

DRAFT**SAN DIEGO UNIFIED PORT DISTRICT****ORDINANCE XXXX****ORDINANCE GRANTING AN AMENDED,
RESTATED AND COMBINED LEASE TO AUSTAL
USA, LLC 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, 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 “Current Lease”); and

WHEREAS, pursuant to the Current 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 and pursuant to which each Original Guarantor, jointly and severally, has

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guaranteed MGBW's obligations under the Current Lease; and

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

WHEREAS, MGBW is proposing to assign its right, title and interest in the Current Lease to Austal USA, LLC, an Alabama limited liability company ("Austal"), with Austal agreeing to assume MGBW's obligations under the Current 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, during discussions with MGBW and Austal regarding the Assignment, Austal indicated that due to the Current Lease expiring on March 31, 2027, the remaining lease term of approximately 5.5 years would not allow for significant investment in the leasehold needed to realize their business model; and

WHEREAS, in light of Austal not wanting to take an assignment of the Current Lease, staff has negotiated a new Amended, Restated and Combined Lease ("ARC Lease") with Austal expiring November 30, 2050; and

WHEREAS, the ARC Lease includes additional provisions that would provide substantial benefits to the District and region, including but not limited to: (i) environmental emission reduction commitments; (ii) environmentally friendly investments in the leasehold premises; (iii) labor peace provisions; (iv) increased rent; (v) local hire and community engagement commitments; (vi) provisions that entitle the District to receive 2.5% of the proceeds from a future lease assignment and a financing transaction; and (vii) a contribution of \$250,000 to support the National City Balanced Plan, all as further set forth in the ARC Lease and the corresponding agenda to which this ordinance relates; and

WHEREAS, the ARC Lease also contains the District's current standard lease terms, which includes, among other provisions, the following items not present in the Current Lease: (i) District participation in refinance proceeds not reinvested in District tidelands; (ii) updated hazardous materials provisions; and (iii) a demolition and remediation fund to pay for any improvements the District elects to have Austal remove at the end of the lease term as well as to fund any required environmental remediation; and

WHEREAS, Austal's obligations under the ARC Lease will be guaranteed pursuant to a Continuing Guaranty (the "Guaranty") executed by the parent company, Austal Holdings, Inc. ("Austal Holdings"), including obligations related to

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hazardous materials; and

WHEREAS, the proposed ARC Lease with Austal would set a high bar for future industrial leases on District tidelands; and

WHEREAS, staff believes that the ARC Lease would provide substantial environmental, labor, safety, and community engagement provisions that align with the District's goals; and

WHEREAS, additionally, the Assignment and ARC lease 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, the effectiveness of the ARC Lease is conditioned upon the consummation of the Assignment of the Current Lease from MGBW to Austal (the "Closing"); and

WHEREAS, if both the Closing fails to take place and the ARC Lease fails to become effective for any reason on or before February 28, 2022 (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 ARC Lease becoming effective on or before the Outside Closing Date, this Ordinance shall be conditioned upon the District receiving, on or before the Closing, executed counterpart originals of the ARC Lease from Austal, MGBW, and each of the Original Guarantors and the Guaranty from Austal Holdings; and

WHEREAS, in connection with the ARC Lease, the Executive Director or his designated representative, in the Executive Director's discretion, is hereby authorized to replace the current survey of the Premises attached to the ARC Lease with an updated survey of the Premises so long as the leasehold boundaries remain unchanged; and

WHEREAS, in light of the foregoing benefits and the conditions set forth in this Ordinance, staff recommends adopting an ordinance granting the Amended, Restated and Combined Lease to Austal USA, LLC, 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, Restated and Combined Lease be granted to Austal USA, LLC conditioned upon (i) the Closing, and thereby the effectiveness of the Amended, Restated and Combined Lease, occurring on or before the Outside Closing Date and (ii) the District receiving, on or before the Closing,

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executed counterpart originals of the Amended, Restated and Combined Lease from Austal, MGBW, and each of the Original Guarantors and the Guaranty from Austal Holdings.

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 Austal USA, LLC and, if deemed necessary by the Executive Director or his designee, to replace the current survey of the Premises attached to the ARC Lease with an updated survey of the Premises so long as the leasehold boundaries remain unchanged.

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: