

DRAFT**SAN DIEGO UNIFIED PORT DISTRICT****ORDINANCE XXXX****ORDINANCE GRANTING AN AMENDED AND
RESTATED LEASE TO SHM SOUTH BAY, LLC DBA
SAFE HARBOR SOUTH BAY 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, California Yacht Marina – Chula Vista, LLC, a California limited liability company (“California Yacht Marina”) operates a marina at 640 Marina Parkway, Chula Vista pursuant to that certain Lease by and between the District and California Yacht dated July 30, 1989 (Document No. 23924) (as amended by Lease Amendment No.1, dated June 5, 1991 (Document No. 26864), Lease Amendment No. 2, dated April 1, 1993 (Document No. 29504), Lease Amendment No. 3, dated May 18, 1994 (Document No. 31315), Lease Amendment No. 4, dated March 17, 1995 (Document No. 32532), Lease Amendment No. 5, dated January 7, 1998 (Document No. 36836), Lease Amendment No. 6, dated September 24, 1998 (Document No. 37971), Lease Amendment No. 7, dated March 15, 2000 (Document No. 39737), Lease Amendment No. 8, dated November 5, 2004 (Document No. 47751), and Lease Amendment No. 9, dated April 22, 2021 (Document No. 72413), the “Existing Lease”); and

WHEREAS, the Existing Lease expires June 30, 2032; and

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

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

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WHEREAS, the Existing Lease requires the Board of Port Commissioners' ("Board") to consent to the Assignment and Assumption of Lease ("Assignment"), (Attachment A to corresponding Agenda on file with the Office of the District Clerk); 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 Existing Lease; and

WHEREAS, SHM South Bay has agreed to an Amended and Restated Lease (Attachment B to corresponding Agenda on file with the Office of the District Clerk) (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: updated percentage rent rate for boat slip rentals; District participation in refinance proceeds not reinvested in District tidelands; 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 will execute a Continuing Guaranty (the "Guaranty") to guaranty all of SHM South Bay's obligations under the Restated Lease and will be required to maintain a net worth of no less than \$250,000,000 throughout the term of the Restated Lease; and

WHEREAS, the effectiveness of the Restated Lease is conditioned upon the consummation of the assignment of the Existing Lease from California Yacht 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 December 31, 2021 (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 of Port Commissioners; 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 adopting an ordinance granting the Restated Lease to SHM South Bay, LLC, under the terms presented.

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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 Restated Lease and the 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 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

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 9th day of November 2021, by the following vote: