

DRAFT**RESOLUTION 20xx-xxx****RESOLUTION CONSENTING TO THE
ASSIGNMENT AND ASSUMPTION OF THE
LEASEHOLD INTEREST FROM EICHENLAUB
MARINE, INC. DBA EICHENLAUB MARINE TO THE
OLDE BOAT YARD LLC.**

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 grant 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, Eichenlaub Marine, Inc., a California corporation dba Eichenlaub Marine (“Eichenlaub”) and the District are parties to that certain Lease filed with the District Clerk as Document No. 69048 (“Existing Lease”) for the leasehold property comprised of approximately 18,377 square feet of water area and 11,401 square feet of land area located at 2608 Shelter Island Drive, San Diego, California (“Premises”); and

WHEREAS, pursuant to the Existing Lease, which runs from November 1, 2008 through October 31, 2038, Eichenlaub operates a marine sales and service facility; and

WHEREAS, Eichenlaub is proposing to assign its rights and obligations under the Existing Lease to The Olde Boat Yard LLC, a California limited liability company (“Olde Boat Yard”) owned and operated by Jeff Brown, of Jeff Brown Yachts, a current District subtenant and a successful yacht brokerage that operates in multiple locations in the United States; and

WHEREAS, the Existing Lease requires the San Diego Board of Port Commissioners (“Board”) to consent to the assignment and assumption of the Existing Lease by Eichenlaub to Olde Boat Yard (the “Assignment”); and

20xx-xxx

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, staff has negotiated an Amended and Restated Lease with Olde Boat Yard in the form of Attachment C to the agenda sheet to which this Resolution relates (the “Amended and Restated Lease”); and

WHEREAS, the Amended and Restated Lease includes, among other provisions, updates to: District participation in refinance proceeds not reinvested in District tidelands or used to pay off existing debt; participation in proceeds resulting from a future assignment or sale of the leasehold interest; the formation of a demolition and remediation fund for end of term obligations; updates to certain environmental and remediation provisions as well as updated indemnity and prevailing wage language; and

WHEREAS, all of Olde Boat Yard’s obligations under the Amended and Restated Lease will be personally guaranteed by Jeff Brown pursuant to the Continuing Guaranty attached as Exhibit D to the Amended and Restated Lease (the “Guaranty”); and

WHEREAS, Eichenlaub will remain obligated under the Existing Lease for all obligations accruing or arising on or prior to the effective date of the Amended and Restated Lease or which by their terms survive any termination or surrender of the Premises; and

WHEREAS, the proposed Assignment of the Existing Lease by Eichenlaub to Olde Boat Yard will continue the success of the leasehold operation and support the boating community while providing further growth opportunities going forward as Jeff Brown has a positive reputation in the marine recreation industry; and

WHEREAS, the effectiveness of the Amended and Restated Lease is conditioned upon the consummation of the Assignment of the Existing Lease from Eichenlaub to Olde Boat Yard (the “Closing”), and the consummation of the Closing is conditioned upon the effectiveness of the Amended and Restated Lease; and

WHEREAS, if both the Closing fails to take place and the Amended and Restated Lease fails to become effective for any reason on or before February 28, 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 Amended and Restated Lease becoming effective on or before the Outside Closing Date, the consent to the Assignment shall be conditioned upon the District receiving

20xx-xxx

executed counterpart originals of the Amended and Restated Lease and the Guaranty on or before the Closing; and

WHEREAS, the proposed Assignment is consistent with BPC Policy No. 355 and will enable the District to update the Existing Lease language to the District's current standards; and

WHEREAS, in light of the foregoing benefits and the conditions set forth this Resolution, staff recommends the Board consent to the Assignment of the Existing Lease from Eichenlaub to Olde Boat Yard.

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 Eichenlaub Marine, Inc. to The Olde Boat Yard LLC 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 Amended and Restated Lease fails to become effective for any reason on or before the Outside Closing Date, and (ii) on or prior to the Closing, the District has received executed counterpart originals of the Amended and 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 11th day of October 2022, by the following vote: