

SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE 2865

**ORDINANCE GRANTING AN AMENDED AND
RESTATED LEASE LOCATED AT 2614 SHELTER
ISLAND DRIVE, SAN DIEGO, TO THE BRIGANTINE
INC., A CALIFORNIA CORPORATION TO UPDATE
TO CURRENT LEASE 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, pursuant to the terms of the lease, as a condition of consent to an assignment, the District may adjust the rent to market and update lease language to the District's current standard; 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 the District's practice that minimum annual rent (MAR) be set at not less than 75% of the average rent paid by the tenant in the prior three years; and

WHEREAS, MAR will be increased from \$67,850 to \$78,750 which brings the MAR to 88% of the last three years' average rent from this leasehold; and

WHEREAS, the Financing Participation Fee is a percentage of the net proceeds for future financing of the leasehold, excluding funds applied towards reinvestment in this leasehold or other leaseholds on Tidelands; and

WHEREAS, the Assignment Participation Fee is a percentage of the gross proceeds for future assignment of the whole or a part of this leasehold interest; and

WHEREAS, Brigantine has also agreed to a Financing Participation Fee and Assignment Participation Fee of 2.5%; and

WHEREAS, staff restated the Restaurant lease to update to the District's current standard language, including such key clauses as: baseball appraisal, District's participation in refinance proceeds, assignment participation fee, marina audit, indemnity and prevailing wage, sustainable leasing, project submittal, public art, and insurance language.


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 San Diego Unified Port District and The Brigantine Inc., a California Corporation, to update current lease terms and increase minimum annual rent to \$78,750.

Section 2. The Executive Director or her designated representative is hereby directed to execute said Amended and Restated Lease on behalf of the District.

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 27th day of July, 2016, by the following vote:

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

NAYS: None.

EXCUSED: None.

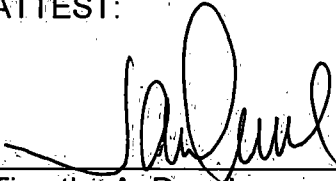
ABSENT: None.

ABSTAIN: None.



Marshall Merrifield, Chairman
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)