

FILE NUMBER: 2025-078

DATE: Tuesday, March 11, 2025

SUBJECT: Assignment and Assumption of Lease with Fish Market Restaurants, Inc. and Amended and Restated Lease to The Brigantine Inc., dba The Fish Market

DESCRIPTION: (A) Resolution Consenting to the Assignment and Assumption of the Leasehold Interest in the Property Located at 750 North Harbor Drive from Fish Market Restaurants, Inc. to The Brigantine, Inc., dba The Fish Market; and (B) Ordinance Granting an Amended and Restated Lease for 750 North Harbor Drive to The Brigantine Inc., dba The Fish Market to Update Lease to Current Terms.

EXECUTIVE SUMMARY:

Fish Market Restaurants, Inc., a California corporation (as successor-in-interest to Fish Market Restaurants – San Diego) (“Fish Market”) operates a restaurant at 750 North Harbor Drive, San Diego as shown on the Location Map (Attachment A), which is excluded from the District’s Exclusive Negotiating Agreement with 1HWY1. Fish Market’s lease with the District expires February 29, 2028¹ (the “Existing Lease”). Fish Market is a tenant in good standing in accordance with the standards outlined in the Board of Port Commissioners Policy No. 355 (“BPC 355”) and is proposing to assign its rights and obligations under the Existing Lease to The Brigantine, Inc., a California corporation dba The Fish Market (“Brigantine”).

The Existing Lease requires the Board of Port Commissioners (“Board”) to consent to the assignment and assumption of the Existing Lease by Fish Market to Brigantine (the “Assignment”). As a condition of granting consent to the Assignment, the District may adjust rent to market and update the terms and provisions of the Existing Lease to the District’s current lease template. The proposed rent increase includes an increase in the percentage rental rate for the primary rental category, the sale of food and fish, from 3.5% to 5%, among other percentage rental rate changes. Brigantine has agreed to an Amended and Restated Lease in the form attached hereto as Attachment B (the “A&R Lease”) with the District’s current standard lease terms, which includes, among other provisions, the following items not present in the Existing Lease: updated rent; District participation in refinance proceeds not reinvested in District tidelands or used to pay existing debt; District participation in proceeds resulting from a future assignment or sale of the leasehold interest; and a demolition and remediation fund to pay for any improvements the District elects to have Brigantine remove at the end of the lease term as well as to fund any required environmental remediation.

¹Lease dated February 16, 1988 on file in the Office of the District Clerk as Document No. 21818 (as amended by that certain Amendment No. 1 dated April 4, 1989 on file in the Office of the District Clerk as Document No. 23598, Amendment No. 2 dated April 12, 2005 on file in the Office of the District Clerk as Document No. 48829, and Amendment No. 3 dated May 13, 2021 on file in the Office of the District Clerk as Document No. 72782) Collectively, “Existing Lease”.

RECOMMENDATION:

(A) Adopt a Resolution Consenting to the Assignment and Assumption of the Leasehold Interest in the Property Located at 750 North Harbor Drive from Fish Market Restaurants, Inc. to The Brigantine, Inc., dba The Fish Market; and (B) Adopt an Ordinance Granting an Amended and Restated Lease for 750 North Harbor Drive to The Brigantine Inc., dba The Fish Market to Update Lease to Current Terms.

FISCAL IMPACT:

The proposed Board action would result in increased revenue to the District. The net present value of the additional revenue to the District is approximately \$419,000 over the remaining 3 years of lease term.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

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

DISCUSSION:

Background

The Fish Market leasehold is comprised of approximately 24,113 square feet of tideland area located at 750 North Harbor Drive in the City of San Diego. Fish Market has been operating the restaurant at this location since 1989. The restaurant is a two-story building with indoor and outdoor dining. The Existing Lease commenced March 1, 1988, and has a term of 40 years, which expires on February 29, 2028.

Fish Market entered into an Agreement for Purchase and Sale of Assets with Brigantine on November 4, 2024, and has requested District consent to the Assignment. Under the Existing Lease and in accordance with BPC 355, as a condition of consent to a proposed assignment, the District has the right to update the lease to include current standard language and to adjust rental rates to market. Staff's proposed action includes the execution of an A&R Lease pursuant to the terms detailed below.

Assignment and Assumption of Leasehold Interest

Brigantine is a family-owned business that has been developing and operating restaurants since 1969 in San Diego County. They currently operate 20 restaurants across 6 concepts, which include The Brigantine Seafood and Oyster Bar, Miguel's Cocina, Ketch Brewing, Ketch Grill and Taps, Topsail, and Portside Coffee & Gelato. Brigantine has a proven track record as a strong operator that has successfully increased revenue to the District through their leases for Portside Pier on the Embarcadero and Ketch in Shelter Island. Fish Market has negotiated the sale of their brand to Brigantine, including this location as well as the Solana Beach location. Brigantine intends to continue operating the restaurants as The Fish Market. The proposed form for the Assignment and Assumption of Lease is attached (Attachment C).

Amended and Restated Lease

The Existing Lease provides that as a condition of consent to an assignment, rent shall be set at current market rates and the lease language updated to current District standard lease provisions.

The following table outlines the percentage rental rates which been negotiated and agreed upon between the District and Brigantine.

Rental Category	Existing Lease	A&R Lease
Food & Fish	3.5%	5%
Beverage On-Site	5.25%	5%
Sundries	5%	5%
Off-Sale Bev	3%	5%
Coin Machine Commission	25%	25%
Coin Machine Rev. Sales	5%	5%
Misc. & Other Sales	10%	10%
Telecommunications	50%	50%
Misc. Unpermitted	N/A	20%

The percentage rental rate for Beverage On-Site under the Existing Lease is 5.25%, a rate which was set in Amendment No. 3 as consideration for structural changes to the rent provisions arising from severe financial hardship from the COVID-19 pandemic. The District has negotiated a .25% reduction to this percentage rental rate in exchange for the 1.5% increase to the primary percentage rental rate category, the sale of food and fish. The 5% rental rate for Beverage On-Site is within the current market rent range for this category, and the cumulative changes to the percentage rental rates result in a net present value of approximately \$419,000 in increased revenue to the District over the remaining 3 years of lease term.

Further, Brigantine has agreed to a Financing Participation Fee and Assignment Participation Fee of 2.5%. The Financing Participation Fee is a percentage of the net proceeds for future financing of the leasehold, excluding funds applied towards reinvestment in this leasehold or other leaseholds on tidelands. The Assignment Participation Fee is a percentage of the gross proceeds of an assignment of the whole or part of the restaurant leasehold interest.

The Existing Lease does not contain the District's most updated lease provisions, therefore, staff has negotiated the A&R Lease to update the language to include terms such as a demolition and remediation reserve fund, as well as updated indemnity and prevailing wage language.

Conclusion and Recommendation

The proposed Assignment is anticipated to improve the leasehold's performance. Brigantine has an excellent reputation in the restaurant industry and a proven track record of maintaining its restaurants in like-new condition. Brigantine has a commitment to reinvest in the proposed leasehold to maximize leasehold revenues.

The proposed Assignment is consistent with BPC Policy No. 355 and would enable the District to update the lease language and increase rent to market. Staff recommends that the Board adopt a resolution consenting to the proposed assignment and assumption of the restaurant leasehold interest and adopt an ordinance to authorize an A&R Lease with Brigantine.

General Counsel's Comments:

The General Counsel's Office has reviewed this agenda and attachments, as presented to it, and approves the same as to form and legality.

Environmental Review:

The proposed Board actions, including without limitation a resolution consenting to the assignment and assumption of the leasehold interest from Fish Market Restaurants, Inc. to The Brigantine, Inc., dba The Fish Market, and an ordinance granting an amended and restated lease to The Brigantine Inc., dba The Fish Market to update the lease to current terms, do not constitute a project under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because there is not a potential to result in a direct or indirect physical change in the environment. Therefore, the proposed Board actions are not subject to CEQA and no further action under CEQA is required.

The proposed Board actions comply with Section 21 and 35 of the Port Act which allow for the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board actions are consistent with the Public Trust Doctrine.

The proposed Board actions do not allow for development, as defined in Section 30106 of the California Coastal Act, or new development, pursuant to Section 1.a. of the District's Coastal Development Permit Regulations. Therefore, issuance of a Coastal Development Permit or an exclusion finding is not required.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct impact on District workforce or contract reporting at this time.

PREPARED BY:

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Attachment(s):

Attachment A: Location Map
Attachment B: Form of Amended and Restated Lease
Attachment C: Form of Assignment and Assumption of Lease