

**DRAFT****RESOLUTION 20xx-xxx****RESOLUTION APPROVING THE PORT MASTER PLAN AMENDMENT FOR THE FIFTH AVENUE LANDING PROJECT AS AMENDED TO REFLECT THE PHASE 1 ONLY MARINA ALTERNATIVE, AND DIRECTING THE FILING WITH THE CALIFORNIA COASTAL COMMISSION FOR CERTIFICATION**

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

**WHEREAS**, the District adopted a Port Master Plan (PMP) which has been certified by the California Coastal Commission; and

**WHEREAS**, said PMP was prepared, adopted and certified pursuant to the Port District Act, the California Coastal Act and other applicable laws; and

**WHEREAS**, Fifth Avenue Landing, LLC (FAL), as the project proponent and applicant, proposed an 843-room market rate hotel; an up to 220-room, lower-cost, visitor serving hotel; 260 parking spaces; retail space; at-grade and elevated public plaza and park; a water transportation center; a two-phased marina expansion; and an optional bridge connecting to the San Diego Convention Center (SDCC) (Project or Proposed Project); and

**WHEREAS**, the Board of Port Commissioners (BPC) approved the Phase I Only Marina Alternative (Alternative 4) of the Final Environmental Impact Report as the approved project; and

**WHEREAS**, the Phase I Only Marina Alternative requires a Port Master Plan Amendment (PMPA) and the draft PMPA includes changes to portions of the existing land and water use designations and updating the precise plan text, graphics, and adding the project to the Table 11, Planning District 3 Centre City Embarcadero Project List to reflect the Phase I Only Marina Alternative; and

**WHEREAS**, in compliance with Section 30712 of the California Coastal Act, the District issued a Notice of Completion and Public Hearing of the draft PMPA on August 11, 2020 and October 9, 2020 in the San Diego Daily Transcript and was distributed consistent with applicable California Coastal Act (Coastal Act) requirements; and

**WHEREAS**, pursuant to the Coastal Act, a public hearing on the draft PMPA was conducted at the BPC meeting on December 8, 2020; and

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**WHEREAS**, if the draft PMPA is approved by the BPC, staff will transmit the draft PMPA application to the California Coastal Commission (CCC) for consideration at a future CCC meeting; and

**WHEREAS**, staff recommends the BPC adopt a resolution approving the draft PMPA and direct staff to file the draft PMPA with the CCC for certification; and

**WHEREAS**, a Final Environmental Impact Report pursuant to the California Environmental Quality Act (CEQA), State CEQA Guidelines, and District procedures relative to FAL proposed PMPA has been prepared and certified and its contents considered.

**NOW, THEREFORE, BE IT RESOLVED** by the BPC of the San Diego Unified Port District, as follows:

- That the BPC finds that the draft PMPA pertaining to the Fifth Avenue Landing Project, on file in the office of the District Clerk as Document No.\_\_\_\_, was fully analyzed and is approved.
- That the Executive Director or her designated representative is hereby authorized and directed to transmit this draft PMPA and all relevant information to the California Coastal Commission for its review and certification pursuant to the Public Resources Code Section 30714.
- That the Executive Director or her designated representative is hereby authorized to amend the PMPA application prior to the California Coastal Commission's certification, if necessary; provided, however, that the Port Master Plan Amendment, as certified by the California Coastal Commission, shall be presented to the BPC for its final approval at a subsequent date.
- That consistent with Public Resources Code Sections 30714 and 30716, and California Code of Regulations Title 14, Section 13632(e), the PMPA shall not be effective until: (a) the CCC certifies the PMPA; (b) the BPC adopts the PMPA as certified by the CCC; and (c) the CCC has received notice of such BPC action and accepts the same as consistent with its certification.

**BE IT FURTHER RESOLVED**, that as a condition of the PMPA's approval, Fifth Avenue Landing shall indemnify and hold the District harmless against all third-party legal challenges, claims, lawsuits, proceedings, and the like, including reimbursement of all District attorneys' fees, costs and other expenses incurred by the District, related to the District's approval of the Phase I Only Marina Alternative (Alternative 4) and/or PMPA. Said indemnity and hold

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harmless condition is independent of any agreements by and between FAL and the District.

**BE IT FURTHER RESOLVED**, the BPC also hereby finds that the BPC's action complies with Section 87 of the Port Act. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed BPC actions are consistent with the Public Trust Doctrine.

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

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By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 28<sup>th</sup> day of December 2020, by the following vote: