

November 1, 2024

MUTUAL TERMINATION AGREEMENT FOR LEASE NO. L-8618

This Mutual Termination Agreement (“**Agreement**”), dated as of [_____, 202X], is made and entered into by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the “**City**”), operating by and through the **SAN FRANCISCO PORT COMMISSION** (the “**Port**” and the “**Landlord**”) and **JPPF WATERFRONT PLAZA, L.P.**, a Delaware limited partnership (the “**Tenant**”).

RECITALS

A. Landlord and Tenant’s predecessor in interest, Francisco Bay Office Park, a limited partnership (“**Original Tenant**”), entered into that certain Lease No. L-8618 dated as of June 28, 1974 (collective, as amended and assigned, the “**Lease**”), as amended by that certain First Amendment to Lease dated as of December 8, 1976 (“**First Amendment**”), as further amended by that certain Second Amendment to Lease dated as of June 21, 1995 (“**Second Amendment**”), with respect to certain premises known as Seawall Lot (“**SWL**”) 315, SWL 316, and SWL 317, located at 50 Francisco Street, 1700 Montgomery Street, 1800 Montgomery Street, 60 Francisco Street, and 80 Francisco Street, as more particularly described in the Lease. The SWLs are also identified by the San Francisco Assessor respectively as Lot 001 of Block 0037, Lot 001 of Block 0036, and Lot 001 of Block 0057. Combined, the three SWLs are approximately 153,357 square feet or 3.52 acres.

B. Landlord and Original Tenant executed a memorandum of lease dated June 28, 1974 recorded in Liber B904, page 557 in the Official Records (“**MOL**”).

C. The First Amendment was unrecorded and a memorandum of the Second Amendment was recorded on July 16, 1996 as Instrument No. 960G002309, in Book G675 of the Official Records, at P. 314 (“**Second Memorandum**”).

D. On May 26, 2004, Landlord and Tenant’s predecessor in interest entered into a Memorandum of Option to Purchase and Lease the Santa Fe Parcel, which was recorded on May 27, 2004 as Document 2004-H729654-00, REEL 1647, IMAGE 0458, in the Official Records (“**Memo of Option**”).

E. As of the Effective Date (defined below), Tenant is current in rent payments to Port and is a tenant-in-good-standing with the Port. By its terms, the term of the Lease is scheduled to expire on June 27, 2050. Concurrently with the termination of the Lease, Landlord and Tenant intend to enter into a new lease for the Premises, having a new 57-year lease term (the “**New Lease**”).

F. Subject to the terms and conditions set forth in this Agreement, Landlord and Tenant desire to terminate the Lease, the MOL, the Second Memorandum, and the Memo of Option. Each of the parties have determined that entering this Agreement is in their respective best interests.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, Port and Tenant hereby agree as follows:

AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.

2. **Definitions.** All capitalized terms used herein but not otherwise defined shall have the meaning given to them in the Lease.

3. **Effective Date.**

(a) Termination of the Lease is subject to the approval of the Port Commission and the Board of Supervisors, each in its sole discretion. Notwithstanding anything to the contrary contained in this Agreement, Tenant acknowledges and agrees that any obligations or liabilities of City under this Agreement are contingent upon a duly adopted resolution of the Port Commission and the Board of Supervisors approving termination of the Lease, each in its sole discretion, and this Agreement shall be null and void if such approval bodies do not approve termination of the Lease.

(b) The date of termination of the Lease (“**Effective Date**”) is the date that a Memorandum of Lease Termination (the “**Termination Memorandum**”) and a New Lease and Purchase Option (the “**Lease Memorandum**”) are each recorded in the Official Records of the City and County of San Francisco.

4. **Tenant and Port Obligations.**

4.1. **Tenant Obligations.** Tenant shall comply with the following terms as material consideration for this Agreement and as a condition precedent for any Port obligation under this Agreement:

(a) **Payments.** Tenant shall have paid all Rent due including late fees or interest charges through the Effective Date.

(b) **Good Standing.** Aside from the terms and conditions set forth in this Agreement, Tenant shall remain a Tenant in Good Standing (as defined by Port policy). If, at any time prior to the Effective Date, Port finds that Tenant is no longer a Tenant in Good Standing, this Agreement shall automatically terminate.

(c) **New Lease.** Tenant shall have delivered (or caused to be delivered) to Port or an escrow company reasonably acceptable to both parties, an original of the New Lease, duly executed by Tenant and the Termination Memorandum and the Lease Memorandum each in recordable form, duly executed and acknowledged by Tenant, and caused the Termination Memorandum and the Lease Memorandum to be recorded in the Official Records.

4.2. **Port Obligations.** As a material consideration for this Agreement and as a condition precedent for any Tenant obligation under this Agreement,

Port shall have delivered (or caused to be delivered) to Tenant or an escrow company reasonably acceptable to both parties, an original of the New Lease, duly executed by Port, and the Termination Memorandum and the Lease Memorandum each in recordable form, duly executed and acknowledged by Port,

with direction to record the Termination Memorandum and the Lease Memorandum in the Official Records.

5. **Continuing Rights and Obligations under the Lease.** From and after the Effective Date, neither Port nor Tenant have any rights or obligations under the Lease, except for obligations arising prior to the Effective Date and any rights or obligations which, by their express terms, survive the expiration or termination of the Lease. Without limiting the foregoing, Tenant shall be responsible for (i) all of its non-monetary obligations under the Lease arising prior to the Effective Date, and (ii) all of its indemnification and any other obligations that expressly survive the expiration or earlier termination of the Lease (the “**Surviving Obligations**”).

6. **No Representation or Warranty by Port.** Nothing contained herein shall operate as a representation or warranty by Port of any nature whatsoever.

7. **Rights Are Cumulative.** Except as may otherwise be provided herein, all liabilities and the rights and remedies of either party as set forth in this Agreement shall be cumulative and in addition to any and all other rights or remedies of each party now or later allowed by applicable law or in equity.

8. **Authority.** The individual executing this Agreement on behalf of Tenant hereby covenants and warrants that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has the full right and authority to enter into this Agreement, and that the person signing on behalf of Tenant is authorized to do so.

9. **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the termination of the Lease. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of this Agreement are superseded in their entirety by this Agreement. No prior drafts of this Agreement or changes between those drafts and the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider such drafts in interpreting this Agreement.

10. **Miscellaneous.** This Agreement shall bind and shall inure to the benefit of the successors and assigns of the parties hereto. This Agreement is made for the purpose of setting forth certain rights and obligations of Tenant and the Port, and no other person shall have any rights hereunder or by reason hereof as a third-party beneficiary of otherwise. This Agreement may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Agreement that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end, all provisions hereof are hereby declared to be severable. In the event of any inconsistencies between the terms of this Agreement and the Lease, the terms of this Agreement shall prevail. Time is of the essence of this Agreement. This Agreement shall be governed by the laws of the State of California. Neither this Agreement nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

11. **Severability.** If any of the provisions of this Agreement or the application thereof is held to be invalid, its invalidity shall not affect any other provision or application of this Agreement

to the extent that such other provision or application can be given effect without the invalid provision or application, and to this end, the provisions of this Agreement are declared and understood to be severable.

12. Lease in Full Force and Effect. Until the Effective Date, this Agreement shall not be construed to modify, waive or affect any of the terms, covenants, conditions, provisions or agreements of the Lease.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, PORT and TENANT execute this Agreement as of the last date set forth below.

PORT: **CITY AND COUNTY OF SAN FRANCISCO,**
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
[Elaine Forbes]
[Executive Director]

Date Signed:_____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of San Francisco)

SS

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

**TENANT: JPPF WATERFRONT PLAZA, L.P.,
A DELAWARE LIMITED PARTNERSHIP**

By: JPPF Waterfront Plaza GP, LLC, a Delaware limited
liability company, its: General Partner

By: _____
Name: _____
Title: _____

Date Signed: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of San Francisco)

SS

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

[Signatures Continue on Next Page]

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____

Name: [_____]

Deputy City Attorney

Agreement Prepared By: [_____, [_____]

____(initial)

Port Commission Resolution No. [_____].

Board of Supervisors Resolution No. [_____].