

DRAFT**SAN DIEGO UNIFIED PORT DISTRICT****ORDINANCE XXXX****ORDINANCE GRANTING AN AMENDED AND
RESTATED LEASE TO THE OLDE BOAT YARD
LLC, TO UPDATE LEASE TO CURRENT LEASE
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 public 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, 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 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

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

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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 Ordinance 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 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 Amended and 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 Amended and 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 Amended and Restated Lease to Olde Boat Yard 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 The Olde Boat Yard 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 designated representative is hereby authorized to execute the Amended and Restated Lease to The Olde Boat Yard 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

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: