

RESOLUTION 2014-117

RESOLUTION CONSENTING TO ENCUMBRANCE OF INTREPID LANDING, LLC'S LEASEHOLD ESTATE BY \$2,620,000 IN FAVOR OF TORREY PINES 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, Intrepid Landing, LLC (Lessee) has a lease (Lease) with the District at 2702 Shelter Island Drive, (District Document No. 61409, on file with the Office the District Clerk), which expires in 2037 and a ten year option, which if exercised, would extend the Lease to June 30, 2047; and

WHEREAS, more specifically, the Lease premise includes approximately 20,665 square feet of land and 69,950 square feet of water along America's Cup Harbor; and

WHEREAS, the Lease requires construction of an approximately 5,000 square-foot marine sales and services building, up to 52 boat slips, a shoreline pedestrian walkway, a public plaza, and parking; and

WHEREAS, the Lease includes specific construction component obligations, including obtaining project financing by no later than May 31, 2014 as evidenced by an irrevocable commitment; and

WHEREAS, on April 21, 2014, Lessee submitted an irrevocable financing commitment from Torrey Pines Bank and is seeking the District's consent to this loan in the form of a lease encumbrance; and

WHEREAS, the terms of the loan are in accordance with BPC Policy No. 355; and

WHEREAS, the consent to the lease encumbrance includes the following conditions:

1. The loan amount will not exceed \$2,620,000.
2. The loan term will not extend beyond the current Lease expiration date of June 30, 2037.
3. All other terms, conditions, provisions and covenants of the Lease shall remain and continue in full force and effect and no further encumbrance of Lease or any part thereof shall be made without the prior written consent of the District in each instance, as provided in the Lease.
4. 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.
5. Nothing contained in the conditions of approval shall be construed to modify, amend or waive any of the provisions of the Lease.
6. 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 Torrey Pines Bank, as confirmed by receipt of final loan documents signed by both Intrepid and Torrey Pines Bank, within 90 days of District's consent.
7. Lessee 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.
8. The District's consent to this encumbrance is conditioned upon the leasehold having no other loans in effect, as confirmed by receipt of a full reconveyance recorded at Office of the Recorder of San Diego County within 90 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 an encumbrance of Intrepid Landing, LLC's leasehold estate by \$2,620,000 in favor of Torrey Pines Bank, with the conditions as stated in the recitals herein.

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 10TH day of June 2014, by the following vote:

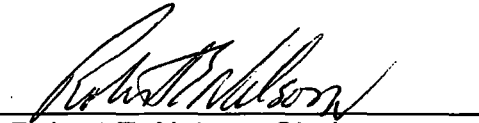
AYES: Bonelli, Castellanos, Malcolm, Merrifield, and Nelson,

NAYS: None.

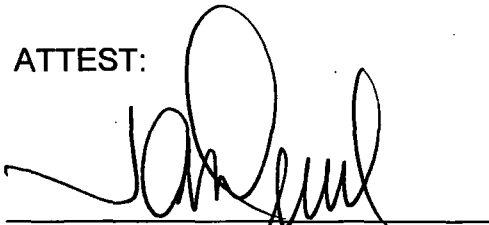
EXCUSED: Moore and Valderrama.

ABSENT: None.

ABSTAIN: None.


Robert E. Nelson, Chairman
Board of Port Commissioners

ATTEST:


Timothy A. Deuel
District Clerk

(Seal)