

RESOLUTION 2016-18

**RESOLUTION AUTHORIZING EXECUTIVE
DIRECTOR TO ENTER INTO NON-DISTURBANCE
AGREEMENT WITH RESIDENCE INN BY
MARRIOTT, LLC, AND GRANTING INDEMNITY,
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, the District has an existing lease with LFN Developers, LLC d.b.a. Lane Field North (LFN) for a 400-room dual branded Marriott Springhill Suites and Residence Inn development (Lane Field North Hotel) located on Pacific Highway in the City of San Diego; and

WHEREAS, on April 28, 2014, LFN entered into a lease (Master Lease) with the District and began construction of the Lane Field North Hotel project; and

WHEREAS, LFN is expected to complete the project shortly and is working on identifying subtenants for the retail spaces and negotiating all of the ancillary agreements required to open for business; and

WHEREAS, at the March 2014 Board of Port Commissioners (BPC) meeting, the management contract with Residence Inn by Marriott, LLC (Marriott) was approved; and

WHEREAS, in order to secure the management and branding of the Lane Field hotels, Marriott agreed to pay \$2 million in key money to LFN and provide a \$21 million credit enhancement facility to secure the construction financing; and

WHEREAS, Marriott is requesting the District enter into a Non-Disturbance Agreement (NDA) with them, which would allow the management contract to continue in place if there are defaults or a termination of the Master Lease, where the District would take direct control of the hotel; and

WHEREAS, under the NDA the District would recognize Marriott as the hotel manager and Marriott would recognize the District as the owner of the Lane Field North Hotel; and

WHEREAS, in the event the Master Lease is terminated early and the District takes possession of completed hotel(s) and only for the period of time that it directly controls the hotel(s): the District agrees to honor the conditions of Marriott's management agreement; the District agrees not to name Marriott in any action against LFN for breach of lease or other action; and the District will assume the obligations of LFN under the Management Agreement which includes agreeing to indemnify Marriott for operations of the retail spaces, hotel bar, parking garage, payments due under any mortgage and from the presence of hazardous materials on site; and

WHEREAS, the District would also benefit by retaining the management company through the transition of finding a new tenant to lease the hotel or continuing to own the Lane Field North Hotel directly; and

WHEREAS, this agreement is common for newly developed hotels where the management company is investing money to facilitate the project.

NOW, THEREFORE, BE IT RESOLVED by 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 enter into a Non-Disturbance Agreement with conditions and indemnity as outlined with Residence Inn by Marriott, LLC.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL



By: Assistant/Deputy

2016-18

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 9th day of February, 2016, by the following vote:


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

NAYS: None.

EXCUSED: None.

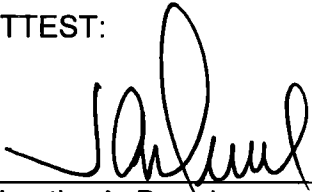
ABSENT: None.

ABSTAIN: None.



Marshall Merrifield, Chairman
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)