THE UNDERTAKING OF ANY OFFICIAL ACTIONS INCLUDING THE NEGOTIATION AND ISSUANCE OF CONTRACTS AND OTHER CITY COMMITMENTS WITH THE PURPOSE OF ACQUIRING POSSESSION AND CONTROL OF THE EXISTING ARC LEASE PREMISES AND THE DEVELOPMENT AND IMPLEMENTATION OF THE EXPANSION ON THE EXISTING ARC LEASE PREMISES AND (IV) INTERFERING WITH OR IMPAIRING FAL'S CONTRACTUAL RELATIONS WITH DISTRICT REGARDING DEVELOPMENT OF THE FAL PROJECT ON THE EXISTING ARC LEASE PREMISES. FOR THE AVOIDANCE OF DOUBT, THE PARTIES ACKNOWLEDGE THAT THE FOREGOING PROHIBITION SHALL BE BROADLY CONSTRUED TO PROTECT AND PRESERVE FAL'S OPPORTUNITY TO PURSUE FINAL

APPROVAL OF THE LAND USE ENTITLEMENTS FOR THE FAL PROJECT. IF CITY ELECTS TO PURSUE AN EXPANSION OF THE SAN DIEGO CONVENTION CENTER BEFORE DECEMBER 31, 2026, IT WILL DO SO IN A WAY THAT HAS NO EFFECT OR IMPLICATION ON THE EXISTING ARC LEASE PREMISES OR THE FAL PROJECT. THE FOREGOING PROHIBITION WILL NOT:

2.8.1.1 PREVENT CITY FROM DEFENDING THE LAND USE ENTITLEMENTS OF THE EXPANSION IN ANY PENDING OR FUTURE LITIGATION OR ANY ADMINISTRATIVE PROCEEDING;

2.8.1.2 PREVENT OR IMPAIR ANY CITY OFFICIAL FROM TAKING A POSITION OR EXPRESSING A POSITION PUBLICLY REGARDING THE TOT INITIATIVE, IF THE TOT INITIATIVE QUALIFIES FOR THE BALLOT;

2.8.1.3 PREVENT CITY FROM ENGAGING IN ALL ACTIONS UNDERTAKEN AFTER DECEMBER 31, 2024 NECESSARY TO SECURE A COASTAL DEVELOPMENT PERMIT AND FINANCING RELATED TO THE EXPANSION; OR

2.8.1.4 PREVENT CITY FROM EXERCISING THE POWER OF EMINENT DOMAIN IN COMPLIANCE WITH APPLICABLE LAWS AND, IF SUCCESSFUL IN ACQUIRING THE EXISTING ARC LEASE PREMISES ON THAT BASIS, PURSUING AN EXPANSION OF THE SAN DIEGO CONVENTION CENTER ON THE EXISTING ARC LEASE PREMISES.

2.8.2 NO OPPOSITION TO FAL PROJECT. CITY WILL NOT OPPOSE THE FAL PROJECT DURING ANY STAGE OF THE ENTITLEMENT PROCESS IN HEARINGS WITH DISTRICT AND THE CALIFORNIA COASTAL COMMISSION. THE FOREGOING NOTWITHSTANDING, CITY WILL RETAIN ITS DISCRETION TO APPROVE OR DISAPPROVE, IN ITS SOLE AND ABSOLUTE DISCRETION, ANY DISCRETIONARY APPROVALS REQUIRED FROM CITY REGARDING THE FAL PROJECT.

BY INITIALING THIS PROVISION IN THE SPACES BELOW, CITY AND FAL EACH SPECIFICALLY AFFIRM THEIR RESPECTIVE AGREEMENTS CONTAINED IN THIS SECTION 2.8 AND AGREE THAT THE FOREGOING PROHIBITIONS ARE REASONABLE CONSIDERING THE FACTS AND CIRCUMSTANCES AS THEY EXIST ON THE EFFECTIVE DATE OF THIS AGREEMENT.

CITY: _____ **FAL:** _____

2.9 Miscellaneous Provisions Regarding FAL Development and Support of Expansion. In this Section 2.9, capitalized terms will have the meanings assigned in the Purchase Agreement unless otherwise specified, provided that the term “Parties” shall refer collectively to City and FAL (and not District).

2.9.1 Flag Lot. The Parties understand and acknowledge that, although the New ARC Lease Premises will include approximately 263,614 square feet as shown in Exhibit E to the ARC Lease (plus portions of the Hilton Park and Convention Way),

the Existing ARC Lease Premises does not include the Marina Landside Area, which is part of the leased premises of the Marina Lease and used in FAL's operations under the Marina Lease. The ARC Lease contemplated that, pursuant to paragraph 17 of Exhibit E to the ARC Lease, the Marina Landside Area will be included in City's long-term leasehold interest in the New ARC Lease Premises. The Draft EIR for the FAL Project, referenced in Section 1.5, analyzed the Marina's landside support facility's needs, which require approximately 31,563 square feet of tideland area for office, marina club, truck loading, parking and a bus turn-around to support current Marina and WTC operations. Following the Alternative A Closing, those facilities will be constructed and operated on the Flag Lot in concert with other compatible uses determined by District, and any future development must incorporate these facilities to ensure viability of the Marina Lease and the WTC. Exhibit E to the ARC Lease provides that the City has the option to cause the landside and underground improvements to be moved to a mutually agreeable location within the vicinity of the New ARC Lease Premises subject to certain conditions precedent, including, without limitation, the City bearing the cost of planning and constructing the relocated WTC space and underground improvements, consistent with the scope and magnitude of the current design of the Existing WTC, and the relocated WTC space will include administrative offices and ticket booths facing the promenade, twelve (12) parking spaces and a bus turnaround, a mutually agreeable size (not to exceed 16,296 square feet in the aggregate) and location and appropriate easements for ingress and egress. The Parties have previously identified the Flag Lot as a mutually acceptable location to relocate the landside and underground improvements required to serve the Marina Lease and the WTC ("**Marina Relocation**"). Therefore, as a condition to FAL's vacation of the Marina Landside Area to accommodate the Marina Relocation and the Expansion, City shall pay FAL as the lessee under the Marina Lease, and not as the lessee under the ARC Lease, FAL's actual, reasonable costs of the Marina Relocation consistent with Exhibit E to the ARC Lease ("**Relocation Costs**"). City shall provide written notice to FAL at least one hundred twenty (120) days before City anticipates needing FAL to vacate the Marina Landside Area to accommodate the Marina Relocation and the Expansion. Promptly after City's delivery of such notice, the Parties shall exchange information pertaining to the Relocation Costs and mutually determine a reasonable estimate of the Relocation Costs, including a reasonable contingency amount in accordance with prevailing construction industry standards ("**Estimated Relocation Costs**"). City, at its option, may elect to pay the Relocation Costs to FAL by depositing funds equal to the Estimated Relocation Costs in an escrow or fund control account ("**Relocation Escrow**") administered by an independent agent. If City makes this election, the Parties will sign written instructions to the independent agent to (i) disburse Relocation Escrow funds to FAL in one or more increments upon FAL's provision of one or more written requests for reimbursement of Relocation Costs supported by invoices and other documents that substantiate the Relocation Costs incurred by FAL to City's reasonable satisfaction, and (ii) disburse the balance (if any) of Relocation Escrow funds to City after all of FAL's reimbursement requests have been processed. Upon City's deposit of the Estimated Relocation Costs in the Relocation Escrow with appropriate written instructions to the independent agent, FAL shall promptly vacate the Marina Landside Area. In the event of a dispute between the Parties regarding the amount of the Estimated Relocation Costs or the payment of the Relocation Costs, the dispute will be

submitted to binding arbitration under the rules of the American Arbitration Association. The prevailing party in such arbitration will be entitled to reasonable attorneys' fees and costs incurred in enforcing any arbitration award or engaging in any court proceedings to enforce the arbitration.

2.9.2 Flag Lot Development. FAL, as the lessee under the Marina Lease and not as the lessee under the ARC Lease, may respond to District's future request for proposals by proposing a project or combination of projects (collectively, "**Flag Lot Development**") on the Flag Lot and the leased premises of that certain *Lease* between CHE, Inc., a Louisiana corporation and District, dated November 10, 1981 on file in the Office of the District Clerk bearing Document No. 14282, relating to the Joe's Crab Shack restaurant site. The Flag Lot Development may include, without limitation, a convention center hotel, a new WTC, other marina supporting facilities as described in the ARC Lease and other uses consistent with tidelands restrictions and the California Coastal Act. With respect to the Flag Lot Development, City agrees:

2.9.2.1 Amendment of Management Agreement. If the Flag Lot Development includes a hotel, including without limitation a convention center hotel, City will consider in good faith the approval of an amendment to the Management Agreement permitting the Flag Lot Development to have access to: (i) SDCCC's meeting rooms and banquet facilities in reasonable proximity to the Flag Lot Development at rates and other terms equal to those granted by SDCCC to other hotel operators and (ii) dedicated parking spaces in the San Diego Convention Center parking garage in a number sufficient to satisfy District's standard parking requirements for hotels. City's consideration of the Management Agreement amendment in accordance with the preceding sentence shall be subject to applicable law, any covenant restrictions that now exist or may be imposed through public bond financing, and other terms to be negotiated. FAL acknowledges that any Management Agreement amendment will require approval by the governing bodies of both City and District in their respective sole and absolute discretion.

2.9.2.2 No Opposition to Flag Lot Development. Provided the Flag Lot Development does not unreasonably impair the construction or operation of the Expansion, City will not oppose FAL's efforts to entitle the Flag Lot Development. The foregoing notwithstanding, City will retain its discretion to approve or disapprove, in its sole and absolute discretion, any discretionary approvals required from City regarding the Flag Lot Development.

2.9.2.3 Marina Lease Base Rent. To the extent necessary to offset impacts of City's construction of the Expansion on FAL's operation of the marina during the Marina Lease term, City will pay FAL's rent to District under the Marina Lease in a total amount not to exceed \$244,920.00. Before the Commencement of Construction of the Expansion, City will deposit into an escrow or fund control account ("**Marina Rent Escrow**") administered by an independent agent a sum of money that equals two years of rent owed by FAL to the District under the Marina Lease, not to exceed \$244,920.00 ("**Marina Rent Amount**"). The Parties will sign escrow instructions on or before the Commencement of Construction of the Expansion authorizing the independent agent to disburse Marina Rent Escrow funds as follows: (i) FAL will receive reimbursement from Marina Rent Escrow funds in monthly increments for each month (or prorated month)

that construction of the Expansion has substantially impeded, or caused closure of, FAL's operation of the marina during the Marina Lease term, with each reimbursement amount equal to the monthly rental amount actually paid by FAL to District under the Marina Lease; and (ii) City will receive a refund of any balance of the Marina Rent Escrow funds that remains after substantial completion of construction of the Expansion. City will not be obligated to increase or replenish Marina Rent Escrow funds at any time.

2.9.3 FAL Support of Expansion. Upon the Effective Date of this Agreement, FAL shall (i) dissolve its political action committee organized to oppose implementation of the Expansion and (ii) not contribute any funding, or directly expend any funds, to oppose implementation of the Expansion. In addition, after the Alternative A Closing occurs, FAL (at no cost) shall support City's efforts to implement the Expansion.

Section 3 - General Provisions

3.1 Inadmissibility of Evidence. FAL agrees that neither the existence of this Agreement nor any provision of this Agreement will form the basis of, or be admissible in, any action or proceeding by FAL (or any person or entity affiliated with FAL) against District, City or SDCCC, including, without limitation, an action for pre-condemnation or condemnation damages. In addition, FAL agrees that all documents and other written or testimonial evidence presented at or before any public hearing for approval of this Agreement, or disclosed publicly by District, City or SDCCC in response to a Public Records Act request or otherwise, related to the value of the FAL Property or the New ARC Lease Premises (each as defined in the Purchase Agreement), or any portion thereof, including, without limitation, appraisals, economic studies and analyses of financial values, shall be inadmissible as evidence in any action or proceeding by FAL (or any person or entity affiliated with FAL). The foregoing prohibition on admissibility of evidence will not preclude the admission of evidence of this Agreement or its contents in any action involving a Third-Party Claim (as defined in the Purchase Agreement) or an action by a third party against District and/or City defended by FAL pursuant to its indemnity obligations under the Purchase Agreement.

3.2 No Admission. This Agreement is in compromise of disputed claims and is not an admission of liability for all or any part of any such claims by any Party. No provision of this Agreement shall be introduced as evidence in any legal proceeding in an effort to establish any Party's liability.

3.3 Applicable Law. This Agreement shall be governed by, construed and enforced in accord with the laws of the State of California.

3.4 Attorneys' Fees and Costs for Breach or Enforcement. The prevailing Party in any action involving a dispute arising out of any alleged breach of this Agreement or any enforcement proceeding concerning this Agreement shall be entitled to recover all costs, expenses and attorneys' fees incurred in connection with the action or proceeding. The aggregate amount recoverable by one Party from the other Party under this Section 3.4 shall not exceed One Hundred Fifty Thousand Dollars (\$150,000.00).

3.5 Persons Bound and Benefited. This Agreement shall be binding upon and inure to the benefit of the Parties, as well as all their past and present employees,

representatives, agents, consultants, lawyers, assigns, successors, parents, partners, affiliates and subsidiaries.

3.7 Integration. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement. This Agreement expressly includes the Recitals set forth in Section 1 above. Nothing in this Agreement is intended to diminish or affect the rights and obligations of the Parties under the Purchase Agreement.

3.8 Agreement Understood. The Parties certify they have read this Agreement, consulted with and received legal advice from their respective attorneys concerning this Agreement, and understand and agree to the terms of this Agreement.

3.9 Authority. Each person executing this Agreement warrants that the signing Party is the sole owner of the rights and obligations referred to and released herein, he or it has not assigned or otherwise transferred any interest in any such rights or obligations, and he or she is authorized to sign this Agreement on behalf of any entity for whom he or she is acting, including any necessary authorization from or by the City Council.

3.10 City Appropriation of Funds. To the extent this Agreement imposes on City any financial obligation or payment obligation, including without limitation any obligation under Section 2.9 above, City's performance of such obligation is subject to and contingent upon the City Council's appropriation of funds in any fiscal year to pay such obligation (each a "**Contingent Obligation**"). Contingent Obligations shall be payable solely from eligible moneys held in a special fund and segregated from the City's General Fund ("**Special Funds**"). Special Funds may only be used to pay Contingent Obligations if and when appropriated for that purpose. The City shall not be obligated to pay Contingent Obligations from the City's General Fund or from tax revenues of the City that would otherwise be deposited in the General Fund. If Voter Approval of the Ballot Measure occurs (as defined and described in Section 1.8 of the Purchase Agreement), Special Funds may include transient occupancy tax revenues dedicated to a special fund for the Expansion and other Convention Center purposes. City shall use best efforts to obtain the City Council's timely appropriation of funds with respect to each Contingent Obligation. However, the City Council has no obligation to make funding appropriations for any Contingent Obligation, in light of City's other funding priorities and budget constraints in the applicable future fiscal year. All City budget decisions are subject to the discretion of the Mayor and the City Council. City shall notify FAL in writing at the earliest possible date if City determines that funds will not be timely appropriated for any Contingent Obligation. This Agreement is subject to the budget and fiscal provisions of the San Diego Charter. No Contingent Obligation shall constitute a debt of the City within the meaning of any debt limitation or restriction in state or local law, including the San Diego Charter.

[SIGNATURES APPEAR ON NEXT PAGE]

3.11 Counterparts. This Agreement may be signed in one or more counterparts, all of which taken together shall constitute a single original document. Electronically transmitted signatures affixed to a counterpart shall have the force and effect of an original signature.

APPROVED:

FIFTH AVENUE LANDING, LLC,
a California limited liability company

CITY OF SAN DIEGO,
a municipal corporation

By: _____
Ray A. Carpenter
Its: Managing Member

By: _____

Name: _____

Title: _____

By: San Diego California Properties, LLC,
Its: Managing Member

Date: _____, 2018

By: _____
Art E. Engel
Its: Managing Member

Approved as to form:

MARA W. ELLIOTT, City Attorney

By: _____

Kevin Reisch

Senior Chief Deputy City Attorney

*Signed by SDCCC to evidence its agreement to be bound by the provisions of Section 2.6 of this Agreement.

SAN DIEGO CONVENTION CENTER
CORPORATION, INC., a California
nonprofit public benefit corporation

By: _____

Name: _____

Title: _____

EXHIBIT D-1

RECORDING REQUESTED BY

San Diego Unified Port District

WHEN RECORDED MAIL TO:

Ms. Randa Coniglio

President/CEO

San Diego Unified Port District

3165 Pacific Highway

San Diego, CA 92101

Telephone: (619) 686-6200

Email: rconiglio@portofsandiego.org

*No Doc Tax Due – R&T Code 11922**(Space Above For Recorder's Use)**No Fee For Govt Agency – Govt Code 27383***ASSIGNMENT AND ASSUMPTION OF LEASE
(ARC LEASE) AND CONSENT TO ASSIGNMENT**

THIS ASSIGNMENT AND ASSUMPTION OF LEASE (ARC LEASE) AND CONSENT TO ASSIGNMENT (“**Assignment**”) is made as of the _____ day of _____, 201__, by and between FIFTH AVENUE LANDING, LLC, a California limited liability company (“**ASSIGNOR**”), and the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (“**ASSIGNEE**”).

W I T N E S S E T H:

A. District and San Diego Convention Center Corporation (“**SDCCC**”) entered into that certain *Amended, Restated and Combined Lease to San Diego Convention Center Corporation* dated April 6, 2010, on file in the Office of the Clerk of the District bearing Document No. 56486 (“**Original ARC Lease**”), for approximately 193,232 square feet of tideland area located in the vicinity of Convention Way and Marina Park Way in the City of San Diego, California, more particularly described and delineated in the Original ARC Lease and in **Exhibit 1** attached hereto (“**Land**”). The Original ARC Lease was subject to a Deed of Trust and Assignment of Rents dated May 6, 2010 that encumbered the SDCCC’s leasehold interest in the Original ARC Lease (District Document No. 56485) (“**Deed of Trust**”).

B. In 2012, the District and SDCCC entered into that certain *Amendment No. 1 to Amended, Restated and Combined Lease to San Diego Convention Center Corporation*, dated September 19, 2012, on file in the Office of the Clerk of the District bearing Document No. 59467 (“**Amendment No. 1**; the Original ARC Lease, as so amended, the “**ARC Lease**”).

C. Assignor is the successor lessee of the ARC Lease, as a result of an assignment in lieu of foreclosure of the Deed of Trust. Assignor executed and delivered

to Assignee a Ratification of Amendment No. 1 to ARC Lease dated _____, 2018.

D. Assignor and Assignee along with the City of San Diego, a municipal corporation, entered into that certain Purchase and Sale Agreement and Escrow Instructions, dated as of _____, 201__ (“PSA”), respecting the sale of certain property, including Assignor’s interest in the ARC Lease.

E. Under the PSA, Assignor is obligated to assign to Assignee any and all of Assignor’s estate, right, title and interest as “Lessee” in and to the ARC Lease and the Land.

F. It is the intent of both Assignor and Assignee that Assignee’s estate as Lessee under this Assignment not be merged into Assignee’s fee interest in the Land and instead that Assignee’s leasehold interest transferred to Assignee hereunder remain as a separate estate and interest.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Assignor assigns and delivers to Assignee all of Assignor’s estate, right, title and interest in and to the ARC Lease, and Assignee accepts such assignment.

2. Subject to the provisions of Section 5 below, Assignee fully and forever releases Assignor from all of the terms, covenants, conditions and obligations imposed upon Assignor as Lessee under the ARC Lease accruing or arising on or after the date this Assignment is recorded in the San Diego County Recorder’s Office.

3. Assignor represents that the ARC Lease is in full force and effect and that, to Assignor’s knowledge, no default exists under the ARC Lease, nor any acts or events which, with the passage of time or the giving of notice, or both, would constitute a default under the ARC Lease.

4. The rights and interests of Assignee as current owner of the fee simple interest in the Land are separate and distinct from the rights and interests of Assignee as the assignee of the ARC Lease under this Assignment. Assignor and Assignee intend that, as a result of this Assignment and notwithstanding the merger doctrine or any similar or other legal principle, (i) no merger of Assignee’s fee simple interest in the Land and Assignee’s rights and interests in the ARC Lease will occur and (ii) no extinguishment of the leasehold interest in the Land created by the ARC Lease will occur. Assignor and Assignee agree that the provisions of this Paragraph 4 are intended to ensure the successful completion of a real property transaction between Assignee and the City of San Diego, a municipal corporation (“City”). Under such transaction, substantially concurrent with this Assignment, Assignee will assign to City the leasehold interest under the ARC Lease subject to an amendment of the ARC Lease between Assignee and City that modifies the real property covered by the ARC Lease. Assignor and Assignee shall not take any actions that would frustrate the stated intent of this Paragraph 4.

5. Assignor agrees to indemnify and defend Assignee from and against for any and all liability, claims, judgments, damages, proceedings, orders, directives, costs, including reasonable attorneys' fees, or demands (each a “Claim” and collectively, “Claims”) arising directly or indirectly from the failure of Assignor to fulfill

Assignor's obligations under the ARC Lease accruing or arising during the period prior to the date of recordation of this Assignment. Assignor confirms and agrees that all indemnity obligations contained in the ARC Lease, including, but not limited to the indemnity obligations contained in Paragraphs 7, 21, 30 42(f) and 44(f) and (g) of the Original ARC Lease, continue in effect with respect to any and all Claims that Assignee may incur that are based on matters covered by any such indemnity obligation and where the incident or matter on which such Claim is based occurred or accrued before the date that this Assignment is recorded in the San Diego County Recorder's office, regardless of when such Claim is first asserted.

6. This Assignment may be signed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

7. This Assignment shall be binding upon and inure to the benefit of the successors, assignees, personal representatives, heirs and legatees of all the respective parties hereto.

8. This Assignment shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California.

9. By signing this Assignment, Assignee certifies that the interest in real property conveyed by this Assignment is hereby accepted by order of the San Diego Unified Port District pursuant to authority conferred by resolution of the Board of Port Commissioners, and the Assignee consents to the foregoing Assignment and further consents to recordation thereof by its duly authorized officer.

[Signatures of the Following Page]

IN WITNESS WHEREOF, Assignor and Assignee have signed and delivered this Assignment as of the day and year first written above.

ASSIGNOR:

ASSIGNEE:

FIFTH AVENUE LANDING, LLC,
a California limited liability company

SAN DIEGO UNIFIED PORT DISTRICT,
a Public Corporation

By: _____
Ray A. Carpenter
Its: Managing Member

By: _____

Name: _____

Its: _____

By: San Diego California Properties, LLC,
Its: Managing Member

Approved as to form and legality:

By: _____
Art E. Engel
Its: Managing Member

GENERAL COUNSEL

By: _____

Date: _____, 2018

Name: _____
Assistant/Senior Deputy
General Counsel

Date: _____, 2018

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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

Signer is Representing: _____



Signer's Name _____

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

Signer is Representing: _____



STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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- Partner -- Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name _____

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

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

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COUNTY OF SAN DIEGO)

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Notary Public, personally appeared _____,
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I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

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Signer's Name _____

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

Signer is Representing: _____



SAN DIEGO UNIFIED PORT DISTRICT ACCEPTANCE

This is to certify that the interest in real property conveyed by this instrument dated _____, 201__ from Fifth Avenue Landing, LLC to the San Diego Unified Port District, a public corporation is hereby accepted by order of the San Diego Unified Port District on _____, 201__ pursuant to authority conferred by resolution of the San Diego Unified Port District adopted on June 12, 2018 and the Assignee consents to recordation thereof by its duly authorized officer.

SAN DIEGO UNIFIED PORT DISTRICT,
a Public Corporation

By: _____

Name: _____

Its: _____

Approved as to form and legality:

GENERAL COUNSEL

By: _____

Name: _____

Assistant/Senior Deputy
General Counsel

Date: _____, 201__

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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- Partner -- Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____



Signer's Name _____

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

Signer is Representing: _____



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COUNTY OF SAN DIEGO)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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

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- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____



Signer's Name _____

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

Signer is Representing: _____



**EXHIBIT 1
TO
ASSIGNMENT OF LEASE**

LEGAL DESCRIPTION OF THE LAND

ALL THAT CERTAIN PORTION OF LAND CONVEYED TO THE SAN DIEGO UNIFIED PORT DISTRICT BY THAT CERTAIN ACT OF LEGISLATURE OF THE STATE OF CALIFORNIA PURSUANT TO CHAPTER 67, STATUTES OF 1962, FIRST EXTRAORDINARY SESSION, AS AMENDED, AND DELINEATED ON THAT CERTAIN MISCELLANEOUS MAP NO. 564, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER ON MAY 28, 1976, FILE NO. 76-164686, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL NO. 1 (LAND AREA)

COMMENCING AT A 3" DIAMETER BRASS DISK MONUMENT STAMPED S.D.U.P.D. NO. 14 AS SHOWN ON R.O.S. NO. 16668, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY JULY 25, 2000; THENCE LEAVING SAID MONUMENT SOUTH 39°31'53" EAST A DISTANCE OF 74.59 FEET (CALCULATED) TO THE **TRUE POINT OF BEGINNING** OF PARCEL NO. 1, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT 556.00 FOOT RADIUS CURVE, CONCAVE TO THE NORTH, A RADIAL TO SAID POINT BEARS SOUTH 00°22'28" EAST FROM THE CENTER OF SAID CURVE; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 04°42'58" AN ARC DISTANCE OF 45.77 FEET TO A POINT OF REVERSE CURVATURE, THE COMMON RADIAL OF WHICH BEARS SOUTH 05°05'26" EAST FROM THE CENTER OF SAID CURVE; THENCE SOUTHEASTERLY ALONG THE ARC OF A 32.00 FOOT RADIUS CURVE CONCAVE TO THE SOUTHWEST THROUGH A CENTRAL ANGLE OF 44°46'18" AN ARC DISTANCE OF 25.00 FEET TO A POINT ON THE SOUTHWESTERLY FACE OF CURB OF A STREET COMMONLY KNOWN AS CONVENTION WAY; THENCE ALONG SAID FACE OF CURB LINE SOUTH 50°19'08" EAST A DISTANCE OF 427.66 FEET TO A POINT HEREINAFTER KNOWN AS POINT "A"; THENCE LEAVING SAID FACE OF CURB LINE SOUTH 39°40'52" WEST A DISTANCE OF 83.00 FEET; THENCE SOUTH 50°19'08" EAST A DISTANCE OF 112.62 FEET; THENCE SOUTH 39°40'52" WEST A DISTANCE OF 110.00 FEET TO A POINT ON THE U.S. BULKHEAD LINE AS SAID U.S. BULKHEAD LINE IS NOW ESTABLISHED FOR THE BAY OF SAN DIEGO AND DELINEATED ON MAP ENTITLED "HARBOR LINES, SAN DIEGO BAY, CALIFORNIA FILE NO. (D.O. SERIES) 426" APPROVED BY THE SECRETARY OF THE ARMY, APRIL 29, 1963, AND FILED IN THE OFFICE OF THE DISTRICT ENGINEER, LOS ANGELES, CALIFORNIA; THENCE LEAVING SAID U.S. BULKHEAD LINE AND CONTINUING SOUTH 39°40'52" WEST A DISTANCE OF 1.00 FOOT; THENCE PARALLEL WITH SAID U.S. BULKHEAD LINE NORTH 50°19'08" WEST A DISTANCE OF 297.61 FEET; THENCE SOUTH 39°40'52" WEST A DISTANCE OF 1.00 FOOT; THENCE PARALLEL WITH SAID U.S. BULKHEAD LINE NORTH 50°19'08" WEST A DISTANCE OF 179.41 FEET; THENCE SOUTH 39°40'52"

Assignment and Assumption of Lease Agreement

EXHIBIT 1

WEST A DISTANCE OF 198.00 FEET; THENCE NORTH 50°19'08" WEST A DISTANCE OF 177.32 FEET TO A POINT ON THE SOUTHEASTERLY FACE OF CURB LINE OF A STREET COMMONLY KNOWN AS MARINA PARK WAY; THENCE ALONG SAID FACE OF CURB LINE NORTH 39°40'52" EAST A DISTANCE OF 200.00 FEET TO A POINT ON SAID U.S. BULKHEAD LINE; THENCE LEAVING SAID U.S. BULKHEAD LINE AND CONTINUING ALONG SAID FACE OF CURB NORTH 39°40'52" EAST A DISTANCE OF 28.85 FEET TO THE BEGINNING OF A 162.00 FOOT RADIUS CURVE, CONCAVE TO THE SOUTHEAST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 49°56'40" AN ARC DISTANCE OF 141.21 FEET TO THE **TRUE POINT OF BEGINNING** OF PARCEL NO. 1, CONTAINING 147,642 SQUARE FEET OR 3.39 ACRES OF TIDELANDS AREA.

PARCEL NO. 2 (LAND AREA)

COMMENCING AT THE ABOVE DESCRIBED POINT "A"; THENCE CONTINUING ALONG SAID CONVENTION WAY FACE OF CURB SOUTH 50°19'08" EAST A DISTANCE OF 196.62 FEET TO THE **TRUE POINT OF BEGINNING** OF PARCEL NO. 2; THENCE CONTINUING ALONG SAID FACE OF CURB SOUTH 50°19'08" EAST A DISTANCE OF 235.00 FEET; THENCE LEAVING SAID FACE OF CURB SOUTH 39°40'52" WEST A DISTANCE OF 193.00 FEET TO THE ABOVE MENTIONED U.S. BULKHEAD LINE; THENCE LEAVING SAID U.S. BULKHEAD LINE AND CONTINUING SOUTH 39°40'52" WEST A DISTANCE OF 1.00 FEET; THENCE PARALLEL WITH SAID U.S. BULKHEAD LINE NORTH 50°19'08" WEST A DISTANCE OF 235.00 FEET; THENCE NORTH 39°40'52" EAST A DISTANCE OF 1.00 FEET TO SAID U.S. BULKHEAD LINE; THENCE LEAVING SAID U.S. BULKHEAD LINE AND CONTINUING NORTH 39°40'52" EAST A DISTANCE OF 193.00 FEET TO THE **TRUE POINT OF BEGINNING** OF PARCEL NO. 2, CONTAINING 45,590 SQUARE FEET OR 1.05 ACRES OF TIDELANDS AREA.

ALSO: RESERVING THEREFROM A CITY OF SAN DIEGO WATER EASEMENT 15.00 FEET IN WIDTH LYING WITHIN PARCEL NO. 1 AS DELINEATED AND DESCRIBED AS EASEMENT NO. 2 ON SHEETS 2 AND 4 OF DRAWING 019-063.

ALSO: RESERVING THEREFROM A CITY OF SAN DIEGO STORM DRAIN EASEMENT 20.00 FEET IN WIDTH LYING WITHIN PARCEL NO. 1 AS DELINEATED AND DESCRIBED AS EASEMENT NO. 3 ON SHEETS 2 AND 4 OF DRAWING NO. 019-063.

ALSO: RESERVING THEREFROM AN EASEMENT FOR PUBLIC PEDESTRIAN ACCESS 25.00 FEET IN WIDTH LYING WITHIN PARCEL NO.'S 1 AND 2 AS DELINEATED AND DESCRIBED AS EASEMENT NO. 4 ON SHEETS 2 AND 4 OF DRAWING 019-063.

ALSO: RESERVING THEREFROM A CITY OF SAN DIEGO WATER EASEMENT 30.00 FEET IN WIDTH AS SHOWN ON CITY OF SAN DIEGO DRAWING NO. 11558-35-D AND LYING WITHIN PARCEL NO.'S 1 AND 2 AS DELINEATED AND DESCRIBED AS EASEMENT NO. 5 ON SHEETS 2 AND 4 OF DRAWING NO. 019-063.

ALSO: RESERVING THEREFROM A CITY OF SAN DIEGO STORM DRAIN EASEMENT 30.00 FEET IN WIDTH LYING WITHIN PARCEL NO. 1 AS DELINEATED AND DESCRIBED AS EASEMENT NO. 6 ON SHEETS 2 AND 4 OF DRAWING NO. 019-063.

ALSO: RESERVING THEREFROM AN EASEMENT FOR PUBLIC PEDESTRIAN ACCESS 24.00 FEET IN WIDTH LYING WITHIN PARCEL NO. 2 AS DELINEATED AND DESCRIBED AS EASEMENT NO. 8 ON SHEETS 2 AND 4 OF DRAWING NO. 019-063.

ALSO: RESERVING THEREFROM A PUBLIC PEDESTRIAN ACCESS EASEMENT 35.00 FEET IN WIDTH LYING WITHIN PARCEL NO.'S 1 AND 2 AS DELINEATED AND DESCRIBED AS EASEMENT NO. 9 ON SHEETS 2 AND 4 OF DRAWING 019-063.

THE ABOVE DESCRIBED TIDELANDS LEASE AND RESERVATION AREAS ARE THOSE DELINEATED ON SAN DIEGO UNIFIED PORT DISTRICT DRAWING NO. 019-063 DATED 18 MARCH 2010, AND MADE A PART OF THIS AGREEMENT.

ALL BEARINGS AND DISTANCES IN THE ABOVE LEGAL DESCRIPTION ARE GRID, AND BASED UPON THE CALIFORNIA COORDINATE SYSTEM, ZONE 6, N.A.D. 83, EPOCH 1991.35.

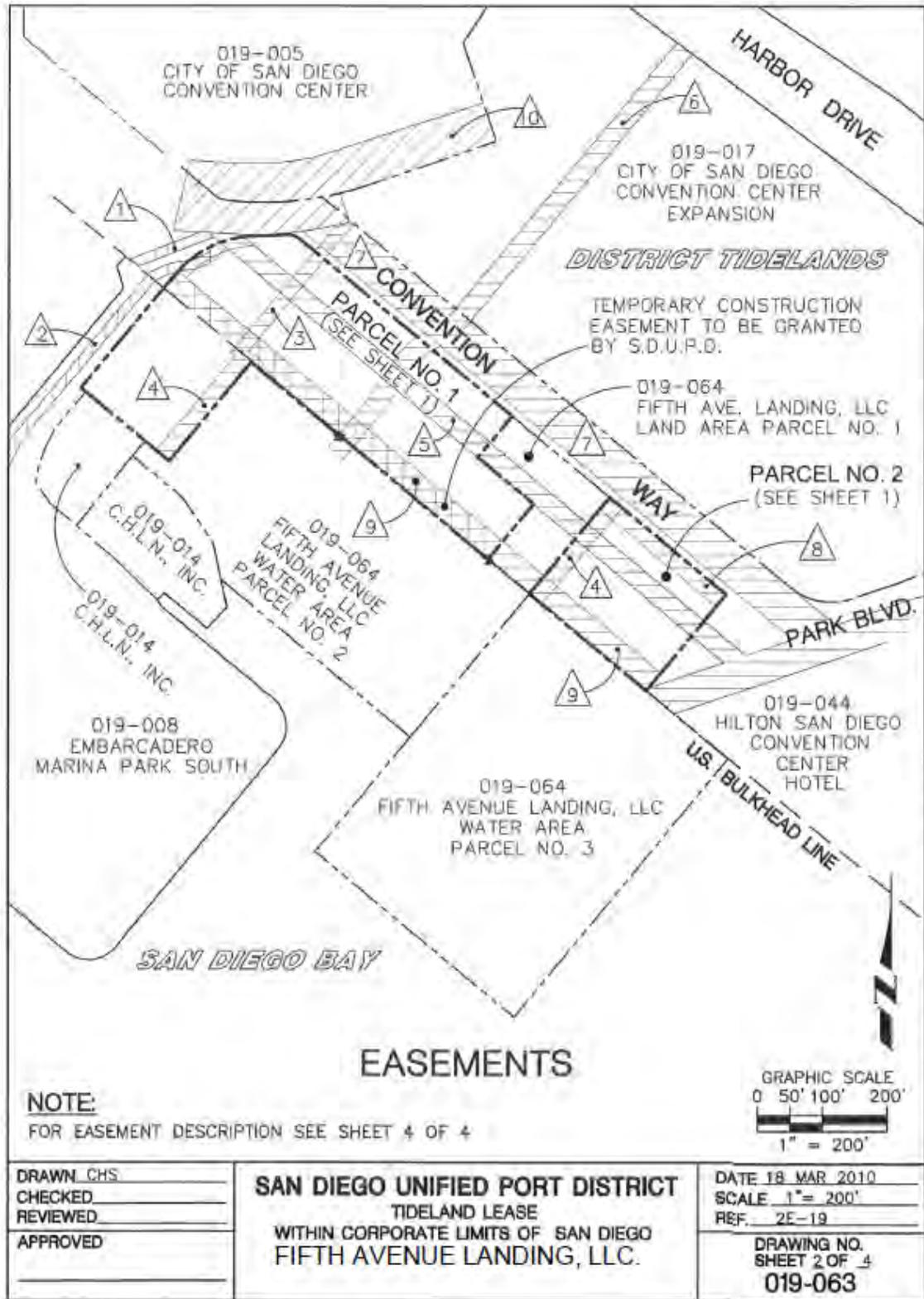


Gary L. Hus
L.S. 7019

3-18-2010

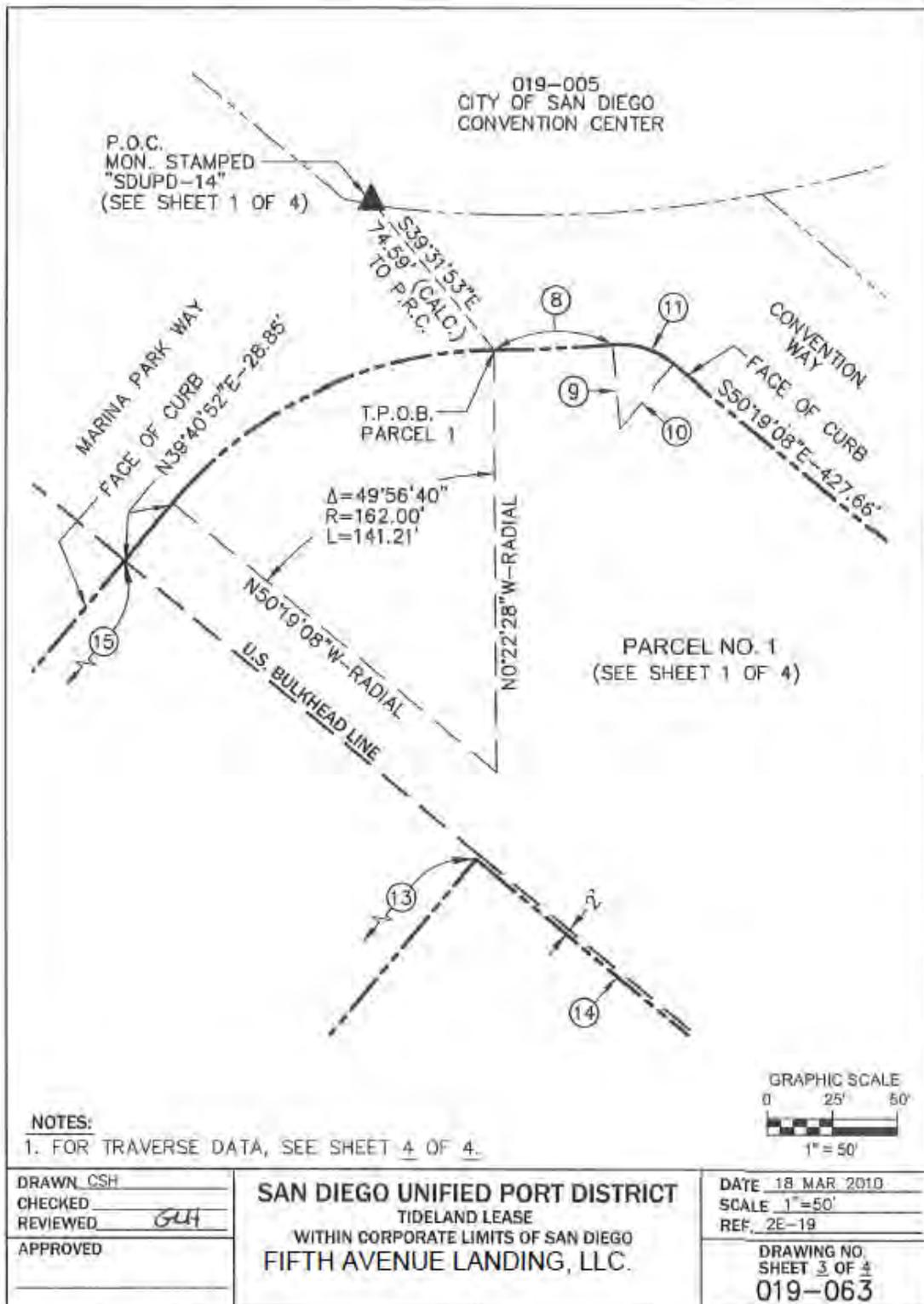
Date





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Assignment and Assumption of Lease Agreement
EXHIBIT 1



Assignment and Assumption of Lease Agreement
EXHIBIT 1

EXHIBIT D-2

REAFFIRMATION OF GUARANTY AND CONSENT TO ASSIGNMENT AND ASSUMPTION

On or about April 6, 2010, San Diego Unified Port District, a public corporation (“**District**” or “**Lessor**”) and San Diego Convention Center Corporation, Inc., a California nonprofit public benefit corporation (“**Lessee**”) entered into an Amended, Restated and Combined Lease dated April 6, 2010 bearing Port Clerk Document No. 56486 (“**Original Lease**”), as amended by that certain Amendment No. 1 to Amended, Restated and Combined Lease dated September 19, 2012 bearing District Clerk Document No. 59467 (“**Amendment**”, together with Original Lease, the “**ARC Lease**”) for the real property located in San Diego, California, as more particularly described in the ARC Lease (“**Land**”).

On or about April 26, 2010, the undersigned guarantors (“**Guarantor**”) entered into that certain Guaranty (“**Guaranty**”) in favor of Lessor, in which the undersigned guarantors agreed to unconditionally guarantee and promise to and for the benefit of Lessor, that Lessee shall perform the provisions of the ARC Lease for which it is responsible.

On or about June 18, 2015, SDCCC assigned to Fifth Avenue Landing, LLC, a California limited liability company, (“**FAL**”) all of SDCCC’s right, title and interest under the ARC Lease pursuant to that certain Assignment of Leasehold Interest in Lieu of Foreclosure recorded in the Official Records of San Diego County on June 22, 2015 as Document No. 2015-0324060.

On or about November 18, 2015, Guarantor entered into that certain Acknowledgment in favor of the Lessor, in which Guarantor acknowledged and consented to the Amendment and Assignment, acknowledged and agreed (a) that the ARC Lease as assigned under the Assignment includes the Amendment, (b) to unconditionally guarantee FAL’s performance of the Original Lease, as amended by the Amendment and Assignment, and agreed that any references to “**Lessee**” in the Guaranty shall be interpreted to include FAL (District Clerk Document No. 68396).

On or about _____, 20__, FAL and District entered into that certain Assignment and Assumption of Lease (ARC Lease) and Consent to Assignment (“**Assignment and Assumption**”) whereby FAL assigned and delivered all of estate, right, title and interest in and to the ARC Lease, and District assumed and consented to such assignment. Section 5 of the Assignment and Assumption requires FAL to indemnify and defend District from and against for any and all liability, claims, judgments, damages, proceedings, orders, directives, costs, including reasonable attorneys' fees, or demands (each a “**Claim**” and collectively, “**Claims**”) arising directly or indirectly from the failure of FAL to fulfill FAL’s obligations under the ARC Lease accruing or arising during the period prior to the date of recordation of the Assignment and Assumption. In Section 5 of the Assignment and Assumption, FAL further confirmed and agreed that all indemnity obligations contained in the ARC Lease, including, but not limited to the indemnity obligations contained in Paragraphs 7, 21, 30 42(f) and 44(f) and (g) of the ARC Lease, continue in effect with respect to any and all Claims that District may incur that are based on matters covered by any such indemnity obligation and where the incident or matter on which

such Claim is based occurred or accrued before the date that the Assignment and Assumption is recorded in the San Diego County Recorder's office, regardless of when such Claim is first asserted

By this Reaffirmation of Guaranty and Consent to Assignment and Assumption, each undersigned Guarantor (a) unconditionally guarantees and promises to and for the benefit of District, that FAL shall perform the provisions of the Assignment and Assumption for which it is responsible, (b) agrees that any references to "Lessee" in the Guaranty shall be interpreted to include FAL; (c) consents to the Assignment and Assumption and (d) agrees and affirms that the Guaranty remains in full force and effect with respect to the Assignment and Assumption, including without limitation Section 5 of the Assignment and Assumption.

This Reaffirmation of Guaranty and Consent to Assignment and Assumption may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement, binding on all Guarantors even though all Guarantors do not sign the original or the same counterpart.

{signatures on following page}

GUARANTORS:

RAYMOND CARPENTER, an individual

By: _____
Signature

Date: _____, 2018

ARTHUR ENGEL, an individual

By: _____
Signature

Date: _____, 2018

HERBERT ENGEL, an individual

By: _____
Signature

Date: _____, 2018

DAVID ENGEL, an individual

By: _____
Signature

Date: _____, 2018

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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

Signer is Representing: _____



Signer's Name _____

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

Signer is Representing: _____



STATE OF CALIFORNIA)
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Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name _____

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- Trustee
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- Trustee
- Guardian or Conservator
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Signer is Representing: _____

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COUNTY OF SAN DIEGO)

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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.

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Signature _____ (Seal)

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Signer is Representing: _____

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OF SIGNER
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- Individual
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- Partner -- Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Reaffirmation of Guaranty and Consent to Assignment and Assumption

EXHIBIT D-3

RECORDING REQUESTED BY

San Diego Unified Port District

WHEN RECORDED MAIL TO:

Ms. Randa Coniglio
President/CEO
San Diego Unified Port District
3165 Pacific Highway
San Diego, CA 92101
Telephone: (619) 686-6200
Email: rconiglio@portofsandiego.org

*No Doc Tax Due – R&T Code 11922
No Fee For Govt Agency – Govt Code 27383*

(Space Above For Recorder’s Use)

**QUITCLAIM DEED
(Marina Lease—Marina Landside Area)**

This **Quitclaim Deed (Marina Lease—Marina Landside Area)** (“**Quitclaim Deed**”) is delivered by FIFTH AVENUE LANDING, LLC, a California limited liability company (“**Grantor**”) to SAN DIEGO UNIFIED PORT DISTRICT, a Public Corporation (“**Grantee**”) on this _____ day of _____, 201__.

WITNESSETH:

A. Grantor is the lessee under a lease with District, dated May 7, 2010, on file in the Office of the Clerk of the District bearing Document No. 56494 (“**Lease**”) for approximately 155,428 square feet of water area known as Parcel No. 2 (“Parcel No. 2) as more full described in the Lease and approximately 25,643 square feet of tideland area known as Parcel No. 1 located on Convention Way and Marina Park Way in the City and County of San Diego, California. The 25,643 square feet of tideland area known as Parcel No. 1 under the Lease is more particularly described in **Exhibit “1”** attached hereto (the “**Marina Landside Area**”) which is the subject of this Quitclaim Deed.

B. The purpose of this Quitclaim Deed is to relinquish and terminate all of Grantor’s right, title and interest in the Marina Landside Area held by Grantor pursuant to the Lease.

1. FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Grantor hereby REMISES, RELEASES AND QUITCLAIMS to Grantee all of Grantor’s right, title and interest in and to the Marina Landside Area.

2. Nothing in this Quitclaim Deed shall modify or affect the obligations of Lessee under the Lease with respect to Parcel No. 2. Except as set forth in this Quitclaim Deed, the Lease is unmodified and remains in full force and effect in accordance with its terms.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Grantor has signed and delivered this Quitclaim Deed as of the day and year first written above.

FIFTH AVENUE LANDING, LLC,
a California limited liability company

By: _____
Ray A. Carpenter
Its: Managing Member

By: San Diego California Properties, LLC,
Its: Managing Member

By: _____
Art E. Engel
Its: Managing Member

Date: ____ __, 2018

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Signer's Name _____

- Individual
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Signer is Representing: _____

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Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

SAN DIEGO UNIFIED PORT DISTRICT ACCEPTANCE

This is to certify that the interest in real property conveyed by this instrument dated _____, 201__ from Fifth Avenue Landing, LLC to the San Diego Unified Port District, a public corporation is hereby accepted by order of the San Diego Unified Port District on _____, 201__ pursuant to authority conferred by resolution of the San Diego Unified Port District adopted on June 12, 2018 and the Grantee consents to recordation thereof by its duly authorized officer.

SAN DIEGO UNIFIED PORT DISTRICT,
a Public Corporation

By: _____

Name: _____

Its: _____

Approved as to form and legality:

GENERAL COUNSEL

By: _____

Name: _____

Assistant/Senior Deputy
General Counsel

Date: _____, 201__

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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Signer's Name _____

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instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name _____

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

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

**EXHIBIT 1
TO
QUITCLAIM DEED**

**Legal Description for
Parcel / Drawing No 019-064
Within Corporate Limits of San Diego**

All that certain portion of land conveyed to the San Diego Unified Port District by that certain Act of Legislature of the State of California pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended, and delineated on that certain Miscellaneous Map No. 564, filed in the Office of the San Diego County Recorder on May 28, 1976, File No. 76-164686, in the City of San Diego, County of San Diego, State of California, and more particularly described as follows:

PARCEL NO. 1 (Land Area)

Commencing at a 3” diameter brass disk monument stamped S.D.U.P.D. No. 14 as shown on R.O.S. No. 16668, filed in the Office of the County Recorder of San Diego County July 25, 2000; thence leaving said monument South 39°31'53” East a distance of 74.59 feet (calculated) said point also being the beginning of a non-tangent 556.00 foot radius curve, concave to the north, a radial to said point bears South 00°22'28” East from the center of said curve; thence easterly along the arc of said curve through a central angle of 04°42'58” an arc distance of 45.77 feet to a point of reverse curvature, the common radial of which bears South 05°05'26” East from the center of said curve; thence southeasterly along the arc of a 32.00 foot radius curve concave to the southwest through a central angle of 44°46'18” an arc distance of 25.01 feet to a point on the southwesterly face of curb of a street commonly known as Convention Way; thence along said face of curb line South 50°19'08” East a distance of 427.66 feet to a point the **TRUE POINT OF BEGINNING of Parcel No. 1**; thence along Convention Way curb face South 50°19'08” East a distance of 196.62 feet; thence leaving said face of curb line South 39°40'52” West a distance of 193.00 feet to a point on the above described U.S. Bulkhead Line as said U.S. Bulkhead Line; thence leaving said U.S. Bulkhead Line and continuing South 39°40'52” West a distance of 1.00 foot; thence parallel with said U.S. Bulkhead Line North 50°19'08” West a distance of 84.00 feet; thence North 39°40'52” East a distance of 1.00 foot to said U.S. Bulkhead Line; thence leaving said U.S. Bulkhead Line North 39°40'52” East a distance of 110.00 feet; thence North 50°19'08” West a distance of 112.62 feet; thence North 39°40'52” East a distance of 83.00 feet to the **TRUE POINT OF BEGINNING** of Parcel No. 1, containing 25,643 square feet or 0.59 acre of tidelands area.

The above described tidelands lease and reservation areas are those delineated on San Diego Unified Port District Drawing No. 019-064 dated 15 May 2018, and made a part of this agreement.

All bearings and distances in the above legal description are grid, and based upon the

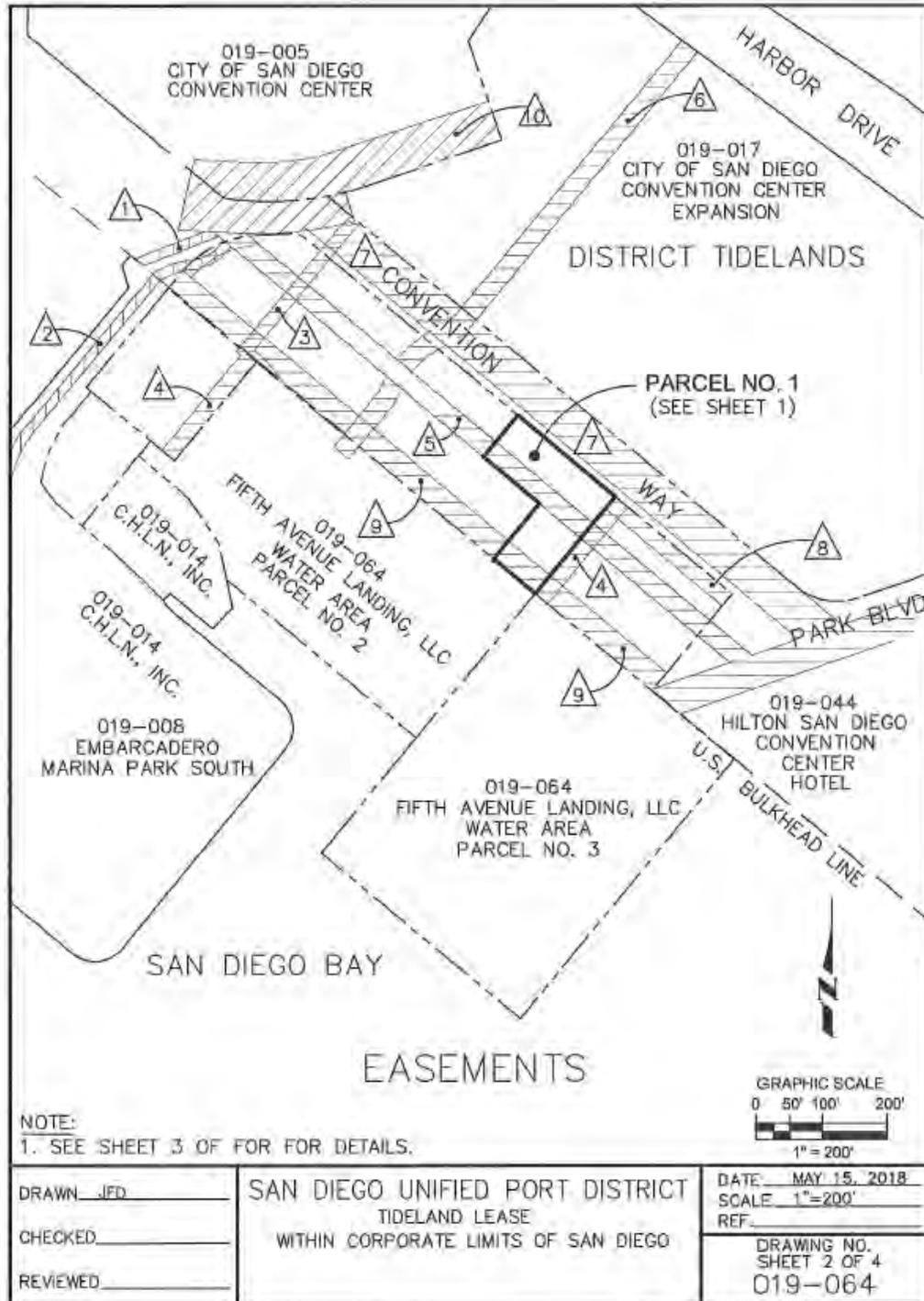
EXHIBIT 1



P:\4286\SURVEY BOUNDARY\4286.03\PLAT EXHIBITS\4286.03-PDC-SDUPD-019-063_PARCEL 1.DWG

Quitclaim Deed
EXHIBIT 1

EXHIBIT 1



DRAWN JFD
 CHECKED _____
 REVIEWED _____

SAN DIEGO UNIFIED PORT DISTRICT
 TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF SAN DIEGO

DATE MAY 15, 2018
 SCALE 1"=200'
 REF. _____
 DRAWING NO. 019-064
 SHEET 2 OF 4

EXHIBIT 1

TRAVERSE DATA		
① $\Delta=04^{\circ}42'58''$ $R=556.00'$ $L=45.77'$	⑨ N39°40'52"E-1.00' ⑩ N39°40'52"E-110.00'	
② N05°05'26"W RADIAL	⑪ N50°19'08"W-112.62'	
③ $\Delta=44^{\circ}46'18''$ $R=32.00'$ $L=25.01'$	⑫ N39°40'52"E-83.00'	
④ N39°40'52"E RADIAL		
⑤ S50°19'08"E-196.62'		
⑥ S39°40'52"W-193.00'		
⑦ S39°40'52"W-1.00'		
⑧ N50°19'08"W-84.00'		
EASEMENT DATA		
① 15.00' CITY OF SAN DIEGO STORM DRAIN ESMT. SDUPD DWG. NO. 519-025 EXIST.		
② 15.00' CITY OF SAN DIEGO WATER ESMT, 519-034 EXIST.		
③ 20.00' CITY OF SAN DIEGO STORM DRAIN ESMT. SDUPD DWG. NO. 519-005 EXIST.		
④ 25.00' PUBLIC PEDESTRIAN ACCESS ESMT.		
⑤ 30.00' CITY OF SAN DIEGO WATER ESMT. S.D.U.P.D. DWG. NO. 519-031 EXIST.		
⑥ 30.00' CITY OF SAN DIEGO STORM DRAIN ESMT. EXIST.		
⑦ 60.00' CITY OF SAN DIEGO GEN. UTIL. ESMT. EXIST.		
⑧ 24.00' PUBLIC PEDESTRIAN ACCESS ESMT.		
⑨ 35.00' PUBLIC PEDESTRIAN ACCESS ESMT.		
⑩ CITY OF SAN DIEGO GENERAL UTILITY EASEMENT 519-030 EXIST.		
DRAWN <u>JFD</u> CHECKED _____ REVIEWED _____	SAN DIEGO UNIFIED PORT DISTRICT TIDELAND LEASE WITHIN CORPORATE LIMITS OF SAN DIEGO	DATE <u>MAY 15, 2018</u> SCALE <u>1"=200'</u> REF. _____ DRAWING NO. SHEET 4 OF 4 019-064

EXHIBIT E

CITY PROMISSORY NOTE

\$5,000,000.00

_____, 201__

FOR VALUE RECEIVED, the undersigned, CITY OF SAN DIEGO, a municipal corporation (“**City**”), promises to pay SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (which, together with any subsequent holder of this City Promissory Note (this “**Note**”), is referred to in this Note as “**District**”), at 3165 Pacific Highway, San Diego, CA 92101 or such other place as District may from time to time designate, the principal sum of FIVE MILLION AND 00/100 DOLLARS (\$5,000,000.00), together with interest at the rate of three percent (3%) per annum, payable in the manner provided below in lawful money of the United States.

This Note is made with reference to that certain Purchase and Sale Agreement and Escrow Instructions dated _____, 201__, among City, District, and Fifth Avenue Landing, LLC, a California limited liability company (“**PSA**”). All capitalized terms in this Note shall have the same meaning ascribed to them in the PSA, unless otherwise specified in this Note. If the Alternative A Closing occurs in accordance with the PSA, City will acquire the Expansion Leasehold Interest in order to carry out the Expansion. The Alternative A Closing is contingent on several events, including satisfaction of the conditions precedent set forth in Sections 6.1.1, 6.1.2, 9.1.2 and 9.1.3 of the PSA (collectively, “**PSA Conditions Precedent**”) and City’s completion of the City Option Payments in accordance with Section 2.7 of the PSA. City’s acquisition of the Expansion Leasehold Interest is essential to City’s successful completion of the Expansion. If the Alternative A Closing does not occur, then the Alternative B Closing shall occur in accordance with the PSA if all conditions to the Alternative B Closing under the PSA are met. This Note is a necessary component of the Alternative A Transactions and, if applicable, the Alternative B Closing.

1. Payments Potentially Owed Through First Maturity Date.

(a) This Section 1 shall become operative on the date of this Note and shall apply upon the delivery of the Released Initial Option Payment to FAL. If the Escrow for the Alternative A Closing under the PSA is terminated because any of the PSA Conditions Precedent have not been timely satisfied in accordance with Sections 6.1.1, 6.1.2, 9.1.2 or 9.1.3 of the PSA, respectively, or because City fails to make any City Option Payment when due under Section 2.7 of the PSA (each an “**Escrow Terminating Event**”) and an Escrow Terminating Event occurs on or before December 31, 2019 (“**First Maturity Date**”), City shall owe District all amounts outstanding under this Note, in one lump sum, including all principal and interest.

(b) Before the date of this Note, the City of San Diego City Council (“**City Council**”) adopted a resolution authorizing City’s Chief Financial Officer to appropriate and expend up to FIVE MILLION THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$5,300,000.00) (“**Initial Encumbered Funds**”) (which is anticipated to exceed the maximum amount of principal and interest under this Note that City may owe to District as of the First Maturity Date), and City delivered the Initial Encumbered Funds to Escrow Agent for deposit

into the Note Escrow Account. Under Section 19.2.1 of the PSA, City and District instructed Escrow Agent to take the following actions after the PSA is terminated due to an Escrow Terminating Event: (i) disburse the Initial Encumbered Funds to District to be used against the amounts outstanding under this Note; and (ii) disburse the balance of the Initial Encumbered Funds, if any, to City. If the Initial Encumbered Funds disbursed to District in accordance with Section 19.2.1 of the PSA are in an amount that satisfies the principal and interest under this Note, then this Note shall be deemed fully satisfied by City.

(c) Section 11.1.4 of the PSA provides that, upon the Alternative A Closing Date, Escrow Agent shall disburse the entirety of the Initial Encumbered Funds to City and shall close out the Note Escrow Account. Upon the Alternative A Closing Date, this Section 1 shall become inoperative and Section 2 shall become immediately operative.

(d) If an Escrow Terminating Event occurs and if the Initial Encumbered Funds (or the relevant portion thereof) are not disbursed to District pursuant to Section 1(b) in an amount that satisfies the principal and interest under this Note because of City's action or inaction after District provides written notice to City in accordance with Section 4, this circumstance shall constitute an Event of Default (as defined in Section 4), and Sections 4, 5 and 6 shall apply; provided, however, if the amount of the Initial Encumbered Funds deposited into the Note Escrow Account is less than the principal, interest, Default Rate (as defined in Section 5), or costs, if applicable and specified in Section 6, City shall pay the difference between the Initial Encumbered Funds and any obligations due and payable under this Section 1(d) from special funds of the City in accordance with, and subject to, Section 20.

2. Payments Potentially Owed After First Maturity Date. This Section 2 shall become operative on the Alternative A Closing Date. If the Alternative A Closing occurs, the principal balance of this Note shall continue to accrue interest. City shall pay any obligations due and payable under this Note after the Alternative A Closing Date from special funds of the City in accordance with, and subject to, Section 20. If the Alternative A Closing occurs, but City has not issued a certificate of occupancy (“COO”) for the Expansion on or before December 31, 2028, then all principal, interest, late charges and any other amounts outstanding under this Note shall be due and payable by City to District on December 31, 2029 (“**Second Maturity Date**”).

3. Conditional Forgiveness of Note Debt. If the Alternative A Closing occurs and City issues a COO for the Expansion on or before December 31, 2028, District shall fully forgive the entire debt evidenced by this Note, and City shall not be required to make any payments to District under this Note. In such event, District will calculate all amounts otherwise payable under this Note as of the date that the COO is issued for the Expansion and shall credit all amounts otherwise payable under this Note as a financial contribution to the Expansion.

4. Event of Default. If City fails to make any payment of all principal, interest, default interest, and any other amounts outstanding due under this Note, when and as the same will become due and payable, or by acceleration, and such default continues for a period of ten (10) calendar days after District provides written notice of default to City (an “**Event of Default**”), District will be entitled to exercise its rights and remedies under this Note or as otherwise provided by law or equity. After the occurrence and during the continuance of an Event of Default, the entire principal sum and accrued interest of the debt evidenced by this Note shall immediately become due and payable, without notice. Any waiver by District shall not

constitute a waiver of the right to exercise same in the event of any subsequent Event of Default. City shall pay any obligations due and payable under this Section 4 from special funds of the City in accordance with, and subject to, Section 20.

5. Late Payment Charge; Default Interest. City acknowledges that default in the payment of any sum due under this Note will result in losses and additional expenses to District. City further acknowledges that the extent of such loss and additional expenses is extremely difficult and impractical to ascertain. Accordingly, if any payment under this Note, whether of principal or interest or both and including the payment due on the First Maturity Date or the Second Maturity Date, as applicable, or upon any acceleration of this Note: (a) is not paid within ten (10) calendar days after the due date thereof, City will pay to District, in addition to the delinquent payment and without any requirement for notice or demand by Payee, a late payment charge equal to five percent (5%) of the amount of the delinquent payment, and (b) is not paid within ten (10) calendar days after the due date thereof (the “**Default Date**”), then such unpaid amounts hereunder, will, on and from the Default Date, bear interest at the rate of ten percent (10%) per annum (the “**Default Rate**”). No provision in this Note (including without limitation the provisions for a late payment charge, accrual of interest on and after the Default Date, or for the continued accrual of interest on any amounts remaining unpaid after the applicable maturity date) shall be construed as in any way excusing City from its obligation to make each payment under this Note promptly when due. City shall pay any obligations due and payable under this Section 5 from special funds of the City in accordance with, and subject to, Section 20.

6. Costs of Collection. With respect to any payments due under this Note, City promises to pay (i) all costs and expenses, including, without limitation, actual attorneys’ fees and expenses, if this Note or any portion of this Note is placed in the hands of any attorney for collection and such collection is effected without suit; (ii) attorneys’ fees and expenses, as determined by the judge of the court, and all other costs, expenses and fees incurred by District in enforcing its rights under this Note; including, without limitation, the institution of a suit to collect all or any portion of amounts owing under this Note; and (iii) all costs and expenses, including, without limitation, actual attorneys’ fees and expenses, incurred by District in connection with any bankruptcy, insolvency or reorganization proceeding or receivership involving City, including, without limitation, attorneys’ fees and expenses incurred in making any appearances in any such proceeding or in seeking relief from any stay or injunction issued in or arising out of any such proceeding. City shall pay any obligations due and payable under this Section 6 from special funds of the City in accordance with, and subject to, Section 20.

7. Certain Waivers. City waives diligence, grace, demand, presentment for payment, exhibition of this Note, protest, notice of nonpayment, and any and all exemption rights against the debt evidenced by this Note. From time to time, without affecting the obligation of City or the successors or assigns of City to pay the outstanding principal balance of this Note and observe the covenants of City contained in this Note, without giving notice to or obtaining the consent of City or the successors or assigns of City, and without liability on the part of District, District may, at the sole option of District and without any obligation whatsoever to do so, extend the time for payment of said outstanding principal balance, or any part thereof, accept a renewal of this Note, join in any extension or subordination agreement, take or release any security for this Note, and agree in writing with City to modify the installment schedule of this Note. No single or partial exercise of any power under this Section 7 will preclude other and further exercise thereof or the exercise of any other power. No delay or omission on the part of

District in exercising any right under this Note will operate as a waiver of such right or of any other right under this Note.

8. Loss, Theft, Destruction or Mutilation of Note. In the event of the loss, theft or destruction of this Note, upon City's receipt of a reasonably satisfactory indemnification agreement executed in favor of City by the party who held this Note immediately prior to its loss, theft or destruction, or in the event of the mutilation of this Note, upon District's surrender to City of the mutilated Note, City will execute and deliver to such party or District, as the case may be, a new promissory note in form and content identical to this Note in replacement of the lost, stolen, destroyed or mutilated Note.

9. Notices. Any notice, demand or document which City or District desires to give to the other shall be in writing, and may be (a) messenger for immediate personal delivery, (b) nationally recognized delivery service guaranteeing overnight delivery (i.e., United Parcel Service, Federal Express, etc.), (c) registered or certified United States mail, postage prepaid, return receipt requested, to the address of the recipient Party, or (d) facsimile or other form of electronic transmission, including email (which shall be followed by a hard copy delivered in accordance with one of the preceding clauses (a) through (c) or via regular U.S. mail, unless the hard copy is waived by reply email from the recipient in response to a notice email). Any notice shall be deemed received by the addressee, on the Business Day (as defined in the PSA) that the notice is sent by messenger for immediate personal delivery and received at the notice address before 5:30 p.m., on the Business Day the notice is transmitted electronically before 5:30 p.m., one Business Day after delivery to a nationally recognized overnight delivery service, or two Business Days after the notice is placed in the United States mail (regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt).

The notice addresses for City and District are as follows:

If to District: Ms. Randa Coniglio
 President/CEO
 San Diego Unified Port District
 3165 Pacific Highway
 San Diego, CA 92101
 Telephone: (619) 686-6200
 Email: rconiglio@portofsandiego.org

With a copy to: Thomas Russell, Esq.
 General Counsel
 Rebecca S. Harrington, Esq.
 Senior Deputy General Counsel
 Office of the General Counsel
 San Diego Unified Port District
 3165 Pacific Highway
 San Diego, CA 92101
 Telephone: (619) 686-6219
 Email: rharrington@portofsandiego.org
 trussell@portofsandiego.org

If to City: Kris Michell
Chief Operating Officer
City of San Diego
202 C Street, MS 9A
San Diego, CA 92101
Telephone No.: (619) 235-5806
Email: kmichell@sandiego.gov

With a copy to: Kevin Reisch, Esq.
Senior Chief Deputy City Attorney
1200 Third Avenue, Suite 1100
San Diego, CA 92101
Telephone: (619) 236-7722
Email: kreisch@sandiego.gov

City or District may designate such other or modified addresses for delivery of written notices under this Note in the manner set forth above.

10. Time of Essence. Time is of the essence in the performance of each and every provision of this Note.

11. Severability. If any provision of this Note is held unenforceable or void, then such provision will be deemed separable from the remaining provisions of this Note and will in no way affect the validity of this Note except that if the provision held unenforceable or void relates to the payment of any monetary sum, then District may, at its option, declare the debt evidenced by this Note and all other sums due under this Note immediately due and payable.

12. Amendments. This Note may be modified only by a written amendment approved by both the City Council and District's Board of Port Commissioners.

13. Governing Law. This Note will be governed by and construed in accordance with the laws of the State of California, without giving effect to principles of conflict of laws of that jurisdiction.

14. Prepayment. City may prepay the principal amount outstanding under this Note in full or in part at any time.

15. Set Off. Subject to Section 20, City may, in its sole discretion, and without any obligation to do so, appropriate and apply toward the payment of all or any part of the obligations of City then due and owing under this Note (a) any indebtedness due or to become due from District to City and (b) any moneys, credits or other property belonging to City or its affiliates, at any time held by or coming into the possession of City.

16. Assignment. This Note and the obligations under this Note may not be assigned by City without the prior written consent of District, which consent may be denied or conditioned by District in its sole and absolute discretion.

17. WAIVER OF JURY TRIAL. CITY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE OR HEREAFTER HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE. CITY CERTIFIES THAT NEITHER DISTRICT NOR

ANY OF ITS OFFICERS, DIRECTORS, REPRESENTATIVES, ADVISORS, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT DISTRICT WOULD NOT IN THE EVENT OF ANY SUCH SUIT, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

18. Usury Savings Clause. City and District intend to conform strictly to the usury laws of the State of California. Any interest payable under this Note will be subject to reduction to the amount not in excess of the maximum non-usurious amount allowed under such laws, as construed by the courts having jurisdiction over such matters. In the event District will collect monies which are deemed to constitute interest which would increase the effective interest rate to a rate in excess of that permitted to be charged by applicable law, all such sums deemed to constitute interest in excess of the legal rate will, upon such determination, at the option of District, be returned to City or credited against the principal balance of any obligation secured hereby then outstanding. If any interest is canceled, credited against principal, or rebated to City in accordance with the foregoing sentence and, if thereafter the interest payable under this Note is less than the maximum amount permitted by applicable law, the interest rate under this Note will automatically be increased to the maximum extent possible to permit repayment to District, as soon as possible, of any interest in excess of the maximum amount permitted by law which was earlier canceled, credited against principal, or rebated to District pursuant to the provisions of the foregoing sentence.

19. Remedies Cumulative. Except as provided in Section 1, no remedy conferred upon or reserved to District under this Note is intended to be exclusive of any other remedy in this Note or by law or equity provided or permitted, but each will be cumulative and will be in addition to every other remedy given under this Note, or now or hereafter existing at law or in equity or by statute.

20. Funding Source. Any payment obligations of City that become due and payable under Sections 1(d), 2, 4, 5, and 6 (“**Payment Obligations**”) shall be payable solely from eligible moneys held by City in a special fund and segregated from the City’s General Fund (“**Special Funds**”). The Special Funds may only be used to satisfy Payment Obligations if and when appropriated for that purpose. City shall not be obligated to satisfy Payment Obligations from the City’s General Fund or from tax revenues of City that would otherwise be deposited in the General Fund. The Special Funds will consist of any eligible moneys held by City in a special fund, which may include transient occupancy tax revenues dedicated to a special fund for the Expansion and other Convention Center purposes under the Ballot Measure, if Voter Approval occurs. City shall use best efforts to obtain the City Council’s timely appropriation of funds with respect to all Payment Obligations. However, the City Council has no obligation to make funding appropriations for any Payment Obligations, in light of City’s other funding priorities and budget constraints in the applicable future fiscal year. All City budget decisions are subject to the discretion of the Mayor and the City Council. City shall notify District in writing at the earliest possible date if City determines that funds will not be timely appropriated for any Payment Obligation. This Note is subject to the budget and fiscal provisions of the San Diego Charter. No Payment Obligation shall constitute a debt of the City within the meaning of any debt limitation or restriction in state or local law, including the San Diego Charter.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, City has signed this Note as of the date first written above.

CITY:

CITY OF SAN DIEGO,
a municipal corporation

By: _____

Name: _____

Title: _____

Approved as to form:

MARA W. ELLIOTT, City Attorney

By: _____

Kevin Reisch

Senior Chief Deputy City Attorney

EXHIBIT F-1

RECORDING REQUESTED BY:

San Diego Unified Port District

WHEN RECORDED, MAIL TO:

Ms. Randa Coniglio

President/CEO

San Diego Unified Port District

3165 Pacific Highway

San Diego, CA 92101

Telephone: (619) 686-6200

Email: rconiglio@portofsandiego.org

*No Doc Tax Due – R&T Code 11922
No Fee For Govt Agency – Govt Code 27383*

(Space Above For Recorder’s Use)

**MEMORANDUM OF OPTION IN FAVOR OF
SAN DIEGO UNIFIED PORT DISTRICT
UNDER PURCHASE AND SALE AGREEMENT**

This Memorandum of Option in Favor of San Diego Unified Port District under Purchase and Sale Agreement (“**Memorandum**”), is between FIFTH AVENUE LANDING, LLC, a California limited liability company (“**FAL**”), and SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (“**District**”).

FAL, District, and the City of San Diego, a municipal corporation (“**City**”), entered into that certain unrecorded Purchase and Sale Agreement and Escrow Instructions, dated as of _____, 201____ (“**Agreement**”). Among other things, the Agreement provides for FAL’s grant to District of an option to purchase the following real property interests (collectively, “**Option**”): (i) FAL’s leasehold estate in the property referred to in the Agreement as the “Existing ARC Lease Premises” and specifically described in **Exhibit A** attached to this Memorandum and (ii) FAL’s leasehold estate in the property referred to in the Agreement as the Marina Landside Area and specifically described in **Exhibit B** attached to this Memorandum. The Option will commence on the date of recordation of this Memorandum in the Official Records of the San Diego County Recorder’s Office, and will expire on October 1, 2019, subject to earlier termination or extension in accordance with the provisions of the Agreement. The Agreement also provides for District’s simultaneous grant to City of an option to purchase a leasehold interest in a portion of the Existing ARC Lease Premises and the entirety of the Marina Landside Area, referred to collectively as the “New ARC Lease Premises” in the Agreement. FAL, District, and City will sign and record a separate memorandum to memorialize City’s above-described option.

This Memorandum is intended for notice purposes only. This Memorandum is not a complete summary of the Agreement and shall not be used in interpreting the Agreement. This Memorandum shall not alter or affect the rights or obligations of FAL or District under the Agreement. In the event of any conflict between this Memorandum and the Agreement, the provisions of the Agreement shall control.

[remainder of this page intentionally left blank]

This Memorandum may be signed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one and the same document.

FAL:

FIFTH AVENUE LANDING, LLC,
a California limited liability company

By: _____
Ray A. Carpenter
Its: Managing Member

By: San Diego California Properties, LLC,
Its: Managing Member

By: _____
Art E. Engel
Its: Managing Member

DISTRICT:

SAN DIEGO UNIFIED PORT DISTRICT,
a Public Corporation

By: _____
Name: _____

Its: _____

Approved as to form and legality:

GENERAL COUNSEL

By: _____

Name: _____
Assistant/Senior Deputy
General Counsel

ACKNOWLEDGMENT

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
COUNTY OF _____

On _____, before me,

(insert name and title of the officer)

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 _____ (Seal)

ACKNOWLEDGMENT

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
COUNTY OF _____

On _____, before me,

(insert name and title of the officer)

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 _____ (Seal)

ACKNOWLEDGMENT

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
COUNTY OF _____

On _____, before me,

(insert name and title of the officer)

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 _____ (Seal)

ACKNOWLEDGMENT

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
COUNTY OF _____

On _____, before me,

(insert name and title of the officer)

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 _____ (Seal)

EXHIBIT A
Legal Description for Memorandum of District Option
Existing ARC Lease Premises

Lease Description for
Parcel / Drawing No 019-063
Within Corporate Limits of San Diego

All that certain portion of land conveyed to the San Diego Unified Port District by that certain Act of Legislature of the State of California pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended, and delineated on that certain Miscellaneous Map No. 564, filed in the Office of the San Diego County Recorder on May 28, 1976, File No. 76-164686, in the City of San Diego, County of San Diego, State of California, and more particularly described as follows:

PARCEL NO. 1 (Land Area)

Commencing at a 3" diameter brass disk monument stamped S.D.U.P.D. No. 14 as shown on R.O.S. No. 16668, filed in the Office of the County Recorder of San Diego County July 25, 2000; thence leaving said monument South 39°31'53" East a distance of 74.59 feet (calculated) to the TRUE POINT OF BEGINNING of Parcel No. 1, said point also being the beginning of a non-tangent 556.00 foot radius curve, concave to the north, a radial to said point bears South 00°22'28" East from the center of said curve; thence easterly along the arc of said curve through a central angle of 04°42'58" an arc distance of 45.77 feet to a point of reverse curvature, the common radial of which bears South 05°05'26" East from the center of said curve; thence southeasterly along the arc of a 32.00 foot radius curve concave to the southwest through a central angle of 44°46'18" an arc distance of 25.00 feet to a point on the southwesterly face of curb of a street commonly known as Convention Way; thence along said face of curb line South 50°19'08" East a distance of 427.66 feet to a point hereinafter known as Point "A"; thence leaving said face of curb line South 39°40'52" West a distance of 83.00 feet; thence South 50°19'08" East a distance of 112.62 feet; thence South 39°40'52" West a distance of 110.00 feet to a point on the U.S. Bulkhead Line as said U.S. Bulkhead Line is now established for the Bay of San Diego and delineated on map entitled "Harbor Lines, San Diego Bay, California File No. (D.O. series) 426" approved by the Secretary of the Army, April 29, 1963, and filed in the Office of the District Engineer, Los Angeles, California; thence leaving said U.S. Bulkhead Line and continuing South 39°40'52" West a distance of 1.00 foot; thence parallel with said U.S. Bulkhead Line North 50°19'08" West a distance of 297.61 feet; thence South 39°40'52" West a distance of 1.00 foot; thence parallel with said U.S. Bulkhead Line North 50°19'08" West a distance of 179.41 feet; thence South 39°40'52" West a distance of 198.00 feet; thence North 50°19'08" West a distance of 177.32 feet to a point on the southeasterly face of curb line of a street commonly known as Marina Park Way; thence along said face of curb line North 39°40'52" East a distance of 200.00 feet to a point on said U.S. Bulkhead Line; thence leaving said U.S. Bulkhead Line and continuing along said face of curb North 39°40'52" East a distance of 28.85 feet to the beginning of a 162.00 foot radius curve, concave to the southeast; thence northeasterly along the arc of said curve through a central angle of 49°56'40" an arc distance of 141.21 feet to the TRUE POINT OF BEGINNING of Parcel No. 1, containing 147,642 square feet or 3.39 acres of tidelands area.

PARCEL NO. 2 (Land Area)

Commencing at the above described Point "A"; thence continuing along said Convention Way face of curb South 50°19'08" East a distance of 196.62 feet to the TRUE POINT OF BEGINNING of Parcel No. 2; thence continuing along said face of curb South 50°19'08" East a distance of 235.00 feet; thence leaving said face of curb South 39°40'52" West a distance of 193.00 feet to the above mentioned U.S. Bulkhead Line; thence leaving said U.S. Bulkhead Line and continuing South 39°40'52" West a distance of 1.00 feet; thence parallel with said U.S. Bulkhead Line North 50°19'08" West a distance of 235.00 feet; thence North 39°40'52" East a distance of 1.00 feet to said U.S. Bulkhead Line; thence leaving said U.S. Bulkhead Line and continuing North 39°40'52" East a distance of 193.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 2, containing 45,590 square feet or 1.05 acres of tidelands area.

ALSO: Reserving therefrom a City of San Diego Water easement 15.00 feet in width lying within Parcel No. 1 as delineated and described as Easement No. 2 on sheets 2 and 4 of Drawing 019-063.

ALSO: Reserving therefrom a City of San Diego Storm Drain easement 20.00 feet in width lying within Parcel No. 1 as delineated and described as Easement No. 3 on sheets 2 and 4 of Drawing No. 019-063.

ALSO: Reserving therefrom an easement for Public Pedestrian Access 25.00 feet in width lying within Parcel No.'s 1 and 2 as delineated and described as Easement No. 4 on sheets 2 and 4 of Drawing 019-063.

ALSO: Reserving therefrom a City of San Diego Water easement 30.00 feet in width as shown On City of San Diego Drawing No. 11558-35-D and lying within Parcel No.'s 1 and 2 as delineated and described as Easement No. 5 on sheets 2 and 4 of Drawing No. 019-063.

ALSO: Reserving therefrom a City of San Diego Storm Drain easement 30.00 feet in width lying within Parcel No. 1 as delineated and described as Easement No. 6 on sheets 2 and 4 of Drawing No. 019-063.

ALSO: Reserving therefrom an easement for Public Pedestrian Access 24.00 feet in width lying within Parcel No. 2 as delineated and described as Easement No. 8 on sheets 2 and 4 of Drawing No. 019-063.

ALSO: Reserving therefrom a Public Pedestrian Access easement 35.00 feet in width lying within Parcel No.'s 1 and 2 as delineated and described as Easement No. 9 on sheets 2 and 4 of Drawing 019-063.

The above described tidelands lease and reservation areas are those delineated on San Diego Unified Port District Drawing No. 019-063 dated 18 March 2010, and made a part of this agreement.

EXHIBIT B
Legal Description for Memorandum of District Option
Marina Landside Area

Legal Description for
Parcel / Drawing No 019-064
Within Corporate Limits of San Diego

All that certain portion of land conveyed to the San Diego Unified Port District by that certain Act of Legislature of the State of California pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended, and delineated on that certain Miscellaneous Map No. 564, filed in the Office of the San Diego County Recorder on May 28, 1976, File No. 76-164686, in the City of San Diego, County of San Diego, State of California, and more particularly described as follows:

PARCEL NO. 1 (Land Area)

Commencing at a 3" diameter brass disk monument stamped S.D.U.P.D. No. 14 as shown on R.O.S. No. 16668, filed in the Office of the County Recorder of San Diego County July 25, 2000; thence leaving said monument South 39°31'53" East a distance of 74.59 feet (calculated) said point also being the beginning of a non-tangent 556.00 foot radius curve, concave to the north, a radial to said point bears South 00°22'28" East from the center of said curve; thence easterly along the arc of said curve through a central angle of 04°42'58" an arc distance of 45.77 feet to a point of reverse curvature, the common radial of which bears South 05°05'26" East from the center of said curve; thence southeasterly along the arc of a 32.00 foot radius curve concave to the southwest through a central angle of 44°46'18" an arc distance of 25.01 feet to a point on the southwesterly face of curb of a street commonly known as Convention Way; thence along said face of curb line South 50°19'08" East a distance of 427.66 feet to a point the **TRUE POINT OF BEGINNING of Parcel No. 1**; thence along Convention Way curb face South 50°19'08" East a distance of 196.62 feet; thence leaving said face of curb line South 39°40'52" West a distance of 193.00 feet to a point on the above described U.S. Bulkhead Line as said U.S. Bulkhead Line; thence leaving said U.S. Bulkhead Line and continuing South 39°40'52" West a distance of 1.00 foot; thence parallel with said U.S. Bulkhead Line North 50°19'08" West a distance of 84.00 feet; thence North 39°40'52" East a distance of 1.00 foot to said U.S. Bulkhead Line; thence leaving said U.S. Bulkhead Line North 39°40'52" East a distance of 110.00 feet; thence North 50°19'08" West a distance of 112.62 feet; thence North 39°40'52" East a distance of 83.00 feet to the **TRUE POINT OF BEGINNING** of Parcel No. 1, containing 25,643 square feet or 0.59 acre of tidelands area.

The above described tidelands lease and reservation areas are those delineated on San Diego Unified Port District Drawing No. 019-064 dated 15 May 2018, and made a part of this agreement.

All bearings and distances in the above legal description are grid, and based upon the California Coordinate System, Zone 6, N.A.D. 83, Epoch 1991.35.

 05-24-2018
GARY L. HUS DATE
LS 7019



EXHIBIT F-2

RECORDING REQUESTED BY:

City of San Diego

WHEN RECORDED, MAIL TO:

Ms. Kris Michell

Chief Operating Officer

City of San Diego

202 C Street, MS 9A

San Diego, CA 92101

*No Doc Tax Due – R&T Code 11922
No Fee For Govt Agency – Govt Code 27383*

(Space Above For Recorder’s Use)

**MEMORANDUM OF OPTION IN FAVOR OF
CITY OF SAN DIEGO
UNDER PURCHASE AND SALE AGREEMENT**

This Memorandum of Option in Favor of City of San Diego under Purchase and Sale Agreement (“**Memorandum**”), is among FIFTH AVENUE LANDING, LLC, a California limited liability company (“**FAL**”), SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (“**District**”), and CITY OF SAN DIEGO, a municipal corporation (“**City**”).

FAL, District, and City entered into that certain unrecorded Purchase and Sale Agreement and Escrow Instructions, dated as of _____, 201__ (“**Agreement**”). Among other things, the Agreement provides for District’s grant to City of an option to purchase a leasehold interest in real property referred to in the Agreement as the “New ARC Lease Premises” and specifically described in **Exhibit A** attached to this Memorandum (“**Option**”). The Option will commence on the date of recordation of this Memorandum in the Official Records of the San Diego County Recorder’s Office, and will expire on October 1, 2019, subject to earlier termination or extension in accordance with the provisions of the Agreement.

FAL has signed this Memorandum because FAL is the current owner of a leasehold estate in real property that includes the New ARC Lease Premises. In the Agreement, FAL has granted to District an option to purchase FAL’s leasehold estate in such real property in anticipation of City purchasing the New ARC Lease Premises from District in accordance with the Agreement.

This Memorandum is intended for notice purposes only. This Memorandum is not a complete summary of the Agreement and shall not be used in interpreting the Agreement. This Memorandum shall not alter or affect the rights or obligations of FAL, District, or City under the

Agreement. In the event of any conflict between this Memorandum and the Agreement, the provisions of the Agreement shall control.

[remainder of this page intentionally left blank]

This Memorandum may be signed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one and the same document.

FAL:

FIFTH AVENUE LANDING, LLC,
a California limited liability company

By: _____
Ray A. Carpenter
Its: Managing Member

By: San Diego California Properties, LLC,
Its: Managing Member

By: _____
Art E. Engel
Its: Managing Member

CITY:

CITY OF SAN DIEGO,
a municipal corporation

By: _____

Name: _____

Its: _____

Date: June __, 2018

Approved as to form:

MARA W. ELLIOTT, City Attorney

By: _____

Kevin Reisch
Senior Chief Deputy City Attorney

DISTRICT:

SAN DIEGO UNIFIED PORT DISTRICT,
a Public Corporation

By: _____

Name: _____

Its: _____

Approved as to form and legality:

GENERAL COUNSEL

By: _____

Name: _____

Assistant/Senior Deputy
General Counsel

ACKNOWLEDGMENT

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
COUNTY OF _____

On _____, before me,

(insert name and title of the officer)

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 _____ (Seal)

ACKNOWLEDGMENT

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
COUNTY OF _____

On _____, before me,

(insert name and title of the officer)

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WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

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STATE OF CALIFORNIA
COUNTY OF _____

On _____, before me,

(insert name and title of the officer)

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.

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WITNESS my hand and official seal.

Signature _____ (Seal)

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STATE OF CALIFORNIA
COUNTY OF _____

On _____, before me,

(insert name and title of the officer)

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.

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WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

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STATE OF CALIFORNIA
COUNTY OF _____

On _____, before me,

(insert name and title of the officer)

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 _____ (Seal)

ACKNOWLEDGMENT

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
COUNTY OF _____

On _____, before me,

(insert name and title of the officer)

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 _____ (Seal)

EXHIBIT A

Legal Description of New ARC Lease Premises

Lease Description for Parcel/Drawings No. 019-063 Within Corporate Limits of San Diego

All that certain portion of land conveyed to the San Diego Unified Port District by that certain Act of Legislature of the State of California pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended, and delineated on that certain Miscellaneous Map No. 564, filed in the Office of the San Diego County Recorder on May 28, 1976, File No. 76-164686, in the City of San Diego, County of San Diego, State of California, and more particularly described as follows:

PARCEL NO. 1 (Land Area)

Commencing at a 3" diameter brass disk monument stamped S.D.U.P.D. No. 14 as shown on R.O.S. No. 16668, filed in the Office of the County Recorder of San Diego County July 25, 2000; thence leaving said monument South 39°31'53" East a distance of 74.59 feet (calculated) to the TRUE POINT OF BEGINNING of Parcel No. 1, said point also being the beginning of a non-tangent 556.00 foot radius curve, concave to the north, a radial to said point bears South 00°22'28" East from the center of said curve; thence easterly along the arc of said curve through a central angle of 04°42'58" an arc distance of 45.77 feet to a point of reverse curvature, the common radial of which bears South 05°05'26" East from the center of said curve; thence southeasterly along the arc of a 32.00 foot radius curve concave to the southwest through a central angle of 44°46'18" an arc distance of 25.01 feet to a point on the southwesterly face of curb of a street commonly known as Convention Way; thence along said face of curb line South 50°19'08" East a distance of 427.66 feet to a point hereinafter known as Point "A"; thence leaving said face of curb line South 39°40'52" West a distance of 83.00 feet; thence South 50°19'08" East a distance of 112.62 feet; thence South 39°40'52" West a distance of 110.00 feet to a point on the U.S. Bulkhead Line as said U.S. Bulkhead Line is now established for the Bay of San Diego and delineated on map entitled "Harbor Lines, San Diego Bay, California File No. (D.O. series) 426" approved by the Secretary of the Army, April 29, 1963, and filed in the Office of the District Engineer, Los Angeles, California; thence leaving said U.S. Bulkhead Line and continuing South 39°40'52" West a distance of 1.00 foot; thence parallel with said U.S. Bulkhead Line North 50°19'08" West a distance of 297.61 feet; thence South 39°40'52" West a distance of 1.00 foot; thence parallel with said U.S. Bulkhead Line North 50°19'08" West a distance of 356.73 feet to a point on the southeasterly face of curb line of a street commonly known as Marina Park Way; thence along said face of curb line North 39°40'52" East a distance of 2.04 feet to a point on said U.S. Bulkhead Line; thence leaving said U.S. Bulkhead Line and continuing along said face of curb North 39°40'52" East a distance of 28.81 feet to the beginning

of a 162.00 foot radius curve, concave to the southeast; thence northeasterly along the arc of said curve through a central angle of 49°56'40" an arc distance of 141.21 feet to the TRUE POINT OF BEGINNING of Parcel No. 1, containing 112,534 square feet or 2.58 acres of tidelands area.

PARCEL NO. 2 (Land Area)

Commencing at the above described Point "A"; thence continuing along said Convention Way face of curb South 50°19'08" East a distance of 196.62 feet to the TRUE POINT OF BEGINNING of Parcel No. 2; thence continuing along said face of curb South 50°19'08" East a distance of 235.00 feet; thence leaving said face of curb South 39°40'52" West a distance of 193.00 feet to the above mentioned U.S. Bulkhead Line; thence leaving said U.S. Bulkhead Line and continuing South 39°40'52" West a distance of 1.00 feet; thence parallel with said U.S. Bulkhead Line North 50°19'08" West a distance of 235.00 feet; thence North 39°40'52" East a distance of 1.00 feet to said U.S. Bulkhead Line; thence leaving said U.S. Bulkhead Line and continuing North 39°40'52" East a distance of 193.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 2, containing 45,590 square feet or 1.05 acres of tidelands area.

PARCEL NO. 3 (Land Area)

Commencing at the above described Point "A", said point also being the TRUE POINT OF BEGINNING of Parcel No. 3; thence along Convention Way curb face South 50°19'08" East a distance of 196.62 feet; thence leaving said face of curb line South 39°40'52" West a distance of 193.00 feet to a point on the above described U.S. Bulkhead Line as said U.S. Bulkhead Line; thence leaving said U.S. Bulkhead Line and continuing South 39°40'52" West a distance of 1.00 foot to; thence parallel with said U.S. Bulkhead Line North 50°19'08" West a distance of 84.00 feet; thence North 39°40'52" East a distance of 1.00 foot to said U.S. Bulkhead Line; thence leaving said U.S. Bulkhead Line North 39°40'52" East a distance of 110.00 feet; thence North 50°19'08" West a distance of 112.62 feet; thence North 39°40'52" East a distance of 83.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 3, containing 25,643 square feet or 0.59 acre of tidelands area.

ALSO: Reserving therefrom a City of San Diego Water easement 15.00 feet in width lying within Parcel No. 1 as delineated and described as Easement No. 2 on sheets 2 and 4 of Drawing 019-063.

ALSO: Reserving therefrom a City of San Diego Storm Drain easement 20.00 feet in width lying within Parcel No. 1 as delineated and described as Easement No. 3 on sheets 2 and 4 of Drawing 019-063.

ALSO: Reserving therefrom an easement for Public Pedestrian Access 25.00 feet in width lying within Parcel No.'s 1 and 2 as delineated and described as Easement No. 4 on sheets 2 and 4 of Drawing 019-063.

ALSO: Reserving therefrom a City of San Diego Water easement 30.00 feet in width as shown On City of San Diego Dwg. No. 11558-35-D and lying within Parcel No.'s 1 and 2 as delineated and described as Easement No. 5 on sheets 2 and 4 of Drawing 019-063.

ALSO: Reserving therefrom a City of San Diego Storm Drain easement 30.00 feet in width lying within Parcel No. 1 as delineated and described as Easement No. 6 on sheets 2 and 4 of Drawing 019-063.

ALSO: Reserving therefrom an easement for Public Pedestrian Access 24.00 feet in width lying within Parcel No. 2 as delineated and described as Easement No. 8 on sheets 2 and 4 of Drawing 019-063.

ALSO: Reserving therefrom a Public Pedestrian Access easement 35.00 feet in width lying within Parcel No.'s 1 and 2 as delineated and described as Easement No. 9 on sheets 2 and 4 of Drawing 019-063.

The above described tidelands lease and reservation areas are those delineated on San Diego Unified Port District Drawing No. 019-063 dated 15 May 2018, and made a part of this agreement.

All bearings and distances in the above legal description are grid, and based upon the California Coordinate System, Zone 6, N.A.D. 83, Epoch 1991.35.


GARY L. HUS 05-18-2018
LS 7019 DATE



Exhibit G-1, G-2, H-1 and H-2
to be
Administratively Attached

Exhibit I

**RATIFICATION OF
AMENDMENT NO. 1 TO
AMENDED, RESTATED, AND COMBINED LEASE**

THIS RATIFICATION ("Ratification"), made and entered into this 1st day of June, 2018, by FIFTH AVENUE LANDING, a California limited liability company ("Lessee") for the benefit of SAN DIEGO UNIFIED PORT DISTRICT, a public corporation ("Lessor").

WITNESSETH:

WHEREAS, Lessor and San Diego Convention Center Corporation, a non-profit public benefit corporation (herein called "SDCCC") on the 6th day of April 2010, entered into an Amended, Restated, and Combined Lease to facilitate the Phase III Expansion of the San Diego Convention Center, which Lease is on file in the Office of the Clerk of Lessor bearing Document No. 56486; and

WHEREAS, Lessor and SDCCC amended the Lease on the 19th day of September 2012 ("Amendment No. 1") to assign the Expansion Option, as more particularly described in Paragraph 49 of the Lease to the City of San Diego, a municipal corporation ("City") and memorialize additional agreements among the Lessor, SDCCC and City. Amendment No. 1 is on file in the Office of the Clerk of Lessor bearing Document No. 59467; and

WHEREAS, SDCCC remained the lessee of record under the Lease until the 19th of June, 2015, when it transferred all of its interest in the Lease to Lessee pursuant to that certain Assignment of Leasehold Interest In Lieu of Foreclosure, recorded with the San Diego County Recorder as Document Number 2015-0324060 on June 22, 2015 ("Assignment"); and

WHEREAS, Lessee assumed the Lease, as amended by Amendment No. 1 and on the 18th day of November 2015, executed Acknowledgement, which on file in the Office of the Clerk of Lessor bearing Document No. 68396; and

NOW THEREFORE, at the request of Lessor, Lessee hereby expressly ratifies Amendment No. 1 and assumes each and every obligation under the Lease, as amended, and acknowledges and agrees that the term "lease" as defined in the Assignment includes both the Lease and Amendment No. 1.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Ratification as of the day and the year first above written.

LESSEE:

FIFTH AVENUE LANDING, LLC,
a California limited liability company

By: _____
Ray A. Carpenter
Its: Managing Member

By: San Diego California Properties, LLC,
Its: Managing Member

By: 

Art E. Engel
Its: Managing Member

IN WITNESS WHEREOF, the undersigned have executed this Ratification as of the day and the year first above written.

LESSEE:

FIFTH AVENUE LANDING, LLC,
a California limited liability company

By: RA Carpenter
Ray A. Carpenter
Its: Managing Member

By: San Diego California Properties, LLC,
Its: Managing Member

By: _____
Art E. Engel
Its: Managing Member

EXHIBIT J

A Full Reconveyance will be issued only when the original Note or Notes, together with the Deed of Trust securing payment thereof, are surrendered to the Trustee for cancellation, accompanied by this Request signed by all owners of the Note or Notes, together with the required fees.

REQUEST FOR FULL RECONVEYANCE

TO Chicago Title Company, TRUSTEE

The undersigned is the legal owner and holder of the Note or Notes for the original sum of \$ 12,500,000.00, and of all other indebtedness secured by Deed of Trust dated 5/6/2010 made by San Diego Convention Center Corporation, Inc. a CA Corp. Trustor, to Chicago Title Company, A CA Corporation Trustee, and recorded on 5/7/2010, as Instrument No. 2010-0230907 in Book 1964, Page 14774, of Official Records, in the office of the County Recorder of San Diego, State of California.

Said Note or Notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed, upon delivery to you of said Deed of Trust and said Note or Notes and upon payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said Note or Notes above mentioned, and all other evidences of indebtedness secured by said Deed of Trust, together with the said Deed of Trust, and to reconvey, without warranty, to the parties legally entitled thereto, all the estate now held by you under the Deed of Trust.

Dated: 5/7/2018

Charles E. Black, Esq., Managing Member

Mail Reconveyance to C/O CHARLES E. BLACK, ESO.

8125 AUBERGE CIRCLE
SAN DIEGO, CA 92127

EXHIBIT K-1

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT (“**Agreement**”), dated as of _____, 201__, being the first calendar date on which all Parties have signed this Agreement (“**Effective Date**”), is made by and among FIFTH AVENUE LANDING, LLC, a California limited liability company (“**FAL**”), the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (“**District**”) and the CITY OF SAN DIEGO, a municipal corporation (“**City**”) (individually, a “**Party**,” and collectively, the “**Parties**”). This Agreement is entered into with reference to the recitals set forth below.

Section 1 - Recitals

1.1 ARC Lease and Marina Lease.

1.1.1 In 1984, the District, as ground lessor, entered into a ground lease, as subsequently amended, with Sea Group Construction, Inc., predecessor in interest to FAL, for premises located bayward of Convention Way and Marina Park Way (“**Prior Lease**”). In 2010, FAL assigned its rights as ground lessee under the Prior Lease with respect to a portion of the Prior Lease premises to the San Diego Convention Center Corporation, Inc., a California nonprofit corporation (“**SDCCC**”) pursuant to an Assignment and Assumption of Lease Agreement (“**Assignment**”) on file in the Office of the District Clerk bearing Document No. 56484.

1.1.2 Substantially concurrently with the Assignment, the District, as ground lessor, and FAL, as ground lessee, entered into a lease dated May 7, 2010, on file in the Office of the District Clerk bearing Document No. 56494 (“**Marina Lease**”) for portions of the Prior Lease premises comprised of approximately 25,643 square feet of land area (“**Marina Landside Area**”) and approximately 155,428 square feet of water area, each adjacent to the Existing ARC Lease Premises (as defined below), approved for the uses specified therein.

1.1.3 Substantially concurrently with the Assignment, District and SDCCC entered into that certain Amended, Restated and Combined Lease to San Diego Convention Center Corporation dated April 6, 2010, on file in the Office of the District Clerk bearing Document No. 56486 (“**Original ARC Lease**”), for portions of the Prior Lease premises comprised of approximately 193,232 square feet of tideland area located in the vicinity of Convention Way and Marina Park Way in the City of San Diego, California, more particularly described and delineated in the Original ARC Lease and in Exhibit A-1 (“**Existing ARC Lease Premises**”). The Original ARC Lease was subject to a Deed of Trust and Assignment of Rents dated May 6, 2010 that encumbered the SDCCC’s leasehold interest in the Original ARC Lease, on file in the Office of the District Clerk bearing Document No. 56485 (“**Deed of Trust**”).

