



MEMORANDUM

July 8, 2022

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

FROM: Elaine Forbes
Executive Director 

SUBJECT: Request approval of a Settlement Agreement for Aclima, Inc. (Aclima) under Leases No. L-16516 (Pier 19), L-16573 (Roundhouse 2, 3rd Floor), L-16608 (Sandhouse), and L-15928 (98 Lombard – terminated) under which: (i) Port and Tenant will agree to a 14-month payment plan of past due rent exceeding \$1.8 million, less late fees and interest, holdover rent and a 20% reduction on past due base rent; (ii) Tenant will execute a stipulated judgement requiring Tenant to pay outstanding rent without foregoing deductions if Tenant fails to comply with the Settlement Agreement; and (ii) Port's waiver of late fees and interest, holdover rent, attorneys' fees, and 20% of past due base rent if Tenant successfully completes the payment plan.

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution No. 22-34

EXECUTIVE SUMMARY

A Port tenant, Aclima Inc., with leases in Roundhouse 2, Sandhouse, and portions of Pier 19, stopped making rent payments in April 2020. As of June 10, 2022, the balance due totals \$1,858,588, which amount includes base rent, holdover rent, and late fees and interest. See Attachment 1 the details for the balance due.

After several rounds of negotiations over the past year, the Port and Aclima agreed on a payment plan for Aclima to pay 80% of the outstanding base rent (\$1,088,265.79). The payment plan does not include payment of holdover rent of approximately \$639,127,

late fees and interest that total \$131,194.97, and 20% of the outstanding base rent (\$217,653.16). If Aclima successfully completes the payment plan, then Port will agree to waive the forgoing amounts not included in the payment plan and Port's attorneys' fees.

After subtracting the Port waivers, Aclima will pay a net balance due of \$870,612.64. The payment plan will consist of the following steps: (i) \$250,000 payment over six months with \$125,000 in the first month and \$25,000 paid over the following five months; (ii) monthly payment of \$47,183.28 over 12 months and (iii) two payments of \$27,206.64 due in months 13 and 14. Tenant will continue to pay base rent owed under each of the existing 3 leases. Under this structure, Aclima will pay 65% of the outstanding amounts owed under the payment plan in the first six months after execution of the settlement agreement.

To ensure that the Port has an expedited means to manage a default under any of the existing leases or the settlement agreement, a critical component of the settlement is to have a stipulated judgement filed with the court and ready to enforce in the event of Aclima's breach. This will shorten the time needed to have Aclima quit their premises. Should Aclima default on any element of this payment plan and fail to cure its default after five (5) days of the Port serving it with written notice, the Port will have the power to enforce a stipulated judgment agreed to by both parties. This stipulated judgment will be filed with the court upon execution of the settlement agreement. It will be enforceable upon the condition of Aclima breaching its obligations laid out in the settlement agreement. The Port will be empowered to file an *ex parte* application with the court to regain right of possession and obtain the entirety of Aclima's outstanding monetary obligations, voiding all concessions made to Aclima by the Port.

Port staff recommends entering into the settlement agreement because (a) the settlement allows the Port to avoid the cost, time and uncertainty in the unlawful detainer process; (b) the repayment plan is front-loaded to reduce past due amounts owed if Aclima defaults in its payment obligations; (c) the stipulated judgement expedites the eviction process, if needed and allows Port to collect outstanding amounts without reduction, and (d) the settlement keeps Aclima paying rent for Port space.

STRATEGIC OBJECTIVE

The proposed settlement supports the Strategic Plan goal of Equity by maintaining an LBE tenant that hires people from disadvantaged communities for their front-line workforce. The proposed settlement is also expected to contribute to meeting the Stability Objective by recovering past due rent and keeps a rent-paying tenant in place for at least 14 more months.

BACKGROUND

Aclima has been a Port tenant at Roundhouse since 2011. Aclima says government agency contracts for air testing produce the bulk of its operating revenue, but most of

their contracts stopped paying during COVID-19-related health orders, resulting in a cash crisis and inability to pay rent. Even after the health orders were lifted Aclima did not recommence paying rent (except for two payments made in July-21 and Oct-21) citing the need to fund payroll over rent. Aclima made a double rent payment in May-22 and full rent payments in June and July 2022, which are positive developments.

All of Aclima's leases expired June 30, 2021 and are on month-to-month holdover status. Under the existing leases, Tenant would be charged holdover rent during such month-to-month period.

Settlement Proposal

- a) Aclima will replenish its security deposit in the amount of \$109,715.60 in the aggregate for the 3 leases as Port has applied all the security deposit under each of the 3 leases.
- b) Aclima will pay \$250,000 of the back rent over six months (\$125,000 due the first month, then five payments of \$25,000 each in months 2-6).
- c) Aclima will pay \$566,169 (75% of past due base rent less \$250,000) over 12-months at \$47,183.28 per month.
- d) Aclima will pay \$54,413.29 (representing 5% of past due base rent) in two payments of \$27,206.64 in months 13 and 14.
- e) After successful payment of a) through d) above, Port would then provide these concessions:
 - i. Waive the holdover rent (\$639,127)
 - ii. Waive late fees/interest (\$131,195)
 - iii. Waive 20% of the net balance due (\$217,653)
 - iv. Waive attorneys' fees.

Note that the actual amounts will change as the amounts owed in the settlement agreement will be based on the amounts owed as of a date later than the date of this memorandum.

If Aclima defaults in its obligations under the settlement agreement, then the holdover rent, late fees/interest and the 20% reduction of past due base rent all become immediately due and payable.

- f) As part of the settlement, Port and Aclima will enter a stipulated judgement whereby Port can recapture the premises upon an Aclima default without having to initiate another unlawful detainer action.
- g) There is a cross default provision in the settlement agreement, which allows the Port to enforce the stipulated judgment for the entire outstanding amount due should Aclima breach any portion of the payment plan or the three leases.

This combination of base rent and settlement payments will require Aclima to make the monthly payments shown in the below table.

		Discounted Balance Payment Plan					
Month	Base Rent	Monthly Base Installment	Accelerated Installment	Delayed Installment	Subtotal	Base Rent + Pmt Plan	
1	Execution	54,857.80	47,183.28	125,000.00	0.00	172,183.28	227,041.08
2	Sep-22	54,857.80	47,183.28	25,000.00	0.00	72,183.28	127,041.08
3	Oct-22	54,857.80	47,183.28	25,000.00	0.00	72,183.28	127,041.08
4	Nov-22	54,857.80	47,183.28	25,000.00	0.00	72,183.28	127,041.08
5	Dec-22	54,857.80	47,183.28	25,000.00	0.00	72,183.28	127,041.08
6	Jan-23	54,857.80	47,183.28	25,000.00	0.00	72,183.28	127,041.08
7	Feb-23	54,857.80	47,183.28	0.00	0.00	47,183.28	102,041.08
8	Mar-23	54,857.80	47,183.28	0.00	0.00	47,183.28	102,041.08
9	Apr-23	54,857.80	47,183.28	0.00	0.00	47,183.28	102,041.08
10	May-23	54,857.80	47,183.28	0.00	0.00	47,183.28	102,041.08
11	Jun-23	54,857.80	47,183.28	0.00	0.00	47,183.28	102,041.08
12	Jul-23	56,503.53	47,183.28	0.00	0.00	47,183.28	103,686.81
13	Aug-23	56,503.53	0.00	0.00	27,206.64	27,206.64	83,710.18
14	Sep-23	56,503.53	0.00	0.00	27,206.64	27,206.64	83,710.18

STAFF ANALYSIS

Staff believes that the proposed settlement structure is beneficial to the Port. It front loads payment of outstanding base rent owed to Port and reduces the uncertainty and costs associated with litigation.

