




MEMORANDUM

April 8, 2022

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

FROM: Elaine Forbes
Executive Director 

SUBJECT: Request approval of Mutual Termination Agreement for Port Lease No. L-7491 (2829 Taylor Street) and Port Lease No. L-9171 (360 Jefferson Street) with Alioto Fish Company, Ltd.

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution No. 22-20

Executive Summary

Alioto Fish Company Ltd. ("Tenant") is the current tenant under Port Lease No. L-7491 for Alioto's Restaurant, located at 2829 Jefferson Street (the "Restaurant Lease"), and under Lease No. L-9171 for storage space located at 360 Jefferson Street (the "Warehouse Lease" and, together with the Restaurant Lease, the "Leases"). In 2020 the onset of the Covid-19 pandemic and associated health orders prompted the Tenant to close the restaurant; it has not reopened since and Tenant has paid no rent due to the Port since March 2020. After negotiations, Port staff and representatives of the Tenant have agreed to seek an amicable mutual 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

The Port entered the Restaurant Lease with the Tenant on May 1, 1970. The term of the Restaurant Lease is 66 years, leaving approximately 14.5 years remaining before the expiration date of April 30, 2036. Over the decades, the name recognition, prime location and quality of service at the restaurant made it one of the highest performing restaurants in the Port's portfolio, though sales had recently decreased over the years leading up to the pandemic. In support of the restaurant operation the Tenant acquired the Warehouse Lease from Hoei Trading America, Inc. effective June 12, 1990; it also expires on April 30, 2036.

In 2020 the onset of the Covid-19 pandemic and associated health orders prompted the Tenant to close the restaurant; it has not reopened since and Tenant has paid no rent due to the Port on either of the Leases since March 2020. As of March 31, 2022, the outstanding balance on Restaurant Lease is \$545,904.80 and the outstanding balance on the Warehouse Lease is \$225,364.28.

Over the course of 2020 and early 2021 Port staff communicated with all of the Port's restaurant tenants about the availability of the Port Commission's tenant relief programs, but the Tenant did not apply. In April 2021 Port staff sent a letter to Fisherman's Wharf restaurant tenants with delinquent balances that had not taken advantage of the Port Commission-approved relief program, reiterating the fact that the rent is still due and inviting them to engage with Port staff to determine a path forward. Tenant responded to the invitation and requested a dialogue with Port staff on parallel paths regarding conditions for reopening the restaurant or, alternatively, a mutual termination of the Leases. After some discussion of the options, Tenant requested a mutual termination along the lines of the recent mutual termination of the Ferry Plaza Limited Partnership ("FPLP") lease at One Ferry Plaza. While recognizing the similarities and differences with the Tenant's situation, Port staff agreed to consider this approach.

Accordingly, Port staff scheduled a series of facility inspections in July and August, performed by members of the Port's Engineering and Maintenance divisions in the same manner as the FPLP facility inspections, to determine what the cost would be to address deficiencies in the condition of the property as compared to the level of maintenance required under the Leases. Port staff also negotiated for financial terms including forfeiture of the security deposits and a termination fee. Those negotiations reached a successful conclusion and today Port staff is bringing the Agreement to the Port Commission for consideration and approval. If the Port Commission approves, the Agreement would be subject to approval by the Board of Supervisors since the Leases were originally approved by the Board under Charter Section 9.118.

Mutual Termination Agreement Summary

The proposed Agreement includes the following key terms:

1. Tenant shall forfeit all moneys held by Port as a security deposit (which the Parties agree is \$18,384.52 for the Restaurant Lease and \$7,590.01 for the Warehouse Lease) and in addition will pay to Port \$200,000.00 as a termination

fee for the Restaurant Lease and \$50,000 as a termination fee for the Warehouse Lease (collectively, the "Termination Fee").

2. Tenant will deliver both premises in the condition required by the Leases and the Restaurant facility in substantially the same condition as Port staff found it during the inspections noted above, subject to removal of tenant's personal property and furniture. Port and Tenant will agree on certain restaurant fixtures that would be beneficial to Port and a future tenant and those will remain in the premises at no cost to Port.
3. Tenant will cooperate as needed to ensure all permits and contractual obligations relating to the leaseholds are assigned or addressed as appropriate to complete the transaction.
4. Tenant shall maintain insurance as required by the Leases up to the Termination Date.
5. Tenant represents that it has returned the full amount of the \$5,000,000 loan from the Small Business Administration Restaurant Revitalization Fund, and further that it has not received other funds from any federal, regional, state or local government-funded financial aid, grant or loan program for COVID relief, that were specifically designated only for payment of rent by the grantor. All such funds received by the undersigned were used as required by the grantor or returned.
6. The parties release each other from known claims, but neither party releases the other as to unknown claims. Known claims released by Port include claims for unpaid rent, future rent and deferred maintenance and for Tenant include claims for rent abatement due to the pandemic.

The Agreement requires all approvals to be obtained by July 31, 2022. Upon approval by the Port Commission, Port staff will calendar the Agreement with the Board of Supervisors as soon as practicable.

Port Staff Analysis

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

1. The Tenant is a longstanding, iconic destination in Fisherman's Wharf that has engaged in good faith with the Port on the negotiation summarized above, reaching an amicable result that both parties find acceptable as to the business terms on which to end the relationship and feel protects their interests going forward.
2. Although the facility inspections identified some needed repairs and replacements relative to the maintenance obligations under the Restaurant Lease, as a general matter the facility was in serviceable condition. Port staff

believes that these renewal needs can be addressed through 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 at an early date, especially in light of the Tenant's desire to not reopen.

Recommendation

Port staff recommends that the Port Commission adopt Resolution No. 22-20 approving the Agreement. If the Port Commission and Board of Supervisors approve the Agreement, the termination date is expected to be no later than August 10, 2022 (and likely sooner, depending on the Board process). Upon final termination of the Leases, Port staff would return to the Port Commission to seek direction on seeking a new tenant for the facility, likely incorporating lessons learned in connection with the development of the broker-managed solicitation that will be discussed later on the April 12 agenda.

In addition, Port staff extends its thanks to the Tenant and all its shareholders and employees who had a hand in making the 50+ years of its partnership with the Port such a great success. While in some ways this is a sad day, the legacy of this restaurant will always be remembered by San Franciscans and visitors alike.

Prepared by: Michael Martin
Assistant Port Director

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

RESOLUTION NO. 22-20

- 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 Alioto Fish Company, Ltd. (“Tenant”) entered into that certain Port Lease No. L-9171, dated May 1, 1970, under which Tenant leases real property known as Alioto’s Restaurant located at 2829 Taylor Street (as amended, the “Restaurant Lease”); and
- WHEREAS, On June 12, 1990, Tenant accepted assignment of that certain Port Lease No. L-7491, under which Tenant leases warehouse support space at 360 Jefferson Street (the “Warehouse Lease” and, together with the Restaurant Lease, the “Leases”); and
- WHEREAS, The Leases both expire on April 30, 2036; and
- WHEREAS, Port and Tenant now wish to agree on an orderly termination of the Leases, 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 termination fees for both Leases, the surrender of the associated security deposits 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 8, 2022; 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 12, 2022.

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Carl Nauta
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Secretary