

**DRAFT****ORDINANCE xxxx****ORDINANCE GRANTING AN AMENDED AND RESTATED LEASE TO THE BRIGANTINE, INC., DBA THE FISH MARKET FOR 750 NORTH HARBOR DRIVE**

**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 of the Port Act requires that all grants, franchises, leases, permits or privileges for more than five (5) years shall be made by ordinance; and

**WHEREAS**, Fish Market Restaurants, Inc., a California corporation (as successor-in-interest to Fish Market Restaurants – San Diego) ("Fish Market") operates a restaurant at 750 North Harbor Drive under a lease with the District that expires February 29, 2028 ("Existing Lease"); and

**WHEREAS**, the Fish Market leasehold is comprised of approximately 24,113 square feet of tideland area located at 750 North Harbor Drive in the City of San Diego ("Premises") on which Fish Market has been operating a restaurant since 1989 consisting of a two-story building with indoor and outdoor dining; and

**WHEREAS**, the Fish Market entered into an Agreement for Purchase and Sale of Assets with The Brigantine, Inc. ("Brigantine") on November 4, 2024, and has requested District consent to the proposed assignment of its leasehold interest in the Premises to Brigantine under the Assignment and Assumption Agreement attached to the agenda sheet to which this Ordinance relates ("Proposed Assignment"); and

**WHEREAS**, Brigantine is a family-owned business that has been developing and operating restaurants since 1969 in San Diego County. They currently operate 20 restaurants across 6 concepts, which include The Brigantine Seafood and Oyster Bar, Miguel's Cocina, Ketch Brewing, Ketch Grill and Taps, Topsail, and Portside Coffee & Gelato, and have a proven track record as a strong operator that has successfully increased revenue to the District through their leases; and

**WHEREAS**, Brigantine intends to continue operating the restaurant as The Fish Market; and

**WHEREAS**, under the Existing Lease, as a condition of consent to the Proposed Assignment, the District has the right to update the lease to include current standard language and to adjust rental rates to market; and

**WHEREAS**, in connection with the Proposed Assignment, the District and Brigantine have negotiated an Amended and Restated Lease in the form attached to the Agenda Sheet to which this Ordinance relates; and

**WHEREAS**, in comparison to the Existing Lease, the Amended and Restated Lease includes numerous beneficial provisions to the District, as further described in the agenda sheet to which this Ordinance relates, and the Amended and Restated Lease has the same expiration date as the Existing Lease of February 29, 2028; and

**WHEREAS**, the effectiveness of the Amended and Restated Lease is to take place concurrently with, and is conditioned upon, the consummation of the Proposed Assignment ("Closing"), and the District's consent to the Proposed Assignment is conditioned upon the full execution and effectiveness of the Amended and Restated Lease; and

**WHEREAS**, if the Closing fails to take place, thereby preventing the effectiveness of the Amended and Restated Lease, for any reason by May 14, 2025 ("Outside Closing Date"), then the authority granted by this Ordinance 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**, subject to the conditions in this Ordinance, District staff recommends that the Board of Port Commissioners adopt an ordinance granting the Amended and Restated Lease to The Brigantine, Inc., dba The Fish Market under the terms presented.

**NOW, THEREFORE**, the Board of Port Commissioners of the San Diego Unified Port District does ordain as follows:

1. The Amended and Restated Lease, in substantially the form attached to the agenda sheet to which this Ordinance relates, be granted to The Brigantine, Inc., conditioned upon the Closing, and thereby the full execution and effectiveness of the Amended and Restated Lease, occurring on or before the Outside Closing Date.

2. Subject to the aforementioned conditions, the Executive Director or their designated representative is hereby authorized to execute the Amended

and Restated Lease in substantially the form attached to the agenda sheet to which this Ordinance relates.

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

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By: Assistant/Deputy General Counsel

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 11<sup>th</sup> day of March 2025, by the following vote: