

SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE 2755

**ORDINANCE GRANTING SECOND AMENDED,
RESTATED AND COMBINED LEASE COVERING
PARCELS 2 AND 5 WITH INTREPID LANDING, LLC
TO EXTEND CONSTRUCTION DEADLINE FOR
BUILDING C**

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, in or around September 1, 1995, Driscoll, Inc., a California corporation (Driscoll) and a fifty percent owner in Intrepid Landing, LLC (Intrepid), obtained control of the Kettenburg Marina boatyard site through a series of Tideland Occupancy and Use Permits issued by District; and

WHEREAS, on July 6, 2005, Driscoll entered into an Option to Lease Agreement ("2005 Option") with District, on file in the Office of the District Clerk bearing Document No.49224, to redevelop the Kettenburg Marina boatyard site; and

WHEREAS, Driscoll did not exercise the 2005 Option and District granted relief to Driscoll whereby on the August 21, 2006, Driscoll and District entered into another Option to Lease Agreement ("2006 Option") on file in the Office of the District Clerk bearing Document No.50988; and

WHEREAS, on July 1, 2007, Driscoll exercised the 2006 Option, and District and Driscoll entered into a Lease ("2007 Lease") for the Kettenburg Marina boatyard site, on file in the Office of the District Clerk bearing Document No. 52163; and

WHEREAS, the 2007 Lease included certain construction deadlines for redevelopment of the Kettenburg Marina boatyard site, including but not limited to, completion of a boatyard administration building, high bay metal boat shed, two concrete piers for a travel lift, paving, boat slips, reconstruction of shoreline, dredging, a water reclamation system, marine sales and services buildings, a shoreline pedestrian walkway, public plaza and parking by December 31, 2008 ("December 2008 Deadline"), but the construction deadline was not met; and

WHEREAS, on August 4, 2009, District granted relief to Driscoll by extending the December 2008 Deadline to December 31, 2010 ("December 2010 Deadline") through the Amendment of Lease, Amendment No. 1 on file in the Office of the District Clerk bearing Document No. 55317. Driscoll did not meet the December 2010 Deadline; and

WHEREAS, to further grant relief for the default under the 2007 Lease, as amended, the District agreed to the division of the leasehold into three development sites (individually, "Marina Project Site," "Commercial Project Site" and "Boatyard Project Site" and collectively, "Sites" , however these words used in naming each of the individual sites is not intended to limit the allowable uses of those sites, rather the terms of the respective leases will govern the respective allowable uses); and

WHEREAS, on the 10th day of January, 2012, Driscoll assigned, transferred and set over unto Intrepid all of its right, title, and interest in and to 2007 Lease and Intrepid assumed all of the debts and obligations of the Lessee under the 2007 Lease, and agreed to fully and faithfully perform each and every term, covenant, and condition thereof, and to pay the rental therein provided; and

WHEREAS, District and Intrepid on the 10th day of January, 2012, entered into an Amended Restated and Combined Agreement ("2012 Amended Restated and Combined Agreement"), on file in the Office of the District Clerk bearing Document No. 58564, whereby Intrepid leased from District the Marina Project Site, as more particularly described in the 2012 Amended Restated and Combined Agreement; and

WHEREAS, District and Intrepid on the 10th day of January 2012, also entered into an Option and Lease Agreement ("Commercial Project Option") for the Commercial Option Site, as more particularly described in the Commercial Project Option, on file in the Office of the District Clerk bearing Document No. 58565, and Driscoll also entered into an Option and Lease Agreement ("Boatyard Project Option") for the Boatyard Project Site, as more particularly described in the Boatyard Project Option, on file in the Office of the District Clerk bearing Document No. 58566; and

WHEREAS, Intrepid agreed to develop a public promenade across the Marina Project Site, the Commercial Project Site and the Boatyard Site, as well as other improvements on the Sites as valuable consideration for the division of the Kettenburg Marina boatyard site, relief of Driscoll's defaults and the 2012 Amended Restated and Combined Agreement; and

WHEREAS, Intrepid and Driscoll have completed some redevelopment and improvements pursuant to the 2012 Amended Restated and Combined Agreement, including the public promenade, but have not completed the construction of Building C, as more particularly described in the 2012 Amended

Restated and Combined Agreement, by December 31, 2013, the construction deadline for said building; and

WHEREAS, Intrepid did not meet conditions precedent to exercising the Commercial Project Option, the term of which expired on December 31, 2013 and Driscoll did not meet conditions precedent to exercising the Boatyard Project Option, the term of which expired on December 31, 2013; and

WHEREAS, Intrepid and Driscoll have requested additional relief in the form of extensions of certain deadlines in the 2012 Amended Restated and Combined Agreement, Commercial Project Option, and Boatyard Project Option; and District has agreed to such extensions in exchange for valuable consideration; and

WHEREAS, such extensions and relief shall be granted by execution of a Second Amended, Restated and Combined Lease, a new Option and Lease Agreement with Driscoll, Inc., and a new Option and Lease Agreement with Intrepid landing, LLC (collectively "New Agreements").

NOW, THEREFORE, the Board of Port Commissioners of the San Diego Unified Port District does ordain as follows:

Section 1. The Second Amended, Restated, and Combined Lease between the San Diego Unified Port District and Intrepid Landing, LLC is hereby granted.

Section 2. The Executive Director or his designated representative is hereby directed to execute said Second Amended, Restated, and Combined Lease.

Section 3. This Ordinance shall take effect on the 31st day from its passage by the Board of Port Commissioners.

APPROVED AS TO FORM AND LEGALITY:
PORT ATTORNEY



By: Assistant/Deputy

2755

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 11th day of February, 2014, by the following vote:

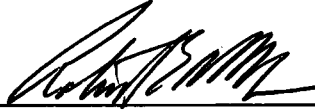
AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, Nelson, and Valderrama

NAYS: None.

EXCUSED: None.

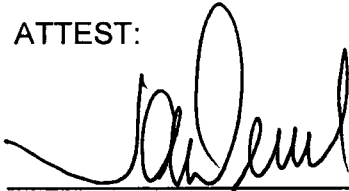
ABSENT: None.

ABSTAIN: None.



Robert E. Nelson, Chairman
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)