

**RESOLUTION 2014-116**

**RESOLUTION CONSENTING TO ENCUMBRANCE  
OF SHELTER ISLAND YACHTWAYS, LTD.  
LEASEHOLD ESTATE BY \$3,300,000 TRUST  
DEED IN FAVOR OF AMERICAN WEST BANK,  
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**, Shelter Island Yachtways, Ltd. dba Shelter Island Boatyard (SIBY) operates a boatyard on two adjoining leaseholds on Shelter Island located at 2330 and 2390 Shelter Island Drive in San Diego; and

**WHEREAS**, SIBY's existing leases have a term of 30 years and are coterminous on February 28, 2015; and

**WHEREAS**, SIBY also has an option to lease agreement with the District to redevelop and enter into a new 30-year lease including improvements designed to expand SIBY's yacht extension business and allow it to service more modern, heavier, and wider vessels that it cannot accommodate with the current facility; and

**WHEREAS**, on December 10, 2013, the Board consented to an encumbrance of SIBY's leasehold in the amount of \$3,300,000 in favor of American West Bank, however, the approval was rendered null and void by SIBY's failure to obtain such financing within 90 days of the consent, in part, due to delays in other agency permitting processes which have since been obtained; and

**WHEREAS**, SIBY's seeks new consent to the encumbrance of \$3,300,000 in favor of American West Bank; and

**WHEREAS**, staff has reviewed the terms of the loan in accordance with BPC 355 and recommends the Board consent to the lease encumbrance, with the following conditions:

1. The loan amount will not exceed \$3,300,000;
2. All other 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;
3. 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;
4. Nothing contained in the conditions of approval shall be construed to modify, amend or waive any of the provisions of the lease;
5. The District's consent to the encumbrance shall be null and void and of no further force and effect if Lessee does not obtain financing from American West, as confirmed by receipt of final loan documents signed by SIBY and American West, within 120 days of District's consent;
6. SIBY acknowledges that it will not seek further rent relief as a result of not being able to meet its debt service or debt repayment obligations;
7. The loan term will not extend beyond the proposed new lease expiration date; and
8. SIBY shall provide the District a copy of a subordination of deed of trust recorded at Office of the Recorder of San Diego County evidencing the subordination of the secondary debt.

**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 an encumbrance of Shelter Island Yachtways, Ltd. leasehold estate by \$3,300,000 trust deed in favor of American West Bank, with conditions.

APPROVED AS TO FORM AND LEGALITY:  
PORT ATTORNEY



By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10<sup>TH</sup> day of June 2014, by the following vote:

AYES: Bonelli, Castellanos, Malcolm, Merrifield, and Nelson,

NAYS: None.

EXCUSED: Moore and Valderrama.

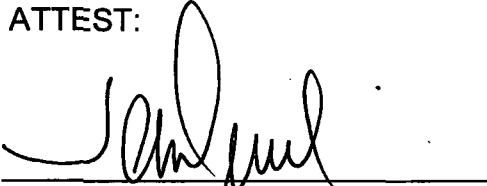
ABSENT: None.

ABSTAIN: None.



Robert E. Nelson, Chairman  
Board of Port Commissioners

ATTEST:



Timothy A. Dewiel  
District Clerk

(Seal)