

DRAFT**RESOLUTION 20xx-xxx****RESOLUTION CONSENTING TO THE
ASSIGNMENT AND ASSUMPTION OF THE
LEASEHOLD INTEREST FROM MARINE GROUP
BOAT WORKS, LLC TO AUSTAL USA, 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 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, Marine Group Boat Works, LLC, a California limited liability corporation (“MGBW”), as tenant and as successor in interest to Knight and Carver Yachtcenter, Inc., and the District, as landlord, are parties to that certain Lease dated March 26, 1997 on file in the Office of the District Clerk as Document No. 35663 (as amended by that certain Amendment No. 1 dated October 21, 1997 on file in the Office of the District Clerk as Document No. 36605, Amendment No. 2 dated March 18, 2003 on file in the Office of the District Clerk as Document No. 45596, Amendment No. 3 dated December 11, 2007 on file in the Office of the District Clerk as Document No. 52822, and Amendment No. 4 dated September 7, 2010 on file in the Office of the District Clerk as Document No. 57071, the “Lease”); and

WHEREAS, pursuant to the Lease, MGBW operates a boatyard and repair facility in National City, California consisting of approximately 7.4 acres of land and building area and approximately 2.26 acres of water area as further delineated on National City Location Map attached as Attachment A in the corresponding agenda sheet; and

WHEREAS, each of Arthur E. Engel, Herbert G. Engel, David P. Engel, Matthew P. Engel, and Todd Roberts (individually each an “Original Guarantor” and collectively the “Original Guarantors”) have entered into that certain Guaranty filed in the Office of the District Clerk on March 29, 2013 as Document No. 60047

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and pursuant to which each Original Guarantor, jointly and severally, has guaranteed MGBW's obligations under the Lease; and

WHEREAS, the Lease currently expires on March 31, 2027; and

WHEREAS, MGBW is proposing to assign its right, title and interest in the Lease to Austal USA, LLC, an Alabama limited liability company (Austal), with Austal agreeing to assume MGBW's obligations under the Lease (such transaction, the "Assignment"); and

WHEREAS, Austal has extensive experience operating shipyards and is an advanced ship manufacturer, servicer and sustainment provider to the United States Navy; and

WHEREAS, staff believes that Austal has the financial and operational wherewithal to operate a world-class ship repair facility on District tidelands; and

WHEREAS, the Assignment would allow the District to gain a world-class shipyard operator to meet the growing demand for ship repair in San Diego Bay; and

WHEREAS, staff recommends the Board adopt a resolution consenting to the assignment and assumption of the Lease to Austal; 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 Lease from Marine Group Boat Works, LLC to Austal USA, LLC.

NOW THEREFORE, BE IT RESOLVED that the Board of Port Commissioners of the San Diego Unified Port District, hereby consents to the Assignment of the Lease from Marine Group Boat Works, LLC to Austal USA, LLC provided that: (i) the consent granted hereunder shall be null and void without further action by the Board of Port Commissioners if the Assignment fails to become effective as between Austal and MGBW on or before February 28, 2022 (the "Outside Effective Date"); (ii) notwithstanding the Assignment, MGBW and each of the Original Guarantors shall remain liable for any obligations accruing or arising on or prior to the effectiveness of the Assignment, or which are otherwise required to be performed in connection with termination or surrender of the Premises (as defined in the Lease), or which by their terms survive termination of the Lease; and (iii) on or prior to the Outside Effective Date, the District has received evidence reasonably acceptable to the District's Executive Director that the Assignment as between MGBW and Austal has become effective.

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: