



MEMORANDUM

April 9, 2021

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. John Burton
Hon. Gail Gilman
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Executive Director 

SUBJECT: Request approval of Mutual Termination Agreement for Port Lease No. L-8627 with Ferry Plaza Limited Partnership, located adjacent to Ferry Plaza

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution No. 21-14

Executive Summary

Ferry Plaza Limited Partnership ("FPLP") is the current tenant under Port Lease No. L-8627 (the "Lease") for premises at the east end of Ferry Plaza. After lengthy negotiations by FPLP and FPLP together with Port seeking the re-establishment of a restaurant operation at the premises, Port staff and representatives of FPLP have agreed to seek a termination of the Lease on the terms summarized below. Accordingly, Port staff is seeking Port Commission approval of the proposed mutual termination agreement (the "Agreement").

Strategic Objective

The proposed Agreement is expected to contribute to meeting the Stability Objective of the Port's Strategic Plan by regaining control of the subject property in order to seek a new tenant relationship under business terms that would be better able to perform through economic cycles and would provide additional benefits to the Port, if feasible.

Background

As noted above, FPLP is the current tenant under the Lease for premises at the east end of Ferry Plaza, consisting of approximately 34,659 square feet, of which 19,428 square feet is interior restaurant space. The term of the Lease is 66 years,

commencing December 1, 1974 and expiring November 30, 2040.

The Lease calls for the premises to be operated as a “first class” restaurant. Port records indicate that there has not been an operating restaurant onsite for at least eight years, and prior to that period there were periods of operation interspersed with periods of closure. Despite the ongoing lack of an operating business at the site, FPLP has consistently paid the base rent due, currently \$18,572 per month (which equates to an annual rent of \$222,866). Percentage rent is also payable at rates of 6% of food and 8% of bar sales, with the tenant paying the greater of base rent or percentage rent. Percentage rent has rarely exceeded base rent since the commencement of the Lease, even in the best of economic conditions. Under the Lease the Port is not entitled to any participation in the proceeds of a transfer or refinance of the Lease.

Since the restaurant last operated, Port staff and representatives of FPLP have engaged in discussions regarding a range of potential transactions to bring in a new operator that would reanimate the site and generate additional rent to the Port. When it became apparent that these discussions would not prove successful, Port staff terminated negotiations and in early 2020 issued a notice of default to FPLP for failure to operate a first class restaurant at the site. At that point, the Port stopped cashing the rent checks submitted by FPLP to avoid the requirement to renotice the default at a later date if the Port chose to pursue its remedies in court. The parties’ discussions then turned away from establishing a new operation under the Lease and instead focused on seeking the orderly termination of the lease relationship. After a series of inspections by Port engineering and maintenance staff to ascertain the condition of the building, the parties ultimately negotiated the proposed Agreement that is the subject of this staff report.

Mutual Termination Agreement Summary

The proposed Agreement includes the following key terms:

1. FPLP will pay all rent amounts due up until December 31, 2020, with no late fees or interest charges. After taking into account the uncashed rent checks referenced above, this payment amount totals \$228,533.71.
2. FPLP will surrender any claim to the \$222,865.97 security deposit upon termination.
3. FPLP will deliver the facility in substantially the same condition as Port staff found it during the inspections noted above.
4. FPLP will cooperate as needed to ensure all permits and contractual obligations relating to the leasehold are assigned or addressed as appropriate to complete the transaction.
5. FPLP will provide a broad release of claims against the Port.
6. Port will provide a limited release of liability for known claims.

Port Staff Analysis

Port staff recommends approval of the Agreement for the following reasons:

1. The tenant has remained current on rent throughout the period of being unable to establish a feasible restaurant operation, and has engaged in good faith with the Port on various means to achieve compliance with the operating requirement under the Lease.
2. Although the facility inspections identified some needed repairs and replacements relative to the maintenance obligations under the Lease, as a general matter the facility was in serviceable condition (and notably the Tenant did not have maintenance responsibility for the substructure under the Lease, unlike a number of other restaurant tenancies on Port property). Port staff believes that these renewal needs can be addressed through a combination of (a) the large security deposit relative to other like tenancies on Port property and (b) the tenant improvements that would be needed to establish a new operation at the site.
3. The Port has an interest in regaining control of the site, especially in light of its adjacency with desired improvements of Ferry Plaza.

Recommendation

Port staff recommends that the Port Commission adopt Resolution No. 21-14 approving the Agreement. If the Port Commission approves, the Agreement would be subject to approval by the Board of Supervisors since it was originally approved by the Board under Charter Section 9.118. Upon successful completion of approvals and execution of the Agreement, Port staff would return to the Port Commission to seek direction on seeking a new tenant for the facility.

Prepared by: Michael Martin
Assistant Port Director

**PORT COMMISSION
CITY & COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 21-14

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of the City and County of San Francisco; and
- WHEREAS, Port and Ferry Plaza Limited Partnership’s predecessors in interest (“Tenant”) entered into that certain BARTD Ventilating Structure Barbary Coast Restaurant Lease, Port Lease No. 8627, dated May 8, 1974, under which Tenant leases real property known as the Bay Area Transit Ventilating Building roof and portions of the so-called Ferry Plaza for operation of a restaurant (as amended, the “Lease”); and
- WHEREAS, The Lease expires on November 30, 2040; and
- WHEREAS, Port and Tenant now wish to agree on an orderly termination of the Lease, per the terms of the Mutual Termination Agreement on file with the Commission Secretary (the “Mutual Termination Agreement”), and
- WHEREAS, Among other things, the Mutual Termination Agreement requires payment of rent by FPLP through December 31, 2020, the surrender of the security deposit to the Port, and other agreements relating to the release of claims and wind down of the lease relationship, all as more particularly described in the Memorandum to the Port Commission dated April 9, 2021; now, be it
- RESOLVED, that, subject to Board of Supervisors’ approval, the Port Commission approves the Mutual Termination Agreement and authorizes the Executive Director or her designee to execute such agreement in substantially the same form on file with the Port Commission Secretary; and, be it further
- RESOLVED, that the Port Commission authorizes the Executive Director to enter into any additions, amendments or other modifications to the Mutual Termination Agreement that the Executive Director, in consultation with the City Attorney, determines, when taken as a whole, to be in the best interest of the Port, do not materially increase the obligations or liabilities of the City or the Port, and are necessary or advisable to complete the transactions which this Resolution contemplates and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of such documents.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of April 13, 2021.

DocuSigned by:

Carl Nicita

Secretary

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