

DRAFT**RESOLUTION 20xx-xxx****RESOLUTION AUTHORIZING AMENDMENT NO. 3
TO THE AGREEMENT WITH R.I. PROPERTIES,
INC., DBA RETAIL INSITE (RETAIL INSITE) FOR
COMMERCIAL REAL ESTATE BROKER
SERVICES FOR SEAPORT VILLAGE TO AMEND
THE ANNUAL MAXIMUM EXPENDITURE,
PAYMENT PROCEDURE OF COMMISSIONS, AND
COMPENSATION STRUCTURE, AND WAIVING
BOARD OF PORT COMMISSIONERS POLICY NO.
114 PAYMENT OF COMMISSIONS FOR THE
LEASING OF TIDELANDS**

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

WHEREAS, at the July 17, 2018 Board of Port Commissioners (BPC) meeting, the BPC selected and authorized an Agreement between the District and R.I. Properties, Inc. dba Retail Insite (Retail Insite) for Real Estate Broker Services (Agreement) to provide commercial real estate broker services for Seaport Village for the period from July 18, 2018 through June 30, 2021; and

WHEREAS, on May 14, 2019, the BPC approved Amendment No. 1 to the Agreement to increase the maximum amount payable under the Agreement to a total aggregate amount not to exceed \$600,000 and to waive BPC Policy No. 114; and

WHEREAS, the BPC provided feedback to staff to consider longer lease terms of up to five (5) years and creative deal structures involving tenant improvement (TI) allowances to attract and secure leases with high caliber, prospective tenants with compatible uses; and

WHEREAS, on November 5, 2019, the BPC approved Amendment No. 2 to the Agreement to amend the commission fee structure for leases of more than five (5) years; and

WHEREAS, to support the District's leasing initiatives at Seaport Village and to provide for commissions on the proposed lease with Malibu Farm Seaport Village Inc. dba Malibu Farm, staff is seeking BPC approval of Amendment No. 3 to the Agreement between the District and Retail Insite; and

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WHEREAS, when the Retail Insite Agreement was approved by the BPC in 2018, it did not contemplate commissions for leases in excess of five years or construction of tenant improvements that would be reimbursed by the District; and

WHEREAS, the proposed amendment would eliminate the annual maximum expenditure (currently capped at \$200,000 per year), amend the payment procedure/timing of commissions, and revise the compensation structure, to provide for commissions when Retail Insite provides substantial advisory services, as determined by the District; and

WHEREAS, if the lease with Malibu Farm is approved, the District would incur cash outflows for broker commissions in the amount of approximately \$281,736; and

WHEREAS, due to the lease structure and Malibu Farm's expected construction timeline, staff anticipates that broker commissions would be paid out by the District in the second or third quarter of Fiscal Year (FY) 2022 and, as a result, would be budgeted in FY 2022's budget; therefore, any cash outflows incurred by the District as a result of this Amendment No. 3 would not impact the District's FY 2021 budget constraints associated with the COVID-19 pandemic; and

WHEREAS, staff recommends the BPC approve Amendment No. 3 to the Retail Insite Agreement and waive BPC Policy No. 114.

NOW, THEREFORE, BE IT RESOLVED that the Board of Port Commissioners of the San Diego Unified Port District hereby waives BPC Policy No. 114 and authorizes Amendment No. 3 to Agreement between San Diego Unified Port District and R.I. Properties, Inc. dba Retail Insite for Real Estate Broker Services to eliminate the annual maximum expenditure, amend the payment procedure/timing of commissions, and revise the compensation structure.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 6th day of October 2020, by the following vote: