

**DRAFT****RESOLUTION 20xx-xxx****RESOLUTION CONSENTING TO ASSIGNMENT  
AND ASSUMPTION OF THE LEASEHOLD  
INTERESTS FROM HII SAN DIEGO SHIPYARD  
INC. TO HELIOS ACQUISITION, LLC, WHICH WILL  
BE RENAMED CONTINENTAL MARITIME OF SAN  
DIEGO, LLC UPON THE EFFECTIVENESS OF THE  
ASSIGNMENT**

**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**, HII San Diego Shipyard Inc., a California corporation (HII SDSY) is an existing District tenant under that certain Lease dated January 11, 2011 on file in the Office of the District Clerk as Document No. 57269 (as amended by that certain Agreement for Amendment of Lease Amendment No. 1 on file in the Office of the District Clerk as Document No. 69210, and as otherwise amended or modified, the "Existing Lease"); and

**WHEREAS**, pursuant to the Existing Lease, HII SDSY operates a shipyard facility at the premises located at 1995 Bayfront Street, San Diego, as further described in the Existing Lease (the "Premises"); and

**WHEREAS**, the Premises include approximately 12 acres of landside area comprised of industrial facilities, production shops, offices and other related utilities, approximately 18 acres of waterside area, and currently has three working piers to moor large naval and commercial vessels; and

**WHEREAS**, HII SDSY has been operating at the Premises since 1985;  
and

**WHEREAS** the Existing Lease expires on December 31, 2032; and

**WHEREAS**, HII SDSY currently provides a broad set of naval sustainment services which include topside maintenance and modernization to naval surface vessels, amphibious ships and auxiliary ships as well as advanced naval logistics; and

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**WHEREAS**, HII SDSY is proposing to transfer its business assets associated with the Premises, including its leasehold interest in the Premises under the Existing Lease, to Helios Acquisition, LLC, a Delaware limited liability company (Helios) and subsidiary of MHI Holdings, LLC, a Delaware limited liability company (MHI Holdings), which is in turn owned by Titan Acquisition Holdings, LP, a Delaware limited partnership (Titan); and

**WHEREAS**, the proposed asset transfer is to take place pursuant to that certain Asset Contribution Agreement dated as of February 11, 2020 (the “APA”) by and between Titan and HII SDSY’s parent company, HII, Inc., a Delaware corporation (HII Inc.); and

**WHEREAS**, concurrently with the consummation of the transactions set forth in the APA (the “Closing”), HII SDSY would assign its right, title, and interest in the Existing Lease to Helios pursuant to an Assignment and Assumption of Lease (the “Lease Assignment”), and concurrently therewith, Helios would be renamed to Continental Maritime of San Diego, LLC (Continental Maritime SD); and

**WHEREAS**, as a condition of the District’s consent to the assignment of the Existing Lease, the District has the right to update the rent to market and, as the District deems necessary, update the Existing Lease to include new or revised lease provisions; and

**WHEREAS**, in connection with the proposed assignment, Staff has negotiated an Amended and Restated Lease with Continental Maritime SD in the form attached to the agenda sheet to which this Resolution relates (the “Amended and Restated Lease”); and

**WHEREAS**, the Amended and Restated Lease has the same expiration date of December 31, 2032 as the Existing Lease; and

**WHEREAS**, in comparison to the Existing Lease, the Amended and Restated Lease includes numerous beneficial provisions to the District;

**WHEREAS**, the Amended and Restated Lease would entitle the District to receive 2.5% of the proceeds from a future lease assignment to a non-Titan affiliate or applicable financing transaction as well as a fixed participation fee of \$400,000 in the event of a change of the majority ownership of Titan; and

**WHEREAS**, the Amended and Restated Lease would further establish market rent and shipyard rent comparisons by increasing rent by 4% from \$105,141 per month to \$109,347, with future rent subject to annual CPI adjustments between 2% and 4%; and

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**WHEREAS**, the Amended and Restated Lease also requires Continental Maritime SD to fund a demolition and remediation account to cover end of term demolition costs and environmental remediation; and

**WHEREAS**, recent sampling conducted pursuant to a Regional Water Quality Control Board investigation order issued to HII SDSY, the City of San Diego, and Caltrans has demonstrated high levels of sediment contamination within the Premises that will likely require remediation; and

**WHEREAS**, in the Amended and Restated Lease, the District has maintained and clarified the broad rights it has under the Existing Lease to require investigation and remediation of sediment contamination that was generated during the shipyard operations since HII SDSY's original lease dated September 10, 1985 and also the contamination pre-existing the 1985 lease that was or is in the future impacted by the use, occupancy, possession, or operation of the Premises as set forth in the Amended and Restated Lease; and

**WHEREAS**, the Amended and Restated Lease maintains and clarifies the tenant's indemnification obligations owing the District relating to hazardous materials and requires Continental Maritime SD to step into the shoes of HII SDSY or HII Inc. with respect to future governmental orders related to site contamination should those entities fail to perform obligations thereunder or if they are not named in a future governmental order for the leasehold; and

**WHEREAS**, the Amended and Restated Lease clarifies that Continental Maritime SD's obligation to investigate, remove or remediate contamination at or from the Premises must be in compliance with all applicable environmental laws, and in a manner and with results that do not impair reasonably anticipated future public trust uses of the Premises, satisfactory to the District in the District's reasonable, good faith discretion; and

**WHEREAS**, the Amended and Restated Lease includes express acknowledgements and agreements by HII SDSY and HII Inc. to release and to not to sue the District, and not to seek to have any regulatory agency or third party impose liability upon the District for any contamination or violation of environmental laws existing at or arising from hazardous materials at or arising from the Premises; and

**WHEREAS**, the Amended and Restated Lease also requires Continental Maritime SD to comply with governmental orders relating to the contamination of the Premises in the event HII SDSY or HII Inc. fail to comply with or be named in such orders; and

**WHEREAS**, the Amended and Restated Lease includes a Continuing Guaranty by HII Inc. (the "HII Guaranty") to guaranty the full and prompt payment and performance of the obligations to clean-up and indemnify the District for any

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Pre-Existing Hazardous Materials (as defined in the Amended and Restated Lease); and

**WHEREAS**, the Amended and Restated Lease also includes a Continuing Guaranty by Titan (the “Titan Guaranty”) to guaranty all of Continental Maritime SD’s obligations under the Amended and Restated Lease; and

**WHEREAS**, notwithstanding the execution of the Amended and Restated Lease, HII SDSY 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**, MHI Holdings, through its subsidiaries, has extensive experience operating shipyards and marine industrial businesses including, but not limited to, MHI Ship Repair in Norfolk, Virginia, and Vigor Industrial in various locations throughout the Pacific Northwest whereby Staff believes that Continental Maritime SD, through Titan, has the financial and operational wherewithal to operate a world-class ship repair facility on District tidelands; and

**WHEREAS**, Continental Maritime SD, through Titan, has indicated its intention to pursue a capital investment in the leasehold after completing the assignment, which may include a new floating dry dock; and

**WHEREAS**, the effectiveness of the Amended and Restated Lease is to take place concurrently with, and is conditioned upon, the Closing, and the effectiveness of the Lease Assignment shall be conditioned upon the effectiveness of the Amended and Restated Lease; and

**WHEREAS**, the Closing is scheduled to take place or on about February 1, 2021; and

**WHEREAS**, if the Closing fails to take place, thereby preventing the effectiveness of the Amended and Restated Lease, for any reason by March 31, 2021 (the “Outside Closing Date”), then the authority granted by this Resolution is to automatically be deemed null and void and the Amended and Restated Lease is not to become effective without further action by the Board of Port Commissioners; and

**WHEREAS**, in addition to the Closing occurring by the Outside Closing Date, the authority granted by this Resolution shall be conditioned upon (i) the District being reimbursed by HII SDSY for all of District’s reasonable costs and expenses associated with the Amended and Restated Lease and (ii) the District receiving executed counterpart originals of the Amended and Restated Lease, the HII Guaranty, the Titan Guaranty, and the Memorandum of Lease (as defined in the Amended and Restated Lease) on or before the Closing; and

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**WHEREAS**, subject to the conditions in this Resolution, Staff recommends that the Board of Port Commissioners adopt a resolution consenting to the assignment of HII San Diego Shipyard Inc.'s leasehold interest to Helios Acquisitions, LLC, which will be renamed Continental Maritime of San Diego LLC upon the effectiveness of the Amended and Restated Lease.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Port Commissioners of the San Diego Unified Port District that the Executive Director or his/her designee is hereby authorized on behalf of the San Diego Unified Port District to enter into the Amended and Restated Lease in the form attached to the agenda sheet to which this Resolution relates, and further provided that (i) the authority granted hereunder shall be null and void, and the Amended and Restated Lease shall not become effective without further action by the Board of Port Commissioners, if the Closing, and thereby the effectiveness of the Amended and Restated Lease, has not occurred by the Outside Closing Date, and (ii) on or prior to the Closing (a) the District has been reimbursed by HII San Diego Shipyard Inc. for all of the District's reasonable costs and expenses associated with the Amended and Restated Lease through the Closing and (b) the District has received executed counterpart originals of the Amended and Restated Lease, the HII Guaranty, the Titan Guaranty, and the Memorandum of Lease.

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: