

## MEMORANDUM

May 4, 2017

**TO:** MEMBERS, PORT COMMISSION  
Hon. Willie Adams, President  
Hon. Kimberly Brandon, Vice President  
Hon. Leslie Katz  
Hon. Eleni Kounalakis  
Hon. Doreen Woo Ho

**FROM:** Elaine Forbes  
Executive Director

**SUBJECT:** Request approval of a First Amendment to Lease No. L-15908 for premises located at Pier 33½ in the Northern Waterfront between the Port of San Francisco and of Queen's Louisiana Po'-Boy Café, LLC ("Queen's") to retroactively extend the rent-free construction period and extend the Term of the Lease

**DIRECTOR'S RECOMMENDATION:** Approve Attached Resolution

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### EXECUTIVE SUMMARY

Queen's was selected for a Local Business Enterprise ("LBE") leasing opportunity under a pilot program through a Request for Proposal that was designed to encourage local business participation in leasing at the Port. The Port Commission awarded Queen's the Lease ("Lease") on February 10, 2015 (Resolution 15-03) and approved the Lease on September 8, 2015 (Resolution 15-29).

Due to unforeseen conditions, Queen's construction was significantly delayed and as a result Queen's has requested and the Port staff agrees to retroactively extend the deadlines and term of the Lease in order to support the tenant and the Port Commission's stated desire to expand opportunities to small local business enterprises.

Specifically, the proposed First Amendment ("Amendment") would: (i) provide a retroactive extension of the nine (9) month rent-free construction period to a total of a maximum of nineteen (19) months and grant rent relief for such extended period; (ii) extend the rent commencement date and completion date for construction of the

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improvements to September 1, 2017; (iii) extend the Lease term by an additional ten (10) months; and (iv) add new City Requirements and other updated provisions. In exchange, Queen's has agreed to release the Port from any claims it may have in connection with the Amendment and the Port would reserve certain rights with respect to the Seawall Resiliency Project.

## **I. BACKGROUND**

Port and Tenant entered into Port Lease No. L-15908 dated August 28, 2015, for a five (5) year term with a four (4) year tenant option to renew, for the development and operation of a restaurant on the ground floor of Pier 33 ½. The Lease commenced on February 1, 2016 and expires on January 31, 2021. The Rent Commencement Date was November 1, 2016.

Due to unforeseen conditions, Queen's construction was significantly delayed and as a result Queen's has not been able to open the restaurant or begin rent payments as required by the Lease. Queen's and Port staff met on numerous occasions to resolve this issue and jointly agreed to a plan that would provide Queen's the necessary time to complete its improvements and avoid a significant financial hardship caused by paying rent prior to completion of construction. During the meetings multiple factors were cited as to why the construction was delayed as outlined below:

- Queen's submitted a Port building permit application on February 1, 2016 with an estimated construction start in March and completion in August 2016.
- The Port requested changes to the plan and there were numerous delays by Queen's architect in making changes that were satisfactory to the Port.
- The building permit was not issued until July 25, 2016.
- Due to delays in permit issuance, Queen's contractor had other project conflicts that delayed their ability to start construction.
- During the delay, Queen's bank withdrew financing due to issues regarding loan collateral from a family guarantor.

Queen's has now hired a new architect, secured new financing and construction has now commenced. Queen's advises that construction will be completed in late July with all equipment installed, tested and permitted by the end of August. Queen's anticipates opening in early September of 2017.

Based on the factors cited above, the Port proposes to extend the construction period through August 2017 (making it a 19-month construction period) and proposes an amendment to the Lease to:

- Extend the rent-free construction period from November 2016 through August 2017, a total of \$49,637.52 (not including interest or penalties);
- Establish a new rent commencement date of September 1, 2017 and extend the Lease expiration date for ten (10) additional months from January 31, 2021 to November 30, 2021;

- Extend the term by an additional ten (10) months;
- Add new City requirements and updated provisions;
- Release the Port from any claims by Queen's;
- Reserve Port's rights with respect to the Seawall Resiliency Project.

## **II. RECOMMENDATION**

Port staff believes that Queen's Louisiana Po-Boy Cafe will enhance the Port's retail operations by providing diversity in dining options and increasing local business opportunities for employment and ownership. Queen's is the first participant in the Port's Pilot LBE Retail Program and as such Port staff has gained valuable insight as to how to craft appropriate terms and conditions for programs of this nature. The approval of the Lease Amendment will provide Queen's a higher likelihood of success in opening and managing the restaurant. Port staff recommends approval of the 1<sup>st</sup> Amendment to Lease L-15908.

Prepared by: Jay Edwards  
Senior Property Manager

Robert Davis  
Principal Administrative Analyst

Prepared for: Mark Lozovoy,  
Acting Deputy Director Real Estate

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

**RESOLUTION NO. 17-22**

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and
- WHEREAS, on April 22, 2014, the Port Commission approved the issuance of a Request for Proposals (“RFP”) (Port Commission Resolution No. 14-24), for a retail opportunity located at Pier 33 North (Pier 33½) for the development and operation of a retail business on the site; and
- WHEREAS, on February 10, 2015 by Resolution 15-03 the Port Commission awarded the opportunity to Queen’s Louisiana Po’-Boy Cafe, LLC (Queen’s) and authorized Port staff to enter into exclusive negotiations with Queen’s; and
- WHEREAS, on September 8, 2015 by Resolution 15-29 the Port Commission approved Lease L-15908 with Queen’s for a 5-year retail Lease with a 4 year Tenant option to renew to improve and operate a casual dining restaurant at Pier 33½s (Lease), and the Lease commenced on February 1, 2016; and
- WHEREAS, the Lease requires Queen’s to make a capital investment for base building and tenant improvements (“improvements”) estimated at a minimum of \$350,000 dollars; further the Lease provides for a rent abatement period of nine (9) months for the purpose of permitting and constructing the improvements and partially offsetting the cost of the improvements, and
- WHEREAS, due to unforeseen conditions, Queen’s construction was significantly delayed and as a result Queen’s has not been able to open the restaurant or begin rent payments as required by the Lease; and
- WHEREAS, Port staff has negotiated a First Amendment to the Lease (Lease Amendment) which would: (i) retroactively extend the nine (9) month rent-free construction period to a total of a maximum of nineteen (19) months and grant rent relief for such extended period; (ii) extend the rent commencement date and completion date for construction of the improvements to September 1, 2017; (iii) extend the Lease term by an additional ten (10) months; (iv) add new City Requirements and other updated provisions; (v) release the Port from any claims by Queen’s; and (vi) reserve Port’s rights with respect to the Seawall Resiliency Project; now, therefore be it

RESOLVED, the Port Commission approves the Lease Amendment and authorizes the Executive Director or her designee to execute the Lease Amendment; and, be it further

RESOLVED, that the Port Commission authorizes the Executive Director to enter into any additions, amendments or other modifications to the Lease that the Executive Director, in consultation with the City Attorney, determines to be in the best interest of the Port, do not materially increase the obligations or liabilities of the City or Port, and are necessary or advisable to complete the transactions which the Lease 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 the Lease, and any such amendments thereto.

***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of May 9, 2017.***

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Secretary