

RESOLUTION 2014-161

RESOLUTION CONSENTING TO ENCUMBRANCE OF SUNROAD HARBOR ISLAND, INC.'S LEASEHOLD ESTATE BY \$11 MILLION IN FAVOR OF BANK OF AMERICA, 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, Sunroad Harbor Island, Inc. (Sunroad) has a lease with the District at 880 Harbor Island Drive, which expires in 2042 and has a ten-year option to extend; and

WHEREAS, Sunroad's lease with the District covers approximately 145,979 square feet of land area and approximately 104,422 square feet of water area on East Harbor Island; and

WHEREAS, the leasehold includes the existing Island Prime/C-Level restaurant as well as a second restaurant, which is currently under construction; and

WHEREAS, the lease commenced August 1, 2012 and has a term of 30 years, which expires on July 31, 2042; and

WHEREAS, Sunroad's lease requires the District to approve initial financing provided by a lender, but after that they do not need the District's consent to refinance, within the first five years of the lease, so long as the loan meets certain criteria; and

WHEREAS, the criteria include: the loan amount not exceeding the initial financing, the loan amount not exceeding 75% of the total project cost and the lender meets requirements identified in the lease; and

WHEREAS, the loan is equal to 35% of the as-complete leasehold value of \$31,000,000, which complies with the maximum 75% loan-to-value ratio required under BPC Policy No. 355; and

WHEREAS, staff has reviewed all of the relevant information required by BPC Policy No. 355 and recommends that the District consent to the encumbrance with the following conditions:

1. The loan amount will not exceed \$11,000,000.
2. The loan term will not extend beyond the current lease expiration date of July 31, 2042.
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 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.
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 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 Sunroad Harbor Island, Inc. does not obtain financing from Bank of America, as confirmed by receipt of final loan documents signed by both Sunroad Harbor Island, Inc. and Bank of America, within 90 days of District's consent.
7. Sunroad Harbor Island, Inc. acknowledges that it will not seek 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 re-conveyance recorded in the 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 San Diego Unified Port District hereby consents to encumbrance of Sunroad Harbor Island, Inc.'s leasehold estate by \$11,000,000 in favor of Bank of America with the above stated conditions.

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 12th day of August, 2014, by the following vote:

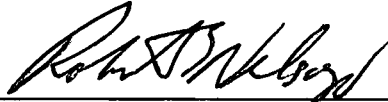
AYES: Bonelli, Moore, Nelson, and Valderrama.

NAYS: None.

EXCUSED: Malcolm, Merrifield.

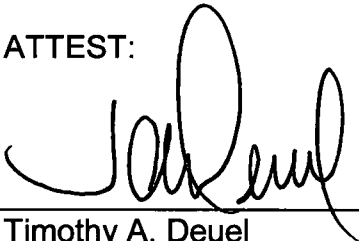
ABSENT: None.

ABSTAIN: Castellanos.



Robert E. Nelson, Chairman
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)