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Title: ORDINANCE GRANTING A 40-YEAR LEASE WITH THE BRIGANTINE, INC., DBA PORTSIDE PIER LOCATED AT 1360 NORTH HARBOR DRIVE

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Date	Ver.	Action By	Action	Result
10/10/2017	1	Board of Port Commissioners	adopted	

DATE: October 10, 2017

SUBJECT:

ORDINANCE GRANTING A 40-YEAR LEASE WITH THE BRIGANTINE, INC., DBA PORTSIDE PIER LOCATED AT 1360 NORTH HARBOR DRIVE

EXECUTIVE SUMMARY:

At the November 17, 2015 Board of Port Commissioners meeting, the Board authorized staff to enter into exclusive negotiations with the Brigantine Inc., dba Portside Pier (Brigantine) for the redevelopment and operation of the Iconic Waterfront Restaurant Site (Location) at 1360 North Harbor Drive (Attachment A) as a result of a Request for Proposals (RFP) process.

Staff negotiated a 40-year lease for the \$13 million Portside Pier restaurant project (Portside Pier), which was issued a Board-authorized Coastal Development Permit on August 1, 2017¹. The Portside Pier project will be for the construction of a two-story restaurant structure, pilings and platform, and dock and dine to accommodate up to 12 vessels. The Brigantine proposes four restaurant concepts at the Location, collectively known as Portside Pier. There will be three features open to the public during their business hours including: 1) a second level viewing deck; 2) a second level perimeter walkway; and 3) an expanded dock and dine. All three public features will be maintained solely by Brigantine at no cost to the District. The proposed rent structure (Attachment B) will be Minimum Annual Rent (MAR) of \$1.1 million at stabilization and 5% of gross sales of both food and beverage. In addition, Brigantine has agreed to revenue sharing above 110% and 120% of the natural breakpoint at 5.5% and 6% of gross sales, respectively. The natural breakpoint is the stabilized MAR of \$1,100,000 over the percentage rental rate of 5% beginning with \$22,000,000 as the natural breakpoint at commencement of the lease. The lease is subject to MAR adjustments which would increase the natural breakpoint.

As a successful local family restaurant developer and operator, Brigantine demonstrates the best balance of activating the Location through increased public access as well as maximizing revenues to the District. Staff recommends the Board approve an Ordinance granting a 40-year lease to the Brigantine Inc., dba Portside Pier.

RECOMMENDATION:

Adopt an Ordinance granting a new 40-year lease with The Brigantine Inc., dba Portside Pier located at 1360 North Harbor Drive

FISCAL IMPACT:

The proposed Brigantine lease would set MAR in Year 1 at \$366,666; Year 2 at \$733,333; and Year 3 at \$1,100,000 and percentage rental rate of 5% on both food and beverage throughout the term of the lease. In addition, the Brigantine proposes to revenue sharing at 110% and 220% over the natural breakpoint of \$22,000,000 for their annual gross sales. This translates to an additional 0.5% of rent to the District on annual gross sales above \$24.2 million and another additional 0.5% of rent to the District on annual gross sales above \$26.4 million from Portside Pier. The natural breakpoint would increase when MAR gets adjusted during the term of the lease.

COMPASS STRATEGIC GOALS:

As part of efforts to support a vibrant and active waterfront, the District selected a successful restaurant operator to maximize the potential of the Location and rent to the District. This agenda item supports the following Strategic Goals.

- A vibrant waterfront destination where residents and visitors converge.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

Background

At the May 12, 2015 Board meeting, staff was directed to issue a RFP for the Location. On May 20, 2015, staff issued the RFP and received six proposals. On August 11, 2015, the Board advanced Fish Market, Sunroad and Brigantine to a second round and allowed them to issue a supplement to their original proposals. Brigantine proposed to redevelop the restaurant and dock and dine facilities, and proposed "Portside Pier" as the overall site name, with a plan to divide the space into the following four concepts on two levels:

- Brigantine on the Bay - "Will feature San Diego's finest surf and turf...signature oyster bar, and a lounge with exhibition cooking."
- Miguel's Cocina - "Serves up some of the most authentic Mexican flavors north of the border."
- Ketch Grill and Taps - "Casual walk-up, dine-in and take-out grill...connects San Diego's unique, fresh pub fare with the area's thriving craft beer and spirits community."
- Portside Gelato & Coffee - "Will brew fresh coffee and espresso from San Diego's own roaster, Café Moto, and offer a wide assortment of fine gelato."

Brigantine is a family-owned business that has been developing and operating restaurants since

1969 in San Diego County, including their 12 restaurants operating as Brigantine Seafood and Oyster Bar and Miguel's Cocina. Brigantine has a proven track record as a strong operator that has redeveloped and rebranded underperforming restaurant locations, and they continue to reinvest \$2 to \$3 million in their restaurants each year. They also have a strong management team with over 20 years of experience and diverse backgrounds. Most notably, Mike Morton Jr., CEO of Brigantine, was named Restaurateur of the Year by the San Diego County Chapter of the California Restaurant Association.