The settlement plan includes a requirement for a stipulated judgement which, in the case of an Aclima default, will provide the Port an expedited means to recover the premises and preserves Port's right to recover all outstanding amounts not included in the payment plan.

Port staff and consultants concluded that the San Francisco office market is experiencing increased vacancy, falling rents, and significant concessions as demand for office space weakens, Staff believes it is better to keep Aclima in place paying rent than evicting Aclima because of the downtime and improvement costs required to release their office premises.

RECOMMENDATION

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

Prepared by: Don Kavanagh, Senior Property Manager
Kimberley Beal, 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. 22-34

- 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-16516 dated May 6, 2019 with Aclima, Inc. for 7,169 square feet of shed space in Pier 19 for storage of air quality monitoring equipment and vehicles (the “Pier 19 Lease”);
- WHEREAS, The Port entered into Lease No. L-16573 dated October 28, 2019 with Aclima, Inc. for 7,133 square feet for general office uses at 10 Lombard Street, Roundhouse Two, Third Floor (the “Roundhouse 2 Lease”); and
- WHEREAS, The Port entered into Lease No. L-16608 dated October 22, 2019 with Aclima, Inc. for 1,641 square feet for general office uses at 1101 The Embarcadero (the “Sandhouse Lease”); and
- WHEREAS, The Port entered into Lease No. L-15958 dated June 26, 2015 with Aclima, Inc. for 1,106 square feet for general office uses at 98 Lombard Street (“98 Lombard Lease”); and
- WHEREAS, The Pier 19 Lease, the Roundhouse 2 Lease and the Sandhouse Lease each expired June 30, 2021 and Tenant has remained in possession on a month-to-month basis; and
- WHEREAS, The 98 Lombard Lease was terminated by Aclima on August 31, 2021 and Aclima vacated such premises, but left an outstanding balance due on such lease; and
- WHEREAS, Aclima has an outstanding balance under the four leases as set forth in the staff memorandum accompanying this resolution; and
- WHEREAS, The Port and Tenant have reached an agreement on the terms of a settlement agreement as described in the staff memorandum accompanying this resolution, copy of which is on file with the Commission Secretary (“Settlement Agreement”); and
- WHEREAS, Under the proposed Settlement Agreement, (i) Port and Aclima will enter into a 14-month payment plan to pay a portion of the outstanding balance, as described in the memorandum accompanying this resolution, (ii) Aclima will replenish in full the security deposit owed under the existing leases, (iii) Port will waive portions of the outstanding amount that were not

included the payment plan, such as holdover rent, late fees and interest, and attorneys' fees upon successful payment by Aclima of the amounts agreed in the Settlement Agreement, and (iv) Aclima will enter into a stipulated judgment on terms described in the staff memorandum accompanying this resolution; and

WHEREAS, The parties now wish to settle their dispute in a manner that allows Aclima to continue its occupancy in Roundhouse 2, Sandhouse and Pier 19 with the intention of avoiding protracted disputes, uncertainties, and litigation; and now therefor be it

RESOLVED, That the Port Commission hereby approves the Settlement Agreement and authorizes the Executive Director or her designee to execute the Settlement 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 Settlement 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 July 12, 2022.

Secretary

Attachment 1
Aclima's Payment and Balance History - Consolidated
Aclima, Inc. Leases #L-16516, L-16573, L-16608, and L-15958 (terminated)

Balance as of 6/30/22

Type of Amounts Owed	Pier 19 Lease	Roundhouse	Sandhouse	98 Lombard	Total Due
Outstanding Base Rent	232,274.16	642,018.51	136,276.62	77,696.50	1,088,265.79
Late Fees/Interest	29,442.94	74,930.57	15,495.81	11,325.65	131,194.97
Holdover Rent	168,686.57	430,262.56	93,438.54		639,127.08
Total Amounts Owed for Each Lease:	430,403.67	1,147,211.64	245,210.97	89,022.15	1,858,587.84
% of Total Outstanding Base Rent	21.3%	59.0%	12.5%	7.1%	100.0%