

DRAFT**RESOLUTION 20xx-xxx**

RESOLUTION DIRECTING STAFF TO (A) STUDY A SINGLE-PHASE, DUAL BRANDED, 325-ROOM HOTEL PROJECT ON THE ELBOW PARCEL IN EAST HARBOR ISLAND IN THE CITY OF SAN DIEGO (REVISED PROJECT), (B) WAIVE THE RESTRICTION IN SECTION 4 OF THE EXCLUSIVE NEGOTIATING AGREEMENT BETWEEN SUNROAD HIE HOTEL PARTNERS, L.P. (SUNROAD) AND THE DISTRICT (ENA) NOT TO PROPOSE ANY DEVELOPMENT THAT REQUIRES A PORT MASTER PLAN AMENDMENT, AND (C) COMMENCE ENVIRONMENTAL REVIEW ON THE REVISED PROJECT

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, on September 8, 2016, the Board of Port Commissioners (BPC) selected Sunroad Enterprises to redevelop a parcel of land on East Harbor Island better known as the “Elbow Parcel” and directed staff to enter into an Exclusive Negotiating Agreement with Sunroad Enterprises for a 325-room hotel on the Elbow Parcel that does not require a Port Master Plan Amendment (PMPA); and

WHEREAS, Sunroad Enterprises entered into an Exclusive Negotiating Agreement with the District dated April 14, 2017 through its Sunroad HIE Hotel Partners, L.P. (Sunroad) entity that was filed in the Office of the District Clerk as Document No. 66537 (ENA); and

WHEREAS, Section 4 of the ENA states that the “proposed development shall be based on Developer’s Vision . . . except Developer shall . . . not propose any development that requires a PMPA”; and

WHEREAS, the BPC previously certified the Sunroad Harbor Island Hotel Project & East Harbor Island Subarea PMPA Revised Final Environmental Impact Report (EIR) on file in the Office of the District Clerk bearing Document No. 61775, the Mitigation Monitoring and Reporting Program (MMRP) from the EIR on file in the Office of the District Clerk bearing Document No. 61775, and the Findings of Facts and Statement of Overriding Considerations (collectively, Findings) adopted by the BPC pursuant to the Resolution No. 2014-52 (collectively, 2013 EIR); and

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WHEREAS, Sunroad's First and Second Submittals propose a two-phased, dual branded, 500-room hotel project on the Elbow Parcel with the first phase comprising 325 hotel rooms and the second phase comprising 175 hotel rooms; and

WHEREAS, staff has analyzed Sunroad's Second Submittal and determined that the Second Submittal does not conform to the 2013 EIR because the Second Submittal proposes 500 rooms in two phases (325 rooms in Phase 1 and 175 rooms in Phase 2) and the 2013 EIR analyzes only 325 rooms on the Elbow Parcel and did not analyze any phasing of the project; and

WHEREAS, Section 5(b)(i)(5) of the ENA requires staff to bring the proposed project to the BPC through a preliminary project review or other agendized means to seek the BPC's direction if the proposed project is not in conformance with the 2013 EIR; and

WHEREAS, if the BPC determines a single-phase, dual branded, 325-room hotel project on the Elbow Parcel should be further studied, in addition to the BPC directing staff to study that project, the BPC should also direct staff to waive the restriction in Section 4 of the ENA not to propose any development that requires a PMPA, and commence environmental review for the revised project; and

WHEREAS, the environmental review pursuant to the California Environmental Quality Act (CEQA) under this scenario may take approximately 6 to 12 months to complete; and

WHEREAS, the PMPA and Coastal Development Permit (CDP) process may take up to 12 months to complete in addition to CEQA, for a total of 18 to 24 months for the entire entitlement process (*i.e.*, 6-12 months for CEQA, 7-8 months for PMPA, and 4 months for CDP); and

WHEREAS, the anticipated schedule does not assume litigation associated with the CEQA process or appeals to the appealable CDP; and

WHEREAS, since the ENA will expire on September 27, 2018, an administrative extension of the Negotiating Period (as defined in the ENA) will be required; and

WHEREAS, if the BPC directs staff in its sole and absolute discretion, to proceed with additional environmental review, approval of such environmental review shall be a condition precedent to the BPC's consideration of the Definitive Agreement (as defined in the ENA); and

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WHEREAS, the BPC's action and direction to staff does not constitute an "approval" of a "project" pursuant to CEQA Guidelines Sections 15387 and 15352; and

WHEREAS, the action and direction to staff will not result in any direct or indirect physical changes to the environment; and

WHEREAS, full CEQA analysis will be completed prior to the approval of any entitlements, concept approval, or agreements necessary for the project; and

WHEREAS, at the sole and absolute discretion of the BPC, it may adopt any and all feasible mitigation measures, alternatives to the project, including a no project alternative, a statement of overriding consideration, if applicable, and approve or disapprove the project and any permits or entitlements necessary for the same; and

WHEREAS, based on the totality of the circumstances and the entire record, the BPC's direction does not commit the District to a definite course of action prior to CEQA review being conducted and therefore, no further CEQA review is required; and

WHEREAS, the proposed BPC actions and direction to staff allows for the District to implement its obligations under the Port Act and/or other laws and consequently, the proposed BPC action and direction to staff are consistent with the Public Trust Doctrine; and

WHEREAS, the proposed BPC action and direction to staff do not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's CDP Regulations because it will not result in, without limitation, a physical change, change in use or increase the intensity of uses and therefore issuance of CDP is not required; and

WHEREAS, if the project moves forward, the BPC will consider approval of the project and improvements after the certification of a PMPA with the California Coastal Commission, and subsequently appropriate documentation under District's CDP Regulations, have been completed and authorized by the BPC, if necessary; and

WHEREAS, the BPC's direction in no way limits the exercise of the District's discretion under the District's CDP Regulations.

NOW, THEREFORE, BE IT RESOLVED that the Board of Port Commissioners of the San Diego Unified Port District, hereby directs staff to: (1) study only a single-phase, dual branded, 325-room hotel project on the Elbow Parcel in East Harbor Island in the City of San Diego (Revised Project); (2) waive

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the restriction in Section 4 of the Exclusive Negotiating Agreement with Sunroad HIE Hotel Partners, L.P. (ENA) not to propose any development that requires a Port Master Plan Amendment; and (3) commence environmental review on the Revised Project.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Senior/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 14th day of August 2018, by the following vote: