

## **RESOLUTION 2015-173**

### **RESOLUTION CONSENTING TO A PLEDGE BY SAFE HARBOR MARINAS, LLC OF 100% OF ITS EQUITY MEMBERSHIP INTEREST IN SHM CABRILLO ISLE, LLC IN FAVOR OF REGIONS BANK AS ADDITIONAL COLLATERAL FOR A LOAN UP TO \$12,500,000 IN FAVOR OF REGIONS BANK, TOGETHER WITH A UCC, 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 (SHM 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, Safe Harbor is desirous of encumbering the SHM Leasehold by a loan up to \$12,500,000 to be used to fund the purchase of the SHM Leasehold interest; and

**WHEREAS**, Safe Harbor is also desirous of pledging 100% of its equity membership interest in SHM (SHM Interests) in favor of Regions Bank as additional collateral for a loan up to \$12,500,000 pursuant to a pledge and security agreement (Pledge) and UCC Financing Statement (UCC);

**WHEREAS**, staff recommends the BPC consent to the Pledge and UCC with the following conditions:

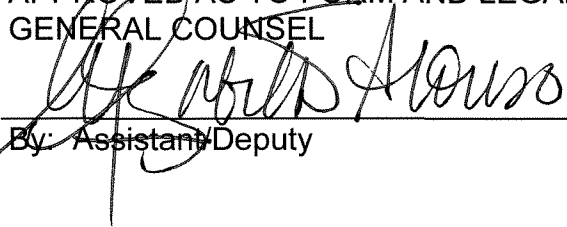
1. The Pledge and UCC will only cover the SHM Interests; and
2. The District's consent to the Pledge and UCC strictly prohibits the SHM Interests from being cross-collateralized with other membership interests or properties for purposes of a loan or other security agreement; and
3. The District's consent 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 SHM Interests shall constitute a default under the Pledge; and
4. The Pledge and UCC 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 pledge of the SHM Interests 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 Pledge and UCC, and is not agreeing to be a party to the Pledge, UCC 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 Pledge and UCC 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, including the Pledge and UCC, signed by both Safe Harbor and Regions Bank, as applicable, within one hundred eighty (180) days of District's consent; and
9. The District's consent to this Pledge and UCC is conditioned upon the SHM 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
10. The District's consent to this Pledge and UCC is conditioned upon the SHM Interests not being subject to any other pledge;

11. The District's consent to this Pledge and UCC 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; and

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Port Commissioners, 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 a pledge by Safe Harbor Marinas, LLC of 100% of its equity membership interest in SHM Cabrillo Isle, LLC in favor of Regions Bank as additional collateral for 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 8<sup>th</sup> day of December, 2015, by the following vote:

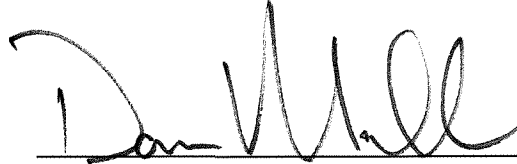
AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, Nelson, and Valderrama.

NAYS: None.

EXCUSED: None.

ABSENT: None.

ABSTAIN: None.



Dan Malcolm, Chairman  
Board of Port Commissioners

ATTEST:



Timothy A. Deuel  
District Clerk

(Seal)