In 2012, District and SDCCC entered into that certain *Amendment No. 1 to Amended, Restated and Combined Lease to San Diego Convention Center Corporation*, dated September 19, 2012, on file in the Office of the District Clerk bearing Document No. 59467 (“**Amendment No. 1**”). Unless otherwise specified, all references to Sections and Exhibits of the ARC Lease (as defined

below) shall refer to the section numbers and exhibits, respectively, set forth in the ARC Lease, as amended by Amendment No. 1 (as so amended, the “ARC Lease”). FAL’s leasehold interest in the Existing ARC Lease Premises under the ARC Lease and in the Marina Landside Area under the Marina Lease (collectively, the “**FAL Property**”),

1.2. Purchase and Sale Agreement. On _____, 201__, the Parties entered into a Purchase and Sale Agreement and Escrow Instructions (“**PSA**”), which addresses, among other items, matters related to the FAL Property. This Indemnity Agreement is being signed and delivered in accordance with the PSA.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged and in consideration of the mutual promises and covenants contained in this Agreement and in the PSA, and having determined that the foregoing recitals are true and correct and should be and are incorporated into this Agreement, the Parties agree as follows:

Section 2– Representations and Warranties

2.1 FAL’s Representations and Warranties. FAL represents and warrants to District and City (individually, an “**Indemnitee**,” and collectively, the “**Indemnitees**”) that except as set forth below, each of statements in Sections 2.2 through 2.6 is true as of the Effective Date to FAL’s knowledge. Wherever the term “**FAL’s knowledge**” is used in this Agreement, it will mean the actual knowledge of any one of Ray A. Carpenter, Art Engel and Ralph Hicks as of the Effective Date of this Agreement, after due and diligent inquiry.

2.2 Authorization; Authority. This Agreement has been duly authorized, signed and delivered by FAL. The individual(s) signing this Agreement on behalf of FAL have the power, right and authority to (i) enter into this Agreement and (ii) bind FAL to this Agreement. FAL has all requisite power and authority required to enter into this Agreement and to take any steps contemplated by and to perform its obligations under this Agreement. FAL has obtained all required consents in connection with entering into this Agreement. All documents required by this Agreement to be signed by FAL are valid, legally binding obligations of and enforceable against FAL in accordance with their terms, except as enforceability may be limited by bankruptcy laws or other similar laws affecting creditors’ rights.

2.3 Pending or Threatened Litigation; No Adverse Condition or Circumstance. Except as disclosed to District and City in writing, there is no litigation pending in any court of applicable jurisdiction that affects or will affect the ability of FAL to fully perform and discharge its obligations under this Agreement or the PSA or that affects the FAL Property, the ARC Lease, the Marina Lease or this Agreement. Except as disclosed to District and City in writing, to FAL’s Knowledge there is no litigation threatened that could affect or will affect the ability of FAL to fully perform and discharge its obligations under this Agreement or the PSA or that affects the FAL Property, the ARC Lease, the Marina Lease or this Agreement. By entering into the PSA and implementing the transactions contemplated in the PSA, District and City are not interfering with any contract between FAL and any third party, and FAL is not and will not be in default or in breach of any contract between FAL and any third party.

2.4 Absence of Fraud and Misleading Statements. No representation, warranty or statement of FAL in this Agreement or the PSA contains or will contain any untrue statement of

a material fact or omits or will omit to state a material fact necessary to make the statements or facts contained therein false or misleading.

2.5 No Violation or Breach. The signing and delivery of this Agreement or the PSA, the incurring of the obligations set forth in this Agreement or the PSA, and compliance with the terms of this Agreement or the PSA will not (i) violate any provision of law or any order of any court or governmental entity to which FAL is subject or (ii) conflict with or result in the breach of any terms, conditions, or provisions of, or constitute a default under any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, limited liability company agreement, lease or other agreements or instruments to which FAL or any of its members are a party.

2.6 Contingent Obligations; Contracts; Proceedings. FAL does not have any contingent obligations or any other contracts, the performance or nonperformance of which could affect the ability of FAL to carry out its obligations set forth in this Agreement or the PSA. No attachments, execution proceedings, assignments of benefit to creditors, bankruptcy, reorganization or other proceedings are pending or, to the FAL's knowledge, threatened against FAL or its members.

Section 3 - Indemnity

3.1 FAL Indemnification of District. FAL shall, to the fullest extent permitted by law, indemnify, defend, hold harmless and protect District and its commissioners, officers, employees, representatives, agents and consultants (collectively, with District, the "**District Parties**"), from and against any and all liabilities, claims, judgments, damages, proceedings, orders, directives, costs, demands, liens, obligations, causes of action, losses, and expenses (including reasonable attorneys', consultants' fees and experts' fees and court costs) (collectively, "**Claims**" or individually, "**Claim**") arising from, or relating to, directly or indirectly: (a) performance or non-performance by FAL of its obligations under the PSA, including, without limitation, as required to cause delivery of title to the FAL Property to District in accordance with Section 9.1.2 of the PSA at the Alternative A Closing (as defined in the PSA); (b) agreements between FAL and any third party related to the FAL Property, the ARC Lease, the Marina Lease, or the FAL Project (as defined in the PSA) or any one thereof that were entered into with or without District's written consent (collectively, "**Third-Party Agreements**"); (c) actions, including without limitation, Claims, or inactions of the parties to Third-Party Agreements, or any of them; (d) challenges to the execution, delivery and/or enforcement of the PSA or to the implementation of the transactions described in the PSA; (e) the enforcement or attempted enforcement of Third-Party Agreements against any of the District Parties, the FAL Property or any portion thereof; (f) the determinations or judgments of District with respect to any approval or disapproval by District of a requested consent, approval, entitlement or amendment in connection with the PSA or any Third-Party Agreements or any transaction described therein, or any party to a Third-Party Agreement, or any assignment, transfer or attempted assignment or transfer of rights under the ARC Lease or the Marina Lease pursuant to a Third-Party Agreement, and/or (g) the recording of any instruments against any property, whether real or personal, owned by District, in each case which District may incur or suffer, and which are based in whole or in part on the PSA, any Third-Party Agreements, the ARC Lease or Marina Lease or any matters relating thereto, specifically including, but not limited to, FAL's negotiation of Third-Party Agreements, the actions, inactions, performance or

non-performance of FAL and/or any of its members, managers or agents with respect to Third-Party Agreements or the PSA and/or any covenants, agreements, promises, representations or statements made by or on behalf of FAL or any of its members, managers or agents in connection with or relating to Third-Party Agreements or the PSA. It is expressly agreed that: (x) District shall have the right, at FAL's cost, to utilize defense counsel of District's choosing, and District's selection and use of such defense counsel (whether in-house or outside legal counsel) shall not excuse FAL's performance of its obligations to District under this Agreement and; (y) FAL's indemnity obligation to District under this section shall not apply to the payment to and retention by FAL of the Released Initial Option Payment (as defined in the PSA).

3.2 FAL Indemnification of City. FAL shall, to the fullest extent permitted by law, indemnify, defend, hold harmless and protect City and its officials, officers, employees, agents and consultants, with counsel chosen by City, from and against any and all Claims arising from, or relating to, directly or indirectly: (a) performance or non-performance by FAL of its obligations under the PSA, including, without limitation, as required to cause delivery of title to the FAL Property to City in accordance with Section 9.1.3 of the PSA at the Alternative A Closing (as defined in the PSA); (b) Third-Party Agreements, (c) the actions or inactions of the parties to Third-Party Agreements, or any of them, (d) challenges to the entering into and enforcement of the PSA, and/or (e) the enforcement or attempted enforcement of Third-Party Agreements against any Indemnitee or the Indemnitees, the Expansion Property or any portion thereof, which City may incur or suffer, and which are based in whole or in part on the PSA, Third-Party Agreements or any matters relating thereto, specifically including, but not limited to, FAL's negotiation of Third-Party Agreements, the actions, inactions, performance or non-performance of FAL and/or any of its members, managers or agents with respect to the Third-Party Agreements, the PSA and/or any covenants, agreements, promises, representations or statements made by or on behalf of FAL or any of its members, managers or agents in connection with or relating to the Third-Party Agreements or the PSA. It is expressly agreed that: (x) City shall have the right, at FAL's cost, to utilize defense counsel of City's choosing, and City's selection and use of such defense counsel (whether in-house or outside legal counsel) shall not excuse FAL's performance of its obligations to City under this Agreement and; (y) FAL's indemnity obligation to City under this section shall not apply to the payment to and retention by FAL of the Released Initial Option Payment (as defined in the PSA).

Section 4 - Tender of Claim

4.1 Tender to FAL. Either Indemnitee may notify FAL of any Claim or Claims at such time as the Indemnitee sees fit after such Indemnitee becomes aware of such Claim or Claims. The Claim or Claims shall be sent to FAL in accordance with the provisions of Section 5 below and may include a specification of Indemnitee's counsel chosen by Indemnitee to represent Indemnitee with respect to the Claim or Claims, which counsel will be paid by Indemnitor, but serve as counsel to Indemnitee. If the Claim is contained in any complaint or other court filing served upon the Indemnitee, the Indemnitee shall include a copy of any complaint or other court filing served upon the Indemnitee. Within ten (10) calendar days after receipt of any notice of a Claim sent by an Indemnitee, FAL shall confirm receipt thereof and confirm in writing to the Indemnitee providing such notice that FAL is prepared to defend the Claim and bear the costs of doing so by Indemnitee's chosen counsel or if Indemnitee's initial

notice did not specify Indemnitee's chosen counsel, requesting Indemnitee to specify its chosen counsel, which Indemnitee will do within ten (10) calendar days of FAL's request.

4.2 If FAL fails to provide notice as required by Section 4.1 and if such failure continues for 5 days following FAL's receipt of written notice of such failure from District or City, FAL shall be in default under this Agreement but such default shall not negate any of FAL's obligations under this Agreement.

Section 5 - Notices

5.1 **Delivery.** Any and all notices and communications pursuant to or as required by this Agreement must be in writing and may be sent by (a) messenger for immediate personal delivery, (b) nationally recognized delivery service guaranteeing overnight delivery (i.e., United Parcel Service, Federal Express, etc.), (c) registered or certified United States mail, postage prepaid, return receipt requested, to the address of the recipient Party, or (d) facsimile or other form of electronic transmission, including email (which shall be followed by a hard copy delivered in accordance with one of the preceding clauses (a) through (c) or via regular U.S. mail, unless the hard copy is waived by reply email from the recipient in response to a notice email). Any notice shall be deemed received by the addressee, on the Business Day that the notice is sent by messenger for immediate personal delivery and received at the notice address before 5:30 p.m. Pacific Time, on the Business Day the notice is transmitted electronically before 5:30 p.m. Pacific Time, one Business Day after delivery to a nationally recognized overnight delivery service, or two Business Days after the notice is placed in the United States mail (regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt). Any attorney representing a Party may give any notice on behalf of such Party.

5.2 **Addresses.** The notice addresses for the Parties, as of the Effective Date, are as follows:

If to FAL:	Mr. Ray A. Carpenter Fifth Avenue Landing, LLC 2145 E Belt St. San Diego, CA 92113 Telephone: (619) 233-0178 Email: rayc@restaite.net
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With a copy to:	Art E. Engel San Diego California Properties, LLC 1311 First Street Coronado, CA. 92118 Telephone: (619) 992-7311 Email: aeengel8@gmail.com
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With a copy to: Charles E. Black, Esq.
8125 Auberge Circle
San Diego, CA 92127
Telephone: (619) 993-6503
Email: cblack@cburbandevelopment.com

If to District: Ms. Randa Coniglio
President/CEO
San Diego Unified Port District
3165 Pacific Highway
San Diego, CA 921013165 Pacific Highway
San Diego, CA 92101
Telephone: (619) 686-6200
Email: rconiglio@portofsandiego.org

With a copy to: Thomas Russell, Esq.
General Counsel
Rebecca S. Harrington, Esq.
Senior Deputy General Counsel
Office of the General Counsel
San Diego Unified Port District
3165 Pacific Highway
San Diego, CA 92101
Telephone: (619) 686-6219
Email: rharrington@portofsandiego.org
trussell@portofsandiego.org

If to City: Kris Michell
Chief Operating Officer
City of San Diego
202 C Street, MS 9A
San Diego, CA 92101
Telephone No.: (619) 235-5806
Email: kmichell@sandiego.gov

With a copy to: Kevin Reisch, Esq.
Senior Chief Deputy City Attorney
1200 Third Avenue, Suite 1100
San Diego, CA 92101
Telephone No.: (619) 236-7722
Email: kreisch@sandiego.gov

5.3 Changes. Each Party shall promptly deliver written notice to the other Parties regarding any change in such Party's notice address.

Section 6 - General Provisions

6.1 Prompt Performance. Time is of the essence of each covenant and condition set forth in this Agreement.

6.2 Gender, Number. Whenever the context requires, the use in this Agreement of (i) the neuter gender includes the masculine and the feminine gender and (ii) the singular number includes the plural number.

6.3 Survival of Provisions, Non-Merger. The representations, warranties, agreements and indemnities set forth in this Agreement are a material part of the consideration that induced District and City to enter into the PSA and the transactions provided for in the PSA. The provisions of this Agreement will survive the expiration or sooner termination of the PSA and the completion of the various transactions provided for in the PSA and the closings held thereunder, as well as the delivery of the various documents contemplated by the PSA.

6.4 Captions. Captions in this Agreement are inserted for convenience of reference only and will not affect the construction or interpretation of this Agreement.

6.5 Entire Agreement. This Agreement and all exhibits referred to in this Agreement contain the entire agreement between the Parties relating to the indemnity provided in this Agreement, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, relating solely to this Indemnity are merged into and superseded by this Agreement. Notwithstanding the foregoing, nothing in this Agreement modifies, amends or supersedes the various indemnity provisions in the ARC Lease, the Marina Lease, the PSA, the various documents contemplated by the PSA or any document which may be entered into in connection with implementing the transactions under the PSA or any other written three-party or two-party agreement between the Parties.

6.6 Modification. No modification, amendment, change, waiver, or discharge of this Agreement will be valid unless it is in writing and signed by the Party against which the enforcement of the modification, waiver, amendment, change, or discharge is or may be sought.

6.7 Attorneys' Fees and Costs. FAL agrees to pay to any Indemnitee within fifteen (15) calendar days after written demand all costs and expenses incurred by such Indemnitee in seeking to enforce its rights and remedies under this Agreement, including court costs, costs of alternative dispute resolution and reasonable attorneys' fees, whether or not suit is filed or other proceedings are initiated hereon. FAL further agrees to pay within 15 days after written demand

all costs and expenses, including, without limitation, actual attorneys' fees and expenses, incurred by any Indemnitee in connection with any bankruptcy, insolvency or reorganization proceeding or receivership involving FAL or any affiliate of FAL, including, without limitation, attorneys' fees and expenses incurred in making any appearances in any such proceeding or in seeking relief from any stay or injunction issued in or arising out of any such proceeding.

6.8 Successors. All terms of this Agreement will be binding upon, inure to the benefit of and be enforceable by, the Parties and their respective administrators or executors, successors and assigns.

6.9 Invalidity. If any material covenant, condition or provision of this Agreement is held to be invalid, void or unenforceable by a final order or judgment of a court of competent jurisdiction, the remainder of this Agreement will be enforceable.

6.10 Counterparts. This Agreement may be signed in any number of counterparts, each of which will be deemed an original, and all of which together will constitute one instrument.

6.11 Further Assurances. The Parties agree to cooperate with each other and sign and deliver any documents reasonably necessary to carry out the intent and purpose of this Agreement.

6.12 Applicable Law. This Agreement will be construed and enforced in accordance with the laws of the State of California. All actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the Superior Court of the County of San Diego, State of California or in any other appropriate court of that county.

{Signatures commence on following page}

IN WITNESS WHEREOF, this Agreement has been signed on the dates set forth below.

FAL:

FIFTH AVENUE LANDING, LLC,
a California limited liability company

By: _____
Ray A. Carpenter
Its: Managing Member

By: San Diego California Properties, LLC,
Its: Managing Member

By: _____
Art E. Engel
Its: Managing Member

Date: _____, 2018

DISTRICT:

SAN DIEGO UNIFIED PORT DISTRICT,
a Public Corporation

By: _____
Name: _____

Its: _____

Date: _____, 2018

Approved as to form and legality
GENERAL COUNSEL

By: _____

Name: _____
Assistant/Senior Deputy
General Counsel

CITY:

CITY OF SAN DIEGO,
a municipal corporation

By: _____

Name: _____

Title: _____

Date: _____, 2018

Approved as to form:

MARA W. ELLIOTT, City Attorney

By: _____

Kevin Reisch
Senior Chief Deputy City Attorney

EXHIBIT K-2**GUARANTY TO INDEMNITY AGREEMENT**

RAYMOND CARPENTER, ARTHUR ENGEL, HERBERT ENGEL and DAVID ENGEL, hereinafter individually “**Guarantor**,” and collectively “**Guarantors**”, whose addresses are set forth below, as a material inducement to and in consideration of the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (“**District**”) and the CITY OF SAN DIEGO, a municipal corporation (“**City**”) entering into that certain Purchase and Sale Agreement and Escrow Instructions, dated the same date as this Guaranty (the “**PSA**”), with Fifth Avenue Landing, LLC, a California limited liability company (“**FAL**”) which is wholly or partially owned by Guarantors pursuant to which PSA, among other things, FAL has provided that certain Indemnity Agreement dated the same date as this Guaranty in favor of District and City and on file in the Office of the Clerk of the District, Document No. _____ (“**Indemnity Agreement**”), a copy of which is attached to this Guaranty and made a part of it, each unconditionally, absolutely and irrevocably guarantees and promises to and for the benefit of each of District and City, the prompt and full performance by FAL of all the provisions and obligations of the Indemnity Agreement. District and City are sometimes referred to individually as an “**Indemnitee**” or collectively as “**Indemnitees**”. This Guaranty to Indemnity Agreement is referred to herein as the “**Guaranty**”.

The obligations of the Guarantors are joint and several, and are independent of FAL’s obligations. A separate action may be brought or prosecuted against any Guarantor, whether the action is brought or prosecuted against any other Guarantor, FAL, or all, or whether any other Guarantor, FAL, or one or both of the Indemnitees or all are joined in the action.

Each Guarantor waives the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.

The provisions of the Indemnity Agreement and/or the PSA may be changed by agreement between the parties thereto at any time, without the consent of and without notice to any Guarantor. Each Guarantor guarantees the prompt and full performance of the Indemnity Agreement as changed and notwithstanding any change then or previously made to the PSA. Any Indemnitee's failure or delay in the enforcement of any of its rights under the Indemnity Agreement or this Guaranty shall not affect this Guaranty or relieve any Guarantor from any of its obligations under the Indemnity Agreement or this Guaranty.

If FAL defaults under the Indemnity Agreement, either or both Indemnitees can proceed immediately against each or any Guarantor or Guarantors, FAL, or all or any of them, and either or both Indemnitees can enforce against any Guarantor, FAL, or all or any of them, any rights that it has under the Indemnity Agreement, this Guaranty or pursuant to applicable

laws. If the Indemnity Agreement terminates and any Indemnitee has any rights it can enforce against FAL after termination, either Indemnitee or both Indemnitees can enforce those rights against any Guarantor, or all of them, without giving prior notice to FAL, any other Guarantor, or any or all of them, and can do so without making any demand on any of them.

Each Guarantor waives the right to require an Indemnitee to: (1) proceed against FAL or any other Guarantor; (2) proceed against or exhaust any security that any Indemnitee holds from FAL or any Guarantor; or (3) pursue any other remedy in such Indemnitee's power.

Until all of FAL's obligations under the Indemnity Agreement have been discharged in full, no Guarantor has any right of subrogation against FAL. Each Guarantor waives: (i) its right to enforce any remedies that the Guarantor now has, or later may have, against FAL; (ii) any right to participate in any security now or later held by either or both Indemnitees or FAL; (iii) all presentments, demand for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty; and (iv) all notices of the existence, creation, or incurrence of new or additional obligations.

If any Indemnitee elects to enforce any or all of any Guarantor's obligations by legal proceedings, each Guarantor shall pay such Indemnitee all costs incurred, including, but not limited to, reasonable attorney fees. Each Guarantor agrees to pay to such Indemnitee within fifteen (15) calendar days after written demand all costs and expenses incurred by Indemnitee in seeking to enforce such Indemnitee's rights and remedies under this Guaranty, including court costs, costs of alternative dispute resolution and reasonable attorneys' fees, whether or not suit is filed or other proceedings are initiated with respect to the Indemnity Agreement. Each Guarantor further agrees to pay within fifteen (15) calendar days after written demand all costs and expenses, including, without limitation, actual attorneys' fees and expenses, incurred by any Indemnitee in connection with any bankruptcy, insolvency or reorganization proceeding or receivership involving any Guarantor, FAL or any affiliate of FAL, including, without limitation, attorneys' fees and expenses incurred in making any appearances in any such proceeding or in seeking relief from any stay or injunction issued in or arising out of any such proceeding.

Each Guarantor agrees that the validity of this Guaranty and the obligations of each Guarantor under this Guaranty shall not be released, terminated, impaired, reduced, or discharged by reason of any bankruptcy, insolvency, reorganization, liquidation, or receivership proceedings with respect to FAL.

The validity, enforcement, and interpretation of this Guaranty shall for all purposes be governed by and construed in accordance with the laws of the State of California (without regard to its conflicts of law principles).

If any provision of this Guaranty or the application thereof to any person or circumstance shall, for any reason and to any extent, be declared to be invalid or unenforceable, neither the remaining provisions of this Guaranty nor the application of such provision to any other person or circumstance shall be affected thereby, and the remaining provisions of this Guaranty, or the applicability of such provision to other persons or circumstances, as applicable, shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

All of the rights and remedies of Indemnitees under this Guaranty and the Indemnity Agreement are cumulative of each other and of any and all other rights at law or in equity, and the exercise by any Indemnitee of any one or more of such rights and remedies shall not preclude the simultaneous or later exercise by either Indemnitee of any or all such other rights and remedies. No single or partial exercise of any right or remedy shall exhaust or preclude any other or further exercise thereof, and every right and remedy may be exercised at any time and from time to time. No notice to or demand on any Guarantor in any case shall entitle such Guarantor to any other or further notice or demand in similar or other circumstances. No provision of this Guaranty or any right or remedy of any Indemnitee with respect hereto, or any default or breach, can be waived, nor can this Guaranty or any Guarantor be released or discharged in any way or to any extent, except specifically in each case by a writing intended for that purpose (and which refers specifically to this Guaranty) executed and delivered to the Guarantor by both Indemnitees.

Time shall be of the essence in this Guaranty with respect to all of each Guarantor's obligations hereunder.

Any and all notices and communications pursuant to this Guaranty must be in writing and may be sent by (a) messenger for immediate personal delivery, (b) nationally recognized delivery service guaranteeing overnight delivery (i.e., United Parcel Service, Federal Express, etc.), (c) registered or certified United States mail, postage prepaid, return receipt requested, to the address of the recipient, or (d) facsimile or other form of electronic transmission, including email (which shall be followed by a hard copy delivered in accordance with one of the preceding clauses (a) through (c) or via regular U.S. mail, unless the hard copy is waived by reply email from the recipient in response to a notice email). Any notice shall be deemed received by the addressee, on the business day that the notice is sent by messenger for immediate personal delivery and received at the notice address before 5:30 p.m. Pacific Time, on the business day the notice is transmitted electronically and received at the notice address before 5:30 p.m. Pacific Time, one business day after delivery to a nationally recognized overnight delivery service, or two business days after the notice is placed in the United States mail (regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt). Any attorney representing a party may give any notice on behalf of such Party.

Addresses. The notice addresses for the parties, as of the Effective Date, are as follows:

Mr. Ray A. Carpenter
Fifth Avenue Landing, LLC
2145 E Belt St.
San Diego, CA 92113
Telephone: (619) 233-0178
Email: rayc@restaite.net

Art E. Engel
San Diego California Properties, LLC
1311 First Street
Coronado, CA. 92118
Telephone: (619) 992-7311
Email: aeengel8@gmail.com

Herbert Engel
San Diego California Properties, LLC
P.O. Box 978
950 Pleasant Valley Road
Rancho Santa Fe, CA 92067
Email: h.engel@sbcglobal.net

David Engel
San Diego California Properties, LLC
P.O. Box 675392
8266 St. Andrews Road
Rancho Santa Fe, CA 92067
Email: david.engel@cox.net

Each Guarantor shall promptly deliver written notice to each Indemnitee regarding any change in such Guarantor's notice address.

Guarantor's obligations under this Guaranty shall be binding on any successor of Guarantor. As used herein, a successor of Guarantor shall mean any assignee, transferee, personal representative, heir, or other person or entity succeeding to the rights or obligations of Guarantor. No Guarantor may assign or transfer to any person or entity Guarantor's obligations under this Guaranty without the prior written consent of the Indemnitees', each in its sole discretion and, with or without cause.

Also as used herein, FAL shall mean FAL's successors and assigns, if any.

Guaranty to Indemnity Agreement

GUARANTORS:

RAYMOND CARPENTER, an individual

By: _____
Signature

Date: _____, 2018

ARTHUR ENGEL, an individual

By: _____
Signature

Date: _____, 2018

HERBERT ENGEL, an individual

By: _____
Signature

Date: _____, 2018

DAVID ENGEL, an individual

By: _____
Signature

Date: _____, 2018

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Signer's Name _____

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

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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

Signer is Representing: _____



Signer's Name _____

- Individual
- Corporate Officer --Title(s): _____
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- Trustee
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- Other: _____

Signer is Representing: _____



Guaranty to Indemnity Agreement

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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

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Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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

Signer is Representing: _____



Signer's Name _____

- Individual
- Corporate Officer --Title(s): _____
- Partner -- Limited General
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- Other: _____

Signer is Representing: _____



Guaranty to Indemnity Agreement

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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- Trustee
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Signer is Representing: _____



Signer's Name _____

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

Signer is Representing: _____



EXHIBIT L

**SAN DIEGO UNIFIED PORT DISTRICT
AMENDMENT NO. 2 TO
AMENDED, RESTATED, AND COMBINED LEASE TO
CITY OF SAN DIEGO
OF PROPERTY LOCATED AT
FIFTH AVENUE LANDING AND MARINA PARK WAY
SAN DIEGO, CALIFORNIA**

THIS AMENDMENT ("Amendment No. 2") is made and entered into this ____ day of _____, _____, by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation ("Lessor" or "District"), and CITY OF SAN DIEGO, a municipal corporation ("Lessee" or "City"). Lessor and Lessee are sometimes referred to in this Amendment No. 2 collectively as the "Parties" and individually as a "Party."

WITNESSETH:

WHEREAS, Lessor and San Diego Convention Center Corporation, Inc., a California nonprofit corporation ("SDCCC") on the 6th day of April 2010, entered into an Amended, Restated, and Combined Lease ("Original Lease") to facilitate the Phase III expansion of the San Diego Convention Center ("Expansion"), which Original Lease is on file in the Office of the Clerk of Lessor bearing Document No. 56486; and

WHEREAS, Lessor and SDCCC amended the Original Lease on the 19th day of September 2012 ("Amendment No. 1"; Original Lease, as amended by Amendment No. 1 is herein referred to as "2012 Lease" and 2012 Lease, as amended by this Amendment No. 2 is herein referred to as "Lease") to assign to Lessee the Expansion Option, as more particularly described in Paragraph 49 of the Lease, and memorialize additional agreements among Lessor, Lessee and SDCCC and Amendment No. 1 is on file in the Office of the Clerk of Lessor bearing Document No. 59467; and

WHEREAS, SDCCC remained the lessee of record of the 2012 Lease until the 19th of June, 2015, when it transferred all of its interest in the 2012 Lease to Fifth Avenue Landing, LLC, a California limited liability company ("FAL") by an assignment in lieu of foreclosure of a deed of trust; and

WHEREAS, FAL assumed the 2012 Lease and on the 18th day of November 2015, signed that certain Acknowledgement with respect to the 2012 Lease, and on the day of May 2018, signed that certain Ratification for the 2012 Lease; and

WHEREAS, on the 6th of January 2016, as required by Paragraph 50(f) of the 2012 Lease, FAL submitted a proposal to Lessor for a hotel and additionally, as part of its submittal, although not required by the 2012 Lease, FAL submitted a proposal for a 560-bed low cost visitor serving hotel on the Premises, along with a two-phased marina expansion on water parcels adjacent to the Premises (collectively, "FAL Project"); and

WHEREAS, on the 13th of April 2017, the Lessor found FAL's application complete and has been diligently and in good faith processing FAL's application; and

WHEREAS, Lessor prepared the Draft Environmental Impact Report (EIR) for Fifth Avenue Landing Project and Port Master Plan Amendment (SCH#2016081053), which analyzed the potential environmental impacts from the FAL Project, and circulated the Draft EIR for public review from 13th of December 2017 to 30th of January 2018, but as of the date of this Amendment No. 2, Lessor has not considered the certification of a Final EIR for the FAL Project; and

WHEREAS, notwithstanding Lessor's processing of FAL's application and the assignment in lieu of foreclosure of the 2012 Lease, Lessee desired to pursue development of the Expansion in anticipation of a citywide vote on a proposed special tax measure titled the "For a Better San Diego" initiative ("Ballot Measure") to increase the City's transient occupancy tax and dedicate the resulting increased tax revenues for specified public benefits, including to finance construction of the Expansion and modernization of the San Diego Convention Center; and

WHEREAS, accordingly, on the ___ day of _____ 201___, Lessor, Lessee and FAL entered a Purchase and Sale Agreement and Escrow Instructions ("PSA"), which is on file in the Office of the Clerk of Lessor bearing Document No. _____; and

WHEREAS, the Alternative A Closing (as defined in the PSA) occurred and FAL assigned the 2012 Lease to Lessor, and Lessor assumed the 2012 Lease from FAL and in accordance with the mutual intent of FAL and Lessor, FAL's assignment of the 2012 Lease to Lessor did not result in a merger of the leasehold interest under the 2012 Lease and Lessor's fee title ownership of the underlying land; and

WHEREAS, upon the Alternative A Closing and delivery of counter originals of this Amendment No. 2 to Lessor and Lessee, substantially concurrent with FAL's assignment of the 2012 Lease to Lessor, this Amendment No. 2 became effective.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and in consideration of the mutual promises and covenants herein contained, and having determined that the foregoing recitals are true

and correct and should be, and hereby are, incorporated into this Amendment No. 2, the Parties agree as follows:

1. Assignment and Assumption of Lease. By signing this Amendment No. 2, District assigns and delivers to City the Lease together with the leasehold interest in the Lease, and City assumes the Lease and the leasehold interest in the Lease.
2. Amendments to 2012 Lease. The 2012 Lease is amended in the following respects and no others, and except as expressly amended, all terms, covenants and conditions of the 2012 Lease shall remain in full force and effect. All defined terms shall have the same meaning as set forth in the 2012 Lease unless otherwise indicated in this Amendment No. 2.
 - (A) City is the “Lessee” in the Lease.
 - (B) The term “City” in Paragraphs 49(c) and 49(f)(vi) and Exhibit E of the Lease shall be replaced with the term “Lessee.”
 - (C) The description of the Leased Premises contained in the “NOW, THEREFORE” paragraph, which appears before Paragraph 1 on page 3 of the Original Lease, is amended to read as follows:

“Approximately 183,767 square feet of tideland area known as Parcels No. 1, No. 2 and No. 3 located on Convention Way and Marina Park Way in the City of San Diego, California, more particularly described and delineated on Lessor’s Drawing No. 019-163 dated May 15, 2018, attached hereto as Exhibits “A” and “B” and by this reference made a part hereof, hereinafter “Leased Premises”.
 - (D) The “Termination Date,” as defined in Paragraph 1 of the Lease, shall be the earlier of (i) May 1, 2042 or (ii) when the “Obligation” is repaid, the “Financing Agreements” are terminated, and any property interests associated therewith are released. “Obligation” and “Financing Agreements” shall have the same meaning as ascribed to those terms in the First Amendment to 1998 Convention Center Management Agreement by and between the San Diego Unified Port District and the City of San Diego dated August 19, 2016, on file with the Clerk of the Lessor as Document No. 65528.
 - (E) Any and all rent due under the Lease to Lessor from Lessee shall be abated during the term of the TUOP, as defined in Section (L) of this Amendment No. 2 and the new Paragraph 52 of the Lease, on the basis that FAL is required to pay rent to Lessor during the term of the TUOP.
 - (F) The special provisions governing the SDCCC Deed of Trust, set forth in Paragraph 9(h), are hereby deleted in their entirety. The remaining provisions of Paragraph 9, including the five stand-alone paragraphs set

forth immediately after Paragraph 9(h), will remain unchanged and will be in full force and effect.

(G) Paragraph 10 of the Lease is amended to delete the phrase “and to the beneficiary under the SDCC Deed of Trust” where such phrase appears on page 29 of the Original Lease.

(H) Paragraph 47 of the Lease is deleted in its entirety and replaced with the following:

“No security deposit shall be required during the term of the TUOP. After the TUOP expires, and prior to taking possession of the Premises, Lessee shall provide Lessor a security deposit in the amount of the minimum annual rent for the Leased Premises, which is anticipated to be FOUR HUNDRED EIGHTEEN THOUSAND NINE HUNDRED EIGHTY-NINE DOLLARS (\$418,989), subject to Paragraph 53. The security deposit shall be held by Lessor and used for the purpose of remedying Lessee’s defaults under this Lease and Lessor’s cost of remedying Lessor’s defaults. After the security deposit has been made, Lessee shall maintain the security deposit continuously throughout the Lease term. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this Lease in accordance with Paragraph 10. The security deposit or the remaining portion thereof shall be rebated, released, assigned, surrendered, or endorsed to Lessee or order, as applicable, upon expiration or earlier termination of this Lease.”

(I) The first unnumbered paragraph of Paragraph 49 is hereby deleted in its entirety and replaced with the following:

“This Paragraph 49 addresses Lessee’s obligations with respect to the redevelopment of the Leased Premises with an expansion to the San Diego Convention Center (“Expansion”). Lessor and Lessee will cooperate diligently and in good faith to amend the Port Master Plan to permit the construction and operation of the Expansion and an expansion to the adjacent Hilton San Diego Bayfront Hotel (“Expansion Hotel”) in accordance with this Paragraph. The Expansion will be located on the Expansion Site, which will include both the Leased Premises and a portion of OPB’s leasehold, which portion of OPB’s leasehold is defined as the “Park Parcel” in the Exclusive Negotiating Agreement between Lessor and OPB dated April 10, 2012, on file in the Office of the Clerk of Lessor bearing Document No. 58932 (“ENA”), and is delineated in Exhibit “A” to the ENA. If the “Release Conditions” in Section 1(b) of the ENA have been satisfied, Lessor shall endeavor in good faith and in a diligent, expeditious manner to cause the Park

Parcel to be relinquished to Lessor in accordance with Section 1(a) of the ENA, thereby allowing the Park Parcel (together with the Leased Premises) to be made available by Lessor to Lessee in accordance with the Amended Management Agreement defined in Paragraph 49(f) of this Lease. The Expansion Hotel will be located on OPB's Leased Premises described in Exhibits "A" and "B" on Drawing No. 019-044 dated October 11, 2005 in the Hilton Lease, which will be referred to as the "Expansion Hotel Site" and which does not overlap with any portion of the Expansion Site. The Expansion and Expansion Hotel are collectively referred to as the "Project." Lessee understands the importance of the Expansion Hotel as a waterfront use and revenue source and further acknowledges that Lessor will, if the Project is approved as proposed, receive the rent stream from the Expansion Hotel. The foregoing notwithstanding, Lessor acknowledges that development, construction and operation of the Expansion Hotel will be subject to conditions and factors outside the control of Lessor and Lessee and that development, construction and operation of the Expansion Hotel is not a condition to the development, construction and operation of the Expansion."

(J) Paragraph 49(g) of the Lease is hereby deleted in its entirety and replaced with the following:

"(g) Expansion Option. Upon the satisfaction of each of the conditions precedent described in Paragraph 49(f), the Expansion Option shall be deemed exercised and no further notice from Lessee to Lessor shall be required. The date that all of the deliveries described in Paragraph 49(f) have occurred is hereinafter called the "Expansion Option Exercise Date." Lessor shall docket the Amended Management Agreement for approval by the Board of Port Commissioners within 60 days following the Expansion Option Exercise Date. Lessee shall have exercised the Expansion Option on or before 5:00 p.m. Pacific Time on December 31, 2028 ("Expansion Option Termination Date"). If Lessee fails to exercise the Expansion Option by the Expansion Option Termination Date, this Paragraph 49 shall automatically terminate and be of no further force and effect and Lessee shall fulfill its obligations under Paragraph 50. Following both the exercise of the Expansion Option and the commencement of construction of the Expansion by Lessee (determined pursuant to Paragraph 49 (f)(vi)), the Lease shall terminate and shall have no further force or effect, and Lessee's occupancy of the Expansion Site will be governed by the Amended Management Agreement."

- (K) Paragraph 50 of the Lease is deleted in its entirety and replaced with the following:

“50. REDEVELOPMENT PROPOSAL ALTERNATIVE TO EXPANSION OPTION: This Paragraph 50 shall be effective on the earliest to occur of the following dates, if any (“Paragraph 50 Effective Date”): (i) the date that Lessee fails to timely exercise the Expansion Option by the Expansion Option Termination Date for any reason, (ii) the date the Expansion Option terminates for any reason, or (iii) if the Alternative A Closing (as defined in the PSA) occurs, the date that a court issues a final decision, after all appeals (if any), that overturns the Voter Approval (as defined in the PSA) of the Ballot Measure.

(a) Requirement for Submittal of Redevelopment Proposal. In accordance with this Paragraph 50, Lessee shall submit a redevelopment proposal for the Premises (“Redevelopment Proposal”). Failure to submit the Redevelopment Proposal in accordance with this Paragraph 50 shall constitute an event of default, in which event Lessor shall have the right to terminate this Lease. The Redevelopment Proposal, as determined by Lessor in its sole and absolute discretion, must be consistent with the Port Act and with Lessor’s then-existing leasing and development policies including, but not limited to, Board of Port Commissioners Policy 355 or its equivalent.

(b) Redevelopment Proposal Submittal Process.

(1) Pre-Submittal Meeting. By no later than one hundred eighty (180) days after the Paragraph 50 Effective Date, Lessee shall request in writing a pre-submittal meeting with Lessor to discuss and present Lessee’s initial Redevelopment Proposal. By no later than sixty (60) days after the date Lessee’s request is received by Lessor, Lessor and Lessee shall meet to discuss the Redevelopment Proposal (the “Pre-Submittal Meeting”). By no later than fourteen (14) days after the Pre-Submittal Meeting, Lessor may send any written comments to Lessee regarding the Redevelopment Proposal which Lessee shall consider in good faith.

(2) Filing of Complete Project Application. By no later than thirty (30) days after the Pre-Submittal Meeting, Lessee shall file with Lessor a complete tenant project plan application (or

Lessor's then current form for the review of tenant projects) for the Redevelopment Proposal which shall include, at a minimum:

- a. A written description of the Redevelopment Proposal;
- b. A site plan, including a scaled site layout, parking layout, if proposed, proposed uses and other features necessary for the Lessor to understand the scope of the Redevelopment Proposal;
- c. Concept-level renderings and precedent imagery of the Redevelopment Proposal;
- d. Financial analysis including but not limited to a development cost proforma, an operating proforma with at least ten (10) years of projected performance including projected gross and net income to Lessee and projected rents to Lessor, and any associated market and feasibility studies evidencing the market demand and financial feasibility of the Redevelopment Proposal; and
- e. Any other information reasonably requested by Lessor in writing with respect to the Redevelopment Proposal.

(3) Lessor's Preliminary Review of Redevelopment Proposal.

- a. Initial Review for Completeness. If Lessor determines that Lessee has submitted an incomplete Redevelopment Proposal, then by no later than thirty (30) days after the Redevelopment Proposal is filed with Lessor, Lessor shall review and give written comments to Lessee requesting additional information and clarification unless such time is extended by Lessee, in writing. Lessee shall revise and resubmit to Lessor the Redevelopment Proposal by no later than sixty (30) days after receipt of Lessor's written comments unless extended by Lessor, in writing.
- b. Initial Direction by Lessor's Board. By no later than sixty (60) days from Lessor's receipt of a complete Redevelopment Proposal, Lessor shall request direction from Lessor's Board on the Redevelopment Proposal. Lessor's Board may either reject/disapprove the proposal or direct Lessor's staff to further evaluate the proposal,

which may include without limitation, whether to process the Redevelopment Proposal, start the environmental review process under the CEQA for the Redevelopment Proposal, commence negotiations, or other direction, in the Lessor's Board of Port Commissioners' sole and absolute discretion.

c. Effect of Initial Review by Lessor's Board. If Lessor's Board rejects the Redevelopment Proposal, then Lessor shall have the right to terminate this Lease in its sole and absolute discretion. If Lessor's Board directs Lessor's staff to further evaluate the Redevelopment Proposal, then Lessee shall have the option, but not the obligation, to proceed consistent with Paragraph 50(c) below.

(c) Redevelopment Proposal Option. If Lessor's Board directs Lessor's staff to further evaluate the Redevelopment Proposal, then Lessee shall have the option, but not the obligation, to exercise the option for the Redevelopment Proposal (the "Redevelopment Proposal Option") subject to the timely satisfaction of the conditions below and in accordance with the process described in this Paragraph 50(c).

(1) Definition of "Approved" and "Approval". Whenever used in this Paragraph 50(c) to refer to an entitlement, the terms "approved" and "approval" will mean approval of the specified action and:

a. Termination of all applicable administrative appeal periods with respect to such action without the filing of an appeal, or if an appeal is filed, the denial of such appeal; and

b. If any legal challenge to the specified action is filed, such legal challenge has been dismissed, withdrawn or otherwise resolved in Lessee's favor, unless an earlier date is agreed to in writing between Lessor and Lessee.

(2) Lessee's Exercise of the Redevelopment Proposal Option. Following the timely satisfaction of all conditions precedent described below, Lessee shall deliver to Lessor a notice that all conditions have been satisfied. Upon Lessor's receipt of Lessee's notice, and only if Lessee has timely satisfied all conditions precedent, the Redevelopment Proposal Option

shall be deemed exercised and no further notice from Lessee to Lessor shall be required. The date that delivery of the notice of the exercise of the Redevelopment Proposal Option occurs is called the "Redevelopment Proposal Option Exercise Date."

- (3) Outside Date for Exercise of Redevelopment Proposal Option. If the Redevelopment Proposal Option Exercise Date does not occur within five (5) years after the initial review of the Redevelopment Proposal by Lessor's Board ("Outside Date for Exercise"), then Lessor shall have the right to extend the time for performance or terminate this Lease in its sole and absolute discretion.
- (4) Conditions Precedent to Exercise of the Option. If Lessee fails to timely satisfy any of the conditions precedent below, then Lessor shall have the right to extend the time for performance or terminate this Lease in its sole and absolute discretion.
 - a. Project and CEQA Approval/Certification. By no later than seven hundred thirty (730) days after the date of the initial review of the Redevelopment Proposal by Lessor's Board of Port Commissioners, Lessee shall obtain from Lessor project and CEQA approval/certification which shall be granted, denied, or conditioned in Lessor's sole and absolute discretion. If Lessor decides to certify the CEQA review and to approve the Redevelopment Proposal, which may include potentially a PMPA or a CDP, Lessor shall deliver to Lessee written notice that Lessor has approved the Redevelopment Proposal by certifying the CEQA review and adopting, if required, a Statement of Overriding Considerations, and approving a PMPA or a CDP (if a PMPA is not required), consistent with the Redevelopment Proposal as described in the CEQA review or an alternative to the Redevelopment Proposal analyzed thereunder. Pursuant to Paragraph 50(e), Lessor, in its sole and absolute discretion, may or may not certify the CEQA review and may or may not approve the Redevelopment Proposal and may select any CEQA alternative, including the alternative of not going forward with the Redevelopment Proposal, or adopt any mitigation measure or condition which it

determines is necessary and appropriate in order to comply with CEQA or any other applicable law or regulation.

- b. Effectiveness of PMPA. If a PMPA is required and subject to Lessor's reservation of discretion pursuant to Paragraph 50(e), then by no later than three hundred sixty five (365) days after the date Lessor approves a PMPA, Lessee shall have obtained CCC certification of the PMPA, which shall exclude the final two approvals required by 14 California Code of Regulations Section 13632.
- c. Coastal Development Permit (CDP) Approval. By no later than one hundred eighty (180) days after the date the CCC approves the PMPA, or, in the event a PMPA is not required, then by no later than ninety (90) days after the date Lessee obtains project and CEQA approval/certification from Lessor, Lessee shall obtain a CDP for the Redevelopment Proposal consistent with the then existing certified Port Master Plan and subject to Lessor's reservation of discretion pursuant to Paragraph 50(e).
- d. Consent to Lessee's Financing. By no later than ninety (90) days prior to exercise of the Redevelopment Proposal Option, Lessee shall submit to Lessor for its consent the proposed equity and debt financing for the Redevelopment Proposal ("Redevelopment Proposal Financing"). By no later than thirty (30) days prior to exercise of the Redevelopment Proposal Option, Lessee shall have obtained Lessor's consent to the Redevelopment Proposal Financing in Lessor's sole and absolute discretion.
- e. Negotiations for an Amended Management Agreement or New Lease. By no later than sixty (60) days prior to exercise of the Redevelopment Proposal Option, Lessee shall have obtained from Lessor approval of either an amendment to the adjacent Convention Center Management Agreement or a new lease for construction and operation of the project contemplated by the Redevelopment Proposal to take effect upon the timely exercise of the Redevelopment Proposal Option. Lessor agrees to negotiate terms with Lessee in good faith; however, Lessor shall have the sole and absolute

discretion to approve or not to approve the Convention Center Management Agreement amendment or the new lease pursuant to Paragraph 50(e).

- f. Performance Guarantees. By no later than sixty (60) days prior to exercise of the Redevelopment Proposal Option, Lessee shall deliver to Lessor, in form and content reasonably satisfactory to Lessor to assure the performance of construction obligations associated with the Redevelopment Proposal, the Construction Contract, Performance Bond, and a Completion Guaranty.
- (d) Entitlement Costs. Lessee shall pay for all direct third-party consultant(s) costs to prepare, at the direction of Lessor, a CEQA review document, a PMPA, if required, and a CDP, if required, and shall pay for any and all permits, entitlements or approvals required for the Redevelopment Proposal; provided, however, that third-party costs shall not include the cost of outside attorneys and/or others hired to act as Lessor's representatives in negotiations with Lessee.
- (e) Reservation of Discretion
- (1) No Approval of a Project. Lessor and Lessee agree that this Paragraph 50 does not constitute an "approval" of a "project" within the meaning of CEQA.
- (2) Lessor Discretion. Lessee acknowledges and agrees that, notwithstanding the terms and conditions of this Lease, Lessor reserves its discretion to approve or disapprove all Discretionary Actions contemplated by this Paragraph 50 (including, but not limited to, a PMPA, CDP and those actions which require by law the exercise of discretion and which Lessor cannot lawfully be committed to by contract) and that nothing in this Lease will be construed as circumventing or limiting Lessor's discretion with respect to the environmental review required by CEQA. Such reservation of discretion will apply, without limitation, to all contemplated legislative and quasi-judicial actions including, without limitation, approval of land use entitlements, CEQA compliance, the exercise of eminent domain, code

enforcement and the making of findings and determinations required by law.

- (3) Board of Port Commissioner's Consideration. Lessee further acknowledges and agrees that: (i) Lessor's Board of Port Commissioner's may, in its sole and absolute discretion, in accordance with and subject to applicable law, adopt conditions, mitigation measures or an alternative, including the "No Project" alternative considered in any CEQA analysis for the Redevelopment Proposal, and certify or not certify the CEQA analysis for any proposed projects, including without limitation the Redevelopment Proposal and approve or not approve any aspect of the proposed projects, including the Redevelopment Proposal, a Statement of Overriding Considerations, a PMPA, or a CDP; and (ii) the CCC may, in its sole and absolute discretion, in accordance with and subject to applicable law, elect not to approve, adopt or certify a PMPA or issue a CDP upon appeal based on CEQA analysis or other discretionary factors.
- (4) Risk of Non-Approval. Lessee further acknowledges and agrees that the Lessor's Board of Port Commissioners' decision whether or not to certify a CEQA analysis and its approval or disapproval of a PMPA and a CDP might be adopted or certified only upon the Lessor's Board's adoption of additional conditions, mitigation measures or alternatives considered in the CEQA analysis, including the "No Project" alternative. Lessee accepts the risk that Lessor's Board or the CCC will not approve, adopt or certify the CEQA analysis or approve a PMPA or a CDP, and the CEQA analysis, a PMPA and a CDP might be approved, adopted or certified subject to the selection of an alternative or the performance of certain additional conditions or mitigation measures imposed by Lessor or the CCC in their sole and absolute discretion, in accordance with and subject to applicable law.
- (5) No Claim. Lessee will not have any claim, cause of action, or right to compensation or reimbursement from Lessor if the CEQA analysis is not certified by the Lessor's Board of Port Commissioners or a PMPA or a CDP are not approved or

adopted by Lessor or certified by the CCC for any reason, or if the CEQA analysis, a PMPA or a CDP are adopted or certified subject to the selection of an alternative or the performance of certain additional conditions or mitigation measures, including the “No Project” alternative. In the event that Lessor will take or fail to take any Discretionary Action with respect to the subject matter of this Lease, any such action or inaction will not constitute a breach of Lessor's obligations under this Lease, and Lessee will not have any claim, cause of action, or right to compensation or reimbursement from Lessor.

- (f) Option Condition Delay Extensions. If Lessor’s Board directs Lessor’s staff to further evaluate the Redevelopment Proposal, Lessor shall process, review and comment on the items specified in Paragraph 50(c)(4) in its normal customary manner, including the timing of processing, reviewing and commenting and taking into account the complexity of the Redevelopment Proposal (“Lessor’s Customary Process”). If Lessee fails to timely satisfy the conditions precedent described in Paragraph 50(c)(4) or fails to meet the Outside Date for Exercise due solely to Lessor’s delay in Lessor’s Customary Process and provided Lessee does not cause such a delay (“Lessor’s Delay”), then the dates for the remaining unsatisfied option conditions shall be adjusted and the Outside Date for Exercise shall be extended subject to the following:
- (1) Extension for Actual Delays. The Outside Date for Exercise, and the dates for satisfaction of the remaining unsatisfied conditions precedent in Paragraph 50(c)(4) shall be automatically extended one day for each day of Lessor’s Delay, not to exceed one hundred eight (180) days in total (“Option Condition Delay Extension”).
 - (2) Written Notice Requirement. An Option Condition Delay Extension shall not be effective unless:
 - a. Lessee delivers to Lessor written notice of the Lessor Delay within three (3) business days of the occurrence of the event causing delay, and

- b. Lessee concurs in writing, in its reasonable discretion, that an actual delay has occurred or is occurring and identifies the extended dates for satisfying the condition(s) precedent.

(L) The following Paragraph 52 is added to the Lease:

“52. TIDELANDS USE AND OCCUPANCY PERMIT. Lessee acknowledges that District and Fifth Avenue Landing, LLC, a California limited liability company (“FAL”) have entered into a Tidelands Use and Occupancy Permit (“TUOP”) for the Leased Premises, on file with the Clerk of the Lessor as Document No. _____. Lessee agrees that this Lease is subject to the TUOP until the TUOP’s expiration date or earlier termination under the provisions of the TUOP. Lessee will not have any claim, cause of action, in law or equity, or right to compensation or reimbursement from Lessor relating to FAL’s occupancy of the Leased Premises during the term of the TUOP or FAL’s activities on the Leased Premises.”

(M) The following Paragraph 53 is added to the Lease:

“53. FUNDING SOURCES AND LESSEE’S CHARTER.

- (a) In or about June or July of each year, the San Diego City Council (“City Council”) adopts an annual appropriation ordinance to appropriate funds related to each approved annual budget for the fiscal year commencing July 1 on a prospective basis. To the extent this Lease imposes on Lessee any financial obligation or payment obligation (including, without limitation, the payment of rent), and notwithstanding any other provision of this Lease, Lessee’s performance of such obligation is subject to and contingent upon the City Council’s appropriation of funds in any fiscal year to pay such obligation (each a “Contingent Obligation”). Lessee’s staff shall request, with respect to each applicable fiscal year under this Lease, that the City Council include any necessary funding appropriation related each Contingent Obligation under this Lease through the annual appropriation ordinance or other appropriate resolution or ordinance. If the City Council does not appropriate funds in any fiscal year to fulfill any Contingent Obligation due in such fiscal year, Lessee shall not be required to perform the Contingent Obligation, but Lessee’s nonperformance of the Contingent Obligation shall be a default under Paragraph 10 and, if not timely remedied in accordance with Paragraph 10, shall result in

termination of the Lease. Contingent Obligations shall be payable solely from eligible moneys held in a special fund and segregated from the Lessee's General Fund ("Special Funds") and Special Funds may only be used to pay Contingent Obligations if and when appropriated for that purpose. Lessee shall not be obligated to pay Contingent Obligations from the Lessee's General Fund or from tax revenues of Lessee that would otherwise be deposited in the General Fund. Special Funds may include transient occupancy tax revenues dedicated to a special fund for the Expansion and other San Diego Convention Center purposes under the Ballot Measure, if voter approval occurs of the Ballot Measure occurs. Lessee shall use best efforts to obtain the City Council's timely appropriation of funds with respect to each Contingent Obligation. Lessee shall notify Lessor in writing at the earliest possible date if Lessee determines that funds will not be timely appropriated for any Contingent Obligation. This Lease is subject to the budget and fiscal provisions of the City of San Diego Charter. No Contingent Obligation shall constitute a debt of Lessee within the meaning of any debt limitation or restriction in state or local law, including the City of San Diego Charter. This Paragraph 53 shall not act as a waiver on the part of Lessor.

- (b) Notwithstanding any other provision of the Lease, including without limitation Paragraph 10 and Paragraph 53(a), commencing on the Paragraph 50 Effective Date and continuing for the balance of the Lease term, this Paragraph 53(b) shall control to the extent that the City is Lessee under the Lease: (i) subject to Paragraph 47, Lessor's sole remedy in the event of Lessee's default under the Lease shall be to terminate Lessee's right to possession of the Leased Premises, whereupon the Lease shall terminate and Lessee shall immediately record a quitclaim deed in Lessor's favor with the County of San Diego recorder and surrender possession of the Leased Premises, and in such event, Lessor shall be entitled to recover from Lessee the unpaid rent which had been earned at the time of termination of the Lease; (ii) Lessor shall have no right to accelerate the payment of any rent under the Lease, and Lessor specifically waives its rights under California Civil Code section 1951.2 to accelerate payment of rent in the event of Lessee's default under the Lease; (iii) any and all rent due under the Lease to Lessor from Lessee shall be abated (or proportionally abated, as applicable) during any period of time that there is substantial

- interference with Lessee's use and occupancy of the Leased Premises (or any portion thereof) due to any cause; and (iv) each payment of monthly rent by Lessee to Lessor shall be in consideration for Lessee's use and occupancy of the Leased Premises during the month to which the rental payment pertains.
- (c) If at any time during the term of this Lease, both Article XVI, Section 18 of the California Constitution and San Diego Charter section 99 are repealed and not replaced with language of similar effect, such that the annual debt limitation no longer applies to Lessee, then Paragraph 53 shall automatically terminate without notice and shall have no further force and effect after the date of repeal of both such provisions.
- (d) This Paragraph 53 shall apply only during the period of time that the City is the Lessee under this Lease and shall automatically terminate without notice on the date of Lessee's assignment to a third party of all of Lessee's rights and obligations under this Lease, subject to Paragraph 9 of this Lease."
- (e) If Paragraph 53 is terminated, Paragraph 10(b)(2) shall automatically be deleted in its entirety and replaced with the following: "Lessor may elect to have the remedy set forth in Civil Code section 1951.4 and may continue the Lease in effect after a default, including, without limitation an abandonment of the Leased Premises, or breach of the Lease by Lessee and recover rent and other charges as they become due under the Lease; provided, however Lessee shall have the right to sublease or assign the Lease and Lessor shall not unreasonably withhold its consent for any Lessee-requested assignment of the Lease or subletting of the Leased Premises. For the purposes of this Paragraph (10)(b)(2) when consenting to an assignment or sublease, Lessor may look at the legality of the proposed use, nature and character of occupancy, and the creditworthiness, financial stability or business reputation of the new lessee or subtenant; provided, however, Lessor may reexamine these factors in light of the particular circumstances of the proposed assignment or sublease for reasonableness. Accordingly, if Lessor does not elect to terminate this Lease pursuant to Paragraph 10(b)(1), Lessor may enforce all of Lessor's rights and remedies under this Lease. Lessor shall not, by any reentry or other act, be deemed to have accepted Lessee's surrender or abandonment of the Leased Premises or Lessee's interest therein, nor be deemed to have terminated this Lease or to have

relieved Lessee of any obligation herein, unless Lessor shall have furnished Lessee with express written notice of Lessor's election to do so, as set forth herein.”

- (N) The following are deleted and of no further force and effect: Paragraph 8(a) of the 2012 Lease, the Guaranty, and Exhibits F, G and H.
 - (O) Exhibit “A” of the 2012 Lease is hereby deleted and substituted with Exhibit “A” attached to this Amendment No. 2.
 - (P) Exhibit “B” of the 2012 Lease is hereby deleted and substituted with Exhibit “B” attached to this Amendment No. 2.
 - (Q) Exhibit “E” of the Lease is hereby deleted and substituted with Exhibit “E” attached to this Amendment No. 2.
3. Effectiveness of Amendment No. 2. Following signature by Lessor and Lessee, this Amendment No. 2 to the Lease shall become effective as of delivery of this Amendment No. 2 by Escrow Agent (as defined in the PSA) to Lessor and Lessee conditioned upon the occurrence of the Alternative A Closing (as defined in the PSA). Lessee shall have no liability for any rent, other payment obligations, or any damages resulting from any default by FAL under the 2012 Lease that occurs prior to the effectiveness of this Amendment No. 2.
4. General Provisions.
- (A) Terms; Captions. The necessary grammatical changes required to make the provisions hereof apply either to corporations, limited liability companies or partnerships or individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed. The captions of paragraphs are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such paragraphs.
 - (B) Time of Essence. Time is of the essence with respect to this Amendment No. 2 and each of its provisions.
 - (C) Partial Invalidity. If any term, provision or condition contained in this Amendment No. 2 shall, to any extent, be invalid or unenforceable, the remainder of this Amendment No. 2, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Amendment No. 2 shall be valid and enforceable to the fullest extent possible permitted by the law of the State of California.
 - (D) Entire Agreement. It is understood and acknowledged that there are no oral agreements between the Parties hereto affecting this Amendment

No. 2, and this Amendment No. 2 supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the Parties hereto with respect to the subject matter of this Amendment No. 2. And all negotiations and oral agreements acceptable to the Parties have been merged into and are included in this Amendment No. 2.

- (E) Joint and Several. If there is more than one individual, trust or entity (collectively, "Persons") constituting Lessee, (i) the obligations imposed upon such Persons under this Amendment No. 2 shall be joint and several and (ii) the act or signature of, or notice from or to, any one or more of them with respect to this Amendment No. 2 shall be binding upon each and all of such Persons with the same force and effect as if each and all of them had so acted or signed, or given or received such notice.
- (F) Authority. If Lessee is a corporation, partnership or limited liability company, each individual signing this Amendment No. 2 on behalf of Lessee hereby represents and warrants that Lessee is a duly formed and existing entity qualified to do business in the California and that Lessee has full right and authority to execute and deliver this Amendment No. 2 and that each of the Persons signing on behalf of Amendment No. 2 is authorized to do so.
- (G) 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 of this Amendment No. 2, including without limitation a summary action commenced by Lessor 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.
- (H) Governing Law. Venue for any legal proceeding shall be in San Diego County, California. This Amendment No. 2 shall be construed and enforced in accordance with the Laws of the State of California.
- (I) Counterparts. This Amendment No. 2 may be signed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.
- (J) Drafting Presumption; Review Standard. The Parties acknowledge that this Amendment No. 2 has been drafted in conformance with Lessor's standard template for lease transactions, that this Amendment No. 2 has been agreed to by both Lessor and Lessee, that both Lessor and

Lessee have consulted with attorneys with respect to the terms of this Amendment No. 2 and that no presumption shall be created against the drafting party. Any deletion of language from this Amendment No. 2 prior to its signature by Lessor and Lessee 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.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 2 as of the day and the year first above written.

LESSEE:

City of San Diego,
a municipal corporation

By: _____

Name: _____

Its: _____

Approved as to form:
MARA W. ELLIOTT, City Attorney

By: _____
Kevin Reisch
Senior Chief Deputy City Attorney

LESSOR:

San Diego Unified Port District,
a Public Corporation

By: _____

Name: _____

Its: _____

Approved as to form and legality:
GENERAL COUNSEL

By: _____

Name: _____
Assistant/Senior Deputy
General Counsel

EXHIBIT "A"

**Legal Description for
CITY OF SAN DIEGO
TIDELAND LEASE
Parcel/Drawings No. 019-063
Within Corporate Limits of San Diego**

All that certain portion of land conveyed to the San Diego Unified Port District by that certain Act of Legislature of the State of California pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended, and delineated on that certain Miscellaneous Map No. 564, filed in the Office of the San Diego County Recorder on May 28, 1976, File No. 76-164686, in the City of San Diego, County of San Diego, State of California, and more particularly described as follows:

PARCEL NO. 1 (Land Area)

Commencing at a 3" diameter brass disk monument stamped S.D.U.P.D. No. 14 as shown on R.O.S. No. 16668, filed in the Office of the County Recorder of San Diego County July 25, 2000; thence leaving said monument South 39°31'53" East a distance of 74.59 feet (calculated) to the TRUE POINT OF BEGINNING of Parcel No. 1, said point also being the beginning of a non-tangent 556.00 foot radius curve, concave to the north, a radial to said point bears South 00°22'28" East from the center of said curve; thence easterly along the arc of said curve through a central angle of 04°42'58" an arc distance of 45.77 feet to a point of reverse curvature, the common radial of which bears South 05°05'26" East from the center of said curve; thence southeasterly along the arc of a 32.00 foot radius curve concave to the southwest through a central angle of 44°46'18" an arc distance of 25.01 feet to a point on the southwesterly face of curb of a street commonly known as Convention Way; thence along said face of curb line South 50°19'08" East a distance of 427.66 feet to a point hereinafter known as Point "A"; thence leaving said face of curb line South 39°40'52" West a distance of 83.00 feet; thence South 50°19'08" East a distance of 112.62 feet; thence South 39°40'52" West a distance of 110.00 feet to a point on the U.S. Bulkhead Line as said U.S. Bulkhead Line is now established for the Bay of San Diego and delineated on map entitled "Harbor Lines, San Diego Bay, California File No. (D.O. series) 426" approved by the Secretary of the Army, April 29, 1963, and filed in the Office of the District Engineer, Los Angeles, California; thence leaving said U.S. Bulkhead Line and continuing South 39°40'52" West a distance of 1.00 foot; thence parallel with said U.S. Bulkhead Line North 50°19'08" West a distance of 297.61 feet; thence South 39°40'52" West a distance of 1.00 foot; thence parallel with said U.S. Bulkhead Line North 50°19'08" West a distance of 356.73 feet to a point on the southeasterly face of curb line of a street commonly known as Marina Park Way; thence along said face of curb line North 39°40'52" East a distance of 2.04 feet to a point on said U.S. Bulkhead Line; thence leaving said U.S. Bulkhead Line and continuing along said face of curb North 39°40'52" East a distance of 28.81 feet to the beginning of a 162.00 foot radius curve, concave to the southeast; thence

northeasterly along the arc of said curve through a central angle of 49°56'40" an arc distance of 141.21 feet to the TRUE POINT OF BEGINNING of Parcel No. 1, containing 112,534 square feet or 2.58 acres of tidelands area.

PARCEL NO. 2 (Land Area)

Commencing at the above described Point "A"; thence continuing along said Convention Way face of curb South 50°19'08" East a distance of 196.62 feet to the TRUE POINT OF BEGINNING of Parcel No. 2; thence continuing along said face of curb South 50°19'08" East a distance of 235.00 feet; thence leaving said face of curb South 39°40'52" West a distance of 193.00 feet to the above mentioned U.S. Bulkhead Line; thence leaving said U.S. Bulkhead Line and continuing South 39°40'52" West a distance of 1.00 feet; thence parallel with said U.S. Bulkhead Line North 50°19'08" West a distance of 235.00 feet; thence North 39°40'52" East a distance of 1.00 feet to said U.S. Bulkhead Line; thence leaving said U.S. Bulkhead Line and continuing North 39°40'52" East a distance of 193.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 2, containing 45,590 square feet or 1.05 acres of tidelands area.

PARCEL NO. 3 (Land Area)

Commencing at the above described Point "A", said point also being the TRUE POINT OF BEGINNING of Parcel No. 3; thence along Convention Way curb face South 50°19'08" East a distance of 196.62 feet; thence leaving said face of curb line South 39°40'52" West a distance of 193.00 feet to a point on the above described U.S. Bulkhead Line as said U.S. Bulkhead Line; thence leaving said U.S. Bulkhead Line and continuing South 39°40'52" West a distance of 1.00 foot to; thence parallel with said U.S. Bulkhead Line North 50°19'08" West a distance of 84.00 feet; thence North 39°40'52" East a distance of 1.00 foot to said U.S. Bulkhead Line; thence leaving said U.S. Bulkhead Line North 39°40'52" East a distance of 110.00 feet; thence North 50°19'08" West a distance of 112.62 feet; thence North 39°40'52" East a distance of 83.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 3, containing 25,643 square feet or 0.59 acre of tidelands area.

ALSO: Reserving therefrom a City of San Diego Water easement 15.00 feet in width lying within Parcel No. 1 as delineated and described as Easement No. 2 on sheets 2 and 4 of Drawing 019-063.

ALSO: Reserving therefrom a City of San Diego Storm Drain easement 20.00 feet in width lying within Parcel No. 1 as delineated and described as Easement No. 3 on sheets 2 and 4 of Drawing 019-063.

ALSO: Reserving therefrom an easement for Public Pedestrian Access 25.00 feet in width lying within Parcel No.'s 1 and 2 as delineated and described as Easement No. 4 on sheets 2 and 4 of Drawing 019-063.

ALSO: Reserving therefrom a City of San Diego Water easement 30.00 feet in width as shown On City of San Diego Dwg. No. 11558-35-D and lying within Parcel No.'s 1 and 2 as delineated and described as Easement No. 5 on sheets 2 and 4 of Drawing 019-063.

ALSO: Reserving therefrom a City of San Diego Storm Drain easement 30.00 feet in width lying within Parcel No. 1 as delineated and described as Easement No. 6 on sheets 2 and 4 of Drawing 019-063.

ALSO: Reserving therefrom an easement for Public Pedestrian Access 24.00 feet in width lying within Parcel No. 2 as delineated and described as Easement No. 8 on sheets 2 and 4 of Drawing 019-063.

ALSO: Reserving therefrom a Public Pedestrian Access easement 35.00 feet in width lying within Parcel No.'s 1 and 2 as delineated and described as Easement No. 9 on sheets 2 and 4 of Drawing 019-063.

The above described tidelands lease and reservation areas are those delineated on San Diego Unified Port District Drawing No. 019-063 dated 15 May 2018, and made a part of this agreement.

All bearings and distances in the above legal description are grid, and based upon the California Coordinate System, Zone 6, N.A.D. 83, Epoch 1991.35.

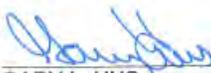
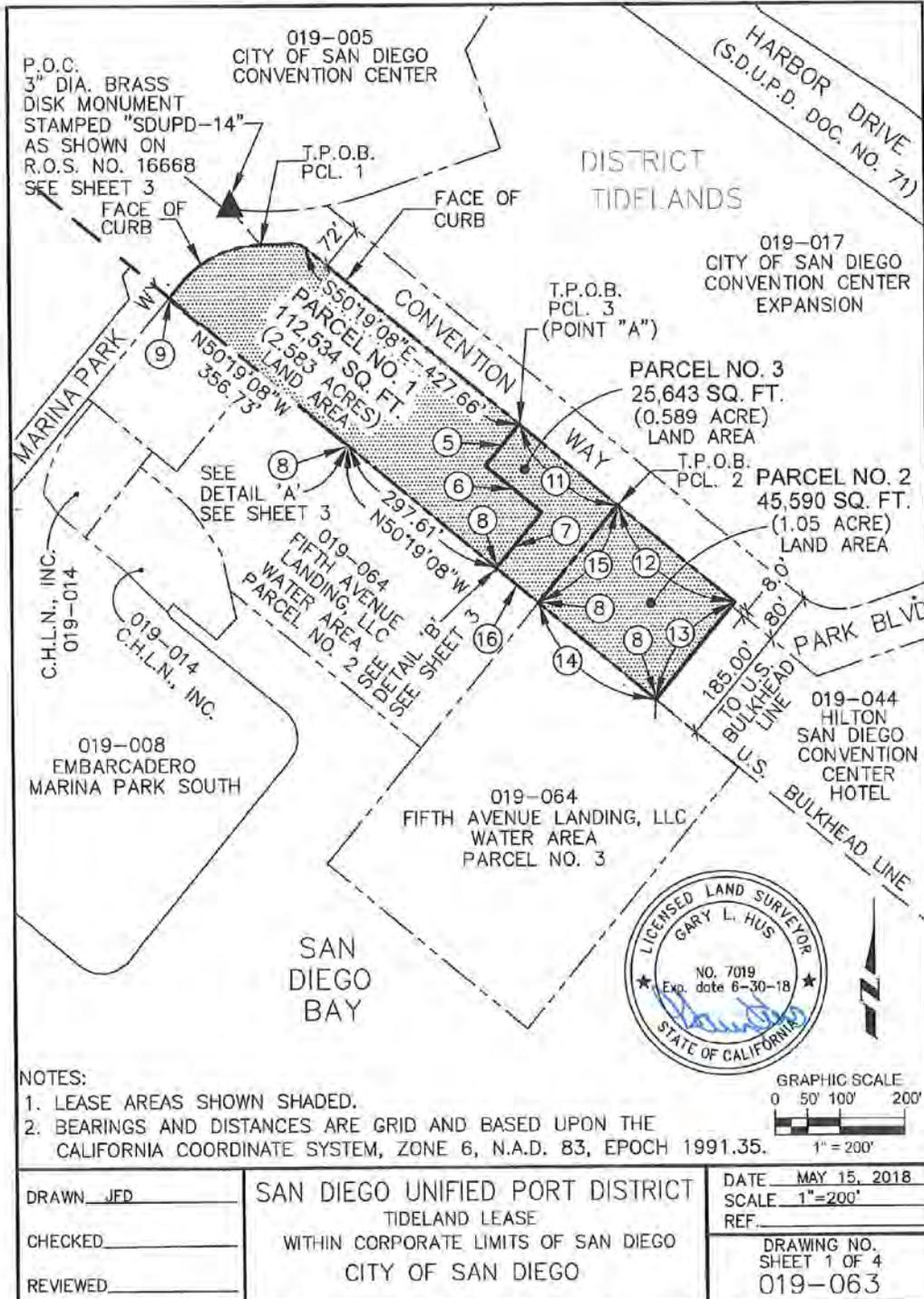

GARY L. HUS 05-18-2018
LS 7019 DATE



EXHIBIT "B"



NOTES:

1. LEASE AREAS SHOWN SHADED.
2. BEARINGS AND DISTANCES ARE GRID AND BASED UPON THE CALIFORNIA COORDINATE SYSTEM, ZONE 6, N.A.D. 83, EPOCH 1991.35.

DRAWN <u>JED</u> CHECKED _____ REVIEWED _____	SAN DIEGO UNIFIED PORT DISTRICT TIDELAND LEASE WITHIN CORPORATE LIMITS OF SAN DIEGO CITY OF SAN DIEGO	DATE <u>MAY 15, 2018</u> SCALE <u>1"=200'</u> REF. _____ DRAWING NO. _____ SHEET <u>1</u> OF <u>4</u> <u>019-063</u>
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P:\4286\SURVEY BOUNDARY\4286.03\PLAT EXHIBITS\4286.03-PDC-SDUPD-019-063_051518.DWG

EXHIBIT "B"

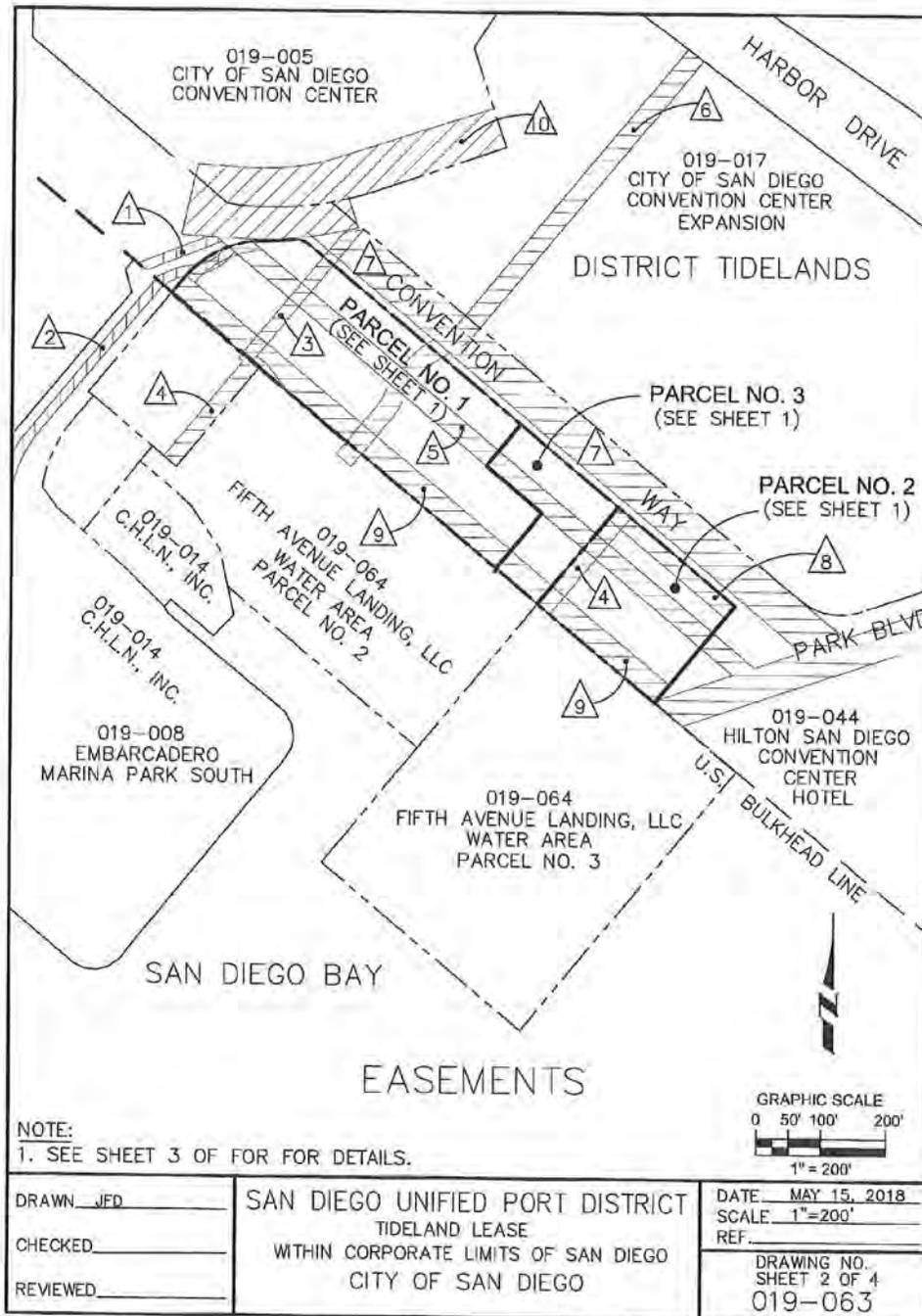


EXHIBIT "B"

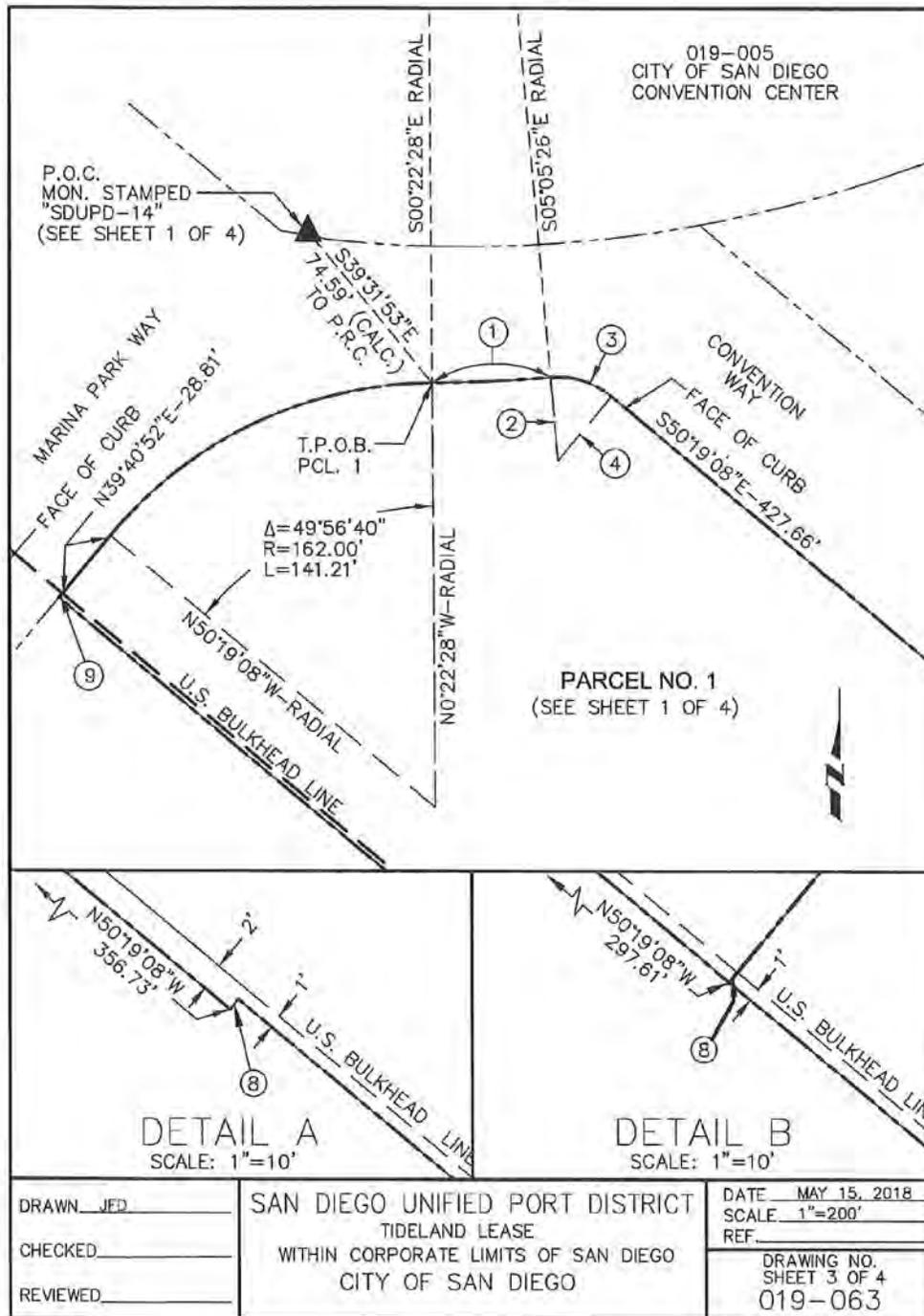


EXHIBIT B

TRAVERSE DATA		
<p>① $\Delta=04^{\circ}42'58''$ R=556.00' L=45.77'</p> <p>② N05°05'26"W RADIAL</p> <p>③ $\Delta=44^{\circ}46'18''$ R=32.00' L=25.01'</p> <p>④ N39°40'52"E RADIAL-1.00'</p> <p>⑤ S39°40'52"W-83.00'</p> <p>⑥ S50°19'08"E-112.62'</p> <p>⑦ S39°40'52"W-110.00'</p> <p>⑧ S39°40'52"W-1.00'</p>	<p>⑨ N39°40'52"E-2.04'</p> <p>⑩ S50°19'08"E-196.62'</p> <p>⑪ S50°19'08"E-235.00'</p> <p>⑫ S39°40'52"W-193.00'</p> <p>⑬ N50°19'08"W-235.00'</p> <p>⑭ N39°40'52"E-193.00'</p> <p>⑮ N50°19'08"W-84.00'</p>	
EASEMENT DATA		
<p>① 15.00' CITY OF SAN DIEGO STORM DRAIN ESMT. SDUPD DWG. NO. 519-025 EXIST.</p> <p>② 15.00' CITY OF SAN DIEGO WATER ESMT. 519-034 EXIST.</p> <p>③ 20.00 CITY OF SAN DIEGO STORM DRAIN ESMT. SDUPD DWG. NO. 519-005 EXIST.</p> <p>④ 25.00' PUBLIC PEDESTRIAN ACCESS ESMT.</p> <p>⑤ 30.00' CITY OF SAN DIEGO WATER ESMT. S.D.U.P.D. DWG. NO. 519-031 EXIST.</p> <p>⑥ 30.00' CITY OF SAN DIEGO STORM DRAIN ESMT. EXIST.</p> <p>⑦ 60.00' CITY OF SAN DIEGO GEN. UTIL. ESMT. EXIST.</p> <p>⑧ 24.00' PUBLIC PEDESTRIAN ACCESS ESMT.</p> <p>⑨ 35.00' PUBLIC PEDESTRIAN ACCESS ESMT.</p> <p>⑩ CITY OF SAN DIEGO GENERAL UTILITY EASEMENT 519-030 EXIST.</p>		
<p>DRAWN: JFD</p> <p>CHECKED: _____</p> <p>REVIEWED: _____</p>	<p>SAN DIEGO UNIFIED PORT DISTRICT TIDELAND LEASE WITHIN CORPORATE LIMITS OF SAN DIEGO CITY OF SAN DIEGO</p>	<p>DATE: MAY 15, 2018</p> <p>SCALE: 1"=200'</p> <p>REF. _____</p> <p>DRAWING NO. SHEET 4 OF 4 019-063</p>

EXHIBIT E

EXPANSION OPTION AMENDED MANAGEMENT AGREEMENT TERM SHEET

1. Parties: San Diego Unified Port District (“District”) and City of San Diego (“City”) are parties to the Amended, Restated and Combined Lease, dated as of April 6, 2010, as amended by Amendment No. 1, and as further amended by Amendment No. 2 (collectively, “ARC Lease”). The terms and provisions of this Term Sheet will be addressed in the Amended Management Agreement defined in Paragraph 49(f)(vi) of the ARC Lease.
2. Premises: The Expansion Site shall refer collectively to (a) the Leased Premises of the ARC Lease, as described and shown in Exhibit “A”; and (b) the Park Parcel described in Paragraph 49 of the ARC Lease.
3. Project: The Project is defined in Paragraph 49(a) of the ARC Lease.
4. Revenue Projections: City will provide revenue projections for the Phase III expansion for up to 10 years.
5. Uses: The Premises shall be subject to the use provisions contained in the Amended Management Agreement and related to the operation and maintenance of a Rooftop Park and for no other purposes whatsoever.
6. Term: With respect to the Premises, the Term will be sixty-six (66) years from the effective date of the Amended Management Agreement.
- 7A. Minimum Rent:
(First Term) With respect to all retail uses on the Premises, City will pay minimum vs. standard Board-adopted percentage rental rates with no offsets except that all revenues from convention center operations will be excluded.

Subject to Paragraph 49(f)(vi) of the ARC Lease, with respect to the balance of the Premises on which City’s Convention Center operations are conducted, commencing on the effective date of the Amended Management Agreement and continuing until the earlier of (i) the thirtieth (30th) anniversary of the effective date of the Amended Management Agreement or (ii) the end of the initial

amortization period of the bond(s) or other financial instrument(s) issued to finance construction of the Expansion, whether or not such bond(s) or other financial instrument(s) are subsequently repaid ahead of schedule or refinanced by new bond(s) or other financial instrument(s) (said time period is hereinafter called "First Term"), City will pay annual minimum rent in accordance with this Paragraph 7A. Neither the prepayment nor the refinancing of such bond(s) or other financial instrument(s) shall either accelerate or extend the First Term for the purposes of this Section 7A.

- a. First Term rent will be determined by a market rate appraisal of the Premises prepared in accordance with Lessor's then current policies and procedures and which excludes both percentage rents for retail and all anticipated and historic revenues from Convention Center operations. Rent so determined will remain even throughout the First Term.
- b. During the First Term, City will pay rent on a quarterly basis. Each payment of rent will be accompanied by a written itemization of Qualified Expenses that total an amount equal or greater than the rent payment.

"Qualified Expenses" will mean normal and customary expenses incurred by City with respect to management, operation, promotion, and maintenance of the Convention Center and approved by Lessor, consistent with applicable law and the Amended Management Agreement. The parties acknowledge that the Qualified Expenses directly benefit the Tidelands. For the avoidance of doubt, it is further acknowledged that Qualified Expenses may include, without limitation, costs incurred to maintain the Convention Center (including Phases I and II as well as the Expansion); provided, however, Qualified Expenses will not include costs incurred in connection with dewatering the Convention Center site. For the purposes of this paragraph, City will be deemed to have incurred a Qualified Expense when it has incurred liability for the Qualified Expense. The parties understand and acknowledge that the City has delegated its responsibilities under the Amended Management Agreement to the San Diego Convention Center Corporation, a California non-profit corporation ("SDCCC"), and that the expenses of SDCCC in management, operation, promotion, and

maintenance of the Convention Center are also Qualified Expenses.

- c. Within ten (10) business days following Lessor's receipt of each rent payment during the First Term and City's written itemization of Qualified Expenses greater than or equal to the rent payment, Lessor will pay City an amount equal to the rent payment.

- d. For the avoidance of doubt, Lessor and City understand and acknowledge that: (i) in no case will rent ever exceed the sum of Qualified Expenses for the applicable period; (ii) the rent payment mechanism set forth in this Paragraph 7A is intended to assure the timely payment of funds for Qualified Expenses from Lessor to City in an amount exactly equal to each payment of First Term rent; and (iii) this Paragraph 7A will be liberally construed to achieve that result throughout the First Term and represents a contribution by Lessor to the financing of the Expansion.

7B. Minimum Rent
(Second Term):

With respect to all retail uses on the Premises, City will pay minimum vs. standard Board-adopted percentage rental rates with no offsets except that all revenues from convention center operations will be excluded.

With respect to the balance of the Premises on which City's convention center operations are conducted, commencing on the first day following expiration of the First Term and continuing until the expiration of the Term of the Amended Management Agreement (said time period is hereinafter referred to as "Second Term"), City will pay rent in accordance with this Paragraph 7B.

- a. At least ninety (90) days prior to the end of the First Term, Lessor will deliver to City in writing, its preliminary determination of initial annual rent for the Second Term of the Lease and identify, with specificity, the justification for its determination. In reaching its preliminary determination of initial annual rent for the Second Term, Lessor will consider the following:
 - i. A market rate appraisal of the Premises prepared in accordance with Lessor's then current policies and procedures which excludes both percentage rents for

- retail and all anticipated and historic revenues from Convention Center operations.
- ii. That, other than retail located thereon, the Premises will be used exclusively for the Expansion as part of the existing Convention Center Phases I and II located on adjacent property. As such, the Expansion will be managed and operated under a common management agreement with Phases I and II.
 - iii. That SDCCC is a non-profit public benefit corporation which operates at a slight loss, requiring an annual subsidy from the City, for the purpose of attracting convention business to the City, including the tidelands, for the benefit of the City, Lessor and others.
 - iv. Potential increases in percentage rents that Lessor may receive from nearby businesses on the surrounding tidelands properties as well as other potential benefits, of the sort identified in the Amended Management Agreement, which may result from City's operations of the Expansion as shown by an economic impact study commissioned by Lessor at City's cost.
 - v. Administrative and other costs Lessor incurs in connection with this Lease.
- b. If City accepts Lessor's preliminary determination of initial annual rent for the Second Term, it shall become annual rent under the Lease. If City disapproves of Lessor's preliminary determination of annual rent for the Second Term, City will deliver to Lessor its written notice of such disapproval ("City's Disapproval Notice") within sixty (60) days following City's receipt of Lessor's preliminary determination of initial annual rent for the Second Term. City's Disapproval Notice will state City's conclusion for appropriate initial rent and identify, with specificity, the justification for City's conclusion. During City's 60-day review period, Lessor shall give City, as soon as practicable and upon City's request, full access to the information considered by Lessor in developing Lessor's preliminary determination of initial rent.

- c. Lessor and City will negotiate diligently and good faith for a period of sixty (60) days following Lessor's receipt of City's Disapproval Notice to determine a mutually acceptable initial rent which will become the initial annual rent for the Second Term under the Lease. If Lessor and City are unable to reach agreement regarding initial annual rent for the Second Term within such sixty-day period, rent will be determined by arbitration in accordance with the arbitration provision applicable to Rent Reviews contained in Lessor's usual and customary lease form except that in reaching his decision, the arbitrator will consider the facts and circumstances referenced in this Paragraph 7B. The initial annual rent for the Second Term determined in accordance with this Paragraph will be subject to adjustment in accordance with Paragraphs 9 and 10 of this Term Sheet.

8. Expansion

Construction:

City will be solely responsible for all pre-development costs associated with the Expansion, all hard and soft costs incurred to construct the Expansion and other costs associated with the Expansion, which shall be commenced and completed in an amount of time fixed by the Amended Management Agreement. An executed completion guaranty for the total project cost will be required.

City and District entered into the Support Agreement dated October 2012, in which City agreed to construct the Expansion and District agreed to provide financial support toward the Expansion by making scheduled annual installment payments to City (or its designee) over a 20-year period in the aggregate amount of \$60 million. District committed this funding, based on a financial feasibility study, to support City's then-proposed long-term financing structure for the Expansion Project – a structure that is no longer legally binding or viable.

After election results are certified confirming that the local electorate has approved the Ballot Measure, City may engage in discussions with District at the appropriate time regarding the potential for District's financial support toward the Expansion under the terms of the new financial model. City and District will consider, in their discretion, whether to approve a new support agreement.

9. CPI Adjustments:

Rents shall have mid-term CPI adjustments every five (5) years during the Second Term.

10. Rent Reviews: Rent reviews shall be every 10 years during the Second Term.
11. Security Deposit: Except as may be determined by the parties in the Amended Management Agreement, the Security Deposit will be an irrevocable letter of credit to be released upon completion of the Project as approved by the Board in an amount equal to three months minimum rent.
12. No Contract: The parties understand and agree that this Term Sheet is nonbinding and is not intended to be and does not constitute a legally binding obligation, and that the terms herein are for discussion purposes only. No legally binding obligations between the Parties will be created, implied, or inferred unless and until they are embodied in a final written agreement or agreements independent of this Term Sheet and executed by the Parties, subject to approval by the District's Board of Port Commissioners in its sole and absolute discretion.
13. Relocation of WTC
- Within one-hundred and twenty (120) days after the date that the Board of Port Commissioners approves the Amended Management Agreement, Lessee shall start the relocate the FAL's Water Transportation Center (WTC) to Parcel No. 1 as identified in Amendment No. 1 to FAL's Marina Lease ("WTC Relocation Site"). Lessee shall cause the landside and underground improvements to be moved to the WTC Relocation Site subject to the following provisions and conditions:
- (a) The cost for the planning and construction of such space and underground improvements, consistent with the scope and magnitude of the current design of such facility, shall be borne by Lessee. FAL shall have the right to review and have input to the operational integrity of the WTC and FAL's approval of the scope and underground improvements space shall not unreasonably be withheld;
 - (b) The space will include:
 - (i) Administrative offices and a ticket booth facing the promenade;
 - (ii) Twelve parking spaces and a bus turn around;

- (iii) A mutually agreeable size (not to exceed 16,296 square feet in aggregate) and location; and
- (iv) Appropriate easements for ingress and egress to both the landside and waterside improvements.

During any relocation, Lessee, at its sole cost and expense, shall provide FAL with mutually agreeable temporary space and uninterrupted utilities to both the temporary space and the waterside improvements.

- 14. District Policies: City shall comply with all District policies in effect at the time of execution of the Amended Management Agreement.

- 15. Retail Merchandising Plan: As part of City's application for a CDP for the Expansion, City will deliver to Lessor a merchandising plan for all retail uses proposed for the Premises. The merchandising plan will describe the types of retail proposed, any unifying or thematic elements of the retail and provide reasonable assurance to Lessor that proposed retail uses are commercially viable. The merchandising plan will be subject to Lessor's approval. The Expansion shall contain retail development which complies with the Lessor-approved merchandising plan.

- 16. Construction and Maintenance of Public Realm Spaces: City shall construct, maintain, secure, operate, and activate the public realm spaces of the Expansion, including the Rooftop Park, at no cost or expense to Lessor during the term of the Amended Management Agreement.

EXHIBIT M-1
AMENDMENT NO. 1 TO
SAN DIEGO UNIFIED PORT DISTRICT
LEASE TO
FIFTH AVENUE LANDING, LLC
OF PROPERTY LOCATED AT
FIFTH AVENUE LANDING AND MARINA PARK WAY
SAN DIEGO, CALIFORNIA

THIS AGREEMENT FOR AMENDMENT OF LEASE AMENDMENT NO. 1 (“Amendment No. 1”), made and entered into this ____ day of _____ 201____, by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter called "Lessor," and FIFTH AVENUE LANDING, LLC, a California limited liability company, hereinafter called "Lessee".

WITNESSETH:

WHEREAS, Lessor and Lessee, on the 7th day of May, 2010, entered into a lease of certain tidelands in the city of San Diego, California, which lease is on file in the Office of the Clerk of Lessor bearing Document No. 56494 (“Original Lease”, as amended by this Amendment No. 1, the “Lease”); and

WHEREAS, Campbell Industries, a California corporation, removed various overwater structures adjacent to the Premises in San Diego Bay, resulting in the creation of approximately 170,906 square feet of shading credits; and

WHEREAS, Lessor has a shading credit ledger whereby Lessor denotes the amount of overwater shading removed on the San Diego Bay and deducts, under certain circumstances, from the ledger shading credits when new overwater development occurs; and

WHEREAS, the Original Lease provided that the shading credits may be available for mitigation of Lessee’s construction of the Option Parcel Improvements, however, Lessee shall have the right of first refusal to attempt to use the lesser of (i) sufficient shading credits for in-water improvements that are over and above “shading” mitigation credits related to the Leased Premises that Lessee may possess or (ii) seventy thousand (70,000) square feet of shading credits (collectively, “Original Shading

Credits”); and

WHEREAS, the Original Lease further provided that in any event, title and all rights to any such Original Shading Credits had not been used by Lessee as mitigation by June 30, 2013, whether or not such Original Shading Credits had purportedly or actually transferred to Lessee, the Original Shading Credits shall revert automatically to Lessor, and Lessee’s right of first refusal was null and void and of no further force or effect (“Shading Credit Sunset Date”); and

WHEREAS, the title and all rights to any such Original Shading Credits where not used in accordance with the terms of the Original Lease by the Shading Credit Sunset Date and accordingly reverted back to the Lessor and Lessee’s right of first refusal expired; and

WHEREAS, on or about the 19th of September 2012, Lessor certified the Final Environmental Impact Report (“FEIR”) for the San Diego Convention Center Phase III Expansion (“Expansion”) and Expansion Hotel Project and Port Master Plan Amendment (“PMPA”) (SCH #2010121004, UPD-83356-EIR-855), adopted Findings of Fact and a Statement of Overriding Considerations and a Mitigation Monitoring Reporting Program and approved the corresponding PMPA which, among other things, designated the land uses and described development requirements in Lessor’s certified Port Master Plan for a Phase III Expansion of the San Diego Convention Center (“Expansion”); and

WHEREAS, on or about the 11th of October 2013, the California Coastal Commission (“CCC”) certified the PMPA, on or about the 4th of March 2014, Lessor adopted the CCC’s certification of the PMPA and adopted Addendum to Final Environmental Impact Report (SCH #2010121004; UPD-83356-EIR-855) San Diego Convention Center Phase III Expansion and Expansion Hotel Project and Port Master Plan Amendment (District Document No. 61745) (“Addendum”), and on or about the 10th of June 2015, the CCC accepted Lessor’s 4th of March 2014 action; and

WHEREAS, the FEIR and Addendum analyzed the relocation of Lessee’s existing water transportation center and landside improvements to the “Water Transportation Center Site”, as identified in Exhibit C of that certain “Amendment No. 1 to Amended, Restated and Combined Lease to San Diego Convention Center Corporation”, dated September 19, 2012, on file in the Office of the Clerk of the District bearing Document No. 59467 and certified PMPA identifies the same (collectively, “Relocated WTC”); and

WHEREAS, the Relocated WTC, as analyzed in the FEIR and Addendum and identified in the PMPA, includes (1) an approximate 1,000-square-foot, one-story building adjacent to the promenade with a maximum height of 15 feet, to accommodate ticket offices, marina offices, and public restrooms and (2) 12 parking spaces and a bus turn-around; and

WHEREAS, this Amendment No. 1 amends the Premises for the site of the Relocated WTC, as analyzed in the FEIR, Addendum and as identified PMPA; and

WHEREAS, on _____ of _____ 201____, Lessor, Lessee and the City of San Diego, a municipal corporation (“City”) entered in to a Purchase and Sale Agreement and Escrow Instructions (“PSA”), which is on file in the Office of the Clerk of Lessor bearing Document No. _____ to facilitate the Expansion and in anticipation of a proposed special tax measure titled the “For a Better San Diego”; and

WHEREAS, the Alternative A Closing, as defined in the PSA, occurred and as a condition of that Alternative A Closing, this Amendment No. 1 is hereby effective upon delivery of originals to Lessor and Lessee; and

WHEREAS, Lessor and Lessee are mutually desirous of amending said Original Lease.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and in consideration of the mutual promises and covenants herein contained, and having determined that the foregoing recitals are true and correct and should be, and hereby are, incorporated into this Amendment No. 1, the Parties agree as follows:

1. Amendment to Lease. The Original Lease is hereby amended in the following respects and no others, and except as expressly amended, all terms, covenants and conditions of the Original Lease shall remain in full force and effect. All defined terms shall have the same meaning as set forth in the Original Lease unless otherwise indicated in this Amendment No. 1. Wherever the term “Lease” is used in the Original Lease or in this Amendment No. 1, it shall mean the Original Lease as amended by this Amendment No. 1.

A. The description of the Leased Premises contained in the Preamble is amended to read as follows:

Approximately 25,643 square feet of tideland area known as Land Parcel No. 1 and approximately 155,428 square feet of water area known as Parcel No. 2 located on Convention Way and Marina Park Way in the City of San Diego, California, more particularly described and delineated on Lessor’s Drawing No. 019-064 dated May 15, 2018, attached hereto as Exhibits “A” and “B” and by this reference made a part hereof, hereinafter “Leased Premises”.

For avoidance of doubt, the portion of the Premises under the Original Lease comprising Land Parcel No. 1 (the “Marina Landside Area”) has been quitclaimed to Lessor by Lessee pursuant to a quitclaim deed

executed immediately prior to the execution of this Amendment No. 1, a copy of which shall be recorded in the official records of San Diego County, California ("Quitclaim Deed") and, subject to the terms of Paragraph 2.5 of the Lease, is excluded from the Leased Premises from and after the date upon which such Quitclaim Deed is made.

- B. Paragraph 2(a) of the Original Lease is hereby deleted and in its entirety and replaced with the following:

2. USE:

- (a) Leased Premises. Until such time that certain Tidelands Use and Occupancy Permit ("TUOP") by and between Lessor and Lessee dated _____, 201__, on file with Lessor's Clerk as Document No. _____, expires or is earlier terminated in accordance with the terms therein ("TUOP Expiration"), Parcel No. 1 shall be used only and exclusively for public parking, meetings, exhibitions, trade shows and special events. Upon the TUOP Expiration, Parcel No. 1 and at all times during the Term, Parcel No. 2 of the Leased Premises shall be used only and exclusively for (i) a water transportation center (which includes both landside and waterside improvements and shall hereinafter be referred to as "Water Transportation Center") for conducting harbor excursions, dinner cruises, whale-watching, ferry service, boat charters and water taxi operations; (ii) on reasonable and non-discriminatory terms and fees, the picking up and dropping off of passengers by water transportation operators approved by Lessor to operate on or from San Diego Bay, (iii) transit-oriented berthing facilities that will accommodate between 20 and 30 large yachts (the transit oriented berthing facility shall not be occupied by the same boat more than a cumulative total of one-hundred and eighty (180) calendar days in each calendar year during the term of the Lease (unless first approved by the Executive Director of Lessor on a case by case basis) and one berth shall be available free of charge to a sailing club or through other means to make boating as a recreational use affordable to those members of the public not able to own personal watercraft), and (iv) parking, loading and un-loading.

- C. Said Original Lease is hereby amended by adding Paragraph 3.3 as follows:

3.3 ADDITIONAL RENT:

- (a) In addition to the rent pursuant to Paragraph 3 above, Lessee agrees to pay Lessor additional Minimum Annual Rent of Fifty Eight Thousand Four Hundred and Sixty Six Dollars (\$58,466), subject to adjustment described in Paragraph 3.2 herein, or the cumulative total of the additional percentage rents per year as provided in (b) below, whichever is greater.
- (b) Percentage rents shall be calculated on a monthly basis and shall be based on the following percentages of gross income of the operations and businesses conducted on Parcel No. 1:
 - (i) Fifteen Percent (15%) of the gross income from sale of parking services or rental parking spaces;
 - (ii) Three Percent (3%) of the gross income from sale of food and food products;
 - (iii) Five Percent (5%) of the gross income from the sale of alcoholic and non-alcoholic beverages from the sale of catered alcoholic and non-alcoholic beverages on the Premises;
 - (iv) Ten Percent (10%) of the gross income from temporary special events in the public/park plaza area of the Premises not covered by (ii) and (iii) above.
 - (v) Ten Percent (10%) of the gross income from any and all activities, operations and enterprises permitted under the terms of this Permit and not otherwise addressed with the foregoing provisions.
 - (vi) Twenty Percent (20%) of the gross income from any and all services or uses not permitted under the terms of the Permit and not otherwise addressed within the foregoing provisions.
- (c) Rent shall be paid and collected in accordance with the Paragraphs 3(e) through 3(j), herein.
- (d) Lessee shall be subject to the rental provisions of this

Paragraph 3.3 during the term of that certain TUOP by and between the Lessor and Lessee dated _____, 201__, on file with the Lessor's Office of the District Clerk as Document No. _____. Upon TUOP Expiration, shall pay to Lessor rent in accordance with Paragraph 3, herein.

- D. Said Original Lease is hereby amended by adding Paragraph 2.3 as follows:

2.3 OPTION TO EXPAND FERRY SERVICE: Subject to the conditions precedent ("Ferry Expansion Conditions") as specified in Paragraph 2.3(b), the Lessee shall have the option to increase the Leased Premises to include (i) up to a cumulative total of 35,000 square feet of land area encompassing Parcel No. 1 and the land identified on Drawing No. 019-064, known as Parcel No. 4, as described on Exhibit A and shown on Exhibit B and (ii) a portion of the water area, presently bounded by Embarcadero Marina Park South to the west and a restaurant tenant to the north, as identified on Drawing No. 019-064, known as Parcel No. 5, as described on Exhibit A and shown on Exhibit B (collectively, "Ferry Expansion Option"). Lessee hereby acknowledges and agrees it does not have exclusive rights to provide ferry service in and around San Diego Bay and any expanded ferry service shall not interfere with adjacent leaseholds.

- (a) Option Term. Unless otherwise extended by written agreement between the parties, the term of the Ferry Expansion Option shall expire twenty-four (24) months after the earlier of issuance of a certificate of occupancy for (1) the Convention Center Hotel in the City of Chula Vista or (2) a new hotel on East Harbor Island ("Ferry Expansion Option Term"). Notwithstanding any other provision of this Agreement, Lessee's right to exercise the Ferry Expansion Option will terminate and be of no further force and effect if any of the conditions set forth in this Paragraph 2.3 are not timely satisfied and the Ferry Expansion Option is not exercised on or before the expiration of the Ferry Expansion Option Term.
- (b) Conditions Precedent to Exercise of Ferry Expansion Option. Lessee shall have no right to exercise the Ferry Expansion Option unless and until all of the following Ferry Expansion Conditions set forth in this Paragraph 2.3(b) have been strictly satisfied and if said Ferry Expansion Option is

exercised, Lessee agrees that the expanded ferry service shall, at a minimum serve Tidelands located in the City of Chula Vista and East Harbor Island as provided herein. For the propose of this Paragraph 2.3, “Expanded Ferry Service” shall mean the expanded ferry service to the City of Chula Vista once the Convention Center Hotel is operational and a docking facility is available in the Chula Vista Bayfront and East Harbor Island once a new hotel is developed and a docking facility is available at that location and all associated improvements.

- (i) Environmental Review, Permits and Approvals and Reservation of Discretion. Subject to Paragraph 2.3(c), Lessee shall obtain approval or certification of the environmental review under CEQA to exercise the Ferry Expansion Option. The parties agree and acknowledge that an approval of a project under CEQA Guideline Sections 15352 and 15378 has not occurred by the granting of the Ferry Expansion Option, and that Lessor’s approval of the CEQA analysis, in its sole and absolute discretion, is a condition precedent to Lessee exercising the Ferry Expansion Option.
- (ii) Entitlements Costs. While the level of environmental review in accordance CEQA, and necessary Entitlements, as defined below, for the Expanded Ferry Service are unknown at this time and are subject to the Lessor’s reservation of discretion pursuant to paragraph 2.3(c), Lessee shall pay for all direct third-party consultant(s) costs to prepare, at the direction of Lessor, the CEQA analysis and Entitlements required for the Expanded Ferry Service; provided, however, that third-party costs shall not include the cost of outside attorneys and/or others hired to act as Lessor's representatives in negotiations with Lessee.
- (iii) Permits, Approvals and Agreements. If Lessor approves or certifies the CEQA review for the Expanded Ferry Service, Lessee shall obtain all permits, approvals and agreements, including without limitation a Port Master Plan Amendment (“PMPA”), if applicable, and Coastal Development Permit (“CDP”),

(collectively, "Entitlements") which Lessor may determine, in its sole and absolute discretion pursuant to Paragraph 2.3(c), are necessary for the Expanded Ferry Service, and other approvals required by Lessor through Lessor's normal and customary approval process. Additionally, the parties acknowledge and agree that the Entitlements, a lease or other project approvals and agreements shall not be presented to Lessor for approval unless and until all environmental review under CEQA has been conducted and approved.

- (iv) Other Agreements and Approvals. The Lessee shall provide Lessor with copies of any and all third-party permits, approvals, including without limitation approvals from the Public Utilities Commission, agreements necessary for the construction and operation of the Expanded Ferry Service.
 - (v) Exercise of Option. If Lessor approves or certifies the CEQA review for the Expanded Ferry Service, in its sole and absolute discretion pursuant to Paragraph 2.3(c) and Lessee has timely satisfied the conditions precedent described in this Paragraph 2.3 prior to the expiration of the Ferry Expansion Option, then Lessee shall have the right to expand the Premises as described in this Paragraph 2.3 if Lessee notifies Lessor in writing that it has timely satisfied all conditions precedent and is exercising its Ferry Expansion Option. Upon Lessor's receipt of the written notice, the Premises shall be automatically expanded consistent with this Paragraph 2.3 and, for the avoidance of doubt, if either the Lessor or Lessee chooses, the parties may enter into a lease amendment to confirm the expanded Premises.
- (c) Reservation of Discretion. Lessee acknowledges and agrees that, notwithstanding the terms and conditions of the Ferry Expansion Option, Lessor reserves its discretion to approve or disapprove all discretionary actions with respect to the Ferry Expansion Option and that nothing in this Paragraph 2.3 will be construed as circumventing or limiting the Lessor's discretion with respect to the environmental review required by CEQA. Such reservation of discretion will

apply to all contemplated legislative and quasi-judicial actions including, without limitation, CEQA compliance, approval of the Entitlements and other approvals, code enforcement and the making of findings and determinations required by law. Lessee further acknowledges and agrees that: (i) Lessor, in its sole and absolute discretion, may or may not certify or approve the environmental review required for the Expanded Ferry Service and may or may not approve any aspect of the Expanded Ferry Service; and (ii) either Lessor or the California Coastal Commission (“CCC”), in their sole and absolute discretion, may elect not to approve, adopt or certify a PMPA based on the Expanded Ferry Service environmental review or other discretionary factors. Lessee further acknowledges and agrees that Lessor’s decision whether or not to certify or approve the Expanded Ferry Service environmental review and Entitlements might be based upon Lessor’s adoption of certain additional conditions, mitigation measures or alternatives, including the alternative of not going forward with the Expanded Ferry Service, considered in the Expanded Ferry Service environmental review and a statement of overriding considerations, if applicable. Lessee accepts the risk that Lessor or the CCC may not approve, adopt or certify the Expanded Ferry Service environmental review and Entitlements and that the Expanded Ferry Service environmental review and Entitlements might be approved, adopted or certified subject to the selection of an alternative or the performance of certain additional conditions or mitigation measures imposed by Lessor or the CCC in their sole and absolute discretion. Other than as expressly set forth in this Paragraph 2.3, Lessee will have no claim, cause of action, or right to compensation or reimbursement from Lessor or any other person if the Expanded Ferry Service environmental review is not approved or certified by Lessor or the Entitlements are not adopted, approved or certified by Lessor or the CCC for any reason, or if either the Expanded Ferry Service environmental review or the Entitlements are adopted or certified subject to the selection of an alternative or the performance of certain additional conditions or mitigation measures. In the event that Lessor takes or fails to take any discretionary action with respect to the Expanded Ferry Service Option, (1) any such action or inaction shall not constitute a breach of Lessor’s obligations under this Paragraph 2.3 and (ii) Lessee shall have no claim, cause of

action, or right to compensation or reimbursement from Lessor or any other person.

- E. Said Original Lease is hereby amended by adding Paragraph 2.4 as follows:

2.4 LESSOR'S RIGHT TO DEVELOP LAND AND AIR PARCELS:

- (a) Future Potential Development. Lessor, in its sole and absolute discretion, reserves the right to develop or cause the development of Parcel No. 1 and Parcel No. 4 described and identified on Drawing No. 019-064 in Exhibits A and B, and any future air parcels if created; provided, however, Lessor shall accommodate the minimum specifications as outlined in Exhibit C for a functioning future water transportation center (collectively, "Future Project"). Lessee and Lessor shall cooperate and act in good faith in processing of a Future Project; provided, however, the timing of Lessor's potential Future Project as outlined in 24 (d) below shall not preclude Lessee from proposing a redeveloped water transportation center on Parcel No. 1 (prior to exercise of the Expanded Ferry Service Option) and/or Parcel No. 4 (after exercise the Expanded Ferry Service Option) which shall be submitted in accordance with Paragraph 4.
- (b) Lessee, Lessee's current or future owners, Lessee's employees, Lessee's related companies, companies owned in part by Lessee's current and future owners, any other related current or future entity that Lessee current or future owners control in part shall cooperate and support all approvals necessary for Future Project. Failure to cooperation shall be deemed a default under Paragraph 10 of this Lease.
- (c) Environmental Review, Permits and Approvals. The parties agree that CEQA analysis shall be required for the Future Project. Additionally, if deemed necessary by the Lessor, in its sole and absolute discretion, Entitlements for the Future Project may be required. The Parties agree and acknowledge that an approval of a project under CEQA Guideline Sections 15352 and 15378; provided, however, the approval of the CEQA analysis is required for any Future Project. The CEQA analysis and Entitlements may be

reviewed and considered by the Lessor and the parties acknowledge and agree that inclusion of this Paragraph 2.4 does not guarantee or commit the Lessor to approve any CEQA analysis, the Future Project or Entitlements for the Future Project and the parties assumes the risk that Lessor or the CCC, if applicable, will not approve or adopt the same. The parties further agree and acknowledge that Lessor retains sole and absolute discretion to, among other things (i) prepare, adopt, or disapprove an exemption, a ND, a MND, or an EIR pursuant to CEQA for the Future Project and the Entitlements required to carry out the Future Project; (ii) adopt, condition or disapprove the Future Project or any portion thereof, and Entitlements needed for the same; (iii) adopt any and all feasible mitigation measures to lessen potentially significant environmental impacts from Future Project; and (iv) modify any portion of the Future Project, adopt any alternatives to the Future Project, including the “no project” alternative, and adopt or refuse to adopt a Statement of Overriding Considerations, if applicable, in connection with the CEQA process. The parties acknowledge that this Paragraph 2.4 shall not be construed as a direct or indirect commitment by the Lessor or any other entity to take or to not take any action, whether under CEQA, the Coastal Act or otherwise, in connection with the Future Project. Additionally, the parties acknowledge and agree that no Entitlements shall presented to Lessor for approval unless and until all environmental review under CEQA has been conducted and approved.

- (d) Timing of Lessor’s Future Project and Effect on Lessee’s Improvements. If Lessee has built a new water transportation center improvements prior to or concurrent to Lessor exercising its right to develop a Future Project, the Lessor shall notify Lessee and to the extent the Lessee voluntarily agrees, the Lessor shall at its sole cost and expense relocate the Lessee into or adjacent to the Future Project consistent with the minimum requirements outlined in Exhibit C.

If Lessor exercises its right to develop a Future Project prior to Lessee’s construction of its water transportation center improvements, the Lessee’s water transportation center may be located within or adjacent to the development of the Future Project, in whichever configuration the Lessor

reasonably determine best accommodates the development of the Future Project so long as Lessee's minimum specifications as outlined on Exhibit C are satisfied and the Water transportation center is located adjacent to the waterfront and within the Flag lot.

- (e) Subject to Paragraph 2.4 (d), Lessee shall execute the Quitclaim Deed, attached hereto as Exhibit D, thirty (30) days after final certification of any environmental document described in Paragraph 2.4 (c) above, which Quitclaim Deed shall remove Parcel No. 1 and Parcel No. 4 identified on Drawing No. 019-064 in Exhibit B from the Premises.
 - (f) Lease Amendment for Lessor's Future Project. If Lessor develops its Future Project, then prior to completion of the Future Project, Lessor and Lessee shall negotiate, in good faith, and an amendment to this Lease or a new lease that, among other items, identifies: (1) the Premises consistent with Exhibit C and (2) shared maintenance and operations responsibilities and costs in proportion to the improvements to be leased by Lessee from Lessor in the Future Project.
- F. Said Original Lease is hereby amended by adding Paragraph 2.5 as follows:

2.5 MARINA LANDSIDE PARCEL – HOLD HARMLESS Notwithstanding the quitclaim of interest by Lessee of the Marina Landside Area in favor of Lessor pursuant to the Quitclaim Deed and without limiting any other agreement of Lessee in the Lease to indemnify, defend or hold harmless Lessor, Lessee agrees to indemnify, defend and hold harmless Lessor from and against any and all liability, claims, judgments, damages, proceedings, orders, directives, losses, costs, and expenses including reasonable attorneys' fees, or demands (each a "Claim" and collectively, "Claims") arising directly or indirectly from the failure of Lessee to fulfill its obligations under the Lease accruing or arising with respect to the Marina Landside Area during the period prior to the date of recordation of the Quitclaim Deed. Lessee confirms and agrees that the indemnity obligations contained in Paragraphs 7, 21, 30, 42(f), 44(f) and (g) and 45(d) of the Lease, continue in effect with respect to any and all Claims that Lessor may incur where the incident or matter on which such Claim is based occurred or accrued before the date that the Quitclaim Deed is recorded in the San Diego County Recorder's office, regardless of when such Claim is first asserted. This indemnity obligation shall apply for the entire time that any third party can make a claim against or sue Lessor for

liabilities arising out of Lessee's use, occupancy, possession or operation of the Marina Landside Area.

- G. Lessor agrees to reinstate up to thirty-nine thousand (39,000) square feet of shading credits for Lessee's use on the Premises, Option Parcel or adjacent areas, but only to the extent they are used by Original Lessee and only in the amount they are actually used, if at all. Accordingly, Paragraph 5(a) of the Original Lease is hereby deleted in its entirety and replaced with the following:
- (c) Subject to the appropriate federal and California resource agencies' consent or approval of Lessor's shading credit ledger and Bay-wide program for use of shading credits ("Resource Agency Approval"), Lessor has available "shading" mitigation credits that resulted from the removal of piers, floats, and other in-water improvements on San Diego Bay. In the event Resource Agency Approval is obtained by Lessor, Lessor shall reinstate up to 39,000 thirty-nine thousand (39,000) square feet of shading credits for Lessee's sole use on the Lease Premises; Option Parcel or adjacent water areas at no cost to Lessee ("Lessee Shading Credits"); provided, however, Lessee Shading Credits shall not be sold or transferred. Lessee and Lessor agree that if in the future, an over water project(s) is formulated and less than 39,000 square feet of Lessee Shading Credits are needed, the excess of Lessee's Shading Credits shall revert back to Lessor, at no cost to Lessor. Lessee further acknowledges that additional mitigation for future overwater coverage, if any, may be required, and agrees and accepts the risk that, other than the Resource Agency Approval, it remains solely responsible for obtaining all governmental approvals to use such Shading Credits. Lessee also acknowledges and accepts the risk that any or all such government approvals, including the Resource Agency Approvals may not be forthcoming.
- H. Said Original Lease is hereby amended by deleting therefrom Paragraph 49 in its entirety.
- I. Exhibit "A" of said Original Lease is hereby amended and replaced with Exhibit "A" attached hereto.
- J. Exhibit "B" of said Original Lease is hereby amended and replaced with Exhibit "B" attached hereto.
- K. Said Original Lease is hereby amended by adding Exhibit "C" for the "Water Transportation Specifications" attached hereto.

- L. Said Original Lease is hereby amended by adding Exhibit "D" for the "Future Project Area Quitclaim Deed" attached hereto.
2. Effectiveness of Amendment No 1. Following execution by all parties hereto, this Amendment No. 1 to the Original Lease shall become effective as of delivery of this Amendment No. 1 by Escrow Agent (as defined in the PSA) to Lessor and Lessee conditioned upon the occurrence of the Alternative A Closing (as defined in the PSA).
3. General Provisions.
- A. Terms; Captions. The necessary grammatical changes required to make the provisions hereof apply either to corporations, limited liability companies or partnerships or individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed. The captions of paragraphs are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Paragraphs.
- B. Time of Essence. Time is of the essence with respect to this Amendment No. 1 and each of its provisions.
- C. Partial Invalidity. If any term, provision or condition contained in this Amendment No. 1 shall, to any extent, be invalid or unenforceable, the remainder of this Amendment No. 1, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Amendment No. 1 shall be valid and enforceable to the fullest extent possible permitted by the laws of the State of California.
- D. Entire Agreement. It is understood and acknowledged that there are no oral agreements between the Parties hereto affecting this Amendment No. 1 and this Amendment No. 1 supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the Parties hereto with respect to the subject matter hereof. Any all negotiations and oral agreements acceptable to both parties have been merged into and are included herein.
- E. Joint and Several. If there is more than one individual, trust or entity (collectively, "Persons") constituting Lessee (i) the obligations imposed upon such Persons under this Amendment No. 1 shall be joint and several and (ii) the act or signature of, or notice from or to, any one or more of them with respect to this Amendment No. 1 shall be binding upon each and

all of such Persons with the same force and effect as if each and all of them had so acted or signed, or given or received such notice.

- F. Authority. If Lessee is a corporation, partnership or limited liability company, each individual executing this Amendment No. 1 on behalf of Lessee hereby represents and warrants that Lessee is a duly formed and existing entity qualified to do business in California and that Lessee has full rights and authority to execute and deliver this Amendment No. 1 and that each of the Persons signing on behalf of Amendment No. 1 is authorized to do so.
- G. 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 Lessor 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.
- H. Governing Law. Venue for any legal proceeding shall be in San Diego County, California. This Amendment No. 1 shall be construed and enforced in accordance with the laws of the State of California.
- I. Counterparts. This Amendment No. 1 may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.
- J. Drafting Presumption; Review Standard. The Parties acknowledge that this Amendment No. 1 has been agreed to by the Parties, that both Lessor and Lessee have consulted with attorneys with respect to the terms of this Amendment No. 1 and that no presumption shall be created against the drafting party. Any deletion of language from this Amendment No. 1 prior to its execution by Lessor and Lessee 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.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 1 as of the day and the year first above written.

LESSEE:

FIFTH AVENUE LANDING, LLC,
a California limited liability company

By: _____

Ray A. Carpenter
Its: Managing Member

By: San Diego California Properties, LLC,
Its: Managing Member

By: _____

Art E. Engel
Its: Managing Member

LESSOR:

SAN DIEGO UNIFIED PORT
DISTRICT, a Public Corporation

By: _____

Name: _____

Its: _____

General Counsel
Approved as to form and legality:

By: _____

Name: _____

Assistant/Senior Deputy
General Counsel

Exhibit A

**Lease Descriptions for
FIFTH AVENUE LANDING, LLC.
TIDELANDS LEASE
Parcel/Drawing No. 019-064
Within Corporate Limits of San Diego**

All that certain portion of land conveyed to the San Diego Unified Port District by that certain Act of Legislature of the State of California pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended, and delineated on that certain Miscellaneous Map No. 564, filed in the Office of the San Diego County Recorder on May 28, 1976, File No. 76-164686, in the City of San Diego, County of San Diego, State of California, and more particularly described as follows:

PARCEL NO. 1 (Land Area)

Commencing at a 3" diameter brass disk monument stamped S.D.U.P.D. No. 14 as shown on R.O.S. No. 16668, filed in the Office of the County Recorder of San Diego County July 25, 2000; thence leaving said monument along a tie line South 34°17'50" West a distance of 168.06 feet (calculated) to a point on the southwesterly face of curb of a street commonly known as Convention Way, said point also being the TRUE POINT OF BEGINNING of Parcel No. 1; thence along said southwesterly face of curb of Convention Way and parallel with the U.S. Bulkhead Line as said U.S. Bulkhead Line as is now established for the Bay of San Diego and delineated on map entitled "Harbor Lines, San Diego Bay, California File No. (D.O. series) 426" approved by the Secretary of the Army, April 29, 1963, South 50°19'08" East a distance of 177.32 feet; thence leaving said face of curb South 39°40'52" West a distance of 198.00 feet; thence North 50°19'08" West a distance of 92.27 feet; thence North 39°40'52" East a distance of 111.31 feet; thence North 50°19'08" West a distance of 85.05 feet; thence North 39°40'52" East a distance of 86.69 feet to the TRUE POINT OF BEGINNING of Parcel No. 1, containing 25,643 square feet or 0.59 acre of tidelands area.

PARCEL NO. 2 (Water Area)

Commencing at the above-described True Point of Beginning of Parcel No. 1; thence along a line parallel with the above described U.S. Bulkhead Line South 50°19'08" East a distance of 177.32 feet to the TRUE POINT OF BEGINNING OF PARCEL NO. 2; thence continuing along said parallel U.S. Bulkhead Line South 50°19'08" East a distance of 179.41 feet; thence North 39°40'52" East a distance of 1.00 feet; thence along said parallel U.S. Bulkhead Line South 50°19'08" East a distance of 381.61 feet; thence leaving said parallel U.S. Bulkhead Line South 39°40'52" West a distance of 288.67 feet; thence North 50°19'08" West a distance of 381.61 feet to a point on the northeasterly boundary line of an area now under lease to C.H.L.N., Inc.; thence along said C.H.L.N., Inc. northeasterly boundary line North 12°18'56" West a distance of 58.08 feet; thence North 34°19'03" West a distance of 79.80 feet; thence North 45°53'02" West a distance of 25.21 feet; thence North 50°19'08" West a distance of

Lease Amendment No. 1

Exhibit A

79.84 feet; thence North 39°40'52" East a distance of 29.96 feet; thence South 50°19'08" East a distance of 48.04 feet; thence North 39°40'52" East a distance of 198.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 2, containing 155,428 square feet or 3.57 acres of water covered tidelands area.

PARCEL NO. 3 (Water Area)

Commencing at the above described True Point of Beginning of Parcel No. 2; thence along a line parallel with the above described U.S. Bulkhead Line South 50°19'08" East a distance of 179.41 feet; thence North 39°40'52" East a distance of 1.00 feet; thence along a line parallel with the U.S. Bulkhead Line South 50°19'08" East a distance of 381.61 feet to the TRUE POINT OF BEGINNING of Parcel No. 3; thence continuing a line parallel with the U.S. Bulkhead Line South 50°19'08" East a distance of 400.00 feet; thence leaving said parallel Line South 39°40'52" West a distance of 519.00 feet; thence North 50°19'08" West a distance of 400.00 feet; thence North 39°40'52" East a distance of 519.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 3, containing 207,600 square feet or 4.77 acres of water covered tidelands area.

PARCEL NO. 4 (Land Area)

Commencing at the True Point of Beginning of Parcel No. 1; thence South 39°40'52" West a distance of 86.69 feet to the TRUE POINT OF BEGINNING OF PARCEL NO. 4; Thence South 50°19'08" East a distance of 85.05 feet; thence South 39°40'52" West a distance of 111.31 feet; thence North 50°19'08" West a distance of 85.05 feet; thence North 39°40'52" East a distance of 111.31 feet to the TRUE POINT OF BEGINNING OF PARCEL NO. 4, containing 9,467 square feet of tidelands area.

PARCEL NO. 5 (Water Area)

Commencing at the above described True Point Of Beginning of Parcel No. 3; thence South 39°40'52" West a distance of 519.00 feet; thence North 50°19'08" West a distance of 50.00 feet; thence continuing North 50°19'08" West a distance of 94.52 feet to the TRUE POINT OF BEGINNING of Parcel No. 5; thence North 39°40'52" East a distance of 139.75 feet; thence North 50°19'08" West a distance of 150.48 feet; thence North 39°40'52" East 40.58 feet; thence South 50°19'08" East a distance of 245.00 feet; thence South 39°40'52" West a distance of 180.33 feet; thence retracing North 50°19'08" West a distance of 94.52 feet to the TRUE POINT OF BEGINNING of Parcel No. 5, containing 23,153 square feet or 0.855 acre of water covered tidelands area.

ALSO: Reserving therefrom a City of San Diego Water easement 15.00 feet in width as delineated and described as Easement No. 2 on sheets 2 and 3 of Drawing No. 019-064.

ALSO: Reserving therefrom a City of San Diego Storm Drain easement 20.00 feet in width as delineated and described as Easement No. 3 on sheets 2 and 3 of Drawing No. 019-064.

Exhibit B

Depiction of Leased Premises and Ferry Expansion Option Parcels

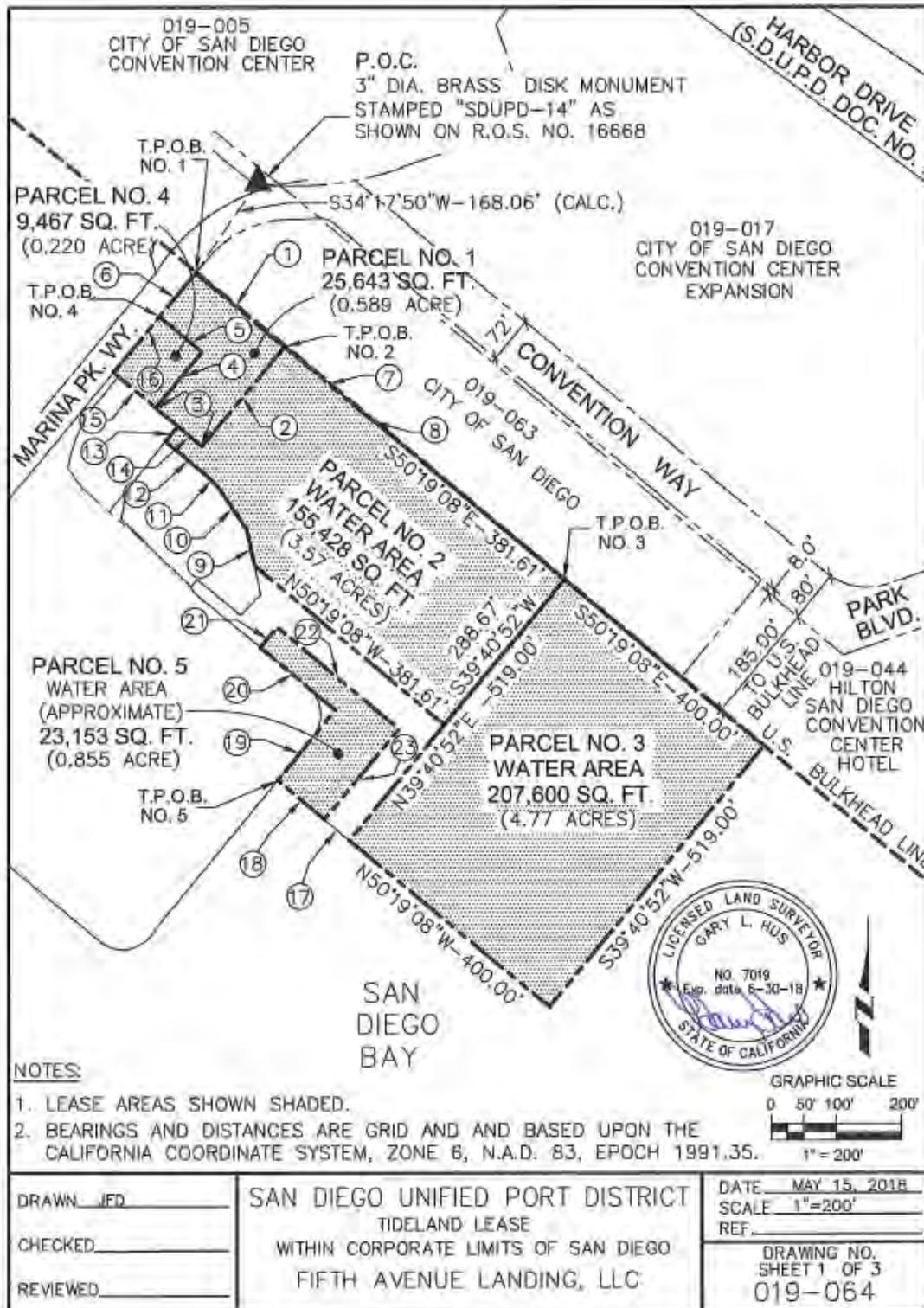


Exhibit B

Depiction of Leased Premises and Ferry Expansion Option Parcels



Lease Amendment No. 1

Exhibit B

Exhibit B

Depiction of Leased Premises and Ferry Expansion Option Parcels

DATA TABLE	
① S50°19'08"E-177.32'	⑬ N39°40'52"E-29.96'
② S39°40'52"W-198.00'	⑭ S50°19'08"E-48.04'
③ N50°19'08"W-92.27'	⑮ N50°19'08"W-85.05'
④ N39°40'52"E-111.31'	⑯ N39°40'52"E-111.31'
⑤ N50°19'08"W-85.05'	⑰ N50°19'08"W-50.00'
⑥ N39°40'52"E-86.69'	⑱ N50°19'08"W-94.52'
⑦ S50°19'08"E-179.41'	⑲ N39°40'52"E-139.75'
⑧ N39°40'52"E-1.00'	⑳ N50°19'08"W-150.48'
⑨ N12°18'56"W-58.08'	㉑ N39°40'52"E-40.58'
⑩ N34°19'03"W-79.80'	㉒ S50°19'08"E-245.00'
⑪ N45°53'02"W-25.21'	㉓ S39°40'52"W-180.33'
⑫ N50°19'08"W-79.84'	

EASEMENT DATA	
①	15.00' CITY OF SAN DIEGO STORM DRAIN ESMT. SDUPD DWG. NO. 519-025 EXIST.
②	15.00' CITY OF SAN DIEGO WATER ESMT, 519-034 EXIST.
③	20.00' CITY OF SAN DIEGO STORM DRAIN ESMT. SDUPD DWG. NO. 519-005 EXIST.
④	25.00' PUBLIC PEDESTRIAN ACCESS ESMT.
⑤	30.00' CITY OF SAN DIEGO WATER ESMT. S.D.U.P.D. DWG. NO. 519-031 EXIST.
⑥	30.00' CITY OF SAN DIEGO STORM DRAIN ESMT. EXIST.
⑦	60.00' CITY OF SAN DIEGO GEN. UTIL. ESMT. EXIST.
⑧	24.00' PUBLIC PEDESTRIAN ACCESS ESMT.
⑨	35.00' PUBLIC PEDESTRIAN ACCESS ESMT.
⑩	CITY OF SAN DIEGO GENERAL UTILITY EASEMENT 519-030 EXIST.

DRAWN <u>JFD</u> CHECKED _____ REVIEWED _____	SAN DIEGO UNIFIED PORT DISTRICT TIDELAND LEASE WITHIN CORPORATE LIMITS OF SAN DIEGO FIFTH AVENUE LANDING, LLC	DATE <u>MAY 15, 2018</u> SCALE <u>1"=200'</u> REF. _____ DRAWING NO. SHEET <u>3</u> OF <u>3</u> <u>019-064</u>
---	--	---

Exhibit C**Minimum Specifications for Water Transportation Center**

Program Element	Square Feet (SF)
Front Office	300 SF
Lobby	200 SF
IT Center	100 SF
Locker Room/Gym/Spa for Patrons	6,000 SF
Café/Bar	3,000 SF
Guest Services	2,000 SF
Offices	1,400 SF
Sales Office	600 SF
Retail Services	700 SF
Guest Mail/Package Arrival	600 SF
Outdoor Patio	3,000 SF
TOTAL	17,900 SF

Additionally, a bus turnaround, 65 parking spaces and 2 loading docks are needed.

Exhibit D

QUITCLAIM DEED

RECORDING REQUESTED BY San Diego
Unified Port District WHEN RECORDED MAIL

TO: Ms. Randa Coniglio
President/CEO
San Diego Unified Port District
3165 Pacific Highway
San Diego, CA 92101
Telephone: (619) 725-6002
Email: rconiglio@portofsandiego.org

*No Doc Tax Due – R&T Code 11922
Govt Agency – Govt Code 27383*

(Space Above For Recorder's Use) No Fee For

**QUITCLAIM DEED
(Marina Lease—Future Project Area)**

This **Quitclaim Deed (Marina Lease—Future Project Area)** (“**Quitclaim Deed**”) is delivered by FIFTH AVENUE LANDING, LLC, a California limited liability company (“**Grantor**”) to SAN DIEGO UNIFIED PORT DISTRICT, a Public Corporation (“**Grantee**”) on this ____ day of ____, 201__.

WITNESSETH:

A. Grantor is the lessee under a lease with District, dated May 7, 2010, on file in the Office of the Clerk of the District bearing Document No. 56494, as amended by Lease Amendment No. 1 bearing Document No. _____ (“**Lease**”) for approximately 155,428 square feet of water area known as Parcel No. 2 (“Parcel No. 2) as more fully described in the Lease and approximately 25,643 square feet of tideland area known as Parcel No. 1 and approximately 9,467 square feet of tideland area known as Parcel No. 4 located on Convention Way and Marina Park Way in the City and County of San Diego, California. The 25,643 square feet of tideland area known as Parcel No. 1 and the 9,467 square feet of tideland area known as Parcel No. 4 under the Lease is more particularly described in **Exhibit “1”** attached hereto (the “**Future Project Area**”) which is the subject of this Quitclaim Deed.

B. The purpose of this Quitclaim Deed is to relinquish and terminate all of Grantor’s right, title and interest in the Future Project Area held by Grantor pursuant to the Lease.

1. FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Grantor hereby REMISES, RELEASES AND QUITCLAIMS to Grantee all of Grantor’s right, title and interest in and to the Future Project Area.

2. Nothing in this Quitclaim Deed shall modify or affect the obligations of Lessee under the Lease with respect to Parcel No. 2. Except as set forth in this Quitclaim Deed, the Lease is unmodified and remains in full force and effect in accordance with its terms.

[SIGNATURES ON FOLLOWING PAGE]

Lease Amendment No. 1

Exhibit D

2

IN WITNESS WHEREOF, Grantor has signed and delivered this Quitclaim Deed as of the day and year first written above.

FIFTH AVENUE LANDING, LLC,
a California limited liability company

By: _____
Ray A. Carpenter
Its: Managing Member

By: San Diego California Properties,
LLC, Its: Managing Member

By: _____
Art E. Engel
Its: Managing Member

Date: _____, _____

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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

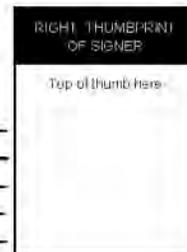
Signer is Representing: _____



Signer's Name _____

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

Signer is Representing: _____



STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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and could prevent fraudulent removal and reattachment of this form to another document.

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Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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

Signer is Representing: _____



Signer's Name _____

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

Signer is Representing: _____



**EXHIBIT 1
TO QUITCLAIM DEED**

**Legal Description for
Parcel / Drawing No 019-064
Within Corporate Limits of San Diego**

All that certain portion of land conveyed to the San Diego Unified Port District by that certain Act of Legislature of the State of California pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended, and delineated on that certain Miscellaneous Map No. 564, filed in the Office of the San Diego County Recorder on May 28, 1976, File No. 76-164686, in the City of San Diego, County of San Diego, State of California, and more particularly described as follows:

PARCEL NO. 1 (Land Area)

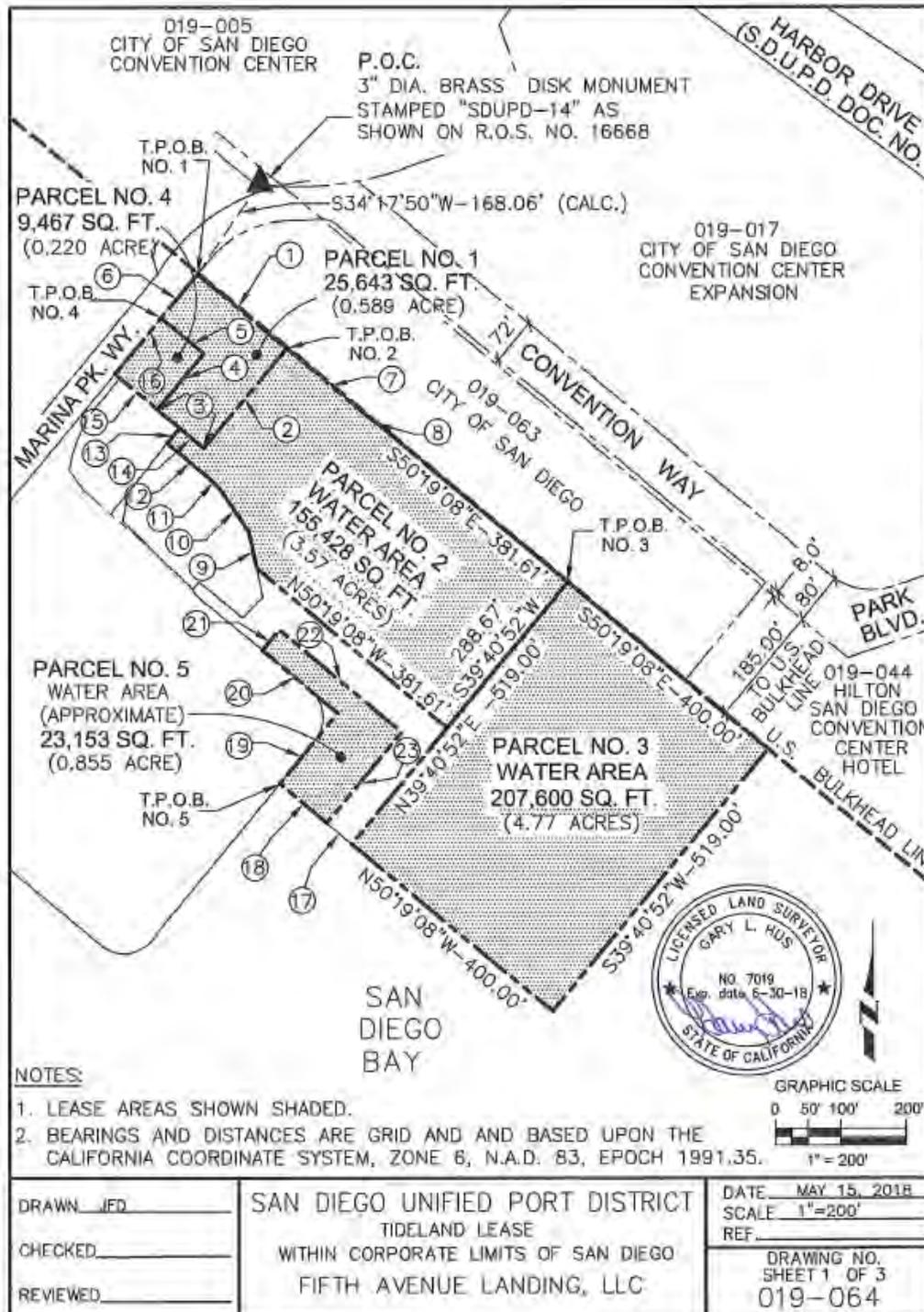
Commencing at a 3" diameter brass disk monument stamped S.D.U.P.D. No. 14 as shown on R.O.S. No. 16668, filed in the Office of the County Recorder of San Diego County July 25, 2000; thence leaving said monument along a tie line South 34°17'50" West a distance of 168.06 feet (calculated) to a point on the southwesterly face of curb of a street commonly known as Convention Way, said point also being the TRUE POINT OF BEGINNING of Parcel No. 1; thence along said southwesterly face of curb of Convention Way and parallel with the U.S. Bulkhead Line as said U.S. Bulkhead Line as is now established for the Bay of San Diego and delineated on map entitled "Harbor Lines, San Diego Bay, California File No. (D.O. series) 426" approved by the Secretary of the Army, April 29, 1963, South 50°19'08" East a distance of 177.32 feet; thence leaving said face of curb South 39°40'52" West a distance of 198.00 feet; thence North 50°19'08" West a distance of 92.27 feet; thence North 39°40'52" East a distance of 111.31 feet; thence North 50°19'08" West a distance of 85.05 feet; thence North 39°40'52" East a distance of 86.69 feet to the TRUE POINT OF BEGINNING of Parcel No. 1, containing 25,643 square feet or 0.59 acre of tidelands area.

PARCEL NO. 4 (Land Area)

Commencing at the True Point of Beginning of Parcel No. 1; thence South 39°40'52" West a distance of 86.69 feet to the TRUE POINT OF BEGINNING OF PARCEL NO. 4; Thence South 50°19'08" East a distance of 85.05 feet; thence South 39°40'52" West a distance of 111.31 feet; thence North 50°19'08" West a distance of 85.05 feet; thence North 39°40'52" East a distance of 111.31 feet to the TRUE POINT OF BEGINNING OF PARCEL NO. 4, containing 9,467 square feet of tidelands area.

EXHIBIT 1 TO QUITCLAIM DEED

Depiction of "Future Project Area"



Lease Amendment No. 1
Exhibit D

EXHIBIT M-2

**REAFFIRMATION OF GUARANTY
AND CONSENT TO AMENDMENT NO. 1 OF MARINA LEASE
(Alternative A)**

On or about May 7, 2010, San Diego Unified Port District, a public corporation ("Port") and Fifth Avenue Landing, LLC, a California limited liability company ("FAL") entered into a Lease dated May 7, 2010 bearing Port Clerk Document No. 56494 ("Original Lease") for the real property located in San Diego, California, as more particularly described in the Lease ("Property").

On or about April 26, 2010, the undersigned guarantors entered into that certain Guaranty ("Guaranty") in favor of the Port, in which the undersigned guarantors agreed to unconditionally guarantee and promise to and for the benefit of Port, that FAL shall perform the provisions of the Lease for which it is responsible.

Port and FAL now intend to enter into that certain Amendment No. 1 to San Diego Unified Port District Lease to Fifth Avenue Landing, LLC of Property Located at Fifth Avenue Landing and Marina Parkway, San Diego, CA ("Amendment No. 1") dated _____, 201__ bearing District Clerk Document No. _____ (Amendment No 1, together with Lease, "Amended Lease").

By this Reaffirmation of Guaranty and Consent to Amendment of Marina Lease, each undersigned Guarantor:

- (a) unconditionally guarantees and promises to and for the benefit of Lessor, that FAL shall perform the provisions of the Amended Lease for which it is responsible;
- (b) consents to Amendment No. 1, and
- (c) agrees and affirms that the Guaranty remains in full force and effect with respect to the Amended Lease.

This Reaffirmation of Guaranty and Consent to Amendment of Marina Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement, binding on all Guarantors even though all Guarantors do not sign the original or the same counterpart.

{signatures on following page}

GUARANTORS:

RAYMOND CARPENTER, an individual

By: _____
Signature

Date: _____, 2018

ARTHUR ENGEL, an individual

By: _____
Signature

Date: _____, 2018

HERBERT ENGEL, an individual

By: _____
Signature

Date: _____, 2018

DAVID ENGEL, an individual

By: _____
Signature

Date: _____, 2018

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Signer's Name _____

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

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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

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Title or Type of Document: _____

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Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name _____

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

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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

Signer is Representing: _____

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OF SIGNER
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EXHIBIT N-1

AMENDMENT NO. 1 TO

SAN DIEGO UNIFIED PORT DISTRICT

LEASE TO

FIFTH AVENUE LANDING, LLC

OF PROPERTY LOCATED AT

FIFTH AVENUE LANDING AND MARINA PARK WAY

SAN DIEGO, CALIFORNIA

THIS AGREEMENT FOR AMENDMENT OF LEASE AMENDMENT NO. 1 (“Lease Amendment No. 1”), made and entered into this ____ day of _____ 201__, by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter called "Lessor," and FIFTH AVENUE LANDING, LLC, a California limited liability company, hereinafter called "Lessee."

WITNESSETH:

WHEREAS, Lessor and Lessee, on the 7th day of May, 2010, entered into a lease of certain tidelands in the city of San Diego, California, which lease is on file in the Office of the Clerk of Lessor bearing Document No. 56494 (“Original Lease”, as amended by this Amendment No. 1, the “Lease”); and

WHEREAS, Campbell Industries, a California corporation, removed various overwater structures adjacent to the Premises in San Diego Bay, resulting in the creation of approximately 170,906 square feet of shading credits; and

WHEREAS, Lessor has a shading credit ledger whereby Lessor denotes the amount of overwater shading removed on the San Diego Bay and deducts, under certain circumstances, from the ledger shading credits when new overwater development occurs; and

WHEREAS, the Original Lease provided that the shading credits may be available for mitigation of Lessee’s construction of the Option Parcel Improvements, however, Lessee shall have the right of first refusal to attempt to use the lesser of (i) sufficient shading credits for in-water improvements that are over and above “shading” mitigation credits related to

the Leased Premises that Lessee may possess or (ii) seventy thousand (70,000) square feet of shading credits (collectively, "Original Shading Credits"); and

WHEREAS, the Original Lease further provided that in any event, title and all rights to any such Original Shading Credits had not been used by Lessee as mitigation by June 30, 2013, whether or not such Original Shading Credits had purportedly or actually transferred to Lessee, the Original Shading Credits shall revert automatically to Lessor, and Lessee's right of first refusal was null and void and of no further force or effect ("Shading Credit Sunset Date"); and

WHEREAS, the title and all rights to any such Original Shading Credits where not used in accordance with the terms of the Original Lease by the Shading Credit Sunset Date and accordingly reverted back to the Lessor and lessee's right of first refusal expired; and

WHEREAS, on __ of June 201__, Lessor, Lessee and the City of San Diego, a municipal corporation ("City") entered in to a Purchase and Sale Agreement and Escrow Instructions ("PSA"), which is on file in the Office of the Clerk of Lessor bearing Document No. _____ to facilitate the City's desire to expands the San Diego Convention Center, as described in Lessor's certified Port Master Plan ("Expansion"), and in anticipation of a citywide proposed special tax measure titled the "For a Better San Diego" initiative to increase the City's transient occupancy tax and dedicate the resulting increased tax revenues for specified public benefits, including to finance construction of the Expansion and modernization of the San Diego Convention Center; and

WHEREAS, the Alternative B Closing, as defined in the PSA, occurred and as a condition of that Alternative B Closing, this Amendment No. 1 is hereby effective upon delivery of originals to Lessor and Lessee; and

WHEREAS, Lessor and Lessee are mutually desirous of amending said Original Lease.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and in consideration of the mutual promises and covenants herein contained, and having determined that the foregoing recitals are true and correct and should be, and hereby are, incorporated into this Amendment No. 1, the Parties agree as follows:

1. Amendment to Lease. The Original Lease is hereby amended in the following respects and no others, and except as expressly amended, all terms, covenants and conditions of the Original Lease shall remain in full force and effect. All defined terms shall have the same meaning as set forth in the Original Lease unless otherwise indicated in this Amendment No. 1. Wherever the term "Lease" is used in the Original Lease or in this Amendment No. 1, it shall mean the Original Lease as amended by this Amendment No. 1.
 - A. Lessor agrees to reinstate up to thirty-nine thousand (39,000) square feet of shading credits for Lessee's use on the Premises, Option Parcel or

adjacent areas, but only to the extent they are used by Lessee and only in the amount they are actually used, if at all. Accordingly, Paragraph 5(a) of the Lease is hereby deleted in its entirety and replaced with the following:

(a) Subject to the appropriate federal and California resource agencies' consent or approval of Lessor's shading credit ledger and Bay-wide program for use of shading credits ("Resource Agency Approval"), Lessor has available "shading" mitigation credits that resulted from the removal of piers, floats, and other in-water improvements on San Diego Bay. In the event Resource Agency Approval is obtained by Lessor, Lessor shall reinstate up to 39,000 thirty-nine thousand (39,000) square feet of shading credits for Lessee's sole use on the Lease Premises; Option Parcel or adjacent water areas at no cost to Lessee ("Lessee Shading Credits"); provided, however, Lessee Shading Credits shall not be sold or transferred. Lessee and Lessor agree that if in the future, an over water project(s) is formulated and less than 39,000 square feet of Lessee Shading Credits are needed, the excess of Lessee's Shading Credits shall revert back to Lessor, at no cost to Lessor. Lessee further acknowledges that additional mitigation for future overwater coverage, if any, may be required, and agrees and accepts the risk that, other than the Resource Agency Approval, it remains solely responsible for obtaining all governmental approvals to use such Shading Credits. Lessee also acknowledges and accepts the risk that any or all such government approvals, including the Resource Agency Approvals may not be forthcoming.

2. Effectiveness of Amendment No. 1. Following execution by all parties hereto, including Exhibit A to Amendment No. 1, this Amendment No. 1 to the Lease shall become effective as of delivery of this Amendment No. 1 by Escrow Agent (as defined in the PSA) to Lessor and Lessee conditioned upon the occurrence of the Alternative B Closing (as defined in the PSA).

3. General Provisions.

A. Terms; Captions. The necessary grammatical changes required to make the provisions hereof apply either to corporations, limited liability companies or partnerships or individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed. The captions of paragraphs are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Paragraphs.

B. Time of Essence. Time is of the essence with respect to this Amendment No. 1 and each of its provisions.

C. Partial Invalidity. If any term, provision or condition contained in this Amendment No. 1 shall, to any extent, be invalid or unenforceable, the

remainder of this Amendment No. 1, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Amendment No. 1 shall be valid and enforceable to the fullest extent possible permitted by the laws of the State of California.

- D. Entire Agreement. It is understood and acknowledged that there are no oral agreements between the Parties hereto affecting this Amendment No. 1 and this Amendment No. 1 supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the Parties hereto with respect to the subject matter hereof. Any all negotiations and oral agreements acceptable to both parties have been merged into and are included herein.
- E. Joint and Several. If there is more than one individual, trust or entity (collectively, "Persons") constituting Lessee (i) the obligations imposed upon such Persons under this Amendment No. 1 shall be joint and several and (ii) the act or signature of, or notice from or to, any one or more of them with respect to this Amendment No. 1 shall be binding upon each and all of such Persons with the same force and effect as if each and all of them had so acted or signed, or given or received such notice.
- F. Authority. If Lessee is a corporation, partnership or limited liability company, each individual executing this Amendment No. 1 on behalf of Lessee hereby represents and warrants that Lessee is a duly formed and existing entity qualified to do business in California and that Lessee has full rights and authority to execute and deliver this Amendment No. 1 and that each of the Persons signing on behalf of Amendment No. 1 is authorized to do so.
- G. 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 Lessor 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.
- H. Governing Law. Venue for any legal proceeding shall be in San Diego County, California. This Amendment No. 1 shall be construed and enforced in accordance with the laws of the State of California.
- I. Counterparts. This Amendment No. 1 may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.

- J. Drafting Presumption; Review Standard. The Parties acknowledge that this Amendment No. 1 has been agreed to by the Parties, that both Lessor and Lessee have consulted with attorneys with respect to the terms of this Amendment No. 1 and that no presumption shall be created against the drafting party. Any deletion of language from this Amendment No. 1 prior to its execution by Lessor and Lessee 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.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 1 as of the day and the year first above written.

LESSEE:

FIFTH AVENUE LANDING, LLC,
a California limited liability company

By: _____
Ray A. Carpenter
Its: Managing Member

By: San Diego California Properties,
LLC,
Its: Managing Member

By: _____
Art E. Engel
Its: Managing Member

LESSOR:

SAN DIEGO UNIFIED PORT
DISTRICT,
a Public Corporation

By: _____

Name: _____

Its: _____

General Counsel
Approved as to form and legality

By: _____

Name: _____
Assistant/Senior Deputy
General Counsel

EXHIBIT N-2

**REAFFIRMATION OF GUARANTY AND CONSENT TO
AMENDMENT NO. 1 OF MARINA LEASE
(Alternative B)**

On or about May 7, 2010, San Diego Unified Port District, a public corporation (“Port”) and Fifth Avenue Landing, LLC, a California limited liability company (“FAL”) entered into a Lease dated May 7, 2010 bearing Port Clerk Document No. 56494 (“Original Lease”) for the real property located in San Diego, California, as more particularly described in the Lease (“Property”).

On or about April 26, 2010, the undersigned guarantors entered into that certain Guaranty (“Guaranty”) in favor of the Port, in which the undersigned guarantors agreed to unconditionally guarantee and promise to and for the benefit of Port, that FAL shall perform the provisions of the Lease for which it is responsible.

Port and FAL now intend to enter into that certain Amendment No. 1 to San Diego Unified Port District Lease to Fifth Avenue Landing, LLC of Property Located at Fifth Avenue Landing and Marina Parkway, San Diego, CA (“Amendment No. 1”) dated _____, 201__ bearing District Clerk Document No. _____ (Amendment No 1, together with Lease, “Amended Lease”).

By this Reaffirmation of Guaranty and Consent to Amendment of Marina Lease, each undersigned Guarantor (a) unconditionally guarantees and promises to and for the benefit of Lessor, that FAL shall perform the provisions of the Amended Lease for which it is responsible, (b); consents to Amendment No. 1 and (c) agrees and affirms that the Guaranty remains in full force and effect with respect to the Amended Lease.

This Reaffirmation of Guaranty and Consent to Amendment of Marina Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement, binding on all Guarantors even though all Guarantors do not sign the original or the same counterpart.

{signatures on following page}

GUARANTORS:

RAYMOND CARPENTER, an individual

By: _____
Signature

Date: _____, 2018

ARTHUR ENGEL, an individual

By: _____
Signature

Date: _____, 2018

HERBERT ENGEL, an individual

By: _____
Signature

Date: _____, 2018

DAVID ENGEL, an individual

By: _____
Signature

Date: _____, 2018

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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Document Date: _____

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Capacity(ies) Claimed by Signer(s)

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Signer is Representing: _____

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- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____



EXHIBIT O-1

**SAN DIEGO UNIFIED PORT DISTRICT
AMENDMENT NO. 2 TO
AMENDED, RESTATED, AND COMBINED LEASE TO
SAN DIEGO CONVENTION CENTER CORPORATION
OF PROPERTY LOCATED AT
FIFTH AVENUE LANDING AND MARINA PARK WAY
SAN DIEGO, CALIFORNIA**

THIS AMENDMENT (“Amendment No. 2”), made and entered into this ____ day of _____, 201_, by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (“Lessor”), and FIFTH AVENUE LANDING, a California limited liability company (“Lessee”). Lessor and Lessee are sometimes referred herein collectively, as “Parties” and individually as “Party”.

WITNESSETH:

WHEREAS, Lessor and San Diego Convention Center Corporation, a non-profit public benefit corporation (herein called “SDCCC”) on the 6th day of April 2010, entered into an Amended, Restated, and Combined Lease (“Lease”) to facilitate the Expansion, which Lease is on file in the Office of the Clerk of Lessor bearing Document No. 56486; and

WHEREAS, Lessor and SDCC amended the Lease on the 19th day of September 2012 (“Amendment No. 1”) to assign the Expansion Option, as more particularly described in Paragraph 49 of the Lease to the City of San Diego, a municipal corporation (“City”) and memorialize additional agreements among the Lessor, SDCCC and City and Amendment No. 1 is on file in the Office of the Clerk of Lessor bearing Document No. 59467; and

WHEREAS, SDCCC remained the lessee of record under the Lease until the 19th of June, 2015, when it transferred all of its interest in the Lease to Lessee by an assignment in lieu of foreclosure of the deed of trust; and

WHEREAS, Lessee assumed the Lease, as amended by Amendment No. 1 and on the 18th day of November 2015, executed Acknowledgement, which on file in the Office of the Clerk of Lessor bearing Document No. 68396; and

WHEREAS, on the 6th of January 2016, as required by Section 50(f) of the Lease, Lessee submitted a proposal to Lessor to the Hotel and additionally, as part of its submittal, although not required by the Lease, Lessee submitted a proposal for a 560-bed low cost visitor serving hotel ("LCVS Hotel") on the Premises, along with a two-phased marina expansion ("Marina Expansion") on water parcels adjacent to the Premises; and

WHEREAS, on the 13th of April 2017, the Lessor found Lessee's application complete and has been diligently and in good faith processing the Lessee's application; and

WHEREAS, Lessor prepared the Draft Environmental Impact Report (EIR) for Fifth Avenue Landing Project and Port Master Plan Amendment (SCH#2016081053), which analyzed the potential environmental impacts from the Hotel, LCVS Hotel and Marina Expansion and circulated the Draft EIR for public review from December 13, 2017 to January 30, 2018, but as of the date of this Amendment No. 2, Lessor has not considered the certification of a Final EIR; and

WHEREAS, notwithstanding, Lessor's processing of Lessee's application and the assignment in lieu of foreclosure of the Lease, City desired to pursue development of the Expansion and in anticipation of a citywide vote on a proposed special tax measure titled the "For a Better San Diego" to increase the City's transient occupancy tax and dedicate the resulting increased tax revenues for specified public benefits, including to finance construction of the Expansion and modernization of the San Diego Convention Center, on _____ of _____ 201____, Lessor, Lessee and City entered in to a Purchase and Sale Agreement and Escrow Instructions ("PSA"), which is on file in the Office of the Clerk of Lessor bearing Document No. _____; and

WHEREAS, the Alternative B Closing, as defined in the PSA, occurred and as a condition of that Alternative B Closing, this Amendment No. 2 is hereby effective upon delivery of originals to Lessor and Lessee.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and in consideration of the mutual promises and covenants herein contained, and having determined that the foregoing recitals are true and correct and should be, and hereby are, incorporated into this Amendment No. 2, the Parties agree as follows:

1. Amendment to Lease. The Lease is hereby amended in the following respects and no others, and except as expressly amended, all terms, covenants and conditions of the Lease shall remain in full force and effect. All defined terms shall

have the same meaning as set forth in the Lease unless otherwise indicated in this Amendment No. 2.

- (A) The Termination Date of the Lease shall be the 30th day of June 2027, unless sooner terminated as provided in the Lease.
- (B) Paragraph 50 of the ARC Lease is hereby deleted in its entirety and replaced with the following:

50. DEVELOPMENT OF HOTEL WITHOUT EXPANSION: If the Expansion Option terminates for any reason. Lessee will develop a freestanding hotel without the Expansion ("Hotel") on the Premises in accordance with this Paragraph.

- (a) Description of Hotel. The Hotel will contain a number of hotel rooms equal to the maximum number of hotel rooms permitted under the then-current PMPA with banquet and conference rooms, ballroom, restaurants, cocktail lounges, retail shops, and related development on the entire Premises including parking in accordance with Lessor's published standards, a public park/plaza of approximately one acre, public promenade along the waterfront, pedestrian bridge(s), and a public observation terrace, and an interface with the existing water transportation center. If the then-current Port Master Plan limits development to fewer than 400 hotel rooms on the Premises, Lessor acknowledges that Lessee has agreed to Paragraph 50(j) with the understanding that Lessee will seek an amendment to the Port Master Plan to increase the maximum number of hotel rooms permitted on the Premises to a number greater than 400. The Hotel will meet or exceed the service quality standards of the Hilton San Diego Bayfront, San Diego Marriott Hotel & Marina and Manchester Grand Hyatt hotels. The Hotel may include 110 parking spaces in the Convention Center, subject to Lessor and City of San Diego amending the Management Agreement to that effect.
- (b) Entitlement Processing. If an additional amendment to the then current Port Master Plan is deemed necessary by Lessor, Lessor and Lessee will cooperate diligently and good faith to amend the Port Master Plan to permit the construction and operation of the Hotel.

- (c) Entitlement Schedule. A schedule of the actions anticipated to be necessary for the entitlement of the Hotel (the "Hotel Entitlement Schedule") is attached as Exhibit "F" to this Lease; provided, however, notwithstanding the Hotel Entitlement Schedule, if Lessor certifies the Hotel Environmental Document, as defined below, which also include the CEQA review for the LCVS Hotel and Marina Expansion (collectively, "Project Environmental Document"), approves the Hotel, LCVS Hotel or Marina Expansion, or any one or combination of the three, or an alternative as analyzed in the Project Environmental Document, and approves a PMPA, and the CCC certifies the PMPA, Lessor shall consider approval of CDP(s) for the Hotel, LCVS Hotel and Marina Expansion at the time it considers the approval of PMPA, as certified by CCC (in accordance with 14 California Code of Regulations Section 13632(e)). The effectiveness of Lessor's approval of the CDPs, if granted, shall be conditioned on the CCC's acceptance of Lessor's approval of PMPA, as certified by CCC (in accordance with 14 California Code of Regulations Section 13632(e)). Lessee acknowledges that the Hotel Entitlement Schedule represents the Lessor's current, best estimate of the schedule for the processing and consideration of entitlement approvals for the Hotel by Lessor and CCC. Lessee further acknowledges that Lessor may adjust the Hotel Entitlement Schedule to accommodate schedule changes resulting from (i) delays in the schedule for the processing and consideration of entitlements including the filing and processing of administrative appeals of entitlement approvals, (ii) litigation of entitlement approvals and other governmental actions necessary for the implementation of the Project and (iii) the impact of market conditions on financing and ground leasing of components of the Hotel. Lessee hereby consents to future amendments to the Hotel Entitlement Schedule that reflect the impact of the causes described in the preceding sentence.
- (d) Entitlement Costs. Lessee will pay all direct costs incurred by Lessor in the processing, consideration and approval of Entitlements for the Hotel including, without limitation, costs incurred for the preparation and associated research for all required plans, studies, analyses, appraisals, reports and other work product by planning, design, financial, engineering and; other consulting professionals regarding any aspect of the Project Hotel as

determined by Lessor in its sole discretion ("Hotel Reports"). Prior to incurring any financial obligation for the preparation of a Hotel Report, Lessor will notify Lessee in writing of scope, purpose and estimated cost of the Hotel Report. Lessee will pay all costs described in this paragraph within thirty (30) days following Lessee's receipt of invoices for such costs from Lessor. If Lessee proposes a Hotel with more than 250 rooms and if Lessor (and CCC, if applicable) approves a CDP for a Hotel with more than 250 rooms. Lessee shall, within sixty (60) days following approval of the CDP, reimburse Lessor for the Expansion Hotel Percentage of Entitlement Costs incurred by Lessor pursuant to Paragraph 49(c) of this Lease in addition to the costs described above.

- (e) CEQA Compliance. Lessor, in its sole and absolute discretion, will determine the type of environmental document ("Hotel Environmental Document") that is required for the Hotel by CEQA. If Lessor determines that the preparation of a Hotel Environmental Document is required, the Hotel Environmental Document and the PMPA will be prepared by a private firm ("Hotel CEQA Consultant") selected by Lessor, in its sole and absolute discretion under an agreement ("Hotel Three-Party Agreement") in form and content as required by Lessor, in its sole and absolute discretion, and executed by the Lessor, Lessee and the Hotel CEQA Consultant. The Hotel Three-Party Agreement will include the following provisions: (i) Lessee agrees to pay all costs incurred by Lessor in the preparation of the Hotel Environmental Document and (ii) Lessee will directly pay to the Hotel CEQA Consultant such costs as they are incurred within thirty (30) days after Lessee receives the Hotel CEQA Consultant's written request for payment. In the event of any conflict or inconsistency between the Hotel Three-Party Agreement actually executed by the parties hereto and the provisions in the preceding sentence, the provisions of the Hotel Three-Party Agreement shall govern and prevail. Lessee will fully and timely cooperate with the Lessor and, if applicable, the Hotel CEQA Consultant in furnishing information required for the CEQA document and Lessor's efforts to obtain CCC certification, including Lessee's attendance and presentations at community workshops or other public forums where issues relating to the Hotel EIR and PMPA are discussed.

- (f) Required Submissions. Commencing thirty (30) days following the date this Lease is transferred to FIFTH AVENUE LANDING, LLC (or its permitted assignee) pursuant to Paragraph 9(h) of this Lease, and continuing on the thirtieth (30th) day of each calendar quarter thereafter until June 30, 2020, Lessee, at its sole cost, shall cause PKF Consulting or such other hotel financial consulting firm approved by Lessor in its sole discretion ("Hotel Consultant") to deliver to Lessor a Quarterly RevPAR Report (defined below). Concurrent with delivery of the first Quarterly RevPAR Report, Lessee, at its sole cost, shall also cause Hotel Consultant to deliver to Lessor the Calendar Year 2007 RevPAR Certification. The term "Quarterly RevPAR Report" shall mean and refer to (i) a quarterly report issued by Hotel Consultant, (ii) applicable to the twelve-month period ending on the last day of the calendar quarter ending immediately prior to the calendar quarter in which the subject Quarterly RevPAR Report was issued, (iii) calculating the revenue per available room per day ("RevPAR") for the competitive set of Hotels described in Exhibit "G" ("Competitive Hotel Set") for the twelve-month period ending on the last day of such calendar quarter and (iv) certified to Lessor by Hotel Consultant to be true and correct. The term "Calendar Year 2007 RevPAR Certification" shall mean a letter addressed to Lessor, signed and certified to be true and correct by Hotel Consultant, identifying for Calendar Year 2007 the RevPAR for the Competitive Hotel Set. Lessor may request such other and further documentation and information reasonably required by Lessor to verify the conclusions contained in the Quarterly RevPAR Report and the Calendar Year 2007 RevPAR Certification and Lessee shall cause Hotel Consultant to comply with such requests. At the earliest possible date but no later than twelve (12) months following the date of issuance of the first Quarterly RevPAR Report which reflects a RevPAR greater than or equal to Calendar Year 2007 RevPAR for the Competitive Hotel Set contained in the Calendar Year 2007 RevPAR Certification, Lessee will submit a site development plan for the Hotel sufficient for a project level EIR that complies with the Lessor's governing urban design, environmental and planning documents that may include but are not limited to the items set forth below. If a Port Master Plan Amendment was approved to accommodate the Expansion and Expansion Hotel described in Paragraph 49 of this Lease, the entitlements required for development of Lessee's proposed site development plan may include a further Port Master Plan Amendment, as determined by Lessor in its sole and absolute discretion as further described below. For the avoidance of doubt, Lessee's right and obligation to submit a site development plan for the Hotel in accordance with this Paragraph 50(f) shall terminate on June 30, 2020.

- (i) Port Master Plan and Precise Plan, Planning District 3;
- (ii) South Embarcadero Redevelopment Program 2 (SERP2) EIR and Port Master Plan Amendment (PMPA);
- (iii) Findings of Fact for SERP2 EIR and PMPA;
- (iv) South Embarcadero Urban Design Guidelines, as amended;
- (v) Hilton Coastal Development Permit;
- (vi) San Diego Convention Center EIR;
- (vii) Findings of Fact for San Diego Convention Center Expansion and PMPA;
- (viii) South Embarcadero Phase 2 Public Access Plan; and
- (ix) Coastal Commission Staff Report for Convention Center Hotel (Hilton) Project;
- (x) Coastal Commission Staff Report for SERP 2 PMPA;
- (xi) Fifth Avenue Landing, LLC CDP for the water transportation center; and
- (xii) Any Port Master Plan Amendment approved pursuant to Paragraph 49 of this Lease.

(g) Reservation of Discretion. Lessee acknowledges and agrees that, notwithstanding the terms and conditions of this Lease, Lessor reserves its discretion to approve or disapprove all Discretionary Actions with respect to the Hotel, LCVS Hotel and Marina Expansion, and that nothing in this Lease will be construed as circumventing or limiting the Lessor's discretion with respect to the environmental review required by CEQA. Such reservation of discretion will apply to all contemplated legislative and quasi-judicial actions including, without limitation, approval of land use entitlements, CEQA compliance, code enforcement and the making of findings and determinations required by law. Lessee further acknowledges and agrees that: (i) the Board may, in its sole and absolute discretion, certify or not certify the Project Environmental Document and approve or not approve any aspect of the Hotel, LCVS Hotel or Marina Expansion; and (ii) either the Board or the CCC may, at their sole and absolute discretion, elect not to approve, adopt or certify the PMPA based on the Project Environmental Document or other discretionary factors. Lessee further acknowledges and agrees that the Board's decision whether or not to certify the Project Environmental Document and its approval of the PMPA might be adopted or certified only upon the Board's adoption of certain additional conditions, mitigation measures or alternatives, including the alternative of not going forward with the Hotel, LCVS Hotel or Marina Expansion, considered in the Project Environmental Document. Lessee accepts the risk that the Board or the CCC may not

approve, adopt or certify the Project Environmental Document and the PMPA and the Project Environmental Document and the PMPA might be approved, adopted or certified subject to the selection of an alternative or the performance of certain additional conditions or mitigation measures imposed by Lessor or CCC in their sole and absolute discretion. Other than as expressly set forth in this Lease, Lessee will have no claim, cause of action, or right to compensation or reimbursement from Lessor or any other person if the Project Environmental Document is not certified by the Board or the PMPA is not adopted by Lessor or certified by the CCC for any reason, or if either the Project Environmental Document or the PMPA is adopted or certified subject to the selection of an alternative or the performance of certain additional conditions or mitigation measures. In the event that Lessor will take or fail to take any Discretionary Action with, respect to the Hotel, (i) any such action or inaction will not constitute a breach of Lessor's obligations under this Lease and (ii) Lessee will have no claim, cause of action, or right to compensation or reimbursement from Lessor or any other person.

- (h) Negotiation of Leases. Lessor and Lessee shall diligently and in good faith negotiate leases for the Hotel, LCVS Hotel and Marina Expansion; provided, however, no leases shall be presented to Lessor for approval unless Lessor certifies the Project Environmental Document. Pursuant to Paragraph 50(g), above, Lessor, in its sole and absolute discretion, may or may not certify the Project Environmental Document or may or may not approve the PMPA and may select any alternative, including the alternative of not going forward with the Hotel, LCVS Hotel or Marina Expansion or may adopt any mitigation measure or condition which it determines is necessary and appropriate in order to comply with CEQA or any other applicable law or regulation.
- (i) Termination of Lease upon Approval of Lease(s) and Executing New Lease(s). If after certifying the Project Environmental Document, Lessor approves new leases for the Hotel and LCVS Hotel, the Lease will terminate upon the effective date of the new leases for the Hotel and LCVS Hotel and shall be of no further force or effect and all of Lessee's rights and obligations with respect to the Premises will be governed solely by the new lease, unless the Lease specifies that Lessee's obligations shall survive its termination.

- (C) Termination of Paragraph 50 Lease. If Lessor does not certify the Project Environmental Document, approve the PMPA or CDP(s), or approve leases for the Hotel or LCVS Hotel, then this Paragraph 50 shall terminate and be of no further effect. Exhibit "H" of the Lease is hereby deleted and of no further effect.
2. Effectiveness of Amendment No 2. Following execution by all parties hereto, including Exhibit A to Amendment No. 2, this Amendment No. 2 to the Lease shall become effective as of deliver of this Amendment No 2 by Escrow Agent (as defined in the PSA) to Lessor and Lessee conditioned upon the occurrence of the Alternative B Closing (as defined in the PSA).
3. General Provisions.
- (A) Terms; Captions. The necessary grammatical changes required to make the provisions hereof apply either to corporations, limited liability companies or partnerships or individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed. The captions of paragraphs are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections.
- (B) Time of Essence. Time is of the essence with respect to this Amendment No. 2 and each of its provisions.
- (C) Partial Invalidity. If any term, provision or condition contained in this Amendment No. 2 shall, to any extent, be invalid or unenforceable, the remainder of this Amendment No. 2, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Amendment No. 2 shall be valid and enforceable to the fullest extent possible permitted by the law of the State of California.
- (D) Entire Agreement. It is understood and acknowledged that there are no oral agreements between the Parties hereto affecting this Amendment No. 2 and this Amendment No. 2 supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the Parties hereto with respect to the subject matter hereof. And all negotiations and oral agreements acceptable to both parties have been merged into and are included herein.
- (E) Joint and Several. If there is more than one individual, trust or entity (collectively, "Persons") constituting Lessee (i) the obligations imposed

upon such Persons under this Amendment No. 2 shall be joint and several and (ii) the act or signature of, or notice from or to, any one or more of them with respect to this Amendment No. 2 shall be binding upon each and all of such Persons with the same force and effect as if each and all of them had so acted or signed, or given or received such notice.

- (F) Authority. If Lessee is a corporation, partnership or limited liability company, each individual executing this Amendment No. 2 on behalf of Lessee hereby represents and warrants that Lessee is a duly formed and existing entity qualified to do business in the California and that Lessee has full right and authority to execute and deliver this Amendment No. 2 and that each of the Persons signing on behalf of Amendment No. 2 is authorized to do so.
- (G) 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 Lessor 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.
- (H) Governing Law. Venue for any legal proceeding shall be in San Diego County, California. This Amendment No. 2 shall be construed and enforced in accordance with the Laws of the State of California.
- (I) Counterparts. This Amendment No. 2 may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.
- (J) Drafting Presumption; Review Standard. The Parties acknowledge that this Amendment No. 2 has been agreed to by both the parties, that both Lessor and Lessee have consulted with attorneys with respect to the terms of this Amendment No. 2 and that no presumption shall be created against the drafting party. Any deletion of language from this Amendment No. 2 prior to its execution by Lessor and Lessee 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.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 2 as of the day and the year first above written.

LESSEE:

FIFTH AVENUE LANDING, LLC,
a California limited liability company

By:

Ray A. Carpenter
Its: Managing Member

By: San Diego California Properties,
LLC,

Its: Managing Member

By:

Art E. Engel
Its: Managing Member

LESSOR:

SAN DIEGO UNIFIED PORT
DISTRICT,
a Public Corporation

By: _____

Name: _____

Its: _____

General Counsel
Approved as to form and legality

By: _____

Name: _____

Senior Deputy General
Counsel

EXHIBIT O-2

**REAFFIRMATION OF GUARANTY AND
CONSENT TO AMENDMENT NO. 2
OF ARC LEASE
(Alternative B)**

On or about April 6, 2010, San Diego Unified Port District, a public corporation (“**District**” or “**Lessor**”) and San Diego Convention Center Corporation, Inc., a California nonprofit public benefit corporation (“**Lessee**”) entered into an Amended, Restated and Combined Lease dated April 6, 2010 bearing Port Clerk Document No. 56486 (“**Original Lease**”), as amended by that certain Amendment No. 1 to Amended, Restated and Combined Lease dated September 19, 2012 bearing District Clerk Document No. 59467 (“**Amendment**”, together with Original Lease, the “**ARC Lease**”) for the real property located in San Diego, California, as more particularly described in the ARC Lease (“**Land**”).

On or about April 26, 2010, the undersigned guarantors (“**Guarantor**”) entered into that certain Guaranty (“**Guaranty**”) in favor of Lessor, in which the undersigned guarantors agreed to unconditionally guarantee and promise to and for the benefit of Lessor, that Lessee shall perform the provisions of the ARC Lease for which it is responsible.

On or about June 18, 2015, SDCCC assigned to Fifth Avenue Landing, LLC, a California limited liability company, (“**FAL**”) all of SDCCC’s right, title and interest under the ARC Lease pursuant to that certain Assignment of Leasehold Interest in Lieu of Foreclosure recorded in the Official Records of San Diego County on June 22, 2015 as Document No. 2015-0324060 (“**Assignment**”).

On or about November 18, 2015, Guarantor entered into that certain Acknowledgment in favor of the Lessor, in which Guarantor acknowledged and consented to the Amendment and Assignment, acknowledged and agreed (a) that the ARC Lease as assigned under the Assignment includes the Amendment, (b) to unconditionally guarantee FAL’s performance of the Original Lease, as amended by the Amendment and Assignment, and agreed that any references to “Lessee” in the Guaranty shall be interpreted to include FAL.

Lessor and FAL now intend to enter into that certain Amendment No. 2 to Amended, Restated, and Combined Lease to San Diego Convention Center Corporation of Property Located at Fifth Avenue Landing and Marina Parkway, San Diego, CA (“**Amendment No. 2**”) dated _____, 201__ bearing District Clerk Document No. _____ (Amendment No 2, together with ARC Lease, “**Amended Lease**”).

By this Reaffirmation of Guaranty and Consent to Amendment of ARC Lease, each undersigned Guarantor (a) unconditionally guarantees and promises to and for the benefit of Lessor, that FAL shall perform the provisions of the Amended Lease for which it is responsible, (b) agrees that any references to “Lessee” in the Guaranty shall be interpreted to include FAL; (c) consents to Amendment No. 2 and (d) agrees and affirms that the Guaranty remains in full force and effect with respect to the Amended Lease.

This Consent to Amendment and Reaffirmation of Guaranty may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement, binding on all Guarantors even though all Guarantors do not sign the original or the same counterpart.

{signatures on following page}

GUARANTORS:

RAYMOND CARPENTER, an individual

By: _____
Signature

Date: _____, 2018

ARTHUR ENGEL, an individual

By: _____
Signature

Date: _____, 2018

HERBERT ENGEL, an individual

By: _____
Signature

Date: _____, 2018

DAVID ENGEL, an individual

By: _____
Signature

Date: _____, 2018

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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

Signer is Representing: _____



Signer's Name _____

- Individual
- Corporate Officer --Title(s): _____
- Partner -- Limited General
- Attorney in Fact
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- Other: _____

Signer is Representing: _____



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- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name _____

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

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

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COUNTY OF SAN DIEGO)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the
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- Trustee
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Signer is Representing: _____

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OF SIGNER
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Signer is Representing: _____

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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.

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Signature _____ (Seal)

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OF SIGNER
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- Partner -- Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

EXHIBIT P**TIDELANDS USE AND OCCUPANCY PERMIT**

THIS PERMIT, by the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter called "District," to FIFTH AVENUE LANDING, LLC, a California limited liability corporation, hereinafter called "Tenant," is set forth as follows:

District and Tenant are herein referred to collectively, as "Parties" and at times individually referred to as "Party". District for the considerations hereinafter set forth, hereby grants to Tenant upon the terms and conditions and for the purposes and uses hereinafter set forth, the right to use and occupy a portion of those lands conveyed to the District by that certain Act of the Legislature of the State of California, entitled "San Diego Unified Port District Act," Stats. 1962, 1st Ex. Sess., c. 67, as amended, which lands are more particularly described as follows and are referenced in this Permit as "Premises":

Approximately 112,534 square feet of land area located on Parcel No. 1, approximately 45,590 square feet of land area located on Parcel No. 2, approximately 25,643 square feet of land area located on Parcel No. 3 and approximately 9,467 square feet of land area located on Parcel No. 4 on Convention Way and Marina Park Way in the City of San Diego, California, more particularly described and delineated on District's Drawing No. 019-063 dated May 10, 2018, attached hereto as Exhibit "A"

This Permit is granted upon the following terms and conditions:

1. EFFECTIVENESS CONDITIONED ON ALTERNATIVE A CLOSING: On _____ 201__, District, Tenant and the City of San Diego, a municipal corporation ("City") entered in to a Purchase and Sale Agreement and Escrow Instructions ("PSA") on file in the Office of the Clerk of District bearing Document No. _____ to facilitate the expansion of the San Diego Convention Center ("Expansion"), as described in the Final Environmental Impact Report for the San Diego Convention Center Phase III Expansion and Expansion Hotel Project and Port Master Plan Amendment SCH #2010121004, UPD-83356-EIR-855) and in anticipation of a citywide vote on a proposed special tax measure titled the "For a Better San Diego" ballot measure ("Ballot Measure") to increase the City's transient occupancy tax and dedicate the resulting increased tax revenues for specified public benefits, including to finance construction of the Expansion and modernization of the San Diego Convention Center. The PSA included two closings depending on whether the Ballot Measure passed and whether certain payments were made, as more particularly described in the PSA. The

Parties acknowledge and agree that the effectiveness of this Permit is conditioned on the occurrence of the Alternative A Closing, as defined in the PSA.

2. SUBJECT TO ARC LEASE: Tenant acknowledges that District and City have entered into that certain San Diego Unified Port District Amended, Restated and Combined Lease to San Diego Convention Center Corporation of Property Located at Fifth Avenue Landing and Marina Parkway on file in the Office of the Clerk of District bearing Document No. 56486, as amended (“ARC Lease”) and the ARC Lease has the same premises as the Premises of this Permit. District acknowledges that the ARC Lease is subject to this Permit. Tenant agrees that this Permit constitutes a license, subject to revocation or termination as specified in this Permit, and the District and City may from time to time amend or assign the ARC Lease; provided, however, no amendment or assignment shall unreasonably interrupt or frustrate Tenat’s right to use the Premises under this Permit.

3. TERM: This Permit shall commence on _____, 201__, the date of the Alternative A Closing (“Commencement Date”), and unless sooner terminated as provided in this Permit, expire the earlier of (i) five years after the Commencement Date or (ii) the date of “Commencement of Construction” of the Expansion. For this Section 3, “Commencement of Construction” shall mean the earlier of (a) the issuance of a demolition permit for the improvements in connection with the construction of the Expansion or (b) City’s commencement of work to relocate any utilities or streets, including Convention Way, to facilitate construction of the Expansion. . A ninety (90) day notice shall be given to Tenant by the District or by the City, if District causes City to do so, prior to the Commencement of Construction of the Expansion (“Commencement of Construction Notice”). If the District causes the City to give the Tenant the Commencement of Construction Notice, and City fails to do so, Tenant shall have no remedy, in law or equity, against District.

4. USE: The Premises shall be used only and exclusively for the following uses.

4.1 Parcels No. 1, No. 2 and No. 4

Parcels No. 1, No. 2 and No. 4 of the Premises shall be used only and exclusively for public parking, meetings, exhibitions, trade shows and special events. Said special events shall be generally less than forty-eight (48) hours each, excluding setup and breakdown times, and may include, without limitation, weddings, holiday parties, concerts, conventioner meetings, lectures, etc. in portions of said public park/plaza area located on Parcel No. 2 of the Premises. Tenant may grant permission and charge reasonable fees and impose reasonable requirements for other organizations and groups to hold such temporary special events in the public park/plaza area. Said temporary special events will be subject to the provisions of a “Master Special Events

Permit” which may be issued from time-to-time by District to Tenant, which Master Special Events Permit will require, among other things, Tenant to comply with District’s “Special Event Procedures and Guidelines” (which may be amended from time-to-time). Each such Master Special Events Permit shall include, but is not limited to, the following provisions: (i) a minimum term of three (3) years which is renewable upon request of Tenant unless this Permit has expired or been terminated; (ii) Tenant will be responsible for the issuance of sub-permits to other organizations and groups; (iii) Tenant may require that sub-permittees utilize Tenant’s personnel, facilities, catering, and similar services and pay reasonable fees to Tenant for such services; (iv) said Special Event Procedures and Guidelines, as amended from time-to-time, shall not be inconsistent with the rights of Tenant under this Permit; (v) Tenant shall maintain reasonable public access through the public park/plaza to San Diego Bay at all times, including during special events and (vi) as per District’s Port Master Plan, “at no time will public access to the sidewalk promenade be fenced, screened or blocked off by any structure,” unless District’s Port Master Plan is otherwise amended. The foregoing notwithstanding, Tenant may control lateral access to the sidewalk promenade in connection to its special events provided longitudinal access to and along the sidewalk promenade remains unrestricted at all times and further provided that such controlled access is consistent with applicable District and California Coastal Commission rules, regulations and policies.

Further, Tenant shall pay District the appropriate rent due for such temporary special events pursuant to Section 5 below.

4.2 Parcel 3

Parcel 3 shall be used only and exclusively for a landside water transportation center, parking, loading and un-loading supporting waterside operations as specified in the San Diego Unified Port District Lease to Fifth Avenue Landing on Property Located at Fifth Avenue and Marina Parkway, on file with the District clerk as Document No. 56494.

5. RENTAL AND SECURITY DEPOSIT: As and for the rental and security deposit, Tenant agrees to pay to District as follows:

5.1 Parcels No. 1, No. 2 and No. 4

The rent of this Permit for Parcels No. 1, No. 2 and No. 4 shall be a minimum of Three Hundred Eight Two Thousand and Seventy Nine Dollars (\$382,079) per year per year, hereinafter “Minimum Annual Rent,” or the cumulative total of the percentage rents per year as provided in (a) below, whichever is greater.

- (a) Tenant agrees to pay to District percentage rent calculated on a monthly basis and shall be based on the following percentages of the gross

income of all operations and businesses conducted on or from Parcels No. 1 and No. 2:

- (i) Fifteen Percent (15%) of the gross income from sale of parking services or rental parking spaces;
 - (ii) Three Percent (3%) of the gross income from sale of food and food products;
 - (iii) Five Percent (5%) of the gross income from the sale of alcoholic and non-alcoholic beverages from the sale of catered alcoholic and non-alcoholic beverages on the Premises;
 - (iv) Ten Percent (10%) of the gross income from temporary special events in the public/park plaza area of the Premises not covered by Sections 5(ii) and 5(iii) above.
 - (v) Ten Percent (10%) of the gross income from any and all activities, operations and enterprises permitted under the terms of this Permit and not otherwise addressed with the foregoing provisions.
 - (vi) Twenty Percent (20%) of the gross income from any and all services or uses not permitted under the terms of the Permit and not otherwise addressed within the foregoing provisions.
- (b) On or before the 20th day of each month, Tenant shall render to District, in a form prescribed by District, a detailed report of gross income for that portion of the accounting year which ends with and includes the last day of the previous calendar month. The accounting year shall be twelve (12) full calendar months. The first accounting year shall begin on the first day of the first month during which the percentage rent described in this Permit becomes effective. Subsequent accounting years shall begin upon each anniversary of that date during the Term of this Permit or any extension thereof. Each report shall be signed by Tenant or its responsible agent under penalty of perjury and shall include the following:
- (i) The total gross income for said portion of the accounting year, itemized as to each of the business categories for which a separate percentage rent rate is established.
 - (ii) The related itemized amounts of percentage rent computed, as herein provided, and the total thereof.

- (iii) The total rent previously paid by Tenant for the accounting year within which the preceding month falls.

5.2 Parcel No. 3

The rent of this Permit for Parcel No. 3 shall be paid and collected in accordance with the rental terms of Paragraph 3 of certain Amendment No. 1 to San Diego Unified Port District Lease to Fifth Avenue Landing, LLC of Property Located at Fifth Avenue Landing and Marina Park Way on file in the Office of the Clerk of the District bearing Document No. _____ (“Marina Lease Amendment No. 1”).

5.3 Payments, Late Fees and Accounting

- (a) All payments of Rent shall be delivered to the San Diego Unified Port District, Finance Department, 3165 Pacific Highway, San Diego, California, 92101. Checks must be made payable to the San Diego Unified Port District and can be hand delivered to the above address or mailed to the San Diego Unified Port District, Finance Department, Post Office Box 120488, San Diego, California 92112-0488. The designated place of payment and filing may be changed at any time by District upon ten (10) days' written notice to Tenant. Tenant assumes all risk of loss and responsibilities for late charges, as herein described, if payments are made by mail.
- (b) Tenant hereby acknowledges that late payment by Tenant to District of rent and other sums due hereunder will cause District to incur costs not contemplated by this Permit. Accordingly, in the event Tenant is delinquent in remitting the rent due in accordance with the rent provisions of this Permit, Tenant shall pay, in addition to the unpaid rent, five percent (5%) of the delinquent rent. If rent is still unpaid at the end of fifteen (15) days, Tenant shall pay an additional five percent (5%) [being a total of ten percent (10%)]. The parties hereby agree that said late charges are appropriate to compensate District for loss resulting from rent delinquency including, without limitation, lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Acceptance of such late charges and any portion of the late payment by District shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent District from exercising any of its other rights and remedies. The Executive Director of District shall have the right to waive for good cause any late charges upon written application of Tenant for any such delinquency period.
- (c) All payments by Tenant to District shall be by a good and sufficient check. No payment made by Tenant or receipt or acceptance by District of a lesser amount than the correct amount of rent due under this Permit shall

be deemed to be other than a payment on account of the earliest rent due hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and District may accept such check or payment without prejudice to District's right to recover the balance or pursue any other available remedy.

- (d) Tenant shall, at all times during the term of this Permit, keep or cause to be kept, accurate and complete records and double entry books of account of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuit of the rights granted herein. The records must be supported by source documents of original entry such as sales invoices, cash register tapes, bank depository documentation, purchase invoices, or other pertinent supporting documents. Financial statements (a balance sheet and income/expense statement), based upon the double entry books of account, shall be prepared not less than annually.

All sales under this Permit shall be recorded by means of a comprehensive system which includes sufficient business processes to ensure that all monies received are clearly and accurately recorded and are documented by system reports and /or original source documents. The system shall provide appropriate reporting and distinction of all sales categories and be able to generate an audit trail of all transactions. Sales may also be recorded by another system if first approved in writing by the Executive Director of District.

Contracts, bills, invoices, sales receipts or other similar-type documents evidencing transactions between any parties doing business under this Permit (including subtenants) shall in no event identify rent due to District as a separate charge, fee or tax.

All Tenant's books of account, records, financial statements, and documentation related to this Permit or to business operations conducted within or from the Premises, shall be kept either at the Premises or at such other locations as are acceptable to District. District shall have the right at any and all reasonable times, following a notice provided to Tenant ten (10) business days in advance, to examine and audit said books, records, financial statements, and documentation, without restriction, for the purpose of determining the accuracy thereof, the accuracy of the monthly statements of gross income submitted, and the accuracy of the rent paid to the District. In the event that the Tenant's business operations conducted within or from the Premises are part of a larger business operation of the Tenant, and any part of the books, records, financial statements and documentation required herein is prepared only for the larger operation, and not solely for the business operations of the

Premises, then the District shall also have the right to examine and audit that part of said books, records, financial statements, and documentation of the larger business operation.

Tenant's failure to keep such books of account, records, financial statements, and documentation and make them available for inspection by District is a breach of this Permit and cause for immediate termination. The Executive Director of District shall have the discretion to require the installation of any additional accounting methods or controls he may deem necessary, subject to prior written notice. In the event the Tenant does not make available the original records and books of account at the Premises or within the limits of San Diego County, Tenant agrees to pay all necessary travel expenses incurred by District in conducting an audit at the location where said records and books of account are maintained.

Additionally, if the audit reveals a discrepancy of more than five percent (5%) between the rent due as reported by Tenant and the rent due as determined by the audit, and/or Tenant has failed to maintain complete and accurate books of account, records, financial statements, and documentation in accordance with this Permit, then Tenant shall pay the cost of the audit, as determined by the Executive Director of District, plus the rent determined to have been underpaid. In addition, should Tenant fail to pay said amounts within thirty (30) days after written notice from District, then Tenant shall pay an additional fee of ten percent (10%) of said unpaid amounts as compensation to District for administrative costs as previously described herein, along with the rent determined to have been underpaid.

Furthermore, if the audit reveals that rent due to District is less than five percent (5%) between the rent due as reported by Tenant and the rent due as determined by the audit, and should Tenant fail to pay said unpaid rent within thirty (30) days after written notice from District, then Tenant shall pay an additional fee of ten percent (10%) of said unpaid rent as compensation to District for administrative costs as previously described herein, along with the rent determined to have been underpaid.

Tenant agrees to pay such amounts as set forth above. Acceptance of late charges and any portion of the late payment by District shall in no event constitute a waiver of Tenant default with respect to late payment, nor prevent District from exercising any of the other rights and remedies granted in this Permit. The Executive Director of District shall have the right to waive for good cause any late charges upon written application of Tenant for any such delinquency period.

If the audit reveals that rent has been overpaid by Tenant, then District shall credit Tenant in the amount of said overpayment which credit shall

be used to offset future rental payment(s) due District.

- (e) Gross income shall include all income resulting from operations, businesses and commercial activities conducted on or from the Premises or any other property that is located within District's jurisdiction (unless such income is being reported under another agreement with District):
- (i) whether conducted by Tenant, its subtenants or concessionaires, or parties operating through Tenant, its subtenants, or concessionaires; and
 - (ii) whether conducted with or without an agreement with District or a tenant of District or a tenant of Tenant.

Gross income shall also include revenue from whatever source derived including, but not limited to: (i) sales via the internet; (ii) sales via telephone; (iii) agency sales; and (iv) any other type of sales (whether such sales occur from the Premises or elsewhere) resulting in Tenant's customers receiving services, products, or benefits on or from the Premises and whether for cash or credit.

Gross income shall include any manufacturer's or importer's excise tax included in the prices of the goods sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge.

Gross income, however, shall not include any of the following: (1) sales of United States postage; (2) any sales or excise taxes payable by Tenant to any governmental agency as a direct result of operations under this Permit, provided that the amount of such taxes is shown on the books and records elsewhere herein required to be maintained; (3) gratuities, provided the customer voluntarily determines the amount of said gratuity to be paid, or the customer is aware that the Tenant has added a pre-established gratuity to the charge for the services rendered and said additional amount is segregated and identified as a gratuity on the billing to the customer; and (4) ticket sales price (if this Permit allows ticket sales for events that will occur on property not within District's jurisdiction for events or activities in which Tenant has no ownership interest [e.g., San Diego Zoo, San Diego Wild Animal Park, Sea World, Caribbean cruises, etc.] gross income shall include all income, fees and commissions that Tenant receives as compensation for handling and making said ticket sales).

Further, refunds for goods returned shall be deducted from current gross income upon their return.

Bad debt losses shall not be deducted from gross income.

5.4 Security Deposit

The security deposit of Ninety Four Thousand Dollars (\$94,000) provided by Tenant to District under Paragraph of 47 of the ARC Lease shall be held by District and used for the purpose of remedying Tenant's defaults under this Permit or during the term of the ARC Lease while Tenant was lessee thereunder.

Except as provided below, the security deposit shall be in the form of an Irrevocable Stand-By Letter of Credit drawn on a bank having a branch located in San Diego County or having a Moody's Long Term Letter of Credit rating of single A or higher and a Moody's Long Term Deposit rating of single A or higher ("Letter of Credit"). The principal sum shall be made payable to Lessor. Each Letter of Credit provided during the term of this Permit shall be valid for a minimum of twelve (12) months from date of issuance. Provided, however, when the remaining term of this Permit is one (1) year or less, the Letter of Credit shall be valid for a minimum of three (3) months beyond the term of this Permit. If a Letter of Credit is not valid for the entire remaining term of this Permit plus three (3) months beyond, then such Letter of Credit shall be extended or renewed at least ninety (90) days prior to its expiration.

All or any portion of the principal sum of the Letter of Credit shall be available unconditionally to District for the purposes and uses provided herein. The bank, and the form and provisions of the Letter of Credit shall be acceptable to the Executive Director of District, in his/her sole discretion, and if not so acceptable, may be rejected. The Letter of Credit and Drawing Certificate shall not be acceptable if it requires District to send written notice of default or request or demand payment from Tenant after default, prior to District drawing on any funds under the Letter of Credit.

Notwithstanding the above, if said security deposit or the cumulative total amount of security deposits required by District under this Permit and other leases, permits and agreements between District and Tenant does not exceed Twenty-Five Thousand Dollars (\$25,000), Tenant may elect to provide said security deposit in the form of cash.

The amount of the security deposit may be adjusted from time to time at the discretion of the Executive Director of District. Following any such adjustment, the amount of the security deposit may not exceed the greater of (i) three (3) months' flat rent, or (ii) the annual average of three (3) months' percentage rent if this Permit provides for percentage rent. In the event the amount of the security deposit is increased, Tenant shall submit the additional security deposit within thirty (30) days of notification of the increase.

Tenant shall maintain the required security deposit continuously throughout the term of this Permit. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this Permit.

The security deposit or the remaining portion thereof shall be rebated, released, assigned, surrendered, or endorsed to Tenant or order, as applicable, upon expiration or earlier termination of this Permit.

6. CITY ACCESS FOR EXPANSION PREDEVELOPMENT ACTIVITIES:

Concurrent with the signature of this Permit, Tenant and City will sign the License Agreement in the form of Exhibit B attached to this Permit, by which Tenant will allow City and its representatives and contractors to access the Premises during the Term of this Permit to conduct certain predevelopment activities in preparation for Commencement of Construction of the Expansion. District's written consent to the License Agreement shall be required.

7. TENANT COOPERATION: Tenant shall in good faith make all reasonable efforts to cooperate with the City, San Diego Convention Center Corporation and the District to provide access to the Premises from time to time at commercially reasonable rates to accommodate operations of the San Diego Convention Center and related ancillary events, including without limitation the regional event currently known as "Comic-Con International," which from time to time may be renamed.

8. ASSIGNMENT-SUBLEASE-ENCUMBRANCE: Tenant shall not encumber, any interest in this Permit, the Premises thereof, and the improvements thereon by any means, including without limitation, a deed of trust, mortgage, or any other security instrument without the express written consent of the District ("Consent"). Furthermore, neither the whole nor any part of the Premises nor any of the interest, including equitable interest, rights or privileges granted by this Permit shall be granted, assignable or transferable in any way without such Consent. With the exception of Sections 4 and 6 of this Permit, Tenant shall not grant any permission to any other person or entity to occupy any portion of the Premises without such Consent. Any such purported assignment, transfer, sublease, encumbrance, or permission given without such Consent shall be void.

9. IMPROVEMENTS: Tenant acknowledges prior examination of the Premises and the condition thereof, and agrees that the improvements thereon, if any, are in their present condition, satisfactory and usable for Tenant's purposes and that no representations as to value or condition have been made by or on behalf of District.

Tenant agrees that it shall make no changes or alterations in the Premises, nor make, erect, or install any machines, signs, or other improvements thereon (collectively, "Development") without the Consent of the Executive Director of District or the Board of

Port Commissioners, if applicable (collectively, "District Consent"). Prior to obtaining District Consent, Tenant shall confer with the City regarding any proposed Development on the Premises and shall obtain the City's written approval of any proposed Development ("City Approval"), which shall be submitted by Tenant to the District. District shall not be liable for issuing District Consent without obtaining City Approval. This Section 9 shall not diminish in any way the District's discretion to approve or disapprove any Development on the Premises. Tenant further agrees to provide proper containers for trash and to keep the Premises free and clear of rubbish, debris, and litter at all times.

10. MAINTENANCE: Tenant hereby agrees that the Premises are in a good and tenantable condition, that Tenant will take good care of the Premises and appurtenances, including any personal property belonging to District; and that Tenant, as a part of the consideration for rental stated above, will at Tenant's sole cost and expense keep and maintain said Premises, appurtenances, and personal property in good and sanitary condition and repair during the term of this Permit, subject to normal and ordinary wear and tear resulting from the use of the Premises as herein provided. District shall at no time during the term of this Permit be required to maintain or make any improvements or repairs to the Premises.

11. TITLE TO IMPROVEMENTS; EXPIRATION OF TENANCIES: On the commencement date of the Term of this Permit, all existing structures, buildings, installations, and improvements (including furniture, fixtures and equipment ("FF&E")) of any kind located on the Premises are owned by and title thereto is vested in Tenant. Any structures, buildings, installations, and improvements subsequently placed on the Premises by Tenant and its sub-tenants and licensee's in such fashion shall be the property of the Tenant until the expiration of this Permit. Any and all FF&E and other personal property on the Premises at the expiration or earlier termination of this Permit shall be removed by Tenant at Tenant's cost within thirty (30) days after the expiration of the term of this Permit or sooner termination thereof. Tenant agrees to repair any and all damage occasioned by the removal. All structures, buildings and improvements on the Premises shall remain at the expiration or earlier termination of this Permit.

Machines, appliances, and equipment of any kind placed on the Premises by Tenant at any time, whether prior to or during the term of this Permit, are owned by and title thereto is vested in Tenant and shall be removed by Tenant at Tenant's cost within thirty (30) days after the expiration of the term of this Permit or sooner termination thereof; provided, however, Tenant agrees to repair any and all damage occasioned by the removal thereof.

If any such FF&E, personal property, machines, appliances, and equipment are not removed within thirty (30) days after the termination of this Permit, the same may be

considered abandoned and shall thereupon become the property of District without cost to the District and without payment to Tenant, except that District, in consultation with the City, shall have the right to have the same removed at the expense of Tenant.

At the expiration of this Permit, Tenant shall turn the Premises over free and clear of any leases or subleases, and agreements or contracts related to the Premises.

During any period of time employed by Tenant under this Section, Tenant shall continue to pay the full rental to District in accordance with this Permit which said rental shall be prorated daily.

12. REMOVAL OF MATERIALS: Tenant hereby agrees that upon the expiration of this Permit or the sooner termination as herein provided, it will remove within thirty (30) days all debris, surplus, and salvage materials from the land area forming a part of or adjacent to the Premises, so as to leave the same in as good condition as when first occupied by Tenant, subject to reasonable wear and tear; provided, however, that if any debris, surplus, and salvage materials shall not be so removed within thirty (30) days by Tenant, District may remove, sell, or destroy the same at the expense of Tenant; and Tenant hereby agrees to pay District the cost of such removal, sale, or destruction; or at the option of District, the title to said ships, vessels, barges, hulls, debris, surplus, and salvage materials not removed shall become the property of District.

During any period of time employed by Tenant under this Tenant shall continue to pay the full rental to District in accordance with this Permit which said rental shall be prorated daily.

13. HOLD HARMLESS: Tenant shall, except for Claims (as that term is defined below) arising from the sole negligence or willful misconduct of District or City, defend, indemnify and hold harmless the District and City and their respective officials, officers, representatives, agents, and employees from any litigation, claim, action, proceeding, loss, damage, cost, expense (including, without limitation, all attorneys' fees and consultant/expert fees), award, fine, penalty or judgment (collectively, "Claims") arising directly or indirectly out of, from, or in connection with: (a) the obligations undertaken in connection with this Permit; (b) the possession, use, occupancy, operation or development of the Premises by Tenant or Tenant's representatives, agents, employees, consultants, contractors, invitees, subtenants, successors, assigns or similar users/affiliates (collectively, "Tenant Affiliate"); (c) the approval of this Permit, or other permits or approvals granted to Tenant or a Tenant Affiliate related to the Premises, including, but not limited to, approvals or permits for the development of any structures, buildings, installations, and improvements on the Premises, or use of the Premises (collectively, "Related Approvals"); (d) PWL (as defined below) and (e) environmental documents, mitigation and/or monitoring plans, or determinations

conducted and adopted pursuant to the California Environmental Quality Act or the National Environmental Policy Act for this Permit or Related Approvals.

Tenant acknowledges and agrees that:

- (a) Any construction, alteration, demolition, installation or repair work required or performed under this Permit constitutes "public work" under California Prevailing Wage Law, including California Labor Code ("Labor Code") §§ 1720 through 1815, et seq. ("PWL"), and obligates Tenant to cause such work to be performed as "public work," including, but not limited to, the payment of applicable prevailing wages to all persons or entities subject to the PWL.
- (b) Tenant shall cause all persons and/or entities performing "public work" under the Permit to comply with all applicable provisions of the PWL and other applicable wage laws.
- (c) District hereby notifies Tenant and Tenant hereby acknowledges that the PWL includes, without limitation, Labor Code § 1771.1(b) that provides that the requirements described in Labor Code § 1771.1(a), copied below, shall be included in all bid invitations and "public work" contracts:

Labor Code § 1771.1: A contractor or subcontractor shall not be qualified to bid on or 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 currently registered and qualified to perform "public work" pursuant to § 1725.5. It is not a violation of this Section for an unregistered contractor to submit a bid that is authorized by § 7029.1 of the Business and Professions Code or by § 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform "public work" pursuant to § 1725.5 at the time the contract is awarded.

