

**DRAFT**

**SAN DIEGO UNIFIED PORT DISTRICT**

**ORDINANCE XXXX**

**ORDINANCE FINDING THE BOARD ACTION EXEMPT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA), INCLUDING, BUT NOT LIMITED TO CEQA GUIDELINES SECTIONS 15301, AND GRANTING LEASE AMENDMENT NO. 2 TO SHM CABRILLO ISLE, LLC, A DELAWARE LIMITED LIABILITY COMPANY DBA “SAFE HARBOR CABRILLO ISLE,” AMENDING THE USE PROVISION WITH RESPECT TO CHARTER VESSELS, AMENDING PERCENTAGE RENT PROVISIONS, AND ADDING PROVISIONS ON DIVERSITY, EQUITY, AND INCLUSION**

**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**, the District entered into a Second Amended and Restated Lease filed in the Office of the District Clerk on June 14, 2021 as Document No. 72861 (as amended by Agreement for Amendment of Lease, Amendment No. 1 filed in the Office of the District Clerk as Document No. 73287, the “Lease”) with SHM Cabrillo Isle, LLC (SHM Cabrillo) for a recreational marina located at 1450 Harbor Island Drive, in the City of San Diego (Premises); and

**WHEREAS**, the Lease to SHM Cabrillo has a term of forty (40) years commencing on March 1, 2004 and expiring on February 29, 2044; and

**WHEREAS**, as a part of the implementation of Port Code Section 4.37 for the Regulation of Charter Vessel Operations in San Diego Bay and District Tidelands, the District has been encouraging charter business at marinas by updating leases where necessary in order to make them consistent with Section

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4.37, to clarify what charters operations are permitted, and to better define percentage rent applicable to various charter and boat rental categories; and

**WHEREAS**, the aforementioned efforts are important to help marinas to comply with Port Code Section 4.37 and to encourage entrepreneurship and maximize opportunities for visitor serving charter operations around the San Diego Bay; and

**WHEREAS**, in reviewing the Lease language with respect to permitted charter operations, staff noted that the Lease did not contain a specific percentage rent category for rentals of bare boats less than 20 feet in length, and that the percentage rental rate applicable to yacht club memberships set forth in the Lease was higher than intended; and

**WHEREAS**, the proposed Lease Amendment No. 2 (Second Amendment) (see Attachment C to the Agenda Sheet to which this Ordinance relates) adds to the Lease an explicit reference to Port Code Section 4.37 with respect to permitted charter operations, clarifies that any sportfishing charters are limited to "Six-Pack Charters," or those that can service no more than six passengers at any given time, and prohibits any sportfishing charters (other than Six-Pack Charters) and commercial fishing charters of any type; and

**WHEREAS**, the Second Amendment provides a specific percentage rental category and rate of 10% for bare boat charters less than 20 feet in length; and

**WHEREAS**, due to a scrivener's error, the Lease provided for a 22% percentage rental rate applicable to yacht club memberships, and the Second Amendment revises the rate applicable to yacht club memberships to 10%, which rate was originally intended to be included in the Lease and is currently being charged across the San Diego Bay with respect to yacht clubs that sublease space within tideland marinas; and

**WHEREAS**, during the term of the Lease, SHM Cabrillo has continued to pay the intended percentage rental rates for both the bare boat charters less than 20 feet and yacht club membership categories, so a change to the relevant percentage rental rates pursuant to the Second Amendment will not result in reduced or retroactive rent payments to the District; and

**WHEREAS**, the Second Amendment also adds the District's most up to date language on diversity, equity, and inclusion requirements, including reporting requirements to document SHM Cabrillo's commitments to non-discrimination and DEI; and

**WHEREAS**, amending the Lease to include these corrections, updates, and clarifying revisions will benefit SHM Cabrillo as well as the District moving forward; and

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**WHEREAS**, the Board approving the Second Amendment is categorically exempt pursuant to California Environmental Quality Act (CEQA) guidelines Section 15301 (Existing Facilities) and/or 3.a. of the District's Guidelines for Compliance with CEQA because the Second Amendment would continue to allow charter uses at the Premises and involve no expansion of use beyond that previously existing; and

**WHEREAS**, none of the six exceptions to the use of a categorical exemption apply to the Second Amendment (CEQA Guidelines Section 15300.2); and

**WHEREAS**, the project was previously determined to be exempt from CEQA on September 22, 2021; and

**WHEREAS**, pursuant to Section 15378(c) of the CEQA Guidelines, the term "project" refers to the activity being approved, which may be subject to several discretionary approvals of governmental agencies and does not mean each separate governmental approval; and

**WHEREAS**, the Second Amendment constitutes a subsequent discretionary approval of a previously approved project, and accordingly, no further action under CEQA is required; and

**WHEREAS**, for the reasons stated in this Ordinance, staff recommends the Board adopt this Ordinance approving of the Second Amendment.

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

1. The Board finds that the facts recited above are true and further finds that the Board has jurisdiction to consider, approve, and adopt the subject of this Ordinance.

2. Based on the entire record available to the Board and the findings set forth in this Ordinance, the Board finds that the action is categorically exempt under the California Environmental Quality Act (CEQA), including, but not limited to, CEQA guidelines Section 15301 and 3.a.(4) of the District's Guidelines for Compliance with CEQA.

3. The Second Amendment in substantially the same form as Attachment C to the Agenda Sheet to which this Ordinance relates is hereby approved.

4. The Executive Director or their designated representative is hereby authorized to execute the Second Amendment in substantial form as that attached

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as Attachment C to the Agenda Sheet to which this Ordinance relates.

5. 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 5<sup>th</sup> day of December 2023, by the following vote: