

DRAFT

RESOLUTION 20xx-xxx

**RESOLUTION AUTHORIZING STAFF TO SIGN A
NON-BINDING TERM SHEET WITH TOPGOLF USA
SDP, 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 1 (Port Act); and

WHEREAS, East Harbor Island (EHI) is conveniently located directly south of the San Diego International Airport and nestled between Downtown San Diego and the Point Loma Peninsula, with proximity to regional roadways and freeways (see Attachment A - East Harbor Island Location Map, to the Agenda Sheet to which this Ordinance relates); and

WHEREAS, the basin side of EHI hosts the San Diego Harbor Police facilities at the entry to the island, while a large portion on the north side of the area is underutilized with existing off-airport parking and rental car surface parking; and

WHEREAS, with a number of existing leases on holdover or soon expiring, the EHI basin represents an exciting redevelopment opportunity to replace existing airport industrial uses with a vibrant commercial development that includes stimulating public spaces and waterfront access and uses that will attract members of the public to the site; and

WHEREAS, since 2019, staff has undertaken an effort to rethink the configuration of EHI with input from the Board of Port Commissioners (Board) and stakeholders; and

WHEREAS, as a result of those efforts, the District entered into an Exclusive Negotiating Agreement (ENA) dated January 4, 2022 with Topgolf USA SDP, LLC (Topgolf), which ENA is recorded in the Office of the District Clerk as Document No. 73451; and

WHEREAS, at the December 13, 2022 Board meeting and also in connection with the proposed Topgolf project, staff presented the draft project description for preliminary project review and the Board authorized staff to commence California Environmental Quality Act (CEQA) environmental review for the project; and

WHEREAS, the negotiations that followed resulted in the attached non-binding term sheet (Term Sheet) (see Attachment B – Topgolf Term Sheet, to the Agenda Sheet to which this Ordinance relates); and

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WHEREAS, in connection with Term Sheet negotiations and as part of staff's due diligence, staff received and reviewed an updated project pro-forma, reviewed the financials of a Topgolf facility in Ontario, California similar to the one proposed on tidelands, and received and provided feedback on Topgolf's updated community benefits package; and

WHEREAS, the Term Sheet provides for the following key terms: (i) a lease term of 20 years with four, five-year options to extend; (ii) minimum annual rent of \$1,527,000 with projected rent upon commencement of operations of approximately \$1.9 million in year one of operations based on percentage rental rate projections with no ramp up period; (iii) a fair share contribution of \$4 million from Topgolf for a portion of the public infrastructure costs at EHI; and (iv) a community benefits package that includes numerous programs for the local communities and organizations; and

WHEREAS, the Term Sheet is not comprehensive in addressing all deal points to be included in any future agreement and in no way binds the Board to any future decision with respect to EHI, but rather provides a negotiating framework for any potential future agreement to be submitted to the Board for consideration; and

WHEREAS, the Term Sheet in no way binds the District to any agreement or action, and any decision whether or not to enter into a binding agreement with Topgolf or to take any discretionary action(s) in connection with the same will be within the Board's sole and absolute discretion; and

WHEREAS, the proposed Board action does not constitute a project under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur; and

WHEREAS, the proposed Board action complies with Sections 21 and 35 of the Port Act, which allow for the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers; and

WHEREAS, the proposed Board action does not allow for development, as defined in Section 30106 of the California Coastal Act, or new development, pursuant to Section 1.a. of the District's Coastal Development Permit Regulations because there will not be, without limitation, a physical change, change in use or increase the intensity of uses, and therefore, issuance of a Coastal Development Permit or exclusion is not required; and

WHEREAS, for the reasons stated above, staff recommends that the Board authorize staff to sign the non-binding Term Sheet with Topgolf and

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commence negotiations for a definitive agreement to advance the Topgolf project as the potential anchor tenant for an entertainment district on EHI.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners (BPC) of the San Diego Unified Port District (District), as follows:

The Executive Director, or their designated representative, is hereby authorized on behalf of the San Diego Unified Port District to sign a non-binding Term Sheet with Topgolf in substantially the same form as that attached as Attachment B to the Agenda Sheet to which this Ordinance relates and to commence negotiations for a definitive agreement to advance the Topgolf project as the potential anchor tenant for an entertainment district on EHI; provided that the Term Sheet creates no legally binding obligation on either the District or Topgolf to negotiate or otherwise, and any definitive agreement, as a condition to its effectiveness, is subject to the Board consideration and may be approved, denied, and/or conditioned in the Board's sole and absolute discretion.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy General Counsel

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 5th day of December, 2023, by the following vote: