




## MEMORANDUM

March 4, 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 a Settlement Agreement for Lease L-15017 with Paul Furman d/b/a Bay Natives (Tenant) under which: (i) Port and Tenant will enter into Lease L-16658 (“New Lease”) for a reduced premises of 5,000 square feet of outdoor paved land at Pier 94; (ii) payment to be comprised of the New Lease base rent at \$0.45 psf and back rent for Lease L-15017 in the amount of \$1,500 per month to reduce the outstanding balance; (iii) Port to waive all late fees and interest that would have otherwise accrued on the outstanding balance through the end of the 5-year term of the New Lease; and (iv) provided Tenant is not in default under the New Lease, Port to forgive the remaining outstanding balance for Lease L-15017 at the end of the New Lease 5-year term.

**DIRECTOR'S RECOMMENDATION:** Approve the Attached Resolution No. 22-13

### EXECUTIVE SUMMARY

One of the Port’s tenants at Pier 94, Bay Natives, began making partial rent payments after a rent increase in 2017. The Tenant indicated its operating revenues were insufficient to pay parameter rate for its existing leasehold. Between 2017 and January 2022, the Tenant’s outstanding balance, interest, and late fees grew to almost \$215,000. Under the proposed Settlement Agreement and other documents described in this memorandum, the Tenant would reduce its footprint by about 70% and repay approximately \$90,000 of the outstanding balance over a 5-year period and Port would

enter into new leases for the area given back by Tenant and forgive approximately \$125,000 at the end five years, should the Tenant make all required payments.<sup>1</sup>

Tenant has proposed to reduce its premises under a new lease by approximately 70%. Port would lease approximately 40% of the balance of the premises to a new nonprofit called Green City Project to pursue public education initiatives. The remaining 30% would be leased to Herons Head Nursery, dba Artisan Landscape, in synergy with Tenant's primary business. This would allow the Tenant to devote some net revenues to improve its marketing and create a more sustainable business model.

Port staff proposes entering into a settlement with Tenant, whereby Tenant would pay back rent in the amount of \$1,500/month, in addition to parameter rent under the new lease for the reduced premises, in exchange for which Port would waive late fees and interest and forgive the balance of outstanding rent at the end of the new lease term, provided Tenant is not in default under the new lease. Port staff recommends entering into the settlement because (a) Tenant provides a retail opportunity that is unique in this area, (b) the community supports the retention of this business as shown by the support for the Green City Project crowdfunding effort, and (c) the proposed workout provides some opportunity for the combined business to improve operations and pay a market rate rent going forward.

## **STRATEGIC OBJECTIVE**

The proposed settlement supports the Strategic Plan goal of Equity by continuing a tenant relationship that attracts a diversity of people to the waterfront. The proposed settlement is also expected to contribute to meeting the Stability Objective by regaining control of portions of the subject property to then lease to additional tenants who are better able to perform through economic cycles that would provide additional benefits to the Port.

## **BACKGROUND**

Bay Natives is a San Francisco-based specialty nursery that carries a wide variety of rare and endemic Bay Area native plants as well as many species from across the state of California. Bay Natives has been a Port tenant since October 21, 2011 on Pier 94, off Cargo Way and Jennings Street. The original lease was for 6,273 sq. ft. of outdoor paved land at the then parameter rate of \$0.22/sf (or \$1,380.06/month) for a period of 13 months. The original lease required Commission approval as a sole sourced lease thereby waiving the competitive bidding requirement of the Port Commission's Retail Leasing Policy.

A lease amendment dated April 12, 2013 was executed on April 25, 2013 to extend the lease term by forty-eight (48) months, through October 20, 2016. This First Amendment also increased the square footage to 17,850 of paved land. The rental rate increased 3%

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<sup>1</sup> This proposed Settlement Agreement would settle a long-standing (pre-COVID) lease issue. Because this settlement is not due to the COVID-19 economic hardships, staff have not brought the proposal forward consistent with the Port Commission's direction during its November 2021 meeting. During that meeting, Port staff and the Port Commission discussed bringing settlements forward with criteria described to help the Port Commission consider settlements.

per year and at the end of the amended term on October 20, 2016, the rate was \$0.2476/sf for a monthly rate of \$4,419.66.

The lease with Bay Natives expired on October 20, 2016 and has been on a month-to-month holdover since that time. Pursuant to the current market rates approved by the Port Commission, on November 1, 2017, Port increased the Tenant's base rent to \$0.45 per square foot, increasing the monthly rent from \$4,419.66 per month to \$8,032.50 per month.

### **History of Lease and Delinquent Rental Payments**

The Pier 94/96 area was not highly sought after back in 2011 and the market rates were very affordable. Leasing this land to Bay Natives was a good fit for the area and the Port as it provided some diversity to the other heavier industrial uses nearby. At the time, Port staff's objective was for the lease to give the Tenant the opportunity to build up its business over the first 5 years so it would evolve into a profitable enterprise paying fair market rent.

The Pier 94/96 area has increased in demand during the continued economic expansion since 2013 and even during COVID. The site at Jennings Street and Cargo Way is adjacent to Heron's Head Park and the EcoCenter. This area, and the Southern Waterfront in general, has seen much growth since Bay Natives first moved in. The Administration Building at nearby Pier 96 is fully occupied, there is a waiting list for contractors looking for equipment laydown space and Port staff maintain a waiting list of LBE truckers seeking parking, thus the market rate for outdoor paved land has increased accordingly, currently at \$0.45 per square foot.

The lease with Bay Natives expired on October 20, 2016 and has been on a month-to-month holdover since that date. At the time of expiration, the lease rate was \$0.26/sf which was far below the current parameter rate for paved land of \$0.45/sf. In accordance with the lease "Holdover" clause, the Port had the right to increase the rent to market and on November 1, 2017, Port increased the rent to \$8,032.50 per month in accordance with the current market rates approved by the Port Commission.

Bay Natives was a "Tenant in Good Standing" during the initial term of the lease and during the amended term, however Tenant began making partial payments or no payments at all after Port increased the rent to market on November 1, 2017. **Attachment 1** shows the full payment history, reflecting a delinquent rent and fees of approximately \$215,000 as of February 28, 2022.

### **Settlement Proposal**

Port staff has met with the Tenant on several occasions in an effort to create a shared understanding of a solution that will work for both parties. As a result of those discussions, Tenant and its community supporters came up with an innovative proposal that would increase the Port's rental revenue in the near term while providing some additional runway for the Bay Natives operation to become a sustainable payer of market rent. As depicted in Attachment 2, Port would lease roughly 7,850 square feet of the 17,850 square foot parcel to a newly formed nonprofit called Green City Project. The remaining approximately 5,000 square feet would be leased to Herons Head Nursery, dba Artisans Landscape Inc. If approved, Bay Natives would shrink its premises to a size where it can pay full

parameter rent (\$0.45/sf for approximately 5,000 square feet, or \$2,250.00/month). Green City Project and Herons Head Nursery would enter into new leases for the remainder of the current Bay Natives leasehold, also at full parameter (\$0.45/sf) for approximately 7,850 square feet, or \$3,532.50/month and 5,000 square feet or \$2,250/month, respectively. The monthly rental rate for all three leases would increase annually by 3%.

The leases to Bay Natives, Green City Project and Herons Head Nursery would be for five years each. Green City Project would prepay five months of rent plus two months' rent as a security deposit (for a total of \$24,727.50) as a condition to taking occupancy. In addition, Herons Head Nursery has submitted a lease application for the remaining parcel. Herons Head Nursery will be operating as Artisan's Landscape, a gardening contractor that has been working with Bay Natives, and therefore the two parties know each other's business needs. Assuming satisfaction of all Port leasing requirements, Port staff would propose to offer this space to Herons Head Nursery at the full parameter rate of \$0.45/sf (or \$2,250.00/month), with annual 3% increases, in the interest of fostering good communication among these tenants as they share this limited area.

With respect to the outstanding balance, Bay Natives would be required to pay an additional monthly payment of \$1,500.00, equal to 67% of their new monthly rental amount, to retire a portion of the outstanding balance for Lease L-15017. If these payments are made as scheduled over the course of the 5-year term, the Port would receive \$90,000.00. Under this staff proposal, the remainder of the delinquent rent would be forgiven provided Bay Natives is not in default of its new lease.

## **STAFF ANALYSIS**

Port staff believes the proposal above would create an improved situation for the Port as landlord, for the following reasons:

- By resizing its leasehold, Bay Natives would have a realistic chance of remaining current on its rent for the first time since November 2017, especially if synergy with the Green City Project's programming next door attracts more customers to the site.
- Bay Natives would make an additional monthly payment as consideration for forgiveness of the delinquent balance, with such payment sized to an amount that Port staff believes Bay Natives can pay on an ongoing basis.
- At the same time, the proposed revisions to the leased premises create two new leasable parcels, each with independent street access. Port staff believes that both parcels can be immediately leased on the terms described above, and if either or both of those leases do not prove to be sustainable the Port would have an improved ability to offer the applicable premises to a new user.

## **RECOMMENDATION**

Port staff recommends that the Port Commission approve the attached resolution authorizing staff to execute a Settlement Agreement and new lease with the terms as outlined.

Prepared by:           Monico Corral, Property Manager  
                                  Kimberley Beal, Assistant Deputy Director  
                                  Real Estate and Development

For:                        Rebecca Benassini, Deputy Director  
                                  Real Estate and Development

Attachments:           Attachment 1: Tenant payment history  
                                  Attachment 2: Depiction of new premises for Tenant, Green City  
                                  Project and Herons Head Nursery

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

**RESOLUTION NO. 22-13**

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-15017 in October 2011 with Bay Natives for 6,273 square feet of paved land at Pier 94 for a plant nursery, propagation center and retail sales (the "Lease"); and

WHEREAS, The Lease, as subsequently amended, was for 17,850 square feet and for an additional 48 months;

WHEREAS, The lease with Bay Natives expired on October 20, 2016 and Tenant has remained in possession on a month-to-month basis; and

WHEREAS, Tenant's lease was increased to parameter rent effective November 1, 2017, and Tenant has indicated its operating revenues are insufficient to pay the current parameter rate for its existing space; and

WHEREAS, The Port and Tenant have reached an agreement on the terms of a settlement agreement on file with the Commission Secretary ("Settlement Agreement"); and

WHEREAS, Under the proposed Settlement Agreement, (i) Port and Bay Natives will enter into Lease L-16658 ("New Lease") for a reduced premises of 5,000 square feet of outdoor paved land at Pier 94; (ii) payment will be comprised of the New Lease base rent at \$0.45 per square foot and back rent for Lease L-15017 in the amount of \$1,500 per month to reduce the outstanding balance; (iii) Port will waive all late fees and interest that would have otherwise accrued on the outstanding balance through the end of the term of the New Lease; and (iv) provided Bay Natives is not in default under the New Lease, Port will forgive the remaining outstanding balance for Lease L-15017 at the end of the New Lease term; and

WHEREAS, The parties now wish to settle their dispute in a manner that allows Bay Natives to continue its occupancy of a portion of Pier 94 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 may enter into the New Lease; 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 and New Lease 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 March 8, 2022.***

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Secretary

**Attachment 1 Tenant's Payment and Balance History  
Bay Natives, Lease #15017**

Acctg Date	Item ID	Entry Type	Late fee	Late Fee Paid	Rent Paid	Entry Amount
7/1/2017	1800063	IN				\$ 4,552.25
7/5/2017	1800063	PY			\$ (4,552.25)	
8/1/2017	1800898	IN				\$ 4,552.25
8/7/2017	1800898	PY			\$ (3,634.68)	
8/7/2017	1800898	PY			\$ (917.57)	
8/31/2017	1800898	OC	\$ 13.82	\$ (13.82)		
8/29/2017	1801758	IN				\$ 4,552.25
10/12/2017	1801758	PY			\$ (3,620.86)	
11/30/2017	1801758	PY			\$ (931.39)	
9/30/2017	1801758	OC	\$ 37.84	\$ (37.84)		
10/1/2017	1802753	IN				\$ 4,552.25
11/30/2017	1802753	PY			\$ (4,552.25)	
10/31/2017	1802753	OC	\$ 31.18	\$ (31.18)		
11/1/2017	1803641	IN				\$ 8,032.50
11/30/2017	1803641	PY			\$ (1,275.72)	
1/19/2018	1803641	PY			\$ (4,552.25)	
3/12/2020	1803641	PY			\$ (2,000.00)	
3/24/2021	1803641	PY			\$ (204.53)	
11/30/2017	1803641	OC	\$ 572.08	\$ (572.08)		
12/1/2017	1804490	IN				\$ 8,032.50
2/28/2018	1804490	PY			\$ (4,552.25)	
4/14/2021	1804490	PY			\$ (1,500.00)	
5/19/2021	1804490	PY			\$ (1,500.00)	
3/24/2021	1804490	PY			\$ (95.47)	
6/5/2021	1804490	PY			\$ (384.78)	
8/18/2021	1804490	PY				
9/3/2021	1804490	PY				
12/31/2017	1804490	OC	\$ 1,067.03	\$ (1,067.03)		
1/1/2018	1805380	IN				\$ 8,032.50
3/6/2018	1805380	PY			\$ (4,552.25)	
6/5/2021	1805380	PY			\$ (615.22)	
7/14/2021	1805380	PY			\$ (1,000.00)	



Acctg Date	Item ID	Entry Type	Late fee	Late Fee Paid	Rent Paid	Entry Amount
10/13/2021	1805380	PY			\$ (1,000.00)	
9/3/2021	1805380	PY			\$ (696.56)	
11/3/2021	1805380	PY			\$ (168.47)	
12/13/2021	1805380	PY				
1/31/2018	1805380	OC	\$ 1,140.20	\$ (1,140.20)		
2/1/2018	1806340	IN				\$ 8,