

RESOLUTION 2015-172

RESOLUTION CONSENTING TO ENCUMBRANCE OF SHM CABRILLO ISLE, LLC'S LEASEHOLD ESTATE BY A LOAN UP TO \$12,500,000 IN FAVOR OF REGIONS 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 1 (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, CLP Cabrillo Marina, LLC, a Delaware limited liability company (CLP) operates a 400-slip marina at 1450 Harbor Island Drive, San Diego, under a lease with the District which expires on February 29, 2044 (Lease); and

WHEREAS, the leasehold is comprised of approximately 123,538 square feet of land area and approximately 704,902 square feet of water area; and

WHEREAS, CLP is proposing to assign the Lease to SHM Cabrillo Isle, LLC, a Delaware limited liability company (SHM); and

WHEREAS, SHM is a wholly-owned subsidiary of Safe Harbor Marinas, LLC (Safe Harbor), which is a subsidiary of AIM Marina Holdings, LLC; and

WHEREAS, should the Board of Port Commissioners (BPC) consent to the assignment of the Lease to SHM, SHM is desirous of encumbering the leasehold by obtaining a loan up to \$12,500,000; and

WHEREAS, the new loan up to \$12,500,000 is equal to 64% of the appraised leasehold value of \$19,600,000 and therefore complies with the maximum 75% loan-to-value ratio permitted under BPC Policy No. 355; and

WHEREAS, the existing leasehold encumbrance in the amount of \$7,550,000 in favor of Allstate Life Insurance Company will be paid, and reconveyed, as part of the purchase transaction leaving the proposed encumbrance to Regions Bank as the only encumbrance on the leasehold interest; and

WHEREAS, staff has reviewed the terms of the loan in accordance with BPC Policy No. 355 and recommends the BPC consent to the lease encumbrance with the following conditions:

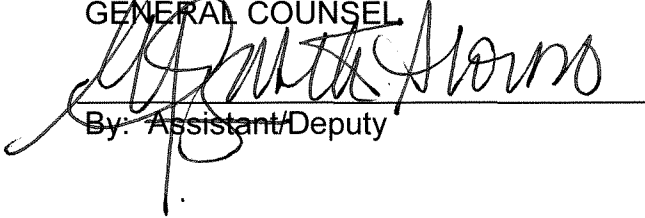
1. The loan amount secured by a deed of trust, note(s) or other encumbrance documents on the SHM leasehold estate shall not exceed \$12,500,000; and
2. The District's consent to encumbrance strictly prohibits the leasehold estate from being cross-collateralized with other properties for purposes of a loan; and
3. The District's consent to encumbrance strictly prohibits any document entered into by Safe Harbor to contain any provision which provides that default by Safe Harbor with relation to any interest that is not the SHM leasehold interest or equity membership interests in SHM shall constitute a default under the consented to encumbrance; and
4. The loan term shall not extend beyond the Lease expiration date of February 29, 2044; and
5. Subject to Condition No. 11 below, 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; and
6. It is understood that the District has not reviewed or approved the terms and conditions of the proposed encumbrance documents, such as a leasehold deed of trust or notes secured thereby and is not agreeing to be a party to the leasehold deed of trust, note(s) or other documents; and
7. Nothing contained in the conditions of approval shall be construed to modify, amend or waive any provision of the Lease; and
8. The District's consent to the encumbrance shall be null and void and of no further force and effect if Safe Harbor does not obtain financing from Regions Bank, as confirmed by receipt of final loan documents signed by both Safe Harbor and Regions Bank, as applicable, within one hundred eighty (180) days of District's consent; and
9. SHM and Safe Harbor acknowledge that they will not seek rent relief as a result of not being able to meet its debt service or debt repayment obligations.

10. The District's consent to this encumbrance is conditioned upon the leasehold not being subject to any other encumbrance, as confirmed by receipt of a full reconveyance of any existing encumbrances recorded in the Office of the Recorder of San Diego County within one hundred and eighty (180) days of District's consent; and
11. The District's consent to this encumbrance is conditioned upon the BPC's adoption of an ordinance granting the amended and restated lease between the District and SHM and the ordinance becoming effective.

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 her designated representative is hereby authorized on behalf of the San Diego Unified Port District to consent to the encumbrance of SHM Cabrillo Isle, LLC's leasehold estate located at 1450 Harbor Island Drive, San Diego, by a loan up to \$12,500,000 in favor of Regions Bank, with the conditions set forth above.

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 8th day of December, 2015, by the following vote:


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

NAYS: None.

EXCUSED: None.

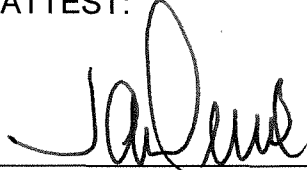
ABSENT: None.

ABSTAIN: None.



Dan Malcolm, Chairman
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)