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RESOLUTION 20xx-xxx

RESOLUTION CONSENTING TO ENCUMBRANCE OF CAHUENGA ASSOCIATES II, DBA KONA KAI MARINA AND WESTGROUP KONA KAI LLC, DBA KONA KAI RESORT LOCATED AT 1551 SHELTER ISLAND DRIVE, SAN DIEGO, CA, LEASEHOLD ESTATE BY \$54,000,000 DEED OF TRUST IN FAVOR OF PRIME FINANCE, 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, Board of Port Commissioners Policy No. 355 (BPC 355) Administrative Practices III(A) sets out the minimum documentation to be submitted by tenants in support of a request of the District to consent to new financing; and

WHEREAS, Cahuenga Associates II, dba Kona Kai Marina. (Kona Kai Marina) has a 40-year lease (Marina Lease) with the District at 1551 and 1901 Shelter Island Drive for a 518-slip marina which expires in 2044; and

WHEREAS, Westgroup Kona Kai, LLC dba Kona Kai Resort (Kona Kai Resort) which is adjacent to Kona Kai Marina, has a lease (Resort Lease) with the District at 1551 Shelter Island Drive for a 129-guest room hotel, including a restaurant, spa, meeting space and parking; and

WHEREAS, the Resort Lease has a 35-year term which expires in 2049, with a 15-year term extension upon completion of Phase Two of the renovation for a total term of 50 years; and

WHEREAS, the Resort Lease includes an option to combine the Kona Kai Resort and Kona Kai Marina leaseholds (collectively Kona Kai) once certain conditions are met; and

WHEREAS, Kona Kai has requested District consent to a \$54,000,000 loan with Prime Finance secured by a leasehold deed of trust; and

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WHEREAS, the Staff has reviewed the terms of the loan in accordance with BPC 355 and recommends the Board consent to the encumbrance of the Kona Kai leaseholds, with the following conditions:

1. The loan amount will not exceed \$54,000,000.
2. The loan term will not extend beyond the current lease expiration date of April 30, 2049, or April 30, 2064, if a 15-year extension is exercised.
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 Kona Kai does not obtain financing from Prime Finance, as confirmed by receipt of final loan documents signed by both Kona Kai and Prime Finance, within 120 days of the District's consent.
7. Kona Kai 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 further loans in effect, as confirmed by receipt of a full reconveyance recorded in the Office of the Recorder of San Diego County within 120 days of the District's consent.

NOW, THEREFORE, BE IT RESOLVED that the Board of Port Commissioners of the San Diego Unified Port District, as follows:

That the Executive Director or her designated representative is hereby authorized on behalf of the San Diego Unified Port District to adopt a resolution consenting to encumbrance of Cahuenga Associates II, dba Kona Kai Marina and Westgroup Kona Kai LLC, dba Kona Kai Resort, both located at 1551 Shelter Island Drive, leasehold estate by \$54,000,000 deed of trust in favor of Prime Finance, with the above mentioned conditions.

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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 13th day of October, 2016, by the following vote: