



## Legislation Text

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**DATE:** October 12, 2021

**SUBJECT:**

**SUNROAD HARBOR ISLAND, INC., DBA SUNROAD ENTERPRISES LOCATED AT 880 HARBOR ISLAND DRIVE, IN THE CITY OF SAN DIEGO, WHICH LEASEHOLD INCLUDES THE COASTERRA, C-LEVEL, AND ISLAND PRIME RESTAURANTS:**

- A. 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; AND,**
- B. ORDINANCE GRANTING AN AMENDED AND RESTATED LEASE TO SHM SUNROAD, LLC, DBA SAFE HARBOR SUNROAD TO UPDATE LEASE TO CURRENT TERMS; AND,**
- C. RESOLUTION CONSENTING TO A SUBLEASE BETWEEN SUNROAD HARBOR ISLAND, INC., AND KIRSCHCOHN, INC., FOR A TWENTY FIVE-YEAR TERM WITH A NINE-YEAR AND 11-MONTH OPTION TO EXTEND.**

**EXECUTIVE SUMMARY:**

Sunroad Harbor Island, Inc. dba Sunroad Enterprises (Sunroad Enterprises) has a lease (Current Lease) with the District to operate restaurants and a shared parking lot located at 880 Harbor Island Drive, in the city of San Diego (Attachment A - Location Map). The Current Lease has a 30-year term with a 10-year option to extend through July 31, 2052. The leasehold includes two restaurant buildings which are home to the Coasterra, C-Level, and Island Prime restaurants.

Sunroad Enterprises wishes to transfer its leasehold interest to SHM Sunroad, LLC dba Safe Harbor Sunroad (SHM Sunroad) through an assignment and assumption of the Current Lease (Transaction) (see Attachment B - Assignment and Assumption of Lease). 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. SHM Sunroad shares common ownership with three other entities that currently have three additional leases on District tidelands. Such entities include SHM Cabrillo Isle, LLC dba SHM Cabrillo Isle, SHM Shelter Island, LLC dba SHM Shelter Island, and Sun Chula Vista Bayfront RV, LLC dba Sun Outdoors San Diego Bay. Sunroad Enterprises has supplied the required documentation and the Transaction meets the qualifications for consent under Board of Port Commissioners Policy No. 355 (BPC 355) and the Lease.

At the July 2021 Board Meeting, the Board consented to the assignment and assumption of Sunroad Enterprises' adjacent marina leasehold, known as Sunroad Resort Marina, to SHM Sunroad. If the

Board consents to the proposed Transaction, SHM Sunroad will hold property rights to both the marina and restaurant leaseholds. Sunroad Enterprises will retain the Option to Lease Agreement to develop a hotel on the land parcel adjacent to SHM Sunroad's leaseholds.

Should the District consent to the Transaction, the Current Lease allows the District to execute a new lease which includes an update to then-current standard lease provisions and a market rate rental adjustment. SHM Sunroad has agreed to an Amended and Restated Lease (Restated Lease) in the form attached hereto (see Attachment C - Form Amended and Restated Lease) with the District's current standard lease terms, which includes, among other provisions, the following items not present in the Current Lease: fixed percentage rental rate increases in lieu of periodic rent reviews and updated minimum annual rent (MAR); 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 funding of any required environmental remediation. 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 to guaranty all SHM Sunroad's obligations under the Restated Lease.

In addition, Sunroad Enterprises is requesting District consent to a sublease with Kirschcohn, Inc. (Kirschcohn) (Attachment D: Kirschcohn Sublease), which will be assigned from Sunroad Enterprises to SHM Sunroad as further explained in the Discussion section below. The proposed sublease with Kirschcohn is for a 25-year term and includes an option to extend for an additional 9 years and 11 months. Kirschcohn has been successfully operating restaurants on the leasehold for over a decade and the proposed sublease is consistent with the terms of the Lease and BPC 355.

In light of the foregoing, staff recommends the Board consent to an assignment and assumption of the Current Lease from Sunroad Enterprises to SHM Sunroad, authorize execution of the Restated Lease in order to update the terms as noted above, and consent to the proposed sublease to Kirschcohn.

### **RECOMMENDATION:**

- A. Adopt a 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; and
- B. Adopt an Ordinance Granting an Amended and Restated Lease to SHM Sunroad, LLC dba Safe Harbor Sunroad; and
- C. Adopt a Resolution Consenting to a Sublease between Sunroad Harbor Island, Inc., and Kirschcohn, Inc., for a Twenty Five-Year Term with a Nine-Year and Eleven-Month Option to Extend.

### **FISCAL IMPACT:**

The proposed Board action would grant a new Restated Lease that includes an increase in Minimum Annual Rent (MAR) paid to the District from \$484,200 to \$610,845. In addition, the Restated Lease includes the removal of rent reviews in exchange for set percentage rental rate increases in the food category as detailed below:

Rental Period 2012-2024	3.00% (no change)
Rental Period 2024-2032	3.25%
Rental Period 2032-2042	4.00%
Rental Period 2042-2052	5.00%

Staff anticipates this change could generate a net present value increase of approximately \$788,811 in rent versus the current rent schedule over the term of the lease

### **COMPASS STRATEGIC GOALS:**

This agenda item supports the following Strategic Goals:

- A vibrant waterfront destination where residents and visitors converge.
- A financially sustainable Port that drives job creation and regional economic vitality.

### **DISCUSSION:**

#### ***Background***

The Sunroad Enterprises leasehold is comprised of 145,979 square feet of land and 104,422 square feet of water area. The leasehold includes two restaurant buildings of approximately 10,500 square feet and 22,500 square feet, and a floating barge used for events and additional seating. The Current Lease commenced August 1, 2012 and has a term of 30 years, which expires on July 31, 2042. Sunroad Enterprises also has a 10-year option to extend so long as Sunroad Enterprises qualifies as a “tenant in good standing,” which would extend the Current Lease to July 31, 2052.

The two restaurant buildings are operated by Kirschcohn, Inc. (as detailed below); better known as the Cohn Restaurant Group and Debra Scott, both of which are reputable and well-known restaurant operators in San Diego. Kirschcohn operates the Coasterra, C-Level, and Island Prime restaurants in the two restaurant buildings located on the leasehold.

Sunroad Enterprises entered into an Agreement of Purchase and Sale with SHM Sunroad on May 12, 2021 and has requested District consent to the Transaction. Pursuant to Article 9 of the Current Lease, upon a consented-to assignment and/or sublease, the District has the right to update the Current Lease to then-current standard lease provisions and adjust the rental rates to market. Staff’s proposed action includes the execution of a Restated Lease pursuant to the terms detailed below.

At the July 2021 Board Meeting, the Board consented to the assignment and assumption of Sunroad Enterprises’ adjacent marina leasehold, known as Sunroad Resort Marina, to SHM Sunroad. If the Board consents to the proposed Transaction, SHM Sunroad will hold property rights to both the marina and restaurant leaseholds. Sunroad Enterprises will still retain an Option to Lease Agreement to develop a hotel on the land parcel adjacent to SHM Sunroad’s leaseholds.

#### ***Safe Harbor***

SHM Sunroad’s parent company, Safe Harbor, is well known within the recreational boating industry for its successful portfolio of marinas and boatyards, and their adjacent and adjoining restaurants.

Safe Harbor was recently acquired by Sun Communities Operating Limited Partnership (SCOLP); SCOLP, in turn, is controlled by Sun Communities, Inc., a Maryland real estate investment trust which owns and operates RV parks (including the RV park on the Chula Vista Bayfront dba Sun Outdoors San Diego Bay). Attachment E details the ownership structure of SHM Sunroad and its parent companies as it would exist following the proposed Transaction (see Attachment E - Proposed Ownership Structure). If the Board consents to the proposed Transaction, staff anticipates that Safe Harbor's management team, together with SCOLP and Sun Communities, Inc.'s well-capitalized structure, will allow for investment into the leasehold. SHM Sunroad has indicated their intention to continue the partnership with Kirschcohn, Inc. for the continued successful operation of the three restaurants on the leasehold, as detailed below.

### ***Amended and Restated Lease***

District staff has negotiated the Restated Lease that includes updated lease language to reflect the current standard lease provisions and a market rate rental adjustment. The following table outlines terms that have been negotiated and agreed upon between the District and SHM.

	<b>Current</b>	<b>Proposed</b>
Minimum Annual Rent (MAR)	\$484,200 annually	\$610,845 annually (adjusted to 75% of the average of previous 3 years (2018-2020))
Food Percentage	3%; subject to change through Lease designated Rent Reviews	Prior to August 1, 2024: 3% August 1, 2024 - July 31, 2032: 3.25% August 1, 2032 - July 31, 2042: 4.00% August 1, 2042 - July 31, 2052: 5.00%
Rent Review	August 1, 2022 and at the commencement of each Rental Period thereafter	Replace with MAR adjustment of 75% of the average rent paid over prior three years; future adjustments on August 1, 2032 and August 1, 2042
Cost of Living MAR Adjustments	Includes mid-term rental period adjustments by Consumer Price Index (CPI)	Future CPI adjustments in 2027, 2037, and 2047.
Assignment Participation Fee	N/A	2.5%
Encumbrance Participation Fee	N/A	2.5%
Continuing Guaranty and Net Worth Requirement	N/A	Includes Continuing Guaranty from Safe Harbor and obligation to maintain a net worth of no less than \$250,000,000 throughout the lease term

It is the District's standard practice that MAR be set at no less than 75% of the average rent paid by the tenant in the prior three years. During the three-year period from calendar years 2018-2020, Sunroad Enterprises paid an average of \$814,461 per year in percentage rent. Therefore, the new MAR will increase from its current rate of \$484,200 to \$610,845 under the Restated Lease, or 75% of

the average rent paid over the aforementioned three-year period.

Staff has also negotiated fixed increases in the food percentage rental category throughout the term of the Restated Lease in exchange for removing periodic rent reviews. This practice has been adopted by the District in recent years to avoid contentious rent review negotiations while ensuring fixed increases to certain percentage rental rates and providing both tenants and the District security in future budgeting. The food percentage rate increases represent an important benchmark for future negotiations.

The Current Lease was executed in 2012, and the District has since updated its lease form to include additional District protective clauses and provisions. Staff has negotiated the Restated Lease to update the language to include terms such as District's participation in refinance proceeds at 2.5%, assignment participation fee at 2.5%, and a demolition and remediation reserve fund, as well as updated indemnity and prevailing wage language.

In addition, Safe Harbor, as parent company of SHM Sunroad, will execute a new Continuing Guaranty as part of the Restated Lease (see Exhibit D to the Restated Lease included on Attachment C: Form Amended and Restated Lease), pursuant to which Safe Harbor will guaranty all of SHM Sunroad's lease obligations. Further, the Restated Lease contains a covenant requiring Safe Harbor to maintain a net worth of at least \$250,000,000 throughout the term of the Restated Lease. Currently, the District does not have a guaranty, personal or otherwise, from a Sunroad Enterprises parent company or owner.

### ***Sublease to Kirschcohn, Inc.***

The proposed sublessee has operated all, or a portion of, the restaurant buildings on the leased premises since 2005. Kirschcohn is an affiliate of Cohn Restaurant Group and is wholly owned by the Cohn Family and Chef Deborah Scott, who are well respected restaurateurs in San Diego. While completing due diligence relating to the proposed Transaction, staff ascertained that although the Board had previously consented to a sublease between Sunroad Enterprises and Kirschcohn, a new sublease between the two parties had been executed. The sublease commenced on August 14, 2015 and includes a 25-year term with a 9-year and 11-month option to extend. The proposed sublease is consistent with the terms of the Current Lease (as well as the Restated Lease) and BPC 355, and staff recommends the Board grant retroactive consent. If the Board approves staff's recommended actions, the Kirschcohn sublease would be assigned to SHM Sunroad upon consummation of the Transaction.

### ***Conclusion***

The proposed Transaction would provide for the continued success and top performance of the leasehold's restaurant operations and would significantly increase the restaurants' capitalization for ongoing operations and potential future improvements to the leasehold. Further, SHM Sunroad's parent companies, Safe Harbor and Sun Communities, Inc., have excellent reputations in the marine and RV resort recreation industry, with a proven track record of managing adjacent and adjoining restaurants and providing quality services and experiences for its guests. The Transaction is consistent with BPC Policy No. 355, will allow the District to update rent to current market rates, and will update the lease to the current District standard, which includes more protective provisions for the District. Additionally, the proposed sublessee has been successfully operating on the leased

premises for over a decade and the sublease agreement is consistent with the terms of the Current Lease, the Restated Lease, and BPC 355. Therefore, staff recommends that the Board consent to the assignment and assumption of leasehold interests from Sunroad Harbor Island, Inc. dba Sunroad Enterprises to SHM Sunroad, LLC dba Safe Harbor Sunroad, grant an Amended and Restated Lease with SHM Sunroad in the form of Attachment C to this Agenda Sheet, and consent to the proposed sublease between Sunroad Harbor Island, Inc., and Kirschcohn, Inc.

### **General Counsel's Comments:**

The Office of the General Counsel has reviewed this agenda sheet and the attachments as presented to it and approves the same as to form and legality.

### **Environmental Review:**

The proposed Board actions, including without limitation, a resolution consenting to assignment and assumption of leasehold interest and an ordinance granting an amended and restated lease, does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because they would not have the potential to result in a direct or indirect physical change in the environment and are, therefore, not subject to CEQA. No further action under CEQA is required.

The proposed Board actions comply with Sections 21 and 35 of the Port Act, which allow the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board actions are consistent with the Public Trust Doctrine.

The proposed Board actions 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 Coastal Development Permit Regulations. Therefore, issuance of a Coastal Development Permit or exclusion is not required.

### **Diversity, Equity, and Inclusion Program:**

This agenda item has no direct DEI impact.

### **PREPARED BY:**

Andrea Ormerod  
Asset Manager, Real Estate

Annette Dahl  
Department Manager, Real Estate

### **Attachment(s):**

Attachment A: Location Map

Attachment B: Assignment and Assumption of Lease

Attachment C: Form Amended and Restated Lease  
Attachment D: Kirschcohn Sublease  
Attachment E: Proposed Ownership Structure