- (d) Tenant's obligations under this Section and the PWL include, without limitation, ensuring:
 - (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 Labor Code § 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) that it post or require the prime contractor to post job site notices, as prescribed by regulation.
 - (iv) Pursuant to Labor Code § 1773.3(a)(1) that Tenant provide notice to the DIR of any “public works” contract subject to the requirements of this chapter, within five days of the award. Pursuant to Labor Code § 1773.3(a)(2) the notice shall be transmitted electronically in a format specified by the department and shall include the name of the contractor, 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 the department specifies that aids in the administration and enforcement of this chapter. PWC-100 is the name of the form currently used by the DIR for providing the notice, but Tenant shall determine and use whatever form the DIR requires.
- (e) District is not responsible for Tenant’s failure to comply with any applicable provisions of the PWL.
 - (f) Tenant's violations of the PWL shall constitute a default under this Permit.

The District may, in its sole and absolute discretion and in good faith, participate in the defense of any Claims and Tenant shall reimburse District for said defense, including, but not limited to, reimbursement for outside attorneys’ and experts’ fees, and other costs. The District’s participation shall not relieve the Tenant of any of its obligations under this Section. The District shall provide reasonable notice to the Tenant of its receipt of any Claims.

This Section shall survive the term or earlier termination of this Permit until such time no Claim can be made. This Section and the other obligations of Tenant under this Permit are independent of, and in addition to, the obligations of Tenant under any existing lease(s), other contractual agreement(s) or permits with or granted by the District, and are binding upon Tenant, and its agents, representatives, successors and assigns.

14. INSURANCE: Tenant shall maintain insurance acceptable to District in full force and effect throughout the term of this Permit. The policies for said insurance shall, as a minimum, provide the following:

(a) Forms of Coverage

- (1) "OCCURRENCE" form Commercial General Liability covering the Premises, operations, and contractual liability assumed by Tenant in this Permit in the amount of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage. The general aggregate shall be Four Million Dollars (\$4,000,000) unless a Two Million Dollars (\$2,000,000) per location aggregate limit is provided separate by endorsement.

If alcoholic beverages are served or sold on the Premises, Liquor Liability coverage in the amount of not less than Two Million Dollars (\$2,000,000) shall be obtained. If no alcoholic beverages are served or sold on the Premises, the proof of insurance shall so state.

- (2) All Risk Property Coverage, including water damage and debris cleanup provisions, in an amount not less than the full replacement value of all Improvements located within the Premises without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance and shall include business interruption and extra expense for full recovery of the net profits and continuing expenses (including the rent to District) for the duration of the period of restoration, a vandalism and malicious mischief endorsement, sprinkler leakage coverage and, if so required by District, flood and earthquake coverage. The coverage policies shall be endorsed with a Loss Payee endorsement in favor of District. It is agreed that any insurance proceeds in excess of Twenty-Five Thousand Dollars (\$25,000) resulting from a loss under said policies shall be payable jointly to District and Tenant to ensure that said proceeds will be reinvested in rebuilding and/or repairing the damaged portions of the Premises and any damaged or destroyed improvements located thereon. However, if there is a Tenant Encumbrance held by a Financial Institution encumbering the leasehold, then all proceeds from such policies of insurance shall be payable in trust with safeguards reasonably acceptable to District to the Consented

to Lender which is a Financial Institution to be disbursed for the repair and restoration of the Premises (or, if there is no Consented to Lender, or the Consented to Lender declines to hold and disburse such proceeds, to a bank or trust company doing business in the County of San Diego agreed upon by the parties, or if the parties fail to agree, to Bank of America, N.A., or its successor, which proceeds shall be deposited in interest bearing accounts or deposits agreed upon by the parties, or if the parties fail to agree, then in the bank's regular passbook savings account). All interest shall be added to the trust funds to be disbursed with the principal. All proceeds shall be disbursed in progress payments for the payment of the cost of repairing or restoring the property so damaged or destroyed. The specific manner of holding such proceeds and the method and conditions of disbursement shall be subject to the prior written approval of District so as to ensure the application of such proceeds in compliance with this Permit.

- (i) In the event that this Permit is terminated with consent of both District and said mortgagee or beneficiary, and the improvements are not reconstructed, repaired, or replaced, the insurance proceeds shall be retained, without liability, by said mortgagee or beneficiary to the extent necessary to fully discharge the debt secured by said mortgage or deed of trust. Furthermore, said mortgagee or beneficiary shall hold the balance thereof to restore the Premises to a neat and clean condition. Any remaining funds shall lastly be paid to District and Tenant, as their interests may appear.

(b) General Requirements

- (1) All required insurance shall be in force the first day of the term of this Permit, and shall be maintained continuously in force throughout the term of this Permit. In addition, the cost of all required insurance shall be borne by Tenant. During the entire term of this Permit, Tenant shall provide District with Certificates, in a form acceptable to District, evidencing the existence of the necessary insurance policies and original endorsements effecting coverage required by this Section. The Certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind insurance on its behalf. Notwithstanding the forgoing, District reserves the right to require complete, certified copies of all required policies at any time.

- (2) All liability insurance policies shall name, or be endorsed to name District and City and their respective officers, employees, and agents as additional insureds and protect District and City and their respective officers, employees, and agents against any legal costs in defending claims. All liability policies shall provide cross-liability coverage. All insurance policies shall be endorsed to state that coverage will not be suspended, voided, cancelled, or reduced in coverage or in limits, except after Tenant has furnished District with thirty (30) days' prior written notice by certified mail. All insurance policies shall be endorsed to state that Tenant's insurance is primary and not excess or contributory to any insurance issued in the name of District or City. Further, all insurance companies must be satisfactory to District.
- (3) Any deductibles or self-insured retentions must be declared and acceptable to District. If the deductibles or self-insured retentions are unacceptable to District, then Tenant shall have the option to either: (i) reduce or eliminate such deductibles or self-insured retentions as respects the District and its officers, employees, and agents; or, (ii) procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- (4) District shall retain the right at any time to review the coverage, form, and amount of insurance required herein. If, in the opinion of District, the insurance provisions in this Permit do not provide adequate protection for District and/or members of the public using the Premises or using services connected with Tenant's use or occupancy of the Premises, District may require Tenant to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. District's requirements shall be reasonable, but shall be designed to ensure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.
- (5) District may require that Tenant obtain and maintain additional or increased insurance from time to time. District shall notify Tenant in writing of changes in the insurance requirements. With respect to changes in insurance requirements that are available from Tenant's then-existing insurance carrier, Tenant shall deposit Certificates evidencing acceptable insurance policies with District incorporating such changes within sixty (60) days of receipt of such

notice. With respect to changes in insurance requirements that are not available from Tenant's then-existing insurance carrier, Tenant shall deposit Certificates evidencing acceptable insurance policies with District, incorporating such changes, within one hundred twenty (120) days of receipt of such notice. In the event Tenant fails to deposit insurance Certificates as required herein, this Permit shall be in default without further notice to Tenant, and District shall be entitled to exercise all legal remedies. Without limitation of the foregoing, Tenant agrees that if Tenant does not take out and maintain such insurance or furnish District with renewals or binders in a timely manner, District may (but shall not be required to), procure said insurance on Tenant's behalf and charge Tenant the cost thereof, which amount shall be payable by Tenant within thirty (30) days of written demand with interest at the Default Rate from the date such sums are expended.

- (6) If Tenant fails or refuses to maintain insurance as required in this Permit, or fails to provide proof of insurance, District has the right to declare this Permit in default without further notice to Tenant, and District shall be entitled to exercise all legal remedies.
- (7) The procuring of such required policies of insurance shall not be construed to limit Tenant's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Permit. Notwithstanding said policies of insurance, Tenant shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Permit, or with the use or occupancy of the Premises.
- (8) Tenant agrees not to use the Premises in any manner, even if use is for purposes stated herein, that will result in the cancellation of any insurance District may have on the Premises or on adjacent premises, or that will cause cancellation of any other insurance coverage for the Premises or adjoining premises. Tenant further agrees not to keep on the Premises or permit to be kept, used, or sold thereon, anything prohibited by any fire or other insurance policy covering the Premises. Tenant shall, at its sole expense, comply with all reasonable requirements for maintaining fire and other insurance coverage on the Premises.

15. TAXES AND UTILITIES: This Permit may result in a taxable possessory interest and be subject to the payment of property taxes. Tenant agrees to and shall pay before

delinquency all taxes and assessments of any kind assessed or levied upon Tenant or the Premises by reason of this Permit or any earlier lease between Tenant and District related to any buildings, machines, or other improvements of any nature whatsoever erected, installed, or maintained by Tenant or by reason of the business or other activities of Tenant upon or in connection with the Premises. Tenant shall also pay any fees imposed by law for licenses or permits for any business or activities of Tenant upon the Premises or under this Permit, and shall pay before delinquency any and all charges for utilities at or on the Premises by reason of this Permit or any earlier lease between Tenant and District. All taxes and utilities shall be paid at the expiration or earlier termination of this Permit and shall be prorated as applicable.

16. CONFORMANCE WITH RULES AND REGULATIONS: Tenant agrees that, in all activities on or in connection with the Premises, and in all uses thereof, including, without limitation, the making of any alterations, changes, installations, or other improvements, it shall abide by and conform to all laws and regulations. Said laws and regulations shall include, but are not limited to those prescribed by the San Diego Unified Port District Act; any ordinances of the city in which the Premises are located, including the Building Code thereof; any ordinances and general rules of District, including tariffs and Board of Port Commissioners policies; and any applicable laws of the state of California and federal government, as any of the same now exist or may hereafter be adopted or amended. In particular and without limitation, Tenant shall have the sole and exclusive obligation and responsibility to comply with the requirements of: (i) Article 10 of District Code entitled "Stormwater Management and Discharge Control," and (ii) the Americans With Disabilities Act of 1990, including but not limited to regulations promulgated thereunder, and District shall have no obligations or responsibilities as to the Premises.

17. DEFAULT: If any default be made in the payment of the rental herein provided or in the fulfillment of any terms, covenants, or conditions hereof, and said default is not cured within ten (10) days after written notice thereof, this Permit shall immediately terminate and Tenant shall have no further rights hereunder and shall immediately remove from said Premises unless such a default is the type of default that cannot be cured in ten (10) days, then this Permit shall not terminate provided Tenant is diligently curing said default; and District shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of said Premises. District shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Tenant in the amount necessary to compensate District for all the detriment proximately caused by Tenant's failure to perform its obligations under this Permit or which in the ordinary course of things would be likely to result therefrom.

18. LIENS: Tenant agrees that it will at all times save District and City free and harmless and defend and indemnify them against all Claims and liens, including, but not limited to Claims and liens for labor, services or materials in connection with improvements, repairs, or alterations on the Premises caused to be performed by Tenant, and the costs of defending against such Claims, including reasonable attorneys' fees and experts' fees.

19. BANKRUPTCY: In the event Tenant commences a proceeding under Chapter XI of the Federal Bankruptcy Act, or is adjudicated bankrupt or insolvent, or a judicial sale is made of Tenant's interest under this Permit, this Permit shall at the option of District immediately terminate and all rights of Tenant hereunder shall immediately cease and terminate.

20. EASEMENTS: This Permit and all rights given hereunder shall be subject to all easements and rights-of-way now existing or heretofore granted or reserved by District in, to, or over the Premises for any purpose whatsoever, and shall be subject to such rights-of-way for reasonable access, sewers, pipelines, conduits, and such telephone, telegraph, light, heat, or power lines as may from time to time be determined by District to be in the best interests of the development of the tidelands.

District agrees that such easements and rights-of-way shall be so located and installed as to produce a minimum amount of interference to the business of Tenant.

21. TITLE OF DISTRICT: District's title is derived from the provisions of the San Diego Unified Port District Act, Appendix 1, Harbors & Navigation Code, and is subject to the provisions of said Act. This Permit is granted subject to the terms and conditions of said Act.

22. JOINT AND SEVERAL LIABILITY: If Tenant, as a party to this Permit, is a partnership or joint venture, or is comprised of more than one party or entity or a combination thereof, the obligations imposed on Tenant under this Permit shall be joint and several, and each general partner, joint venturer, party, or entity of Tenant shall be jointly and severally liable for said obligations. Furthermore, nothing contained herein shall be deemed or construed as creating a partnership or joint venture between District and Tenant or between District and any other entity or party, or cause District to be responsible in any way for the debts or obligations of Tenant, or any other party or entity.

23. NONDISCRIMINATION: Tenant agrees at all times to fully comply with all laws prohibiting discrimination against any person or class of persons by reason of sex, color, race, religion, handicap or national origin. If the use provided for in this Permit allows the Tenant to offer accommodations or services to the public, such

accommodations or services shall be offered by the Tenant to the public on fair and reasonable terms. In complying with all such laws, including, without limitation, the Americans With Disabilities Act of 1990, Tenant shall be solely responsible for such compliance and required programs and there shall be no allocation of any such responsibility between District and Tenant.

24. ENTIRE UNDERSTANDING: This Permit contains the entire understanding of the parties, and Tenant, by accepting the same, acknowledges that there is no other written or oral understanding between the parties in respect to the Premises. No modification, amendment, or alteration of this Permit shall be valid unless it is in writing and signed by the parties hereto.

25. PEACEABLE SURRENDER: Upon the termination of this Permit by the expiration thereof or the earlier termination as by the terms of this Permit provided, Tenant will peaceably surrender the Premises in as good condition, subject to normal and ordinary wear and tear resulting from the use of the Premises as herein provided, as the same may be at the time Tenant takes possession thereof, and to allow District to take peaceable possession thereof.

26. HOLDOVER: This Permit shall terminate without further notice at expiration of the term. Any holding over by Tenant after either expiration or termination shall not constitute a renewal or extension or give Tenant any rights in or to the Premises. If Tenant, with District's consent, remains in possession of the Premises after expiration or termination of the term or after the date in any notice given by District to Tenant terminating this Permit, such possession by Tenant shall be deemed to be a month-to-month tenancy terminable on thirty (30) days' notice given at any time by either party. During any such month-to-month tenancy, Tenant shall pay all rent required by this Permit; and if percentage rent is required by the Permit, it shall be paid monthly on or before the tenth (10th) day of each month.

All provisions of this Permit, except those pertaining to term, shall apply to the month-to-month tenancy.

27. ACCEPTANCE OF PREMISES: BY SIGNING THIS PERMIT, TENANT REPRESENTS AND WARRANTS THAT IT HAS INDEPENDENTLY INSPECTED THE PREMISES AND MADE ALL TESTS, INVESTIGATIONS AND OBSERVATIONS NECESSARY TO SATISFY ITSELF OF THE CONDITION OF THE PREMISES. TENANT AGREES IT IS RELYING SOLELY ON SUCH INDEPENDENT INSPECTION, TESTS, INVESTIGATIONS AND OBSERVATIONS IN MAKING THIS PERMIT. TENANT ALSO ACKNOWLEDGES THAT THE PREMISES ARE IN THE CONDITION CALLED FOR BY THIS PERMIT, THAT DISTRICT HAS PERFORMED ALL WORK WITH RESPECT TO PREMISES AND THAT TENANT DOES NOT HOLD DISTRICT

generate, or store Contaminants on the Premises, District, or its designated representatives, at District's sole discretion, may at any time during the term of this Permit, enter upon the Premises and make any inspections, tests or measurements District deems necessary in order to determine if a release of Contaminants has occurred. District shall give Tenant a minimum of twenty-four (24) hours' notice in writing prior to conducting any inspections or tests, unless, in District's sole judgment, circumstances require otherwise, and such tests shall be conducted in a manner so as to attempt to minimize any inconvenience and disruption to Tenant's operations. If such tests indicate a release of Contaminants, then District, at District's sole discretion, may require Tenant, at Tenant's sole expense, and at any time during the term of this Permit, to have tests for such Contaminants conducted by a qualified party or parties on the Premises. If District has reason to believe that any Contaminants originated from a release by Tenant or a release by any of any of Tenant's affiliates, Tenant predecessor entities or companies, subsidiaries, subtenants, agents or invitees on the Premises have contaminated any area outside the Premises, including but not limited to surface and groundwater, then District, at District's sole discretion, may require Tenant, at Tenant's sole expense, and at any time during the term of this Permit, to have tests for such Contaminants conducted by a qualified party or parties on said area outside the Premises.

The tests conducted by Tenant's qualified party shall include, but not be limited to, applicable comprehensive soil, emission, or groundwater sampling test or other procedures to determine any actual or possible contamination. Tenant shall expeditiously, but no longer than thirty (30) days after District's request for such tests, furnish to District the results of said tests, sampling plans, and analysis thereof identifying any Contaminants which exceed then applicable levels permitted by federal, state, or local laws. Tenant shall report such contamination to the District within seventy-two (72) hours and shall diligently proceed to identify the extent of contamination, how it will be remediated, when it will be remediated, by whom, and the cost of such remediation.

31. UNDERGROUND STORAGE TANKS: In the event any underground storage tanks are located on the Premises or hereinafter placed on the Premises by any party during the term or extension of this Permit, Tenant shall be responsible for tank monitoring of all such underground storage tanks as required by the County of San Diego Hazardous Material Management Division (HMMD) or any other responsible agency. Tenant further agrees to take responsibility for reporting unauthorized releases to HMMD and the District within twenty-four (24) hours of such unauthorized release. Tenant will be responsible for all fees and costs related to the unauthorized release of Contaminants including but not limited to investigative, surface and groundwater cleanup, and expert and agency fees. Tenant shall maintain evidence of financial responsibility for taking corrective action and for compensating third parties for bodily

injury and property damage caused by a release from the underground tank system. Tenant further agrees to be responsible for maintenance and repair of the storage tanks, obtaining tank permits, filing a business plan with HMMMD or other responsible agency and for paying underground storage tank fees, permit fees, and other regulatory agency fees relating to underground storage tanks.

Tenant agrees to keep complete and accurate records on the Premises for a period of not less than thirty-six (36) months from the applicable events, including, but not limited to permit applications, monitoring, testing, equipment installation, repairing and closure of the underground storage tanks, and any unauthorized releases of Contaminants and make such records available for District or responsible agency inspection. Tenant further agrees to include a copy of Health and Safety Code, Chapter 6.7, Section 25299, as part of any agreement between Tenant and any Operator of such underground storage tanks.

Furthermore, Tenant shall be responsible for compliance with all other laws and regulations presently existing or hereinafter enacted applicable to underground storage tanks, including without limitation any such laws and regulations which alter any of the above requirements.

In the event underground storage tanks are located on the Premises, Tenant is required to comply with Code of Federal Regulations, Title 40, Chapter I, Subchapter H or Title 23, Division 3, Chapter 18 of California Code of Regulations, collectively, herein "UST Law." At the time Tenant is required to comply with any provisions of UST Law requiring financial assurance mechanisms, Tenant shall provide District with a certified copy of its Certification of Financial Responsibility. If Tenant's program for financial responsibility requires insurance, then Tenant's policy(ies) shall name District and its officers, employees, and agents as additional insureds, and all other terms of Subsection (b), below, shall apply. Should Tenant change its financial assurance mechanisms, Tenant shall immediately provide District with a certified copy of its revised Certification of Financial Responsibility.

32. ABOVEGROUND STORAGE TANKS: Tenant shall be responsible for any aboveground storage tanks on the Premises. Tenant shall, in accordance with this Permit and applicable laws and regulations, secure and pay for all necessary permits and approvals, prepare a spill prevention control counter measure plan and conduct periodic inspections to ensure compliance therewith, including conformance with the latest version of said laws and regulations. In addition, Tenant shall maintain and repair said tanks and conform and comply with all other applicable laws and regulations for aboveground storage tanks, including without limitation all of the requirements of Health & Safety Code, Sections 25270 through 25170.13 as presently existing or as hereinafter amended, including without limitation conducting daily visual inspection of said tanks,

allowing the San Diego Regional Water Quality Control Board, District, or responsible agency, to conduct periodic inspections and complying with valid orders of said Board, filing the required storage tank statement and payment of the fee therefor, establishing and maintaining the required monitoring program and systems, reporting spills as required, and payment of lawfully imposed penalties as provided therein and as otherwise provided by law. Tenant shall be responsible for all costs associated with an unauthorized release from such tanks, including but not limited to, investigative, surface and groundwater cleanup, expert and agency fees.

33. NOTICES: Any notice or notices provided for by this Permit or by law to be given or served upon Tenant may be given or served by certified or registered letter addressed to Fifth Avenue Landing, LLC. Attn: George Palermo, Manager at 1311 First Street, Coronado, CA 92118 and deposited in the United States mail, or may be served personally upon said Tenant or any person hereafter authorized by it in writing to receive such notice; and that any notice or notices provided for by this Permit or by law to be served upon District may be given or served by certified or registered letter addressed to Executive Director of District at the Administrative Offices of the San Diego Unified Port District, Post Office Box 120488, San Diego, California 92112-0488 and deposited in the United States mail, or may be served personally upon said Executive Director or his and her duly authorized representative; and that any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the parties so served.

34. SECTION HEADINGS: The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision hereof.

35. DRAFTING PRESUMPTION; REVIEW STANDARD: The parties acknowledge that this Permit has been agreed to by both the parties, that both District and Tenant have consulted with attorneys with respect to the terms of this Permit and that no presumption shall be created against the drafting party. Any deletion of language from this Permit prior to its execution by District and Tenant shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse of the deleted language. Unless otherwise specified in this Permit, any approval or consent to be given by the District may be given or withheld in District's sole discretion.

36. TIME OF ESSENCE: Time is of the essence with respect to this Permit and each of its provisions.

37. PARTIAL INVALIDITY: If any term, provision or condition contained in this Permit shall, to any extent, be invalid or unenforceable, the remainder of this Permit, or

the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Permit shall be valid and enforceable to the fullest extent possible permitted by the laws of the State of California.

38. AUTHORITY: If Tenant is a corporation, partnership or limited liability company, each individual executing this Permit on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in California and that Tenant has full rights and authority to execute and deliver this Permit and that each of the Persons signing on behalf of Permit is authorized to do so.

39. ATTORNEYS' FEES: In the event any Claims 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 District 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 attorney's fees and costs for the Claims t, including, without limitation, any and all costs incurred in enforcing, perfecting and executing such judgment.

40. GOVERNING LAW: Venue for any legal proceeding shall be in San Diego County, California. This Permit shall be construed and enforced in accordance with the laws of the State of California.

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

42. SIGNATURE OF PARTIES: It is an express condition of this Permit that said Permit shall not be complete nor effective until the Alternative A Closing occurs and the Permit signed by either the Executive Director or his and her authorized designee on behalf of District and by other party.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Permit as of the day and the year first above written.

TENANT:

FIFTH AVENUE LANDING, LLC,
a California limited liability company

By: _____
Ray A. Carpenter
Its: Managing Member

By: San Diego California Properties, LLC,
Its: Managing Member

By: _____
Art E. Engel
Its: Managing Member

DISTRICT:

SAN DIEGO UNIFIED PORT DISTRICT,
a Public Corporation

By: _____

Name: _____

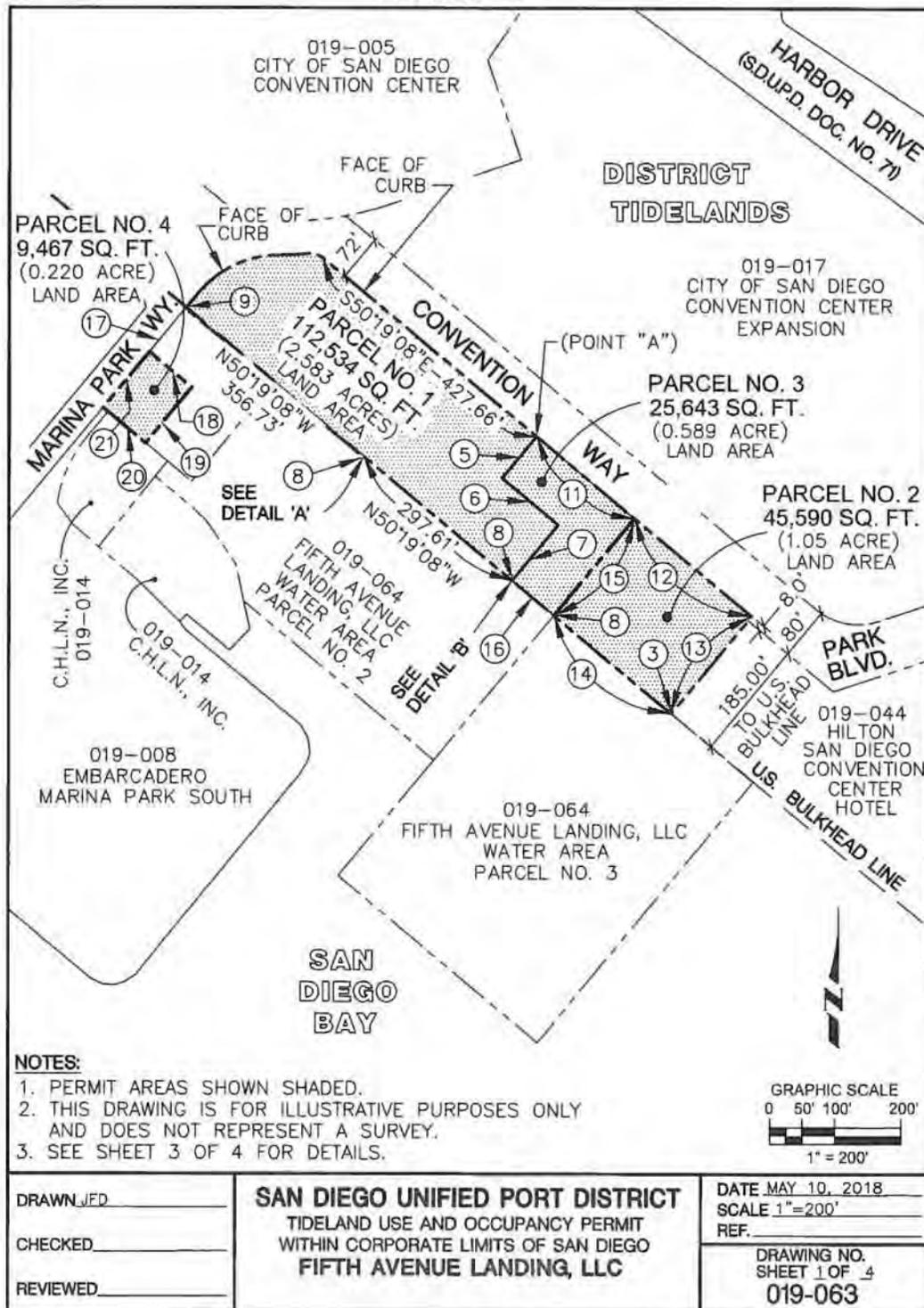
Its: _____

General Counsel
Approved as to form and legality

By: _____

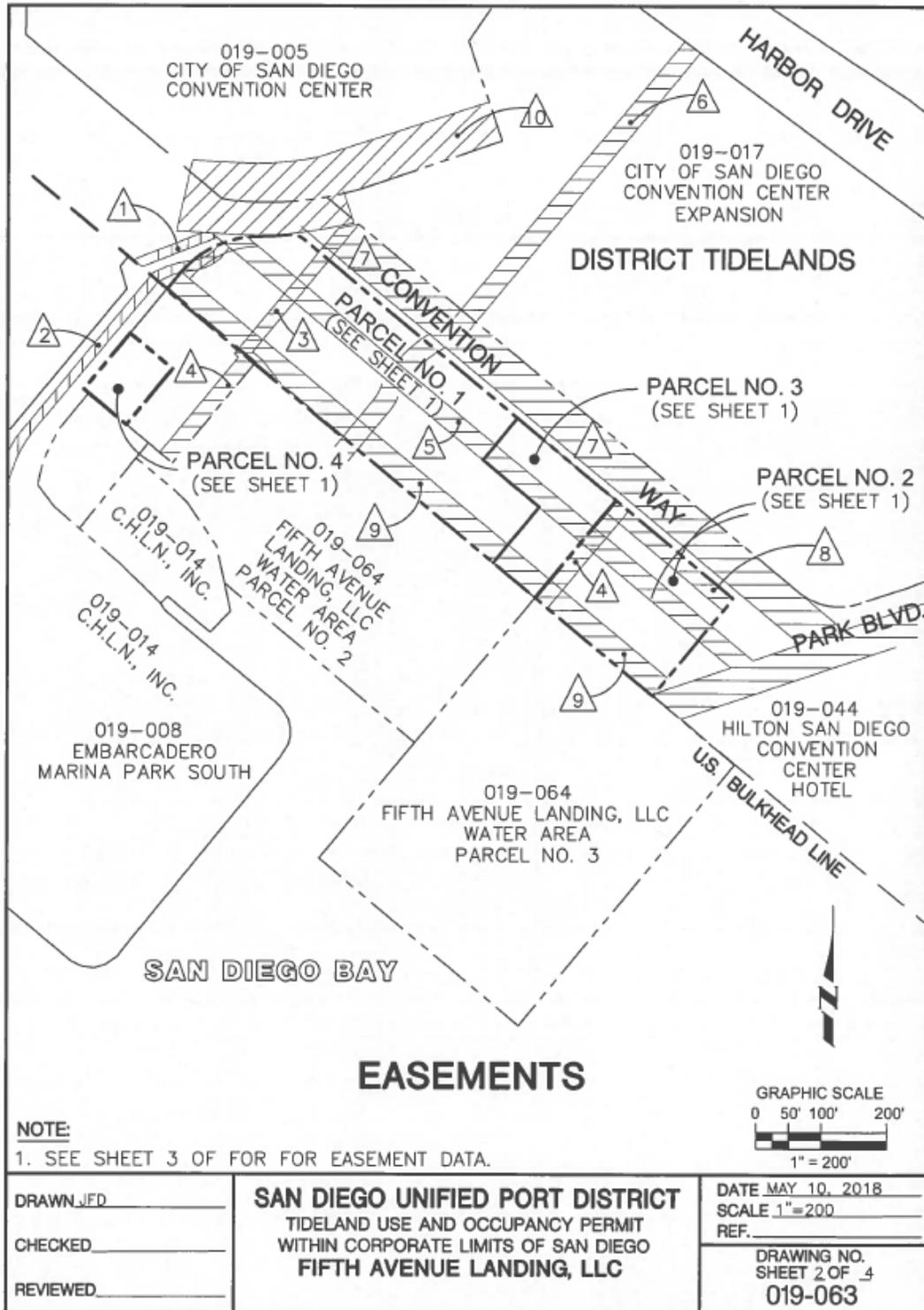
Name: _____
Assistant/Senior Deputy
General Counsel

EXHIBIT A



Tidelands Use and Occupancy Permit
Exhibit A

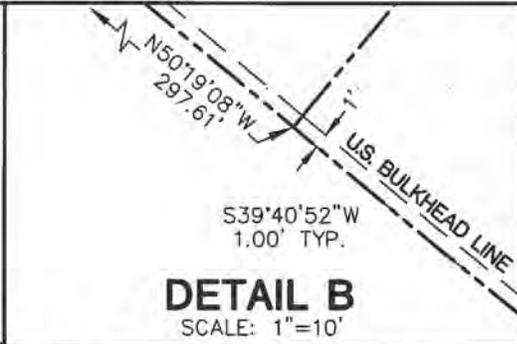
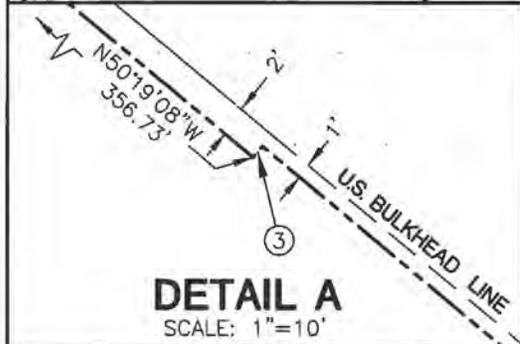
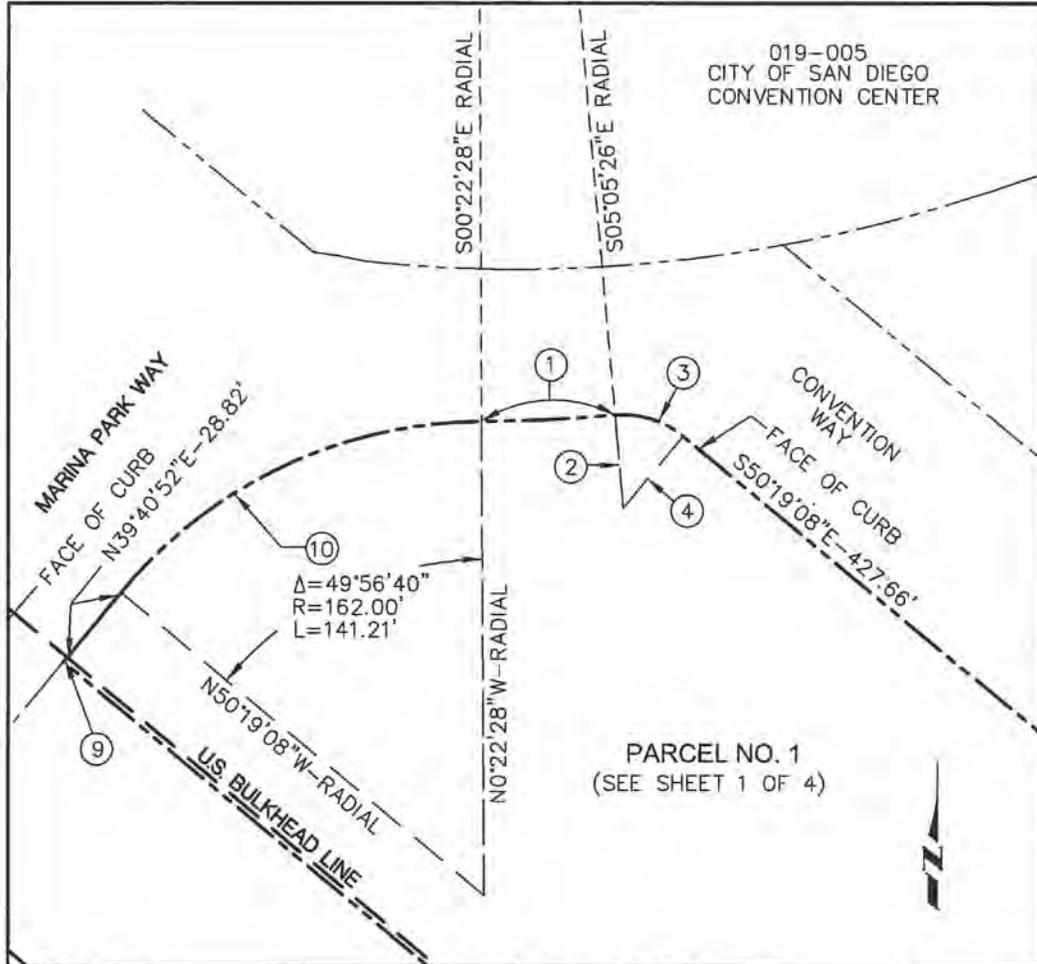
EXHIBIT A



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Tidelands Use and Occupancy Permit
Exhibit A

EXHIBIT A



DRAWN JED

CHECKED _____

REVIEWED _____

SAN DIEGO UNIFIED PORT DISTRICT
TIDELAND USE AND OCCUPANCY PERMIT
WITHIN CORPORATE LIMITS OF SAN DIEGO
FIFTH AVENUE LANDING, LLC

DATE MAY 10, 2018
SCALE 1"=50'
REF. _____

DRAWING NO.
SHEET 3 OF 4
019-063

DEVSERV\REM\019-063\019-063_051018.DWG

EXHIBIT A

TRAVERSE DATA

- | | |
|--|-----------------------|
| ① $\Delta=04^{\circ}42'58''$
R=556.00'
L=45.77' | ⑪ S50°19'08"E-196.62' |
| ② N05°05'26"E RADIAL | ⑫ S50°19'08"E-235.00' |
| ③ $\Delta=44^{\circ}46'18''$
R=32.00'
L=25.01' | ⑬ S39°40'52"W-193.00' |
| ④ N39°40'52"E-1.00' | ⑭ N50°19'08"W-235.00' |
| ⑤ S39°40'52"W-83.00' | ⑮ N39°40'52"E-1.00' |
| ⑥ S50°19'08"E-112.62' | ⑯ N39°40'52"E-193.00' |
| ⑦ S39°40'52"W-110.00' | ⑰ S39°40'52"W-85.95' |
| ⑧ S39°40'52"W-1.00' | ⑱ S50°19'08"E-91.66' |
| ⑨ N39°40'52"E-2.04' | ⑲ S39°40'52"W-113.48' |
| ⑩ $\Delta=49^{\circ}56'40''$
R=556.00'
L=141.22' | ⑳ N50°19'08"W-91.66' |
| | ㉑ N39°40'52"E-113.48' |

EASEMENT DATA

- ① 15.00' CITY OF SAN DIEGO STORM DRAIN ESMT. SDUPD DWG. NO. 519-025 EXIST.
- ② 15.00' CITY OF SAN DIEGO WATER ESMT. 519-034 EXIST.
- ③ 20.00' CITY OF SAN DIEGO STORM DRAIN ESMT. SDUPD DWG. NO. 519-005 EXIST.
- ④ 25.00' PUBLIC PEDESTRIAN ACCESS ESMT.
- ⑤ 30.00' CITY OF SAN DIEGO WATER ESMT. S.D.U.P.D. DWG. NO. 519-031 EXIST.
- ⑥ 30.00' CITY OF SAN DIEGO STORM DRAIN ESMT. EXIST.
- ⑦ 60.00' CITY OF SAN DIEGO GEN. UTIL. ESMT. EXIST.
- ⑧ 24.00' PUBLIC PEDESTRIAN ACCESS ESMT.
- ⑨ 35.00' PUBLIC PEDESTRIAN ACCESS ESMT.
- ⑩ CITY OF SAN DIEGO GENERAL UTILITY EASEMENT 519-030 EXIST.

DRAWN <u>JFD</u> CHECKED _____ REVIEWED _____	SAN DIEGO UNIFIED PORT DISTRICT TIDELAND USE AND OCCUPANCY PERMIT WITHIN CORPORATE LIMITS OF SAN DIEGO FIFTH AVENUE LANDING, LLC	DATE <u>MAY 10, 2018</u> SCALE _____ REF. _____ DRAWING NO. SHEET <u>4</u> OF <u>4</u> 019-063
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EXHIBIT B

LICENSE AGREEMENT

This License Agreement (“**Agreement**”) is entered into as of _____, _____ (“**Effective Date**”), by and between FIFTH AVENUE LANDING, LLC, a California limited liability company (“**FAL**”), and the CITY OF SAN DIEGO, a municipal corporation (“**City**”), with the consent of the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (“**District**”). The Effective Date of this Agreement will be the date of signature of this Agreement by City’s duly authorized representative. On City’s behalf, the administrator of this Agreement will be the Mayor of the City of San Diego or his or her designee (“**Mayor**”).

RECITALS

FAL and City (each, a “**Party**” and collectively, the “**Parties**”) enter into this Agreement with reference to the following facts:

A. District has granted to FAL that certain Tidelands Occupancy and Use Permit dated _____, 2019 (“**District Permit**”), allowing FAL to continue occupancy of the real property described in Attachment 1 to this Agreement (“**Property**”) until the earlier of _____, 2024, or City’s commencement of construction of the Phase III expansion of the San Diego Convention Center (“**Expansion Project**”). Upon termination of the District Permit, City will occupy the Property pursuant to an existing lease between City and District for purposes related to the construction and operation of the Expansion Project.

B. Subject to the terms and conditions set forth in this Agreement, FAL will provide City with access to the Property during the term of the District Permit to allow City and its employees, contractors, and consultants to perform certain predevelopment work related to City’s anticipated completion of the Expansion Project. The Parties agree that material consideration exists for this Agreement. Although City holds a leasehold interest in the Property, City has not objected to District’s granting of the District Permit to FAL based on FAL’s willingness to sign this Agreement for City’s benefit.

TERMS AND CONDITIONS

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. License. FAL grants to City a license (“**License**”) allowing City and its employees, representatives, agents, contractors, and consultants (each, a “**City Party**” and collectively, the “**City Parties**”), to enter the Property to do all of the following: (a) conduct investigations, studies, and environmental site assessments, including without limitation, soil sampling, sediment sampling, ground water sampling, air testing, boring, drilling any other types of environmental testing, and geotechnical evaluation(s), whether intrusive, invasive or not, on across, above and beneath the Property, including any improvements on the Property, or and to evaluate any other aspects of the Property; and (b) conduct such other work as deemed reasonably necessary by City to prepare for construction of the Expansion Project (collectively,

“**Work**”). This license shall include without limitation the right of City to contract for and conduct Phase 1 and Phase 2 analysis, to conduct environmental testing, sampling, invasive testing, and/or boring upon provision of not less than 48 hours advance telephonic or electronic mail notice to FAL. City’s use of the Property in accordance with this Agreement shall not unreasonably interfere with FAL’s use and enjoyment of the Property and shall be subject to all other licenses, easements, encumbrances, and claims of title affecting the Property.

2. City Parties. Whenever this Agreement refers to obligations, acts, or omissions of City, this Agreement shall be deemed to refer to obligations, acts, or omissions of the City Parties collectively, unless the context clearly dictates otherwise. City shall provide a copy of this Agreement to any City Party before the City Party commences any Work on or about the Property.

3. Term. The term of the License (“**Term**”) shall commence upon the Effective Date and shall automatically expire upon the termination of the District Permit.

4. No Property Estate or Interest Conveyed. The Parties do not intend by this Agreement to convey any estate or interest in the Property between them, and nothing in this Agreement shall be construed or interpreted as a grant of any estate, leasehold, easement, or other interest in the Property.

5. Permits; Compliance with Laws and Regulations. City shall perform the Work in conformance with all applicable laws, ordinances, codes, and regulations of federal, state, or local governments, including, but not limited to, those prescribed by the San Diego Unified Port District Act, and any ordinances and general rules of the District, as any of the same now exist or may be adopted or amended in the future. In particular and without limitation, City shall have the sole and exclusive responsibility to comply with the requirements of: (i) Article 10 of District Code entitled “Stormwater Management and Discharge Control”, and (ii) the Americans with Disabilities Act of 1990, including but not limited to regulations promulgated thereunder, and District shall have no obligations or responsibilities as to the Property. City, at its sole cost and expense, shall obtain all required governmental permits and authorizations for City’s performance of the Work upon the Property. In performing the Work upon the Property, City shall comply with the terms and conditions of all such permits and authorizations. FAL shall reasonably cooperate with City in applying for such permits and authorizations, so long as FAL does not incur any out-of-pocket expenses.

6. Maintenance and Condition of the Property. City shall, at all times, conduct any Work on the Property in a safe, neat, and orderly fashion. City shall be responsible for clean-up of the Property from any Work undertaken by City on the Property, in compliance with all zoning, building, safety, health, environmental, and other laws, codes, ordinances, regulations, orders, requirements, permits, or authorizations of any federal, state, or local government applicable to the Work.

7. Hazardous Materials. City shall legally dispose off tidelands all debris, solid waste, hazardous waste, or any other material, including soils or ground water (collectively, “**Waste**”) extracted or removed by City in connection with the Work on the Property. City shall be responsible for managing and disposing of any Waste in accordance with all applicable laws

and regulations. In addition, City shall list itself as the generator of any Waste on the disposal facility's waste manifest and any waste profile. In any event, City shall not store any Waste on the Property for any period of time.

8. Utilities. City shall determine the location of all utilities and take necessary precautions to prevent interruption of any utility service. However, should any interruption of any utility service occur as a result of the Work, City shall bear the sole expense and cost regarding said interruption.

9. Costs of Work. City shall be solely responsible for all costs incurred in connection with performing the Work. City shall not suffer, or permit to be enforced against the Property, any mechanics', materialmen's, contractors', or subcontractors' lien or any claim for damage arising from any Work performed by City or entry upon the Property by City pursuant to this Agreement. City shall pay, or cause to be paid, all liens and claims before any action is brought to enforce the same against the Property, subject to City's right to content such liens and claims. FAL reserves the right to post and maintain on the Property notices of non-responsibility to protect FAL and the Property against any liability for all such liens or claims.

10. Indemnification. City shall indemnify, defend, and hold harmless FAL, District, and District's elected officials, officers, agents, contractors, and employees (collectively, "**Indemnified Parties**") from and against any and all loss, liabilities, damages, judgments, actions, costs, claims, and expenses (collectively, "**Claims**") arising out of or resulting from any acts or omissions, or violation of law, by City in entering the Property or performing Work on the Property. However, City's indemnification obligations under this Agreement shall not include any of the following: (i) Claims arising out of the grossly negligent acts or omissions or willful misconduct of any of the Indemnified Parties; or (ii) Claims arising out of the mere discovery of an existing condition with respect to the Property. City shall give FAL prompt and timely written notice of any claim made or suit instituted related to the Property, the Work, or this Agreement that may in any way directly or indirectly, contingently or otherwise affect FAL, District, or the Property.

11. Liability for Loss, Injury, or Damage. In addition to any other assumption of liability set forth in this Agreement, and excluding any loss or damage to the extent resulting from the gross negligence or willful misconduct of any of the Indemnified Parties, City assumes the risk and responsibility for any damage, destruction, or theft of equipment, materials, or personal property placed on the Property by City and for any injury to persons that occurs on the Property as a result of Work on or relating to the Property.

12. Insurance. Before City or its employees, contractors, or consultants enter upon the Property, City shall deliver to FAL an original endorsement to City's commercial general liability insurance policy evidencing that City carries a commercial general liability insurance policy with a financially responsible insurance company with respect to the Work on the Property. The insurance endorsement shall evidence that the insurance policy has a combined single limit for personal injury and property damage per occurrence of at least Two Million Dollars (\$2,000,000), shall name FAL and District as additional insureds, shall be primary and noncontributing with any other insurance available to FAL and District, and shall contain a full

waiver of subrogation clause. Notwithstanding any provision to the contrary in this Agreement, City may fulfill any of its insurance obligations under this Section 10 by self-insurance.

13. City Appropriation of Funds. To the extent this Agreement imposes on City any financial obligation or payment obligation, City's performance of such obligation is subject to and contingent upon the City Council's appropriation of funds in any fiscal year to pay such obligation (each a "**Contingent Obligation**"). If the City Council does not appropriate funds in any fiscal year to fulfill any Contingent Obligation due in such fiscal year, City shall not be required to perform the Contingent Obligation and shall not incur any resulting monetary penalty, liability, or expense, but City's nonperformance of the Contingent Obligation may result in termination of certain rights in City's favor under this Agreement as specified in the applicable provision of this Agreement. Contingent Obligations shall be payable solely from eligible moneys held in a special fund and segregated from the City's General Fund ("**Special Funds**"). Special Funds may only be used to pay Contingent Obligations if and when appropriated for that purpose. The City shall not be obligated to pay Contingent Obligations from the City's General Fund or from tax revenues of the City that would otherwise be deposited in the General Fund. Special Funds may include any voter-approved transient occupancy tax revenues dedicated to a special fund for the Expansion Project and other Convention Center purposes. City shall use best efforts to obtain the City Council's timely appropriation of funds with respect to each Contingent Obligation. However, the City Council has no obligation to make funding appropriations for any Contingent Obligation, in light of City's other funding priorities and budget constraints in the applicable future fiscal year. All City budget decisions are subject to the discretion of the Mayor and the City Council. City shall notify FAL in writing at the earliest possible date if City determines that funds will not be timely appropriated for any Contingent Obligation. This Agreement is subject to the budget and fiscal provisions of the San Diego Charter. No Contingent Obligation shall constitute a debt of the City within the meaning of any debt limitation or restriction in state or local law, including the San Diego Charter.

14. Governing Law. The laws of the State of California shall govern this Agreement.

15. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

16. Notice. Any notices pursuant to or as required by this Agreement must be in writing and may be sent by (i) messenger for immediate personal delivery; (ii) nationally recognized delivery service guaranteeing overnight delivery (i.e., United Parcel Service, Federal Express, etc.); (iii) registered or certified United States mail, postage prepaid, return receipt requested, to the address of the recipient Party, or (d) facsimile or other form of electronic transmission, including email (which shall be followed by a hard copy delivered in accordance with one of the preceding clauses (i) through (iii) or via regular U.S. mail, unless the hard copy is waived by reply email from the recipient in response to a notice email). Any notice shall be deemed received by the addressee, on the business day that the notice is sent by messenger for immediate personal delivery and received at the notice address before 5:30 p.m. Pacific Time, on the business day the notice is transmitted electronically before 5:30 p.m. Pacific Time, one business day after delivery to a nationally recognized overnight delivery service, or two business days after the notice is placed in the United States mail (regardless of whether or when any

return receipt is received by the sender or the date set forth on such return receipt). Any notices shall be addressed as follows:

- If to FAL: Mr. Ray A. Carpenter
Fifth Avenue Landing, LLC
2145 E Belt St.
San Diego, CA 92113
Telephone: (619) 233-0178
Email: rayc@restaite.net
- With a copy to: Art E. Engel
San Diego California Properties, LLC
1311 First Street
Coronado, CA. 92118
Telephone: (619) 992-7311
Email: aeengel8@gmail.com
- With a copy to: Charles E. Black, Esq.
8125 Auberge Circle
San Diego, CA 92127
Telephone: (619) 993-6503
Email: cblack@cburbandevelopment.com
- If to City: Kris Michell
Chief Operating Officer
City of San Diego
202 C Street, MS 9A
San Diego, CA 92101
Telephone No.: (619) 235-5806
Email: kmichell@sandiego.gov
- With a copy to: Kevin Reisch, Esq.
Senior Chief Deputy City Attorney
1200 Third Avenue, Suite 1100
San Diego, CA 92101
Telephone No.: (619) 236-7722
Email: kreisch@sandiego.gov

17. Recordation. Neither Party shall record this Agreement or any memorandum of this Agreement in the local property records.

18. Severability. If any provision of this Agreement is held to be invalid or unenforceable, this circumstance shall not affect the validity of the remainder of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have signed this Agreement, to be effective as of the Effective Date shown in the preamble on page 1 of this Agreement.

FIFTH AVENUE LANDING, LLC,
a California limited liability company

CITY OF SAN DIEGO,
a municipal corporation

By: _____
Ray A. Carpenter
Its: Managing Member

By: _____

Name: _____

By: San Diego California Properties, LLC,
Its: Managing Member

Title: _____

Date: _____, 2019

By: _____
Art E. Engel
Its: Managing Member

Approved as to form:

MARA W. ELLIOTT, City Attorney

By: _____

Kevin Reisch
Senior Chief Deputy City Attorney

CONSENT

As required by the District Permit, District consents to the foregoing License Agreement between FAL and City.

SAN DIEGO UNIFIED PORT DISTRICT,
a Public Corporation

By: _____

Name: _____

Its: _____

Date: _____, 201____

Approved as to form and legality:

GENERAL COUNSEL

By: _____

Name: _____

Assistant/Senior Deputy
General Counsel

ATTACHMENT 1 TO LICENSE AGREEMENT

Description of the Property

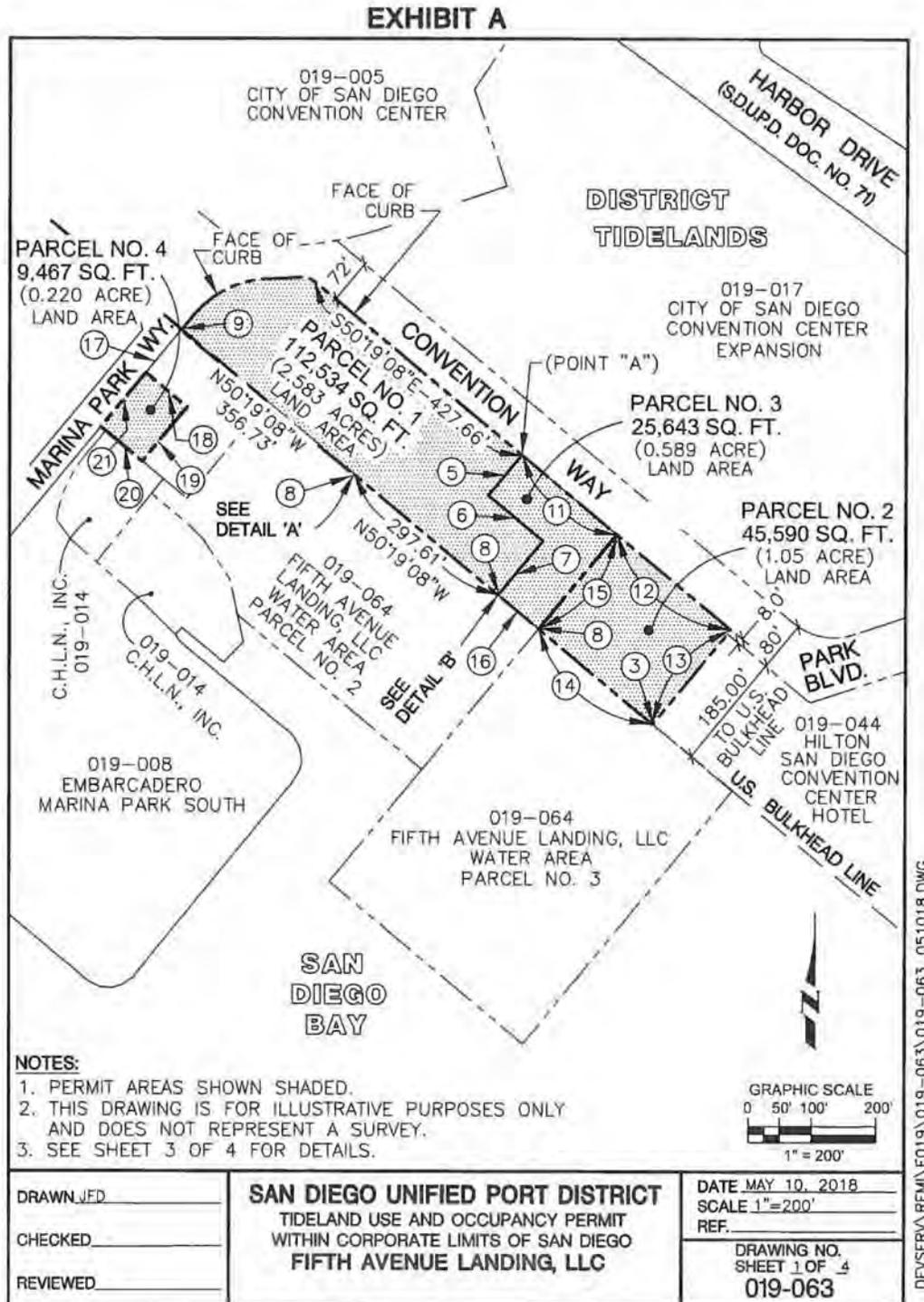
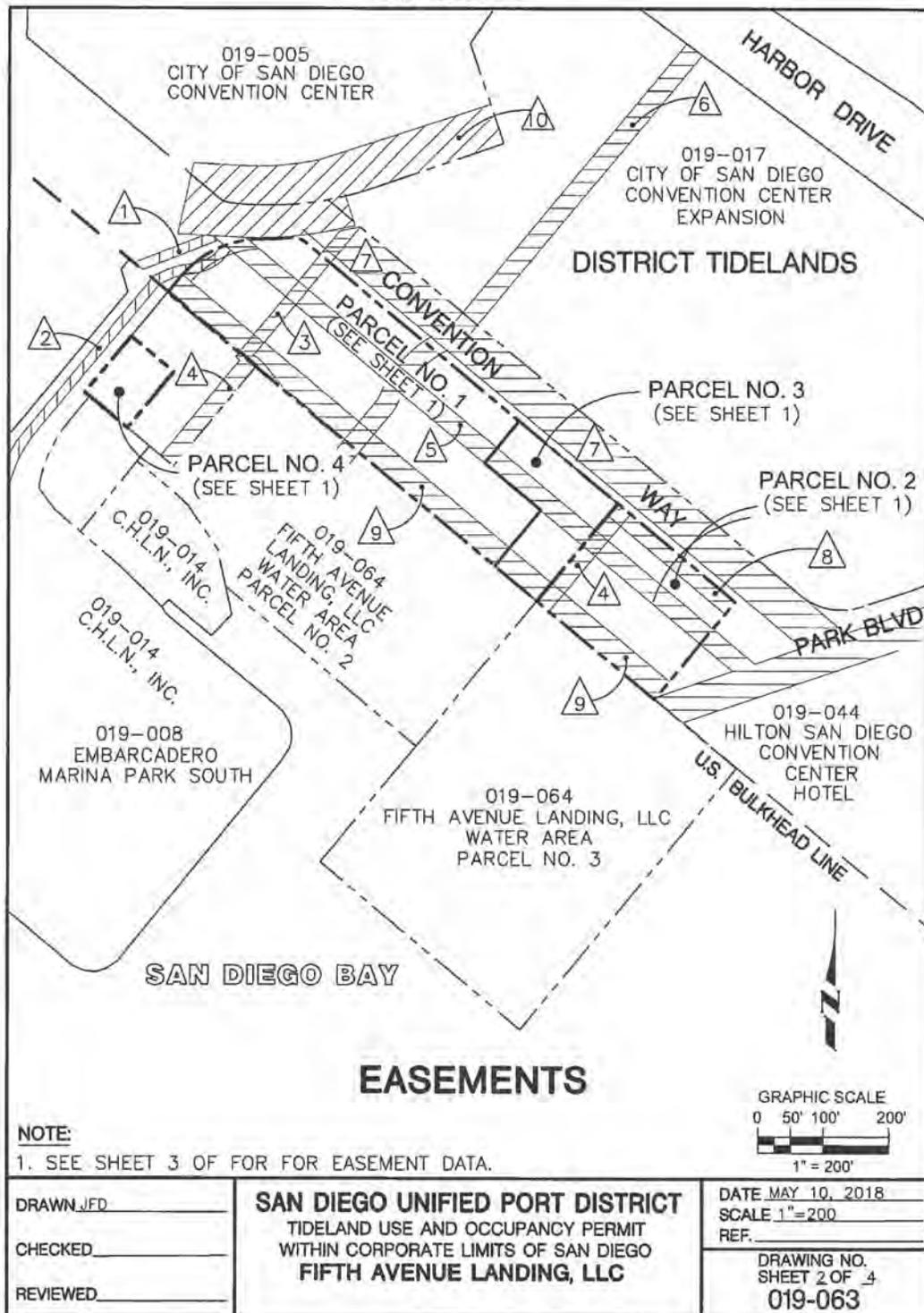


EXHIBIT A



DEVSERV\REM\019-063\019-063_051018.DWG

DRAWN JFD
 CHECKED _____
 REVIEWED _____

SAN DIEGO UNIFIED PORT DISTRICT
 TIDELAND USE AND OCCUPANCY PERMIT
 WITHIN CORPORATE LIMITS OF SAN DIEGO
FIFTH AVENUE LANDING, LLC

DATE MAY 10, 2018
 SCALE 1"=200
 REF. _____
 DRAWING NO. _____
 SHEET 2 OF 4
019-063

EXHIBIT A

TRAVERSE DATA

- | | |
|--|-----------------------|
| ① $\Delta=04^{\circ}42'58''$
R=556.00'
L=45.77' | ⑪ S50°19'08"E-196.62' |
| ② N05°05'26"E RADIAL | ⑫ S50°19'08"E-235.00' |
| ③ $\Delta=44^{\circ}46'18''$
R=32.00'
L=25.01' | ⑬ S39°40'52"W-193.00' |
| ④ N39°40'52"E-1.00' | ⑭ N50°19'08"W-235.00' |
| ⑤ S39°40'52"W-83.00' | ⑮ N39°40'52"E-1.00' |
| ⑥ S50°19'08"E-112.62' | ⑯ N39°40'52"E-193.00' |
| ⑦ S39°40'52"W-110.00' | ⑰ S39°40'52"W-86.69' |
| ⑧ S39°40'52"W-1.00' | ⑱ S39°40'52"W-111.31' |
| ⑨ N39°40'52"E-2.04' | ⑳ N50°19'08"W-85.05' |
| ⑩ $\Delta=49^{\circ}56'40''$
R=556.00'
L=141.22' | ㉑ N39°40'52"E-111.31' |

EASEMENT DATA

- ① 15.00' CITY OF SAN DIEGO STORM DRAIN ESMT. SDUPD DWG. NO. 519-025 EXIST.
- ② 15.00' CITY OF SAN DIEGO WATER ESMT. 519-034 EXIST.
- ③ 20.00' CITY OF SAN DIEGO STORM DRAIN ESMT. SDUPD DWG. NO. 519-005 EXIST.
- ④ 25.00' PUBLIC PEDESTRIAN ACCESS ESMT.
- ⑤ 30.00' CITY OF SAN DIEGO WATER ESMT. S.D.U.P.D. DWG. NO. 519-031 EXIST.
- ⑥ 30.00' CITY OF SAN DIEGO STORM DRAIN ESMT. EXIST.
- ⑦ 60.00' CITY OF SAN DIEGO GEN. UTIL. ESMT. EXIST.
- ⑧ 24.00' PUBLIC PEDESTRIAN ACCESS ESMT.
- ⑨ 35.00' PUBLIC PEDESTRIAN ACCESS ESMT.
- ⑩ CITY OF SAN DIEGO GENERAL UTILITY EASEMENT 519-030 EXIST.

DRAWN JFD	SAN DIEGO UNIFIED PORT DISTRICT TIDELAND USE AND OCCUPANCY PERMIT WITHIN CORPORATE LIMITS OF SAN DIEGO FIFTH AVENUE LANDING, LLC	DATE MAY 10, 2018
CHECKED		SCALE
REVIEWED		REF.
		DRAWING NO. SHEET 4 OF 4 019-063

DEVSERV\REM\019\019-063\019-063_051018.DWG

EXHIBIT Q

RECORDING REQUESTED BY

San Diego Unified Port District

WHEN RECORDED MAIL TO:

Ms. Randa Coniglio

President/CEO

San Diego Unified Port District

3165 Pacific Highway

San Diego, CA 92101

Telephone: (619) 686-6200

Email: rconiglio@portofsandiego.org

*No Doc Tax Due – R&T Code 11922
No Fee For Govt Agency – Govt Code 27383*

(Space Above For Recorder's Use)

**MEMORANDUM OF ASSIGNMENT AND ASSUMPTION
AND LEASE AMENDMENT NO. 2**

This Memorandum of Assignment and Assumption and Lease Amendment No. 2 (“Memorandum”), between SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (“Lessor”), and CITY OF SAN DIEGO, a municipal corporation (“Lessee”), provides notice concerning the leased premises described in Exhibit “A” attached to this Memorandum and incorporated by reference into this Memorandum (“Leased Premises”).

Lessor agrees to assign, and Lessee agrees to assume, the Amended, Restated and Combined Lease on file in the Office of the Clerk of the Lessor bearing Document No. 56486, as amended by Lease Amendment No. 1 dated September 19, 2012 on file in the Office of the Clerk of Lessor bearing Document No. 59467, and as further amended by Lease Amendment No. 2 dated _____, 201__ (collectively, “ARC Lease”). Lessor also agrees to lease the Leased Premises to Lessee, and Lessee agrees to lease the Leased Premises from Lessor, for the term and on the provisions contained in ARC Lease, including without limitation provisions prohibiting assignment, subleasing, and encumbering said leasehold without the express written consent of Lessor in each instance, all as more specifically set forth in the ARC Lease, which are incorporated by reference into this Memorandum.

As further described in Lease Amendment No. 2, the term of the ARC Lease commenced July 1, 1984, and is scheduled to expire upon the earlier of (i) May 1, 2042 or (ii) when the “Obligation” is repaid, the “Financing Agreements” are terminated, and any property interests associated therewith are released.

This Memorandum is intended for notice purposes only. This Memorandum is not a complete summary of the ARC Lease and shall not be used in interpreting the ARC Lease. This Memorandum shall not alter or affect the rights or obligations of Lessor or Lessee under the ARC Lease. In the event of any conflict between this Memorandum and the ARC Lease, the provisions of the ARC Lease shall control.

This Memorandum may be signed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one and the same document.

[SIGNATURES ON FOLLOWING PAGE]

LESSEE:

CITY OF SAN DIEGO,
a municipal corporation

By: _____

Name: _____

Its: _____

Approved as to form:

MARA W. ELLIOTT, City Attorney

By: _____

Kevin Reisch
Senior Chief Deputy City Attorney

LESSOR:

SAN DIEGO UNIFIED PORT DISTRICT,
a Public Corporation

By: _____

Name: _____

Its: _____

Approved as to form and legality

GENERAL COUNSEL

By: _____

Name: _____
Assistant/ Senior Deputy
General Counsel

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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

Signer is Representing: _____



Signer's Name _____

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

Signer is Representing: _____



STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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Signature _____ (Seal)

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Signer's Name _____

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

Signer is Representing: _____



Signer's Name _____

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

Signer is Representing: _____



STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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On _____ before me, _____,
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person whose name is
subscribed to the within instrument and acknowledged to me that he/she/they executed the
same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
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Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name _____

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

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name _____

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

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

EXHIBIT A
Legal Description for Memorandum of Lease Amendment No. 2

Legal Description for
CITY OF SAN DIEGO
TIDELAND LEASE
Parcel/Drawings No. 019-063
Within Corporate Limits of San Diego

All that certain portion of land conveyed to the San Diego Unified Port District by that certain Act of Legislature of the State of California pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended, and delineated on that certain Miscellaneous Map No. 564, filed in the Office of the San Diego County Recorder on May 28, 1976, File No. 76-164686, in the City of San Diego, County of San Diego, State of California, and more particularly described as follows:

PARCEL NO. 1 (Land Area)

Commencing at a 3" diameter brass disk monument stamped S.D.U.P.D. No. 14 as shown on R.O.S. No. 16668, filed in the Office of the County Recorder of San Diego County July 25, 2000; thence leaving said monument South 39°31'53" East a distance of 74.59 feet (calculated) to the TRUE POINT OF BEGINNING of Parcel No. 1, said point also being the beginning of a non-tangent 556.00 foot radius curve, concave to the north, a radial to said point bears South 00°22'28" East from the center of said curve; thence easterly along the arc of said curve through a central angle of 04°42'58" an arc distance of 45.77 feet to a point of reverse curvature, the common radial of which bears South 05°05'26" East from the center of said curve; thence southeasterly along the arc of a 32.00 foot radius curve concave to the southwest through a central angle of 44°46'18" an arc distance of 25.01 feet to a point on the southwesterly face of curb of a street commonly known as Convention Way; thence along said face of curb line South 50°19'08" East a distance of 427.66 feet to a point hereinafter known as Point "A"; thence leaving said face of curb line South 39°40'52" West a distance of 83.00 feet; thence South 50°19'08" East a distance of 112.62 feet; thence South 39°40'52" West a distance of 110.00 feet to a point on the U.S. Bulkhead Line as said U.S. Bulkhead Line is now established for the Bay of San Diego and delineated on map entitled "Harbor Lines, San Diego Bay, California File No. (D.O. series) 426" approved by the Secretary of the Army, April 29, 1963, and filed in the Office of the District Engineer, Los Angeles, California; thence leaving said U.S. Bulkhead Line and continuing South 39°40'52" West a distance of 1.00 foot; thence parallel with said U.S. Bulkhead Line North 50°19'08" West a distance of 297.61 feet; thence South 39°40'52" West a distance of 1.00 foot; thence parallel with said U.S. Bulkhead Line North 50°19'08" West a distance of 356.73 feet to a point on the southeasterly face of curb line of a street commonly known as Marina Park Way; thence along said face of curb line North 39°40'52" East a distance of 2.04 feet to a point on said U.S. Bulkhead Line; thence leaving said U.S. Bulkhead Line and continuing along said face of curb North 39°40'52" East a distance of 28.81 feet to the beginning of a 162.00 foot radius curve, concave to the southeast; thence northeasterly along the arc of said

Memorandum of Lease Amendment No. 2

Exhibit A

curve through a central angle of 49°56'40" an arc distance of 141.21 feet to the TRUE POINT OF BEGINNING of Parcel No. 1, containing 112,534 square feet or 2.58 acres of tidelands area.

PARCEL NO. 2 (Land Area)

Commencing at the above described Point "A"; thence continuing along said Convention Way face of curb South 50°19'08" East a distance of 196.62 feet to the TRUE POINT OF BEGINNING of Parcel No. 2; thence continuing along said face of curb South 50°19'08" East a distance of 235.00 feet; thence leaving said face of curb South 39°40'52" West a distance of 193.00 feet to the above mentioned U.S. Bulkhead Line; thence leaving said U.S. Bulkhead Line and continuing South 39°40'52" West a distance of 1.00 feet; thence parallel with said U.S. Bulkhead Line North 50°19'08" West a distance of 235.00 feet; thence North 39°40'52" East a distance of 1.00 feet to said U.S. Bulkhead Line; thence leaving said U.S. Bulkhead Line and continuing North 39°40'52" East a distance of 193.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 2, containing 45,590 square feet or 1.05 acres of tidelands area.

PARCEL NO. 3 (Land Area)

Commencing at the above described Point "A", said point also being the TRUE POINT OF BEGINNING of Parcel No. 3; thence along Convention Way curb face South 50°19'08" East a distance of 196.62 feet; thence leaving said face of curb line South 39°40'52" West a distance of 193.00 feet to a point on the above described U.S. Bulkhead Line as said U.S. Bulkhead Line; thence leaving said U.S. Bulkhead Line and continuing South 39°40'52" West a distance of 1.00 foot to; thence parallel with said U.S. Bulkhead Line North 50°19'08" West a distance of 84.00 feet; thence North 39°40'52" East a distance of 1.00 foot to said U.S. Bulkhead Line; thence leaving said U.S. Bulkhead Line North 39°40'52" East a distance of 110.00 feet; thence North 50°19'08" West a distance of 112.62 feet; thence North 39°40'52" East a distance of 83.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 3, containing 25,643 square feet or 0.59 acre of tidelands area.

ALSO: Reserving therefrom a City of San Diego Water easement 15.00 feet in width lying within Parcel No. 1 as delineated and described as Easement No. 2 on sheets 2 and 4 of Drawing 019-063.

ALSO: Reserving therefrom a City of San Diego Storm Drain easement 20.00 feet in width lying within Parcel No. 1 as delineated and described as Easement No. 3 on sheets 2 and 4 of Drawing 019-063.

ALSO: Reserving therefrom an easement for Public Pedestrian Access 25.00 feet in width lying within Parcel No.'s 1 and 2 as delineated and described as Easement No. 4 on sheets 2 and 4 of Drawing 019-063.

ALSO: Reserving therefrom a City of San Diego Water easement 30.00 feet in width as shown On City of San Diego Dwg. No. 11558-35-D and lying within Parcel No.'s 1 and 2 as delineated and described as Easement No. 5 on sheets 2 and 4 of Drawing 019-063.

ALSO: Reserving therefrom a City of San Diego Storm Drain easement 30.00 feet in width lying within Parcel No. 1 as delineated and described as Easement No. 6 on sheets 2 and 4 of Drawing 019-063.

ALSO: Reserving therefrom an easement for Public Pedestrian Access 24.00 feet in width lying within Parcel No. 2 as delineated and described as Easement No. 8 on sheets 2 and 4 of Drawing 019-063.

ALSO: Reserving therefrom a Public Pedestrian Access easement 35.00 feet in width lying within Parcel No.'s 1 and 2 as delineated and described as Easement No. 9 on sheets 2 and 4 of Drawing 019-063.

The above described tidelands lease and reservation areas are those delineated on San Diego Unified Port District Drawing No. 019-063 dated 15 May 2018, and made a part of this agreement.

All bearings and distances in the above legal description are grid, and based upon the California Coordinate System, Zone 6, N.A.D. 83, Epoch 1991.35.


GARY L. HUS 05-18-2018
LS 7019 DATE



EXHIBIT R

RECORDING REQUESTED BY

San Diego Unified Port District

WHEN RECORDED MAIL TO:

Ms. Randa Coniglio

President/CEO

San Diego Unified Port District

3165 Pacific Highway

San Diego, CA 92101

Telephone: (619) 686-6200

Email: rconiglio@portofsandiego.org

*No Doc Tax Due – R&T Code 11922
No Fee For Govt Agency – Govt Code 27383*

(Space Above For Recorder’s Use)

**MEMORANDUM OF LEASE AMENDMENT NO. 1
(ALTERNATIVE A)**

This Memorandum of Lease Amendment No. 1 (“Memorandum”), between SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (“Lessor”), and FIFTH AVENUE LANDING, LLC, a California limited liability corporation (“Lessee”), provides notice concerning the leased premises described in Exhibit “A” attached to this Memorandum and incorporated by reference into this Memorandum (“Leased Premises”).

Lessor agrees to lease the Leased Premises to Lessee, and Lessee agrees to lease the Leased Premises from Lessor, for the term and on the provisions contained in the Lease on file in the Office of the Clerk of the Lessor bearing Document No. 56494, as amended by Lease Amendment No. 1 dated _____, 201__ (collectively, “Marina Lease”), including without limitation provisions prohibiting assignment, subleasing, and encumbering said leasehold without the express written consent of Lessor in each instance, all as more specifically set forth in the Marina Lease, which are incorporated by reference into this Memorandum.

As further described in the Lease, the term of the Marina Lease commenced on May 7, 2010, and is scheduled to expire May 6, 2030, with two options to extend of five (5) years each for a total maximum term of thirty (30) years.

This Memorandum is intended for notice purposes only. This Memorandum is not a complete summary of the Marina Lease and shall not be used in interpreting the Marina Lease. This

Memorandum shall not alter or affect the rights or obligations of Lessor or Lessee under the Marina Lease. In the event of any conflict between this Memorandum and the Marina Lease, the provisions of the Marina Lease shall control.

This Memorandum may be signed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one and the same document.

[SIGNATURES ON FOLLOWING PAGE]

LESSEE:

FIFTH AVENUE LANDING, LLC,
a California limited liability company

By: _____
Ray A. Carpenter
Its: Managing Member

By: San Diego California Properties, LLC,
Its: Managing Member

By: _____
Art E. Engel
Its: Managing Member

LESSOR:

SAN DIEGO UNIFIED PORT DISTRICT,
a Public Corporation

By: _____
Name: _____

Its: _____

Approved as to form and legality

General Counsel

Name: _____
Assistant/Senior Deputy
General Counsel

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name _____

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

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____



Signer's Name _____

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

Signer is Representing: _____



STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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

Signer is Representing: _____



Signer's Name _____

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

Signer is Representing: _____



EXHIBIT A
Legal Description for Memorandum of Lease Amendment No. 1

Legal Description for
FIFTH AVENUE LANDING, LLC
TIDELANDS LEASE
Parcel/Drawing No. 019-064
Within Corporate Limits of San Diego

All that certain portion of land conveyed to the San Diego Unified Port District by that certain Act of Legislature of the State of California pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended, and delineated on that certain Miscellaneous Map No. 564, filed in the Office of the San Diego County Recorder on May 28, 1976, File No. 76-164686, in the City of San Diego, County of San Diego, State of California, and more particularly described as follows:

PARCEL NO. 1 (Land Area)

Commencing at a 3" diameter brass disk monument stamped S.D.U.P.D. No. 14 as shown on R.O.S. No. 16668, filed in the Office of the County Recorder of San Diego County July 25, 2000; thence leaving said monument along a tie line South 34°17'50" West a distance of 168.06 feet (calculated) to a point on the southwesterly face of curb of a street commonly known as Convention Way, said point also being the TRUE POINT OF BEGINNING of Parcel No. 1; thence along said southwesterly face of curb of Convention Way and parallel with the U.S. Bulkhead Line as said U.S. Bulkhead Line as is now established for the Bay of San Diego and delineated on map entitled "Harbor Lines, San Diego Bay, California File No. (D.O. series) 426" approved by the Secretary of the Army, April 29, 1963, South 50°19'08" East a distance of 177.32 feet; thence leaving said face of curb South 39°40'52" West a distance of 198.00 feet; thence North 50°19'08" West a distance of 92.27 feet; thence North 39°40'52" East a distance of 111.31 feet; thence North 50°19'08" West a distance of 85.05 feet; thence North 39°40'52" East a distance of 86.69 feet to the TRUE POINT OF BEGINNING of Parcel No. 1, containing 25,643 square feet or 0.59 acre of tidelands area.

PARCEL NO. 2 (Water Area)

Commencing at the above-described True Point of Beginning of Parcel No. 1; thence along a line parallel with the above described U.S. Bulkhead Line South 50°19'08" East a distance of 177.32 feet to the TRUE POINT OF BEGINNING OF PARCEL NO. 2; thence continuing along said parallel U.S. Bulkhead Line South 50°19'08" East a distance of 179.41 feet; thence North 39°40'52" East a distance of 1.00 feet; thence along said parallel U.S. Bulkhead Line South 50°19'08" East a distance of 381.61 feet; thence leaving said parallel U.S. Bulkhead Line South 39°40'52" West a distance of 288.67 feet; thence North 50°19'08" West a distance of 381.61 feet to a point on the northeasterly boundary line of an area now under lease to C.H.L.N., Inc.; thence along said C.H.L.N., Inc. northeasterly boundary line North 12°18'56" West a distance of 58.08 feet; thence North 34°19'03" West a distance of 79.80 feet; thence North 45°53'02" West a distance of 25.21 feet; thence North 50°19'08" West a distance of 79.84 feet; thence North 39°40'52" East a distance of 29.96 feet; thence South 50°19'08" East a distance of 48.04 feet;

Memorandum of Lease Amendment No. 1

Exhibit A

thence North 39°40'52" East a distance of 198.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 2, containing 155,428 square feet or 3.57 acres of water covered tidelands area.

PARCEL NO. 3 (Water Area)

Commencing at the above described True Point of Beginning of Parcel No. 2; thence along a line parallel with the above described U.S. Bulkhead Line South 50°19'08" East a distance of 179.41 feet; thence North 39°40'52" East a distance of 1.00 feet; thence along a line parallel with the U.S. Bulkhead Line South 50°19'08" East a distance of 381.61 feet to the TRUE POINT OF BEGINNING of Parcel No. 3; thence continuing a line parallel with the U.S. Bulkhead Line South 50°19'08" East a distance of 400.00 feet; thence leaving said parallel Line South 39°40'52" West a distance of 519.00 feet; thence North 50°19'08" West a distance of 400.00 feet; thence North 39°40'52" East a distance of 519.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 3, containing 207,600 square feet or 4.77 acres of water covered tidelands area.

PARCEL NO. 4 (Land Area)

Commencing at the True Point of Beginning of Parcel No. 1; thence South 39°40'52" West a distance of 86.69 feet to the TRUE POINT OF BEGINNING OF PARCEL NO. 4; Thence South 50°19'08" East a distance of 85.05 feet; thence South 39°40'52" West a distance of 111.31 feet; thence North 50°19'08" West a distance of 85.05 feet; thence North 39°40'52" East a distance of 111.31 feet to the TRUE POINT OF BEGINNING OF PARCEL NO. 4, containing 9,467 square feet of tidelands area.

PARCEL NO. 5 (Water Area)

Commencing at the above described True Point Of Beginning of Parcel No. 3; thence South 39°40'52" West a distance of 519.00 feet; thence North 50°19'08" West a distance of 50.00 feet; thence continuing North 50°19'08" West a distance of 94.52 feet to the TRUE POINT OF BEGINNING of Parcel No. 5; thence North 39°40'52" East a distance of 139.75 feet; thence North 50°19'08" West a distance of 150.48 feet; thence North 39°40'52" East 40.58 feet; thence South 50°19'08" East a distance of 245.00 feet; thence South 39°40'52" West a distance of 180.33 feet; thence retracing North 50°19'08" West a distance of 94.52 feet to the TRUE POINT OF BEGINNING of Parcel No. 5, containing 23,153 square feet or 0.855 acre of water covered tidelands area.

ALSO: Reserving therefrom a City of San Diego Water easement 15.00 feet in width as delineated and described as Easement No. 2 on sheets 2 and 3 of Drawing No. 019-064.

ALSO: Reserving therefrom a City of San Diego Storm Drain easement 20.00 feet in width as delineated and described as Easement No. 3 on sheets 2 and 3 of Drawing No. 019-064.

ALSO: Reserving therefrom an easement for Public Pedestrian Access 25.00 feet in width as delineated and described as Easement No. 4 on sheets 2 and 3 of Drawing No. 019-064.

EXHIBIT S

RECORDING REQUESTED BY

San Diego Unified Port District

WHEN RECORDED MAIL TO:

Ms. Randa Coniglio

President/CEO

San Diego Unified Port District

3165 Pacific Highway

San Diego, CA 92101

Telephone: (619) 686-6200

Email: rconiglio@portofsandiego.org

No Doc Tax Due – R&T Code 11922
No Fee For Govt Agency – Govt Code 27383

(Space Above For Recorder's Use)

**MEMORANDUM OF LEASE AMENDMENT NO. 1
(ALTERNATIVE B)**

This Memorandum of Lease Amendment No. 1 (“Memorandum”), between SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (“Lessor”), and FIFTH AVENUE LANDING, LLC, a California limited liability corporation (“Lessee”), provides notice concerning the leased premises described in Exhibit “A” attached to this Memorandum and incorporated by reference into this Memorandum (collectively, “Leased Premises”).

Lessor agrees to lease the Leased Premises to Lessee, and Lessee agrees to lease the Leased Premises from Lessor, for the term and on the provisions contained in the Lease on file in the Office of the Clerk of the Lessor bearing Document No. 56494, as amended by Lease Amendment No. 1 dated _____, 201__ (collectively, “Marina Lease”), including without limitation provisions prohibiting assignment, subleasing, and encumbering said leasehold without the express written consent of Lessor in each instance, all as more specifically set forth in the Marina Lease, which are incorporated by reference into this Memorandum.

As further described in the Lease, the term of the Marina Lease commenced on May 7, 2010, and is scheduled to expire May 6, 2030, with two options to extend of five (5) years each for a total maximum term of thirty (30) years.

This Memorandum is intended for notice purposes only. This Memorandum is not a complete summary of the Marina Lease and shall not be used in interpreting the Marina Lease. This

Memorandum shall not alter or affect the rights or obligations of Lessor or Lessee under the Marina Lease. In the event of any conflict between this Memorandum and the Marina Lease, the provisions of the Marina Lease shall control.

This Memorandum may be signed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one and the same document.

[SIGNATURES ON FOLLOWING PAGE]

LESSEE:

FIFTH AVENUE LANDING, LLC,
a California limited liability company

By: _____
Ray A. Carpenter
Its: Managing Member

By: San Diego California Properties, LLC,
Its: Managing Member

By: _____
Art E. Engel
Its: Managing Member

LESSOR:

SAN DIEGO UNIFIED PORT DISTRICT,
a Public Corporation

By: _____
Name: _____

Its: _____

Approved as to form and legality

GENERAL COUNSEL

By: _____
Name: _____
Assistant/Senior Deputy
General Counsel

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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

Signer is Representing: _____



Signer's Name _____

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

Signer is Representing: _____



STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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On _____ before me, _____,
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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
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Signer's Name _____

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

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Signer's Name _____

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

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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On _____ before me, _____,
Notary Public, personally appeared _____,
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- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____



Signer's Name _____

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

Signer is Representing: _____



STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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On _____ before me, _____,
Notary Public, personally appeared _____,
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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
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Signature _____ (Seal)

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- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____



Signer's Name _____

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

Signer is Representing: _____



EXHIBIT A
Legal Description for Memorandum of Lease Amendment No. 1

Lease Description for
FIFTH AVENUE LANDING, LLC
TIDELAND LEASE
Parcel / Drawing No 019-064
Within Corporate Limits of San Diego

All that certain portion of land conveyed to the San Diego Unified Port District by that certain Act of Legislature of the State of California pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended, and delineated on that certain Miscellaneous Map No. 564, filed in the Office of the San Diego County Recorder on May 28, 1976, File No. 76-164686, in the City of San Diego, County of San Diego, State of California, and more particularly described as follows:

PARCEL NO. 1 (Land Area)

Commencing at a 3" diameter brass disk monument stamped S.D.U.P.D. No. 14 as shown on R.O.S. No. 16668, filed in the Office of the County Recorder of San Diego County July 25, 2000; thence leaving said monument South $61^{\circ}44'26''$ East a distance of 132.21 feet (calculated) to a point on the southwesterly face of curb of a street commonly known as Convention Way; thence along said face of curb line South $50^{\circ}19'08''$ East a distance of 427.66 feet the TRUE POINT OF BEGINNING of Parcel No. 1; thence continuing along said face of curb line South $50^{\circ}19'08''$ East a distance of 196.62 feet; thence leaving said face of curb line South $39^{\circ}40'52''$ West a distance of 193.00 feet to a point on the U.S. Bulkhead Line as said U.S. Bulkhead Line is now established for the Bay of San Diego and delineated on map entitled "Harbor Lines, San Diego Bay, California File No. (D.O. series) 426" approved by the Secretary of the Army, April 29, 1963, and filed in the Office of the District Engineer, Los Angeles, California; thence leaving said U.S. Bulkhead Line and continuing South $39^{\circ}40'52''$ West a distance of 1.00 foot to a point hereinafter known as Point "A; thence parallel with said U.S. Bulkhead Line North $50^{\circ}19'08''$ West a distance of 84.00 feet; thence North $39^{\circ}40'52''$ East a distance of 1.00 foot to said U.S. Bulkhead Line; thence leaving said U.S. Bulkhead Line North $39^{\circ}40'52''$ East a distance of 110.00 feet; thence North $50^{\circ}19'08''$ West a distance of 112.62 feet; thence North $39^{\circ}40'52''$ East a distance of 83.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 1, containing 25,643 square feet or 0.59 acre of tidelands area.

PARCEL NO. 2 (Water Area)

Commencing at the above-described Point "A", said point also being the TRUE POINT OF BEGINNING of Parcel No. 2; thence South $39^{\circ}40'52''$ West a distance of 288.67 feet; thence North $50^{\circ}19'08''$ West a distance of 381.61 feet to a point on the northeasterly boundary line of an area now under lease to C.H.L.N., Inc.; thence along said C.H.L.N., Inc. northeasterly

Memorandum of Lease Amendment No. 1

Exhibit A

boundary line North 12°18'56" West a distance of 58.08 feet; thence North 34°19'03" West a distance of 79.80 feet; thence North 45°53'02" West a distance of 25.21 feet; thence North 50°19'08" West a distance of 79.84 feet; thence North 39°40'52" East a distance of 29.96 feet; thence South 50°19'08" East a distance of 48.04 feet; thence North 39°40'52" East a distance of 198.00 feet; thence parallel with said U.S. Bulkhead Line South 50°19'08" East a distance of 179.41 feet; thence North 39°40'52" East a distance of 1.00 feet; thence parallel with said U.S. Bulkhead Line South 50°19'08" East a distance of 381.61 feet to the TRUE POINT OF BEGINNING of Parcel No. 2, containing 155,428 square feet or 3.57 acres of water covered area.

PARCEL NO. 3 (Water Area)

Commencing at the above-described Point "A", said point also being the TRUE POINT OF BEGINNING of Parcel No. 3; thence parallel with said U.S. Bulkhead Line South 50°19'08" East a distance of 400.00 feet; thence South 39°40'52" West a distance of 519.00 feet; thence North 50°19'08" West a distance of 400.00 feet; thence North 39°40'52" East a distance of 519.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 3, containing 207,600 square feet or 4.77 acres of water covered area.

ALSO: Reserving therefrom a City of San Diego Water easement 15.00 feet in width as delineated and described as Easement No. 2 on sheets 2 and 3 of Drawing 019-064.

ALSO: Reserving therefrom a City of San Diego Storm Drain easement 20.00 feet in width as delineated and described as Easement No. 3 on sheets 2 and 3 of Drawing No. 019-064.

ALSO: Reserving therefrom an easement for Public Pedestrian Access 25.00 feet in width as delineated and described as Easement No. 4 on sheets 2 and 3 of Drawing No. 019-064.

ALSO: Reserving therefrom a City of San Diego Water easement 30.00 feet in width as shown On City of San Diego Dwg. No. 11558-35-D and lying within Parcel No. 1 as delineated and described as Easement No. 5 on sheets 2 and 3 of Drawing 019-064.

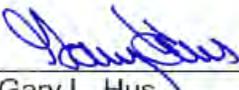
ALSO: Reserving therefrom a City of San Diego Storm Drain easement 30.00 feet in width lying within Parcel No. 2 as delineated and described as Easement No. 6 on sheets 2 and 3 of Drawing No. 019-064.

ALSO: Reserving therefrom an easement for Public Pedestrian Access 24.00 feet in width as delineated and described as Easement No. 8 on sheets 2 and 3 of Drawing No. 019-064.

ALSO: Reserving therefrom a Public Pedestrian Access easement 35.00 feet in width lying within Parcel No. 1 as delineated and described as Easement No. 9 on sheets 2 and 3 of Drawing No. 019-064.

The above described tidelands lease and reservation areas are those delineated on San Diego Unified Port District Drawing No. 019-064 dated 18 March 2010, and made a part of this agreement.

All bearings and distances in the above legal description are grid, and based upon the California Coordinate System, Zone 6, N.A.D. 83, Epoch 1991.35.



Gary L. Hus
L.S. 7019

3-18-2010

Date



EXHIBIT T

RECORDING REQUESTED BY

San Diego Unified Port District

WHEN RECORDED MAIL TO:

Ms. Randa Coniglio

President/CEO

San Diego Unified Port District

3165 Pacific Highway

San Diego, CA 92101

Telephone: (619) 686-6200

Email: rconiglio@portofsandiego.org

No Doc Tax Due – R&T Code 11922
No Fee For Govt Agency – Govt Code 27383

(Space Above For Recorder’s Use)

**MEMORANDUM OF LEASE AMENDMENT NO. 2
(ALTERNATIVE B)**

This Memorandum of Lease Amendment No. 2 (“Memorandum”), between SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (“Lessor”), and FIFTH AVENUE LANDING, LLC, a California limited liability company (“Lessee”), provides notice concerning the leased premises described in Exhibits “A” and “B” attached to this Memorandum and incorporated by reference into this Memorandum (collectively, “Leased Premises”).

Lessor agrees to lease the Leased Premises to Lessee, and Lessee agrees to lease the Leased Premises from Lessor, for the term and on the provisions contained in the Amended, Restated and Combined Lease on file in the Office of the Clerk of the Lessor bearing Document No. 56486, as amended by Lease Amendment No. 1 dated September 19, 2012 on file in the Office of the Clerk of Lessor bearing Document No. 59467, and as further amended by Lease Amendment No. 2 dated _____, 201__ (collectively, “ARC Lease”), including without limitation provisions prohibiting assignment, subleasing, and encumbering said leasehold without the express written consent of Lessor in each instance, all as more specifically set forth in the ARC Lease, which are incorporated by reference into this Memorandum.

As further described in Lease Amendment No. 2, the term of the ARC Lease commenced July 1, 1984, and is scheduled to expire on June 30, 2027. This Lease Amendment No. 2 shall become effective as of _____, 201__.

This Memorandum is intended for notice purposes only. This Memorandum is not a complete summary of the ARC Lease and shall not be used in interpreting the ARC Lease. This Memorandum shall not alter or affect the rights or obligations of Lessor or Lessee under the ARC Lease. In the event of any conflict between this Memorandum and the ARC Lease, the provisions of the ARC Lease shall control.

This Memorandum may be signed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute an original and all of which together shall constitute one and the same document.

[SIGNATURES ON FOLLOWING PAGE]

LESSEE:

FIFTH AVENUE LANDING, LLC,
a California limited liability company

By: _____
Ray A. Carpenter
Its: Managing Member

By: San Diego California Properties, LLC,
Its: Managing Member

By: _____
Art E. Engel
Its: Managing Member

LESSOR:

SAN DIEGO UNIFIED PORT DISTRICT,
a Public Corporation

By: _____
Name: _____

Its: _____

Approved as to form and legality

GENERAL COUNSEL

By: _____
Name: _____
Assistant/Senior Deputy
General Counsel

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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

Signer is Representing: _____



Signer's Name _____

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

Signer is Representing: _____



STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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

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Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name _____

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

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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

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Title or Type of Document: _____

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Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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

Signer is Representing: _____



Signer's Name _____

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

Signer is Representing: _____



STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

OPTIONAL

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

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Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

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Capacity(ies) Claimed by Signer(s)

Signer's Name _____

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

Signer is Representing: _____



Signer's Name _____

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

Signer is Representing: _____



EXHIBIT A
Legal Description for Memorandum of Lease Amendment No. 2

Legal Description for
FIFTH AVENUE LANDING, LLC
TIDELANDS LEASE
Parcel/Drawings No. 019-063
Within Corporate Limits of San Diego

All that certain portion of land conveyed to the San Diego Unified Port District by that certain Act of Legislature of the State of California pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended, and delineated on that certain Miscellaneous Map No. 564, filed in the Office of the San Diego County Recorder on May 28, 1976, File No. 76-164686, in the City of San Diego, County of San Diego, State of California, and more particularly described as follows:

PARCEL NO. 1 (Land Area)

Commencing at a 3" diameter brass disk monument stamped S.D.U.P.D. No. 14 as shown on R.O.S. No. 16668, filed in the Office of the County Recorder of San Diego County July 25, 2000; thence leaving said monument South 61°44'26" East a distance of 132.21 feet (calculated) to a point on the southwesterly face of curb of a street commonly known as Convention Way; thence along said face of curb line South 50°19'08" East a distance of 427.66 feet the TRUE POINT OF BEGINNING of Parcel No. 1; thence continuing along said face of curb line South 50°19'08" East a distance of 196.62 feet; thence leaving said face of curb line South 39°40'52" West a distance of 193.00 feet to a point on the U.S. Bulkhead Line as said U.S. Bulkhead Line is now established for the Bay of San Diego and delineated on map entitled "Harbor Lines, San Diego Bay, California File No. (D.O. series) 426" approved by the Secretary of the Army, April 29, 1963, and filed in the Office of the District Engineer, Los Angeles, California; thence leaving said U.S. Bulkhead Line and continuing South 39°40'52" West a distance of 1.00 foot to a point hereinafter known as Point "A; thence parallel with said U.S. Bulkhead Line North 50°19'08" West a distance of 84.00 feet; thence North 39°40'52" East a distance of 1.00 foot to said U.S. Bulkhead Line; thence leaving said U.S. Bulkhead Line North 39°40'52" East a distance of 110.00 feet; thence North 50°19'08" West a distance of 112.62 feet; thence North 39°40'52" East a distance of 83.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 1, containing 25,643 square feet or 0.59 acre of tidelands area.

PARCEL NO. 2 (Water Area)

Commencing at the above-described Point “A”, said point also being the TRUE POINT OF BEGINNING of Parcel No. 2; thence South 39°40'52” West a distance of 288.67 feet; thence North 50°19'08” West a distance of 381.61 feet to a point on the northeasterly boundary line of an area now under lease to C.H.L.N., Inc.; thence along said C.H.L.N., Inc. northeasterly boundary line North 12°18'56” West a distance of 58.08 feet; thence North 34°19'03” West a distance of 79.80 feet; thence North 45°53'02” West a distance of 25.21 feet; thence North 50°19'08” West a distance of 79.84 feet; thence North 39°40'52” East a distance of 29.96 feet; thence South 50°19'08” East a distance of 48.04 feet; thence North 39°40'52” East a distance of 198.00 feet; thence parallel with said U.S. Bulkhead Line South 50°19'08” East a distance of 179.41 feet; thence North 39°40'52” East a distance of 1.00 feet; thence parallel with said U.S. Bulkhead Line South 50°19'08” East a distance of 381.61 feet to the TRUE POINT OF BEGINNING of Parcel No. 2, containing 155,428 square feet or 3.57 acres of water covered area.

PARCEL NO. 3 (Water Area)

Commencing at the above-described Point “A”, said point also being the TRUE POINT OF BEGINNING of Parcel No. 3; thence parallel with said U.S. Bulkhead Line South 50°19'08” East a distance of 400.00 feet; thence South 39°40'52” West a distance of 519.00 feet; thence North 50°19'08” West a distance of 400.00 feet; thence North 39°40'52” East a distance of 519.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 3, containing 207,600 square feet or 4.77 acres of water covered area.

ALSO: Reserving therefrom a City of San Diego Water easement 15.00 feet in width as delineated and described as Easement No. 2 on sheets 2 and 3 of Drawing 019-064.

ALSO: Reserving therefrom a City of San Diego Storm Drain easement 20.00 feet in width as delineated and described as Easement No. 3 on sheets 2 and 3 of Drawing 019-064.

ALSO: Reserving therefrom an easement for Public Pedestrian Access 25.00 feet in width as delineated and described as Easement No. 4 on sheets 2 and 3 of Drawing 019-064.

ALSO: Reserving therefrom a City of San Diego Water easement 30.00 feet in width as shown On City of San Diego Dwg. No. 11558-35-D and lying within Parcel No. 1 as delineated and described as Easement No. 5 on sheets 2 and 3 of Drawing 019-064.

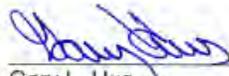
ALSO: Reserving therefrom a City of San Diego Storm Drain easement 30.00 feet in width lying within Parcel No. 2 as delineated and described as Easement No. 6 on sheets 2 and 3 of Drawing 019-064.

ALSO: Reserving therefrom an easement for Public Pedestrian Access 24.00 feet in width as delineated and described as Easement No. 8 on sheets 2 and 3 of Drawing 019-064.

ALSO: Reserving therefrom a Public Pedestrian Access easement 35.00 feet in width lying within Parcel No. 1 as delineated and described as Easement No. 9 on sheets 2 and 3 of Drawing 019-064.

The above described tidelands lease and reservation areas are those delineated on San Diego Unified Port District Drawing No. 019-064 dated 18 March 2010, and made a part of this agreement.

All bearings and distances in the above legal description are grid, and based upon the California Coordinate System, Zone 6, N.A.D. 83, Epoch 1991.35.



Gary L. Hus
L.S. 7019

3-18-2010

Date



EXHIBIT U

RELEASE OF GUARANTORS

This **RELEASE OF GUARANTORS** (“Release”) is made this _____ day of _____, 201__, the date of the Alternative A Closing (as addressed below) (“Effective Date”) by the San Diego Unified Port District, a public corporation (“District”) with reference to the following:

1.1 ARC Lease. Fifth Avenue Landing, LLC, a California limited liability company (“FAL”) is the lessee under that certain Amended, Restated and Combined Lease to San Diego Convention Center Corporation, with District, dated April 6, 2010, on file in the Office of the Clerk of the District bearing Document No. 56486 (“ARC Lease”), for approximately 193,232 square feet of tideland area located in the vicinity of Convention Way and Marina Park Way in the City of San Diego, California, more particularly described in Exhibit A attached hereto (“ARC Lease Premises”). The ARC Lease was amended by Amendment No. 1 to Amended, Restated and Combined Lease to San Diego Convention Center Corporation, dated September 19, 2012, on file in the Office of the Clerk of the District bearing Document No. 59467.

1.2 Guarantors. Raymond Carpenter, Arthur Engel, David Engel and Herbert Engel (individually and collectively, “Guarantor” and “Guarantors”, respectively) jointly and severally unconditionally guaranteed the performance of Lessee’s (as that term is defined in the ARC Lease) obligations under the ARC Lease in a separate Guaranty dated even with the ARC Lease (“Guaranty”).

1.3 Purchase Agreement. The FAL, District and the City of San Diego, a municipal corporation have entered into the Purchase and Sale Agreement and Escrow Instructions (“Purchase Agreement”) with respect to the ARC Lease Premises and other matters. As more particularly described therein, the Purchase Agreement, among other things, outlines two potential transactions, Alternative A Closing and Alternative B Closing. Alternative A Closing is a two-step transaction among the Parties. Specifically, through an Assignment and Assumption of Lease (ARC Lease) and Consent to Assignment (“Assignment and Assumption Agreement”), FAL transfers the ARC Lease to District and District subsequently transfers a portion of the ARC Lease Premises and leasehold interest to the City, as well as other leased premises defined in the Purchase Agreement as the Marina Landside Area (collectively, “ARC Lease Expansion Premises”), for construction of the San Diego Convention Center Phase III Expansion (“Expansion”). The Alternative A Closing is conditioned upon, among other things, the approval of the ballot measure described in Section 1.8 of the Purchase Agreement. The Alternative B closing takes place upon certain conditions being satisfied and only if the conditions to the Alternative A closing are not satisfied, and will result in FAL remaining the Lessee under the ARC Lease. .

1.4 FAL Indemnity Obligations. As more particularly described in Section 5 of Assignment and Assumption Agreement, FAL will continue to indemnify and defend District for obligations contained in the ARC Lease, including, but not limited to the indemnity obligations contained in Paragraphs 7, 21, 30 42(f) and 44(f) and (g) with respect to any and all Claims (as defined in the Assignment and Assumption Agreement) that District may incur based on matters covered by those indemnity obligation and where the incident or matter on which such Claim is based occurred or accrued before the date that the Assignment and Assumption Agreement is recorded in the San Diego County Recorder’s office, regardless of when such Claim is first asserted.

Release of Guaranty

1.5 Reaffirmation of Guaranty. Concurrently with the effectiveness of the Assignment and Assumption Agreement, Guarantors will deliver to District a Reaffirmation of Guaranty and Consent to Assignment and Assumption, whereby, among other items, Guarantors guarantee that FAL shall perform its obligations under the Assignment and Assumption Agreement and agrees and affirms that the Guaranty remains in full force and effect with respect to Section 5 of the Assignment and Assumption.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, except as specified in the Reaffirmation of Guaranty and Consent to Assignment and Assumption, District hereby releases and discharges the Guarantors from all liability as guarantor under the Guaranty. This Release is without prejudice to the rights of the District under all covenants and provisions contained in the ARC Lease all of which rights and remedies are hereby reserved.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Agreement has been signed on the dates set forth below

DISTRICT:

SAN DIEGO UNIFIED PORT
DISTRICT,
a Public Corporation

By: _____

Name: _____

Its: _____

General Counsel
Approved as to form and legality

By: _____

Name: _____

Assistant/Senior Deputy
General Counsel