

RESOLUTION 2013-45

RESOLUTION AUTHORIZING THE PORT ATTORNEY TO FILE AN ACTION IN AN APPROPRIATE COURT TO REQUIRE THE REMOVAL OF THE DRYDOCK, KNOWN AS THE DILIGENCE, FROM THE KNIGHT & CARVER YACHT CENTER, INC. LEASEHOLD LOCATED AT 1313 BAY MARINA DRIVE IN NATIONAL CITY, CALIFORNIA

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, Knight and Carver Yachtcenter, Inc. (K&C), a California corporation has a 30-year Lease with the District which commenced March 26, 1997 and expires March 31, 2027 to operate a boatyard for recreational and small commercial/military vessel repair and construction on file in the Office of the District Clerk as Document No. 35663 along with subsequent Amendments Nos. 1, 2, 3, and 4 with corresponding District Document Nos. 36605, 45596, 52822, and 57071; and

WHEREAS, K&C relocated a Drydock known as the Diligence (Drydock) to its Leasehold at 1313 Bay Marina Drive on June 29, 2010; and

WHEREAS, the Drydock is owned by Diligence & Company, LLC (Diligence), which is comprised of several owners of K&C and Fraser's Boiler Service; and

WHEREAS, the District and K&C on the 16th day of June, 2010, entered into a Tidelands Use and Occupancy Permit of certain tidelands in the City of National City, California, which Permit is on file in the Office of the District Clerk bearing Document No. 56607 for additional water area which was required for the Drydock, hereinafter "the TUOP"; and

WHEREAS, on March 12, 2012, K&C filed for bankruptcy, under Chapter 11 of Title 11 of the United States Code (Bankruptcy Code); and

WHEREAS, following the filing of its bankruptcy, K&C continued to manage and operate the boatyard as a debtor-in-possession and paid the District rent due under the Lease on a weekly basis; and

WHEREAS, supervised by the United States Bankruptcy Court (Court) and pursuant to Bankruptcy Code, K&C is in the process of selling substantially all of its assets through a process that included a public auction; and

WHEREAS, two prospective purchasers through the Court; San Diego San Diego Dry Dock, LLC (SDDD) and Marine Group Boat Works, LLC (MGBW) participated in the auction and made offers; and

WHEREAS, on December 6, 2012, SDDD withdrew its offer for K&C's assets and the Court approved the sale of K&C's assets to MGBW subject to the District's consent to the assignment and assumption of the Lease; and

WHEREAS, the District has requested Diligence or MGBW remove the Drydock from San Diego Bay; and

WHEREAS, the Board of Port Commissioners of the San Diego Unified Port District has authorized the Port Attorney, or his designated representative to file an action in an appropriate court to require the removal of the Drydock, known as the Diligence, from the K&C Leasehold, located at 1313 Bay Marina Drive in National City, California.

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

That the Port Attorney or his designated representative is hereby authorized on behalf of the San Diego Unified Port District to file an action in an appropriate court to require the removal of the Drydock, known as the Diligence, from the Knight & Carver Yacht Center, Inc. Leasehold located at 1313 Bay Marina Drive in National City, California.

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 5th day of March, 2013, by the following vote:

AYES: Malcolm, Moore, Nelson, Smith, Valderrama

NAYS: None.

EXCUSED: None.

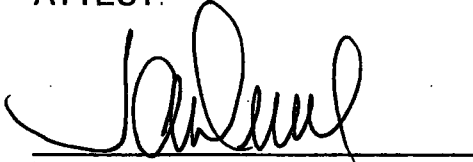
ABSENT: None.

ABSTAIN: None.



Ann Y. Moore, Chair
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk



(Seal)