At the November 17, 2015 Board meeting, the Board selected and authorized negotiations with the Brigantine based on the above proposal and supplement which demonstrated the most comprehensive plan for activating the Location, providing a public viewing deck, expanding dock and dine and maximizing the Location's revenues and rent paid to the District.

New Lease

The proposed rent is summarized below:

- Minimum Investment - \$13 million
- Minimum Annual Rent
 - Year 1: \$366,666
 - Year 2: \$733,333
 - Years 3-10: \$1.1 million
- Percentage Rent
 - Years 1-10: 5% on food and beverage (rent review scheduled in year 10)
- Revenue Sharing: 5.5% to 6% gross sales
- Financing participation: 2.5%
- Assignment Participation: 2.5%

The Brigantine will pay 5% on both gross food and beverage sales which will be the highest percentage rental rates paid by any restaurant tenant on Tidelands. In addition, Brigantine proposed revenue sharing above 110% and 120% natural breakpoints at 5.5% and 6% on gross sales of food and beverage, respectively. The natural breakpoint is stabilized MAR of \$1,100,000 over 5% on gross or \$22,000,000. As a result, the District would receive 0.5% of additional percentage rent when annual gross sales exceed \$24,200,000 and receive another 0.5% of additional percentage rent when gross sales exceed \$26,400,000. The natural breakpoint would increase when MAR is increased. The lease (Attachment C) would result in a net present value (NPV) of \$10.5 million (using a 6% discount rate) to the District based on the projected rent over the first ten stabilized years.

Next Steps

The Redevelopment is expected to start immediately after demolition in early 2018, once the Location is free and clear of existing improvements. Once construction commences, it is expected to be complete in approximately twelve (12) months. Brigantine will take occupancy of the Leasehold in Spring of 2018 when construction commences.

Staff Recommendation

The proposed lease to Brigantine will activate the area, increase both access and boat slips to the public as well as maximize rent to the District. Staff recommends the Board adopt an ordinance granting Brigantine a new lease to develop and operate the Portside Pier restaurant.

General Counsel's Comments:

The General Counsel's Office has reviewed the proposed lease and approves as to form and legality.

Environmental Review:

The proposed Board action would grant a 40-year lease with the Brigantine, Inc. for the redevelopment and operation of a restaurant. The District, as lead agency under the California Environmental Quality Act (CEQA), prepared a Final Mitigated Negative Declaration (MND) and Initial Study for the "Portside Pier Restaurant Redevelopment Project" (UPD #MND-2016-91; Resolution No. 2016-202; Clerk's Document No. 66702) that was adopted by the Board on December 13, 2016. Additionally, on July 11, 2017, the Board adopted the Revised Mitigation Monitoring and Reporting Program (MMRP) for the Final MND. District staff has reviewed the proposed Board action and found it consistent with the project analyzed in the Final MND. Therefore, the proposed Board action is not a separate "project" for CEQA purposes but is a subsequent discretionary approval related to a previously approved project. (CEQA Guidelines § 15378(c); *Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist.* (2012) 206 Cal.App.4th 1036.) Accordingly, the proposed Board action is merely a step in furtherance of the original project for which environmental review was performed, and no further environmental review is required.

In addition, the proposed Board action complies with Section 87 of the Port Act, which allows for all visitor-serving commercial and industrial uses and purposes, and the construction, reconstruction, repair, and maintenance of commercial and industrial buildings, plants, and facilities. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

Finally, on July 11, 2017, the Board, authorized issuance of an appealable Coastal Development Permit (CDP) (Clerk's Document No. 67076) to allow for the restaurant development project (see also Agenda Sheet for the item). The District's position continues to be that the development is Non-Appealable under Section 30715 of the California Coastal Act. However, to move the development forward in a timely manner, the Board authorized issuance of the Portside Pier CDP as an "Appealable" CDP. In doing so, the District did not and continues to not waive any claims that the development is excluded from the scope of Section 30715 and the CDP is not and continues to not constitute precedential evidence for future permits or an admission that restaurants are within the scope of Section 30715. In other words, the District issued the permit as "Appealable" under protest and continues to take that position with its subsequent approvals. District staff has reviewed the Board action and found it to be consistent with the CDP. No additional action under the District's CDP Regulations is required.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

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Attachments:

Attachment A: Project Location Map
Attachment B: Proposed Lease Information Summary
Attachment C: Proposed Lease with The Brigantine Inc., dba Portside Pier

¹ Coastal Development Permit (CDP) for Portside Pier Development Project (Reduced Project) on file with the Office of the District Clerk as Document No. 67076.