

DRAFT**RESOLUTION 20xx-xxx****RESOLUTION CONSENTING TO THE
ASSIGNMENT AND ASSUMPTION OF THE
LEASEHOLD INTEREST FROM CHULA VISTA
MARINA, LP TO SHM SOUTH BAY, LLC DBA SAFE
HARBOR BAYFRONT**

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 Port Act grants the District jurisdiction, traditional police powers, including land use authority, and expressed land management and powers over certain submerged waters and tidelands around and in the San Diego Bay (Port Act Sections 5, 19, 21, 87); and

WHEREAS, Sections 21 and 87(b) of the Port Act grants authority to the District to grant franchises, leases or other privileges to access, use and occupy the tidelands or submerged lands, or parts thereof, for limited periods, not exceeding 66 years, for purposes consistent with the Public Trusts upon which those lands are held, by the State of California; 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 Resolution 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

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WHEREAS, as a condition of granting consent to the Assignment, the 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 Resolution 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 the consent granted by this Resolution 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, the consent to the Assignment 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 Resolution, staff recommends the Board consent to the Assignment of the Existing Lease from Chula Vista Marina to SHM South Bay.

NOW THEREFORE, BE IT RESOLVED that the Board of Port Commissioners of the San Diego Unified Port District, hereby consents to the Assignment and Assumption of the Existing Lease from Chula Vista Marina to SHM South Bay provided that (i) the consent granted hereunder shall be null and void without further action by the Board of Port Commissioners if both the Closing fails to take place and the Restated Lease fails to become effective for any reason on or before then Outside Closing Date, and (ii) on or prior to the Closing, the District has received executed counterpart originals of the Restated Lease and the Guaranty.

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 13th day of September 2022, by the following vote: