

**DRAFT****RESOLUTION 20xx-xxx****RESOLUTION      CONSENTING      TO      THE  
ASSIGNMENT   AND   ASSUMPTION   OF   THE  
LEASEHOLD   INTEREST   FROM   SUNROAD  
HARBOR   ISLAND,   INC.,   DBA   SUNROAD  
ENTERPRISES   TO   SHM   SUNROAD,   LLC,   DBA  
SAFE HARBOR SUNROAD**

**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**, the Port Act grants the District jurisdiction, traditional police powers, including land use authority, and expressed land management and powers over certain submerged waters and tidelands (Tidelands) around and in the San Diego Bay (Port Act Sections 5, 19, 21, 87); and

**WHEREAS**, Sections 21 and 87(b) of the Port Act grants authority to the District to grant franchises, leases or other privileges (collectively Privileges) to access, use and occupy the tidelands or submerged lands, or parts thereof, for limited periods, not exceeding 66 years, for purposes consistent with the Public Trusts upon which those lands are held, by the State of California; and

**WHEREAS**, Sunroad Harbor Island, Inc. dba Sunroad Enterprises (Sunroad Enterprises) entered into a Lease with the District that is on file in the Office of the District Clerk bearing Document No. 59269, filed August 23, 2012 (the "Current Lease") to operate restaurants and a shared parking lot located at 880 Harbor Island Drive, in the City of San Diego (Attachment A - Location Map, attached to corresponding Agenda on file with the Office of the District Clerk); and

**WHEREAS**, the Current Lease has a 30-year term with a 10-year option to extend through July 31, 2052; and

**WHEREAS**, the leasehold includes two restaurant buildings which are home to the Coasterra, C-Level, and Island Prime restaurants; and

**WHEREAS**, Sunroad Enterprises wishes to transfer its leasehold interest under the Current Lease to SHM Sunroad, LLC dba Safe Harbor Sunroad (SHM Sunroad) through an assignment and assumption of the Current Lease (Transaction); and

**WHEREAS**, SHM Sunroad's parent company, Safe Harbor Marinas, LLC (Safe Harbor), is well known within the recreational boating industry for its

20xx-xxx

successful portfolio of marinas, boatyards, and their adjacent and adjoining restaurants; and

**WHEREAS**, SHM Sunroad currently shares common ownership with three other entities that, at this time, have three additional leases on District tidelands. Such entities include SHM Cabrillo Isle, LLC dba Cabrillo Isle, SHM Shelter Island, LLC dba SHM Shelter Island, and Sun Chula Vista Bayfront RV, LLC dba Sun Outdoors San Diego Bay; and

**WHEREAS**, the Current Lease requires the District’s consent to the Transaction, and as a condition to granting consent, the District may require a new lease which includes an update to then-current standard lease provisions and a market rate rental adjustment; and

**WHEREAS**, SHM Sunroad has agreed to an Amended and Restated Lease in the form of Attachment C to the corresponding agenda sheet to which this Resolution relates (the “Restated Lease”) with the District’s current standard lease terms, which includes, among other provisions, the following items not present in the Current Lease: District participation in refinance proceeds not reinvested in District tidelands; participation in proceeds resulting from a future assignment or sale of the leasehold interest; and a demolition and remediation fund to pay for any improvements the District elects to have SHM Sunroad remove at the end of the lease term as well as to fund any required environmental remediation; and

**WHEREAS**, in addition, Safe Harbor, which is required under the Restated Lease to maintain a net worth of no less than \$250,000,000 throughout the lease term, will execute a Continuing Guaranty (the “Guaranty”) to guaranty all of SHM Sunroad’s obligations under the Restated Lease; and

**WHEREAS**, the minimum annual rent and percentage rent rates set forth in the Restated Lease are being increased in comparison to those currently in the Current Lease as set forth in the corresponding Agenda Sheet on file with the Office of the District Clerk; and

**WHEREAS**, the effectiveness of the Restated Lease is conditioned upon the consummation of the assignment of the Current Lease from Sunroad Enterprises to SHM Sunroad (the “Closing”), and the consummation of the Closing is conditioned upon the effectiveness of the Restated Lease; and

**WHEREAS**, if both the Closing fails to take place and the Restated Lease fails to become effective for any reason on or before December 31, 2021 (the “Outside Closing Date”), then the consent granted by this Resolution is to automatically be deemed null and void and of no force and/or effect without further action by the Board of Port Commissioners; and

20xx-xxx

**WHEREAS**, in addition to the Closing occurring and the Restated Lease becoming effective on or before the Outside Closing Date, the consent to the Transaction shall be conditioned upon the District receiving executed counterpart originals of the Restated Lease and the Guaranty on or before the Closing; and

**WHEREAS**, in light of the foregoing benefits and the conditions set forth in this Resolution, staff recommends the Board consent to an assignment and assumption of the Current Lease from Sunroad Enterprises to SHM Sunroad.

**NOW THEREFORE, BE IT RESOLVED** that the Board of Port Commissioners of the San Diego Unified Port District, hereby consents to assignment and assumption of the Current Lease from Sunroad Harbor Island, Inc. dba Sunroad Enterprises to SHM Sunroad, LLC provided that (i) the consent granted hereunder shall be null and void without further action by the Board of Port Commissioners if both the Closing fails to take place and the Restated Lease fails to become effective for any reason on or before then Outside Closing Date, and (ii) on or prior to the Closing, the District has received executed counterpart originals of the Restated Lease and the Guaranty.

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

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By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 12<sup>th</sup> day of October 2021, by the following vote: