

RESOLUTION 2013-95

RESOLUTION CONSENTING TO A \$6,000,000 LOAN BETWEEN RIVERSOURCE LIFE INSURANCE CO. AND BAY CLUB HOTEL AND MARINA, LP, ENCUMBERING THE LEASEHOLD WITH CONDITIONS

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, the District granted a lease to the Bay Club Hotel and Marina (Bay Club) in 1984 to operate a 150-slip marina and 105-room hotel located at 2131 Shelter Island Drive in San Diego; and

WHEREAS, at the November 2010 meeting, the Board of Port Commissioners (BPC) approved the Bay Club's project to replace its marina and determined it would qualify for additional lease term pursuant to BPC Policy No. 355; and

WHEREAS, this capital investment qualifies Bay Club for a 7-year lease term extension with a new updated lease as well as new minimum annual rent (MAR) of \$447,448; and

WHEREAS, additionally, the Bay Club is requesting approval of a \$6,000,000 loan and leasehold encumbrance by RiverSource Life Insurance Co. to repay the existing loan and to ensure funds are available for future capital improvements for the hotel; and

WHEREAS, staff recommends that the BPC consent be conditioned on the following:

- The loan amount will not exceed \$6,000,000.
- The loan term will not extend beyond the lease term of 29-years, 6-months.

- All terms, conditions, provisions and covenants of the lease shall remain and continue in full force and effect and no further encumbrance of the lease or any part thereof shall be made without the prior written consent of the District in each instance, as provided in the lease.
- It is understood that the District has not reviewed or approved the terms and conditions of the proposed encumbrance documents, such as the leasehold deed of trust or note secured thereby and is not agreeing to be a party to the leasehold deed of trust, note or other documents.
- Nothing contained in the conditions to consent shall be construed to modify, amend or waive any provisions of the lease.
- The District's consent to the encumbrance shall be null and void and of further force and effect if Bay Club does not obtain financing from RiverSource, as confirmed by receipt of final loan documents signed by both the Bay Club and RiverSource within 180-days of District's consent.
- The Bay Club acknowledges that it will not seek rent relief as a result of not being able to meet its debt service or debt repayment obligations.
- The District's consent to the encumbrance is conditioned upon the leasehold having no other loans in effect, as confirmed by receipt of a full reconveyance recorded in the Office of the Recorder of San Diego County within 180-days of District's consent.

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

That the Executive Director or his designated representative is hereby authorized on behalf of the San Diego Unified Port District to consent to a \$6,000,000 loan between RiverSource Life Insurance Company and Bay Club Hotel and Marina, LP, encumbering the leasehold with conditions as follows:

- The loan amount will not exceed \$6,000,000.
- The loan term will not extend beyond the lease term of 29-years, 6-months.
- All terms, conditions, provisions and covenants of the lease shall remain and continue in full force and effect and no further encumbrance of the lease or any part thereof shall be made without the prior written consent of the District in each instance, as provided in the lease.
- It is understood that the District has not reviewed or approved the terms and conditions of the proposed encumbrance documents, such as the leasehold deed of trust or note secured thereby and is not agreeing to be a party to the leasehold deed of trust, note or other documents.
- Nothing contained in the conditions to consent shall be construed to modify, amend or waive any provisions of the lease.
- The District's consent to the encumbrance shall be null and void and of no further force and effect if Bay Club does not obtain financing from

RiverSource, as confirmed by receipt of final loan documents signed by both the Bay Club and RiverSource within 180-days of District's consent.

- The Bay Club acknowledges that it will not seek rent relief as a result of not being able to meet its debt service or debt repayment obligations.
- The District's consent to the encumbrance is conditioned upon the leasehold having no other loans in effect, as confirmed by receipt of a full reconveyance recorded in the Office of the Recorder of San Diego County within 180-days of District's consent.

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 11th day of June, 2013, by the following vote:

AYES: Castellanos, Malcolm, Merrifield, Moore, Nelson, Smith, Valderrama

NAYS: None.

EXCUSED: None.

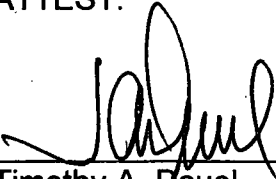
ABSENT: None.

ABSTAIN: None.



Ann Y. Moore, Chair
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)