

**DRAFT**

**SAN DIEGO UNIFIED PORT DISTRICT**

**ORDINANCE XXXX**

**ORDINANCE GRANTING AN AMENDED AND  
RESTATED LEASE TO SHM SOUTH BAY, LLC DBA  
SAFE HARBOR BAYFRONT TO UPDATE LEASE  
TO CURRENT TERMS**

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

**WHEREAS**, Section 87(b) of the Port Act grants authority to the District to lease the tidelands or submerged lands, or parts thereof, for limited periods, not exceeding 66 years, for purposes consistent with the trusts upon which those lands are held, by the State of California; and

**WHEREAS**, Section 21(e) requires that all grants, franchises, leases, permits, rights, or privileges for more than five years shall be made by ordinance; and

**WHEREAS**, Chula Vista Marina LP, a California limited partnership (as successor-in-interest to Chula Vista Marina RV Park, LTD, “Chula Vista Marina”), operates a marina at 550 Marina Parkway, Chula Vista, pursuant to that certain Lease dated November 3, 1981 (District Clerk Document No. 14244) by and between the District and Chula Vista Marina (as amended as set forth in the corresponding Agenda to which this Ordinance relates, the “Existing Lease”); and

**WHEREAS**, the Existing Lease expires November 30, 2030; and

**WHEREAS**, Chula Vista Marina is proposing to assign its rights and obligations under the Existing Lease to SHM South Bay, LLC dba Safe Harbor Bayfront, a Delaware limited liability company (“SHM South Bay”); and

**WHEREAS**, SHM South Bay is a subsidiary of Safe Harbor Marinas, LLC, a Delaware limited liability company (“Safe Harbor”), which is well known within the recreational boating industry for its successful portfolio of both marinas and boatyards; and

**WHEREAS**, the Existing Lease requires the Board of Port Commissioners (“Board”) to consent to the assignment and assumption of the Existing Lease by Chula Vista Marina to SHM South Bay (the “Assignment”); and

**WHEREAS**, as a condition of granting consent to the Assignment, the

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District may adjust rent to market and update the terms and provisions of the Existing Lease; and

**WHEREAS**, SHM South Bay has agreed to an Amended and Restated Lease in the form of Attachment B to the corresponding Agenda to which this Ordinance relates (the “Restated Lease”) with the District’s current standard lease terms, which includes, among other provisions, the following items not present in the Existing Lease: increased percentage rent rates for boat slip rentals; District participation in refinance proceeds not reinvested in District tidelands or used to payback existing debt; participation in proceeds resulting from a future assignment or sale of the leasehold interest; and a demolition and remediation fund to pay for any improvements the District elects to have SHM South Bay remove at the end of the lease term as well as to fund any required environmental remediation; and

**WHEREAS**, Safe Harbor, as parent company of SHM South Bay, will execute a new Continuing Guaranty (the “Guaranty”) as part of the Restated Lease, pursuant to which Safe Harbor will guaranty all of SHM South Bay’s obligations under the Restated Lease; and

**WHEREAS**, the Restated Lease contains a covenant requiring Safe Harbor to maintain a net worth of at least \$250,000,000 throughout the term of the Restated Lease; and

**WHEREAS**, the proposed assignment from Chula Vista Marina to SHM South Bay will provide for the renewed success and performance of the marina operation and has the ability to increase the marina’s revenue over time; and

**WHEREAS**, the effectiveness of the Restated Lease is conditioned upon the consummation of the Assignment of the Existing Lease from Chula Vista Marina to SHM South Bay (the “Closing”), and the consummation of the Closing is conditioned upon the effectiveness of the Restated Lease; and

**WHEREAS**, if both the Closing fails to take place and the Restated Lease fails to become effective for any reason on or before January 31, 2023 (the “Outside Closing Date”), then this Ordinance is to automatically be deemed null and void and of no force and/or effect without further action by the Board; and

**WHEREAS**, in addition to the Closing occurring and the Restated Lease becoming effective on or before the Outside Closing Date, this Ordinance shall be conditioned upon the District receiving executed counterpart originals of the Restated Lease and the Guaranty on or before the Closing; and

**WHEREAS**, in light of the foregoing benefits and the conditions set forth in this Ordinance, staff recommends the Board adopt an Ordinance granting the Restated Lease to SHM South Bay under the terms presented.

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

Section 1. The Amended and Restated Lease be granted to SHM South Bay, LLC conditioned upon (i) the Closing, and thereby the effectiveness of the Amended and Restated Lease, occurring on or before the Outside Closing Date and (ii) the District receiving executed counterpart originals of the Amended and Restated Lease and the Continuing Guaranty on or before the Closing.

Section 2. Subject to the aforementioned conditions, the Executive Director or his/her designated representative is hereby authorized to execute the Amended and Restated Lease to SHM South Bay, LLC.

Section 3. This Ordinance shall take effect on the 31st day from its passage by the Board of Port Commissioners.

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

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By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 13<sup>th</sup> day of September 2022, by the following vote: