

DRAFT**SAN DIEGO UNIFIED PORT DISTRICT****ORDINANCE XXXX****ORDINANCE GRANTING AN AMENDED AND
RESTATED LEASE TO SHM SUNROAD, LLC, DBA
SAFE HARBOR SUNROAD TO UPDATE LEASE TO
CURRENT TERMS**

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, 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, Section 21(e) requires that all grants, franchises, leases, permits, rights, or privileges for more than five years shall be made by ordinance; 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 successful portfolio of marinas, boatyards, and their adjacent and adjoining restaurants; and

WHEREAS, SHM Sunroad currently shares common ownership with three

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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, SHM Sunroad has agreed to an Amended and Restated Lease in the form of Attachment C to the corresponding agenda sheet to which this Ordinance 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 this Ordinance 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

WHEREAS, in addition to the Closing occurring and the Restated Lease becoming effective on or before the Outside Closing Date, this Ordinance 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 connection with the Restated Lease, the Executive Director or his designated representative, in the Executive Director’s discretion, is hereby authorized to update the plat and legal description of the applicable leasehold that is attached to the Restated Lease to replace the reference to Sunroad Enterprises to SHM Sunroad and to make other non-material revisions; and

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WHEREAS, in light of the foregoing benefits and the conditions set forth in this Ordinance, staff recommends adopting an ordinance granting the Restated Lease to SHM Sunroad, LLC, under the terms presented.

NOW THEREFORE, the Board of Port Commissioners of the San Diego Unified Port District does ordain as follows:

Section 1. The Amended and Restated Lease be granted to SHM Sunroad, LLC conditioned upon (i) the Closing, and thereby the effectiveness of the Amended and Restated Lease, occurring on or before the Outside Closing Date and (ii) the District receiving executed counterpart originals of the Restated Lease and the Guaranty on or before the Closing.

Section 2. Subject to the aforementioned conditions, the Executive Director or his designated representative is hereby authorized to execute the Amended and Restated Lease to SHM Sunroad, LLC and, if deemed necessary by the Executive Director or his designee, to update the plat and legal description of the applicable leasehold that is attached to the Restated Lease to replace the reference to Sunroad Harbor Island, Inc. to SHM Sunroad, LLC and make other non-material revisions.

Section 3. This Ordinance shall take effect on the 31st day from its passage by the Board of Port Commissioners.

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 12th day of October 2021, by the following vote: