

**CALENDAR ITEM
C63**

A 78
S 39

08/19/15
PRC 8876.1
D. Simpkin

**CONSENT TO ENCUMBRANCING OF
LEASE PREMISES AND REVISION OF RENT**

LESSEE:

San Diego Unified Port District
3165 Pacific Highway
San Diego, CA 92101

SUBLESSEE:

Sunroad Harbor Island

AREA, LAND TYPE, AND LOCATION:

0.30 acre, more or less, of sovereign land in San Diego Bay, adjacent to Harbor Island, city of San Diego, San Diego County.

AUTHORIZED USE:

Renovation, use, and maintenance of a barge to be used as a floating restaurant and event facility.

LEASE TERM:

40 years, beginning June 28, 2010.

CONSIDERATION:

This lease provides that Lessor may modify the rent periodically during the lease term. Pursuant to this provision, staff has conducted a review of the rent under this lease and recommends that the minimum rent be revised from \$12,009 per year to \$13,077 per year, effective June 28, 2015.

SPECIFIC LEASE PROVISIONS:

Insurance:

Lessee: Combined single limit liability insurance coverage in the amount of not less than \$1,000,000. Applicant may satisfy all or part of the insurance requirements through maintenance of a staff-approved self-insurance program as outlined in the Lease.

Sublessee: Combined single limit Commercial General Liability insurance coverage in the amount of no less than \$2,000,000 with a general

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aggregate coverage of \$4,000,000; Liquor Liability insurance coverage in the amount of no less than \$2,000,000.

OTHER PERTINENT INFORMATION:

1. The San Diego Unified Port District (Port) owns and manages the sovereign land adjoining the lease premises as Trustee, pursuant to Chapter 67, Statutes of 1962, 1st Extraordinary Session, as amended.
2. On June 28, 2010, the Commission authorized the issuance of Lease No. PRC 8876.1, a General Lease – Commercial Use to the Port for a 40-year term ending June 27, 2050, and also authorized a sublessee, Sunroad Harbor Island (Sublessee). The Lease Premises as shown on Exhibit A are utilized for a floating barge structure and appurtenant improvements, including gangways, moorings, and protective pilings that will serve as part of a restaurant to be developed on the upland property adjacent to the Lease Premises.
3. On October 14, 2014, Commission authorized staff to consent to the encumbrancing of the lease premises. The Sublessee is now proposing to replace its original equity financing with a long-term commercial real estate loan from AmericanWest Bank.
4. The Sublessee has initiated an encumbrance with AmericanWest Bank in an amount not to exceed \$17,500,000, for financing to develop two restaurants on the Sublessee's leasehold estate with the Port. The Sublessee's leasehold estate with the Port includes a lease with the Port for the upland restaurant sites and in-water areas within legislatively granted sovereign lands under Port jurisdiction. The barge, which will be utilized for the floating restaurants and event facility, straddles both the Port's and Commission's jurisdiction.
5. On July 14, 2015, the Board of Port Commissioners adopted Resolution No. 2015-86 (attached as Exhibit B), consenting to the encumbrancing of the Sublessee's leasehold estate with the Port. Staff recommends that the Commission authorize staff to consent to the encumbrancing of the Lease Premises by the Sublessee in accordance with Port Resolution 2015-86.
6. In addition, Staff conducted the rent review called for in the lease and recommends that the minimum rent be increased.
7. **Revision of Rent:** The staff recommends that the Commission find that the subject revision of rent does not have a potential for resulting in either

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a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

8. **Consent to Encumbrancing:** The staff recommends that the Commission find that the subject encumbrancing agreement does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

EXHIBITS:

- A. Site and Location Map
- B. Port Resolution

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Revision of Rent: Find that the subject revision of rent is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060 subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

Consent to Encumbrancing: Find that the subject encumbrancing agreement is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

AUTHORIZATION:

- 1. Approve the revision of rent for Lease No. PRC 8876.1 from a minimum of \$12,009 per year to \$13,077 per year, effective June 28, 2015.

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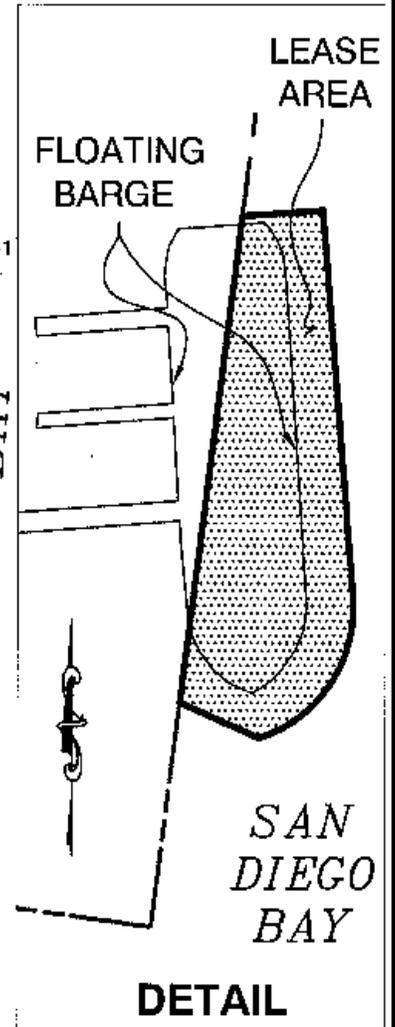
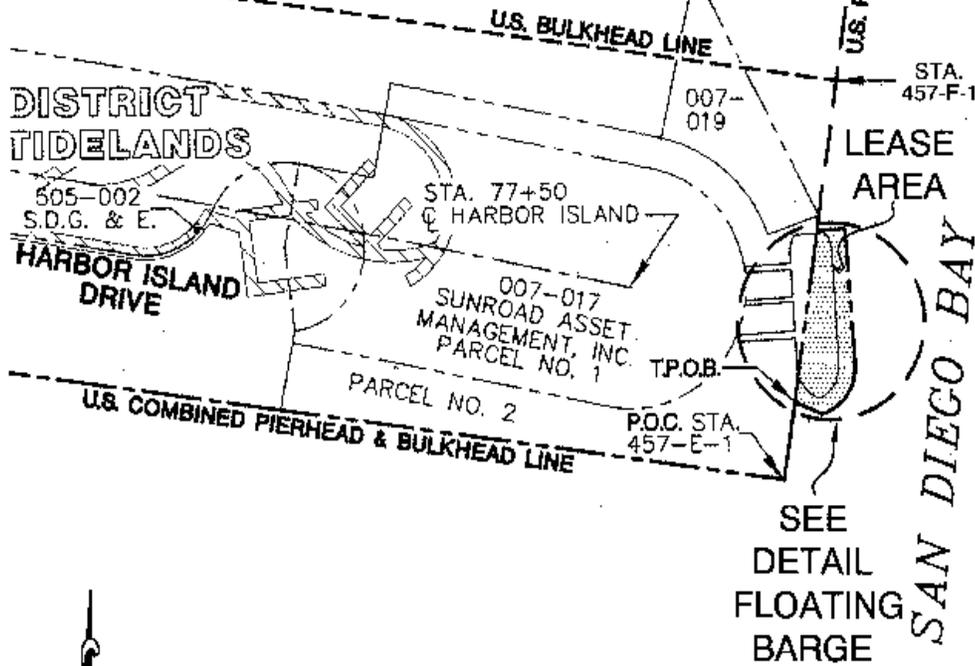
2. Authorize Commission staff to consent to the encumbrancing of the Lease Premises as shown on Exhibit A, attached (for reference purposes only), subject to Lease No. PRC 8876.1, a General Lease – Commercial Use to the San Diego Unified Port District, by Sunroad Harbor Island as the sublessee under the Lease, in accordance with Port Resolution 2015-86, as shown in Exhibit B, attached.

NO SCALE

SITE

SUNROAD MARINA PARTNERS, L.P.

HARBOR ISLAND EAST BASIN



880 HARBOR ISLAND DRIVE

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit A

PRC 8876.1

SAN DIEGO UNIFIED PORT DISTRICT - 880 HARBOR RESTAURANT COMMERCIAL LEASE SAN DIEGO COUNTY



JWP 05/14

EXHIBIT B

PRC 8876.1

RESOLUTION 2015-86

RESOLUTION CONSENTING TO ENCUMBRANCE OF SUNROAD HARBOR ISLAND, INC.'S LEASEHOLD ESTATE BY \$17.5 MILLION IN FAVOR OF AMERICANWEST 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, 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, the leasehold includes the existing Island Prime/C-Level restaurant as well as a second restaurant, Coasterra, which is currently under construction and will be completed in the next few months; and

WHEREAS, in conjunction with the construction of the second restaurant, Sunroad is proposing to replace its original equity financing with a permanent commercial real estate loan from AmericanWest Bank encumbering both the Island Prime/C-Level and Coasterra restaurant; and

WHEREAS, Sunroad's lease is non-standard and in the first five years of the lease, the District may not require a lease amendment or adjustment to market rent as a condition of consent to an encumbrance; and

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

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

1. The loan amount will not exceed \$17,500,000.
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 does not obtain financing from AmericanWest Bank, as confirmed by receipt of final loan documents signed by both Sunroad and AmericanWest Bank, within 180 days of District's consent.
7. Sunroad 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 reconveyance recorded in the Office of the Recorder of San Diego County within 180 days of District's consent, or other satisfactory document to confirm there is no existing finance to reconvey.

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 \$17,500,000 in favor of AmericanWest Bank, with stated conditions.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL



By: Assistant/Deputy

2015-86

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 14th day of July, 2015, by the following vote:

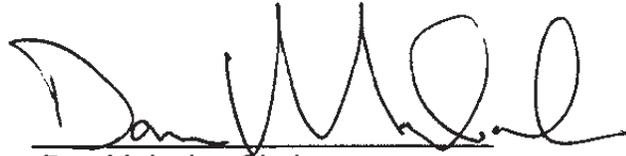
AYES: Bonelli, Malcolm, Merrifield, Moore, Nelson, and Valderrama.

NAYS: None.

EXCUSED: None.

ABSENT: None.

ABSTAIN: Castellanos.



Dan Malcolm, Chairman
Board of Port Commissioners

ATTEST:



 Timothy A. Deuel
District Clerk

(Seal)