

RESOLUTION 2014-33

RESOLUTION CONSENTING TO \$16,500,000 LOAN BETWEEN TORREY PINES BANK AND WESTGROUP KONA KAI, LLC DBA KONA KAI RESORT, 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 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, Noble House Hotels and Resorts the parent company of Westgroup Kona Kai, LLC (Noble House) dba Kona Kai Resort (Kona Kai) has a lease with the District located at 1551 Shelter Island Drive in San Diego for a 129 guest room hotel, including a restaurant, spa, meeting space and parking which expires in 2032, on file in the Office of the District Clerk as Document No. 47502; and

WHEREAS, on October 9, 2012 an Option to Lease (Option) was granted to Kona Kai which expires on October 31, 2014, on file in the Office of the District Clerk as Document No. 59819; and

WHEREAS, the Board of Port Commissioners (BPC) granted this Option to Kona Kai with a preliminary project review in November 2012 (Project) and subsequently issued a Coastal Development Permit and concept approval on August 13, 2013 for the Project; and

WHEREAS, Kona Kai expects that the Project will reposition the existing Kona Kai as a high-end boutique through the two phase renovation, anticipated to cost approximately \$14.3 million; and

WHEREAS, BPC Policy No. 355 allows District staff to administratively approve new financing that replaces construction financing or financing that is no more than 10% or \$250,000 greater than the existing loan amount; and

WHEREAS, the loan being requested requires BPC consent as it exceeds the administrative approval threshold; and

WHEREAS, if the BPC consents to Kona Kai's financing, all conditions precedent necessary to exercise the Option will be satisfied and Kona Kai may enter into the lease and commence construction of the Project; and


WHEREAS, staff has reviewed all of the relevant information required by BPC Policy No. 355 and recommends that the BPC consent to the encumbrance with the following conditions:

- The loan amount will not exceed \$16,500,000.
- The loan term will not extend beyond the current lease expiration date of May 31, 2032.
- 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.
- 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.
- Nothing contained in the conditions of approval shall be construed to modify, amend or waive any provisions of the lease.
- The District's consent to the encumbrance shall be null and void and of no further force and effect if Lessee does not obtain financing from Torrey Pines Bank, as confirmed by receipt of final loan documents signed by both Kona Kai and Torrey Pines Bank, within 90-days of District's consent.
- 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.
- The District's consent to this encumbrance is conditioned upon the leasehold having no other loans in effect, as confirmed by receipt of a full conveyance recorded in the Office of the Recorder of San Diego County within 90 days of District's consent.

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

That the San Diego Unified Port District hereby consents to the \$16,500,000 loan between Torrey Pines Bank and Westgroup Kona Kai, LLC, a Delaware limited liability company dba Kona Kai Resort, with the above conditions.

APPROVED AS TO FORM AND LEGALITY:
PORT ATTORNEY



By: ~~Assistant~~ Deputy

2014-33

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 4th day of March, 2014, by the following vote:

AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, Nelson, and Valderrama

NAYS: None.

EXCUSED: None.

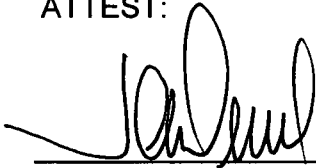
ABSENT: None.

ABSTAIN: None.



Robert E. Nelson, Chairman
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)