



MEMORANDUM

September 9, 2022

TO: MEMBERS, PORT COMMISSION
Hon. Willie Adams, President
Hon. Kimberly Brandon, Vice President
Hon. John Burton
Hon. Gail Gilman
Hon. Steven Lee

FROM: Elaine Forbes 
Executive Director

SUBJECT: Request approval of a Rent Repayment and Forgiveness Agreement for Seawall Lot 337 Associates, LLC, Lease No. L-16417, under which (i) Port will forgive past due base rent for the period March 1, 2020 through April 30, 2021 in the amount of \$100,000; (ii) Tenant will pay \$644,078.21 in past due base rent for the period March 1, 2020 through April 30, 2021; and (iii) Port will waive late fees, accrued interest, and attorneys' fees.

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution No. 22-46

EXECUTIVE SUMMARY

Seawall Lot 337 Associates, LLC (Developer and Tenant) is the Port's Master Lessee for the development of the Mission Rock project at Seawall Lot 337 (SWL 337). The Master Lease allows parking and special events as permissible, revenue generating uses until the land is needed for the development project. While Tenant has consistently paid percentage rent when due, Tenant did not make base rent payments from March 2020 through January 21, 2021. The total base rent due for this period is \$744,078.21. See Attachment 1 for details of the balance due. Because of the drastically diminished demand for parking while the COVID-19 pandemic halted in-person attendance at baseball games and all nearby in-person events, use of the premises and revenue generation was severely impacted. Because of these economic effects, Staff proposes that \$100,000 of the past due rent be forgiven and that the remaining past due amount of \$644,078.21 be paid in full.

THIS PRINT COVERS CALENDAR ITEM NO. 7D

STRATEGIC OBJECTIVE

The proposed settlement supports meeting the Strategic Plan's Stability Objective by collecting past due rent and retaining parking and special event revenues from the premises until needed for development of the Mission Rock project.

BACKGROUND

The Port implemented a rent forgiveness plan for tenants impacted by the COVID-19 health emergency. A subset of Port tenants, namely the Port's parking lot operators, are eligible to participate in a rent forgiveness plan approved by the Port Commission and the Board of Supervisors, whereby base rents for the period between 3/1/2020 to 4/30/2021 are forgiven, acknowledging that parking demand during this period was severely reduced. The forgiveness program was designed to keep parking operators out of default due to lack of rent payment during the most impactful months of COVID-19.

Tenant has an agreement with a parking lot operator to manage the parking operations at SWL 337. With the limited number of ballgames and special events during the pandemic, parking demand at SWL 337 was severely reduced during that time. However, since this facility is not leased directly to a parking lot operator, it does not technically qualify for the rent forgiveness plan previously approved by the Port Commission on August 10, 2021 (Resolution No. 21-33). Further, the premises is part of a Master Lease governing the long-term development of the site for the benefit of Developer and Port.

RECOMMENDATION

In recognition of:

- (1) the near elimination of special events during the pandemic;
- (2) the significant decrease in parking demand with fans not allowed at Oracle Park (Ballpark), and commuters not driving into their offices during the forgiveness period; and
- (3) the Master Lease and Disposition and Development Agreement (DDA) that are guiding development of the surface lot into a new mixed-use neighborhood.

Staff proposes that:

- (1) \$100,000 of the past due rent be forgiven, consistent with forgiveness provided to many other parking lot operations in the Port's portfolio while still recognizing that the Master Lease serves the dual purpose of parking lot & special event operations as well as development; and
- (2) Developer pay Port the remaining past due amount of \$644,078.21.

Port staff recommends that the Port Commission approve the attached resolution authorizing staff to execute a Rent Repayment and Forgiveness Agreement with the terms as outlined in this memorandum.

Prepared by: Phil Williamson, Senior Project Manager
Joshua Keene, Assistant Deputy Director
Real Estate and Development

For: Rebecca Benassini, Deputy Director
Real Estate and Development

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

RESOLUTION NO. 22-46

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, The Port entered into Lease No. L-16417 dated August 15, 2018 (Lease) with Seawall Lot 337 Associates, LLC (Developer) for the entirety of Seawall Lot 337 (SWL 337) for the development of the site into a new mixed-use neighborhood; and

WHEREAS, the Lease authorizes parking and special events as permissible uses until the premises are required for development purposes; and

WHEREAS, Developer has an outstanding balance under the Lease as set forth in the staff memorandum accompanying this resolution; and

WHEREAS, The Port and Developer have reached an agreement on the terms of a forgiveness and repayment agreement as described in the staff memorandum accompanying this resolution, a copy of which is on file with the Commission Secretary (Rent Repayment and Forgiveness Agreement); and

WHEREAS, Under the proposed Rent Repayment and Forgiveness Agreement, (i) Port will forgive \$100,000 of past due base rent, (ii) Developer will pay \$644,078.21 of past due base rent for the period March 1, 2020, through April 30, 2021, and (iii) Port will waive late fees, interest, and attorneys' fees accrued on past due base rent; and

WHEREAS, The parties now wish to settle their dispute in a manner that allows Developer to continue its occupancy of the premises with the intention of avoiding protracted disputes, uncertainties, and litigation; and now therefore be it

RESOLVED, That the Port Commission hereby approves the Rent Repayment and Forgiveness Agreement and authorizes the Executive Director or her designee to execute the Rent Repayment and Forgiveness 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 Rent Repayment and Forgiveness Agreement that the Executive Director, in consultation

with the City Attorney, determines, when taken as a whole, are in the best interest of the Port, do not materially increase the obligations or liabilities of the City of 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 September 13, 2022.

Secretary

Attachment 1 Tenant Payment and Balance History Lease #L-16417

as of August 22, 2022

Seawall Lot 337 / 16417 / Agr#004291

Parcel A: Horizontal Improvement L-16417

March, 2020 to April 2021

Acctg Date	Item ID	Entry Type	Base Rent	Payment	Credit Adjustment	Balance Rent	Late Fee	Description
4/1/2020	2009118	IN	\$ 945,540.00			\$ 271,308.21	\$ 52,242.06	April 2020 to June, 2020 (Parcel A Horizontal Improvement)
2/8/2021	2009118	PY		\$ (201,461.79)				
3/12/2021	2100390	Cr Adjustment			\$ (472,770.00)			Partial credit to invoice #2009118, April to June 2020 base rent adjustment due to commencement of Horizontal Improvement effective
7/1/2020	2100390	IN	\$ 945,540.00			\$ 472,770.00	\$ 82,378.58	July, 2020 to September, 2020 (Parcel A Horizontal Improvement)
3/12/2021	2100390	Cr Adjustment			\$ (472,770.00)			Partial credit to invoice #2100390, April to June 2020 base rent adjustment due to commencement of Horizontal Improvement effective
10/1/2020	2102843	IN	\$ 108,211.80			\$ -	\$ 919.06	October 2020 to December, 2020 (Parcel A Horizontal Improvement)
2/8/2021	2102843	PY		\$ (63,140.66)				
2/18/2021	2102843	Cr Adjustment			\$ (45,071.14)			Partial credit to invoice#2102843 on October to Dec 2020 quarterly base rent due to closing of lead parcels effective Oct 6th, 2020
1/1/2021	2105432	IN	\$ 108,211.80			\$ -	\$ 305.19	January 2021 to March 2021 (Parcel A Horizontal Improvement)
1/29/2021	2105432	PY		\$ (63,654.00)				
2/18/2021	2106653	Cr Adjustment			\$ (44,557.80)			Partial credit to invoice#2105432 on October to Dec 2020 quarterly base rent due to closing of lead parcels effective Oct 6th, 2020
			2,107,503.60	\$ (328,256.45)	\$ (1,035,168.94)	\$ 744,078.21	135,844.89	
TOTAL BLANCE							\$ 879,923.10	

Parcel A B & C

Acctg Date	Item ID	Entry Type	Base Rent	Payment	Credit Adjustment	Balance Rent	Late Fee	Description
1/1/2020	2006237	IN	\$ 105,060.00			\$ -		January 2020 to March, 2020 (Parcel A B & C)
2/8/2021	2009118	PY		\$ (105,060.00)				
4/7/2021	2108211	IN	\$ 190,962.00			\$ -		April 2021 (Parcel A B & C)
4/30/2021	2108211	PY		\$ (190,962.00)				
			296,022.00	\$ (296,022.00)	\$ -	\$ -		
TOTAL BLANCE							\$ -	