

CITY OF SANTA BARBARA WATERFRONT DEPARTMENT

MEMORANDUM

Date: August 19, 2010
To: Harbor Commission
From: John N. Bridley, Waterfront Director
Subject: Lease Agreement with Brophy & Sons, Inc.

RECOMMENDATION:

That Harbor Commission consider and recommend City Council approval of a 25-year lease with Brophy & Sons, Inc., doing business as Brophy Brothers Restaurant and Clam Bar, at an average base rent of \$32,695 per month or 10% of gross sales, whichever is greater.

DISCUSSION:

Brophy & Sons, Inc., (Brophy's) leases approximately 2,200 square feet of second floor space at 119 Harbor Way for their restaurant facility, 380 square feet of space on the first floor of the 119 building for the clam bar, and 994 square feet of space in the adjacent Old Coast Guard Building at 117 Harbor Way for storage and refrigeration. The current lease commenced on October 1, 1991, and expired on February 1, 2010.

The rent is \$32,695 per month or 10% of gross sales, whichever is greater. The current lease has an escalation clause that increases the percentage rent to 11% of gross sales after the business reached \$2.5 million in gross sales in a calendar year. Brophy's typically breaks into the 11% category in July of each year. Other restaurants that have a percentage rent escalation clause include Harbor Restaurant, Chuck's Waterfront Grill, Santa Barbara Shellfish Company and Breakwater Restaurant.

The current Brophy's lease also has a "Reimbursement for Improvements" provision. The Reimbursement for Improvements provision allows eligible tenants to apply for an offset to their percentage rent for certain infrastructure improvements that are approved in advance by the Department (the tenant is still responsible for paying its full base rent obligation).

Tenants that have the Reimbursement for Improvements clause in their lease include Chuck's Waterfront Grill, Char West, Harbor Restaurant, Minnow Café, Shoreline Beach Café, Santa Barbara Shellfish Company, Sea Landing and Santa Barbara Sailing Center. The clause is intended to encourage tenants to invest in the infrastructure of the property, which benefits the tenant and the City, since the property ultimately reverts to City ownership at lease expiration. For example, Brophy's and the Harbor Restaurant

completed major kitchen and plumbing upgrades to their leased properties under the rent credit incentive program. Shoreline Beach Café added its awning and forced-air heating to its outdoor patio and received rent credits under the program; the tenant's sales and percentage rent payments increased following the improvements.

Staff has been in lease discussions with John Bennett of Brophy & Sons since mid January. The principal changes to the lease involve the following:

- Updated Reimbursement for Improvements provision;
- Increased business interruption insurance requirement (24 months' coverage instead of 12) to ensure base rent payments continue to be paid during reconstruction in the event the property is damaged or destroyed;
- New standard maintenance clause clarifying Landlord /Tenant responsibilities; and
- Seasonal allocation of base rent, allowing for a lower base rent in winter months to be made up with a higher base rent in summer months (consistent with most other restaurant tenants.)

The basic terms of the proposed lease are as follows:

- **Base Rent:** \$32,695 average per month (no change) but allocated seasonally
- **Percentage Rent:** 10% of gross sales, escalating to 11% at \$3 million (was 11% at \$2.5 million)
- **Cost of Living Adjustment:** annually, based on changes in the Consumer Price Index
- **Term:** Five years with 4 five-year options for a total of 25 years
- **Personal guarantee:** Since the lease is with a corporation, Susan Bennett signed the City's standard personal guarantee

All other business terms of the lease remain unchanged. Brophy Brothers Restaurant and Clam Bar remains the Waterfront Department's second largest rent generating tenant and produces approximately 12% of the Department's annual property management revenue.

A copy of the lease is available for review at the Waterfront Department administration office.

Attachments: Site Plans

Prepared by: Scott Riedman, Waterfront Business Manager