

**SAN DIEGO UNIFIED PORT DISTRICT**

**ORDINANCE 2842**

**ORDINANCE GRANTING AN AMENDED AND  
RESTATED LEASE TO SHM CABRILLO ISLE, LLC  
TO UPDATE LEASE TO NEW AND REVISED  
TERMS FOR THE LEASEHOLD LOCATED AT 1450  
HARBOR ISLAND DRIVE, SAN DIEGO**

**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**, CLP Cabrillo Marina, LLC, a Delaware limited liability company (CLP) operates a 400-slip marina at 1450 Harbor Island Drive, San Diego, under a lease with the District which expires on February 29, 2044 (Lease); and

**WHEREAS**, the leasehold is comprised of approximately 123,538 square feet of land area and approximately 704,902 square feet of water area and the marina is comprised of approximately 400 slips, a deli, office space, a parking lot and other marina amenities; and

**WHEREAS**, CLP is proposing to assign the Lease to SHM Cabrillo Isle, LLC, a Delaware limited liability company (SHM); and

**WHEREAS**, the Lease provides that as a condition of consent to an assignment, rent shall be set at current market rates and the lease language updated to current District standards; and

**WHEREAS**, it is District's practice that the minimum annual rent (MAR) be set at not less than 75% of the average rent paid by the tenant in the prior three accounting years; and

**WHEREAS**, during the three-year period from March 1, 2012 to February 28, 2015, CLP has paid an average of \$719,797 per year in percentage rent; and

**WHEREAS**, in February 2014 the District performed a regularly scheduled rent review at which time the percentage rental rates were updated to the current BPC adopted rates and the MAR was set at \$660,000; and

**WHEREAS**, the current MAR of \$660,000 exceeds 75% of the average rental paid; and

**WHEREAS**, the current percentage rental rates are consistent with the percentage rental rates adopted by the BPC and staff recommends that the percentage rental rates remain unchanged; and

**WHEREAS**, the Lease will be amended and restated to update to District's current standard language including such key clauses as: sustainable leasing, indemnity, prevailing wage, project submittal, and insurance;

**WHEREAS**, the Lease will also be amended and restated to include a new lease guaranty.

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

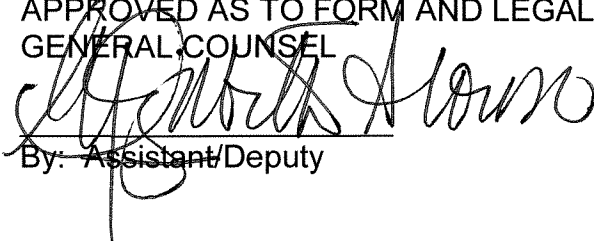
Section 1. That the District grant the Amended and Restated Lease between the San Diego Unified Port District and SHM Cabrillo Isle, LLC for the leasehold located at 1450 Harbor Island Drive, San Diego, which includes new and revised terms and a new lease guaranty.

Section 2. The Executive Director or her designated representative is hereby directed to execute said Amended and Restated Lease on behalf of the District on the date the District receives a recorded assignment and assumption of lease in the form approved by the District ("Recorded Assignment"); provided, however, such date shall not be earlier than the date this Ordinance takes effect as provided in Section 3 below.

Section 3. This Ordinance shall take effect on the 31<sup>st</sup> day from its passage by the Board of Port Commissioners, but shall be null and void and of no further force and effect if the District does not receive the Recorded Assignment within one hundred eighty (180) days of the passage of this Ordinance.

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 8<sup>th</sup> day of December, 2015, by the following vote:

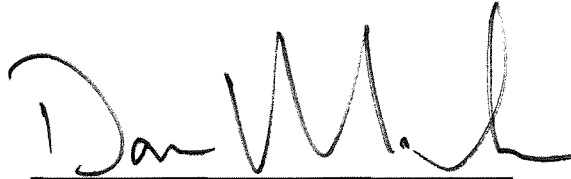
AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, Nelson, and Valderrama.

NAYS: None.

EXCUSED: None.

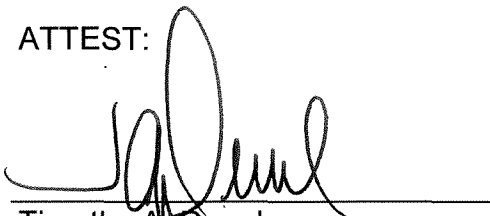
ABSENT: None.

ABSTAIN: None.

A handwritten signature in black ink, appearing to read "Dan Malcolm", written over a horizontal line.

Dan Malcolm, Chairman  
Board of Port Commissioners

ATTEST:

A handwritten signature in black ink, appearing to read "Timothy A. Deuel", written over a horizontal line.

Timothy A. Deuel  
District Clerk

(Seal)