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RESOLUTION 20xx-xxx

**RESOLUTION AUTHORIZING PROPERTY
MANAGEMENT AGREEMENT BETWEEN
THE SAN DIEGO UNIFIED PORT DISTRICT
AND PROTEA PROPERTY MANAGEMENT,
INC. ENDING JUNE 30, 2021 WITH TWO
OPTIONS TO EXTEND BY ONE YEAR EACH
AND GRANTING PROTEA A LIMITATION OF
LIABILITY AND A WAIVER OF
CONSEQUENTIAL AND EXEMPLARY
DAMAGES**

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 August 28, 2017, District staff issued the Request for Proposals (RFP 17-52ME, "Waterfront Retail Opportunity") (RFP) for the interim management and operations of Seaport Village (Seaport) after the lease with Seaport Village Operating Company, LLC (SVOC) expires on September 30, 2018, which leasehold is currently managed by Terramar Retail Centers, LLC; and

WHEREAS, Seaport consists of approximately 90,000 square feet of specialty retailers, restaurants, outdoor entertainment, and parking on an approximately 14-acre Bayfront site located at 849 West Harbor Drive in San Diego, CA; and

WHEREAS, at the January 9, 2018, Board of Port Commissioners (BPC) meeting, the BPC considered the entire record including staff's findings and recommendation and conditionally selected Protea as the successful proposer of the RFP, with conditions; and

WHEREAS, the BPC's conditional selection of Protea as the successful proposer of the RFP was conditioned upon staff renegotiating the management fee with Protea which shall not include incentive management fees, transition fees or leasing commissions (as the BPC directed staff to remove leasing services from the scope of services); and

WHEREAS, on January 24, 2018, staff received a revised management fee proposal from Protea which satisfied the conditions set forth by the BPC in its conditional approval of Protea; and

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WHEREAS, on March 13, 2018, the BPC selected Protea as the successful proposer of the RFP for the interim management and operations of the approximately 14-acre waterfront retail opportunity; and

WHEREAS, staff negotiated with Protea the Property Management Agreement with two options to extend by one year each; and

WHEREAS, the Property Management Agreement includes services that were identified in the RFP that Protea would be required to complete both before and after the lease with SVOC expires on September 30, 2018; and

WHEREAS, Protea's services include, but are not limited to, property management responsibilities, financial accounting and management services, reporting responsibilities, parking responsibilities, and marketing and activation responsibilities; and

WHEREAS, under the Property Management Agreement, Protea is required to submit to the District, for the District's approval, an operating budget for Seaport within thirty (30) days following the execution of the Property Management Agreement and no later than December 1 of each year of the term of the Property Management Agreement; and

WHEREAS, Protea would receive a management fee equal to \$10,000 per month from the commencement date of the Property Management Agreement through October 1, 2018; and

WHEREAS, after October 1, 2018, Protea would receive a management fee equal to 1.7% of the gross revenue generated by Seaport, but in no event less than \$10,000 per month; and

WHEREAS, the Property Management Agreement provides the District with the right to terminate without cause and for no reason whatsoever without incurring any liability to Protea for any damage or loss, including without limitation, lost profits, by giving Manager one (1) day prior written notice if the Exclusive Negotiating Agreement between the District and Protea (ENA) expires or is terminated and a Definitive Agreement (as defined in the ENA) is not executed by the District and 1HWY1, the selected developer for the redevelopment of the Central Embarcadero, prior to or concurrently with the expiration or termination of the ENA; the District and 1HWY1 enter into a Definitive Agreement (as defined in the ENA) and the Definitive Agreement expires or is terminated; or there is an Uncured Default, as defined in the Property Management Agreement; and

WHEREAS, if, at any time, the Executive Director of the District or her designee does not desire to proceed with the Property Management Agreement

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for any other reason not previously addressed, the Executive Director shall seek the direction of the BPC to terminate the Property Management Agreement; and

WHEREAS, in the event the Property Management Agreement were to terminate or expire, Protea would have certain obligations to the District, including but not limited to, cooperation with the District for a period of sixty (60) days after such expiration or termination to transition Seaport and the services back to the District; and

WHEREAS, the District agreed to limit Protea's liability under the Property Management Agreement to Five Million Dollars (\$5,000,000) and waive claims for consequential, incidental, special or exemplary damages; and

WHEREAS, the limitation of consequential damages excludes attorneys' fees and costs paid under the indemnity provisions of the Property Management Agreement; and

WHEREAS, the BPC's action does not constitute an "approval" or a "project" under the California Environmental Quality Act; the proposed BPC action complies with Section 87 of the Port Act and is consistent with the Public Trust Doctrine; and, the BPC action does 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.

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

The Executive Director or her designated representative is hereby authorized to enter into a Property Management Agreement between the San Diego Unified Port District and Protea Property Management, Inc. ending June 30, 2021 with two options to extend by one year each and granting Protea a limitation of liability and a waiver of consequential and exemplary damages, excluding consequential damages for attorneys' fees and costs, paid under the indemnity provisions of the Property Management Agreement.

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 10th day of April 2018, by the following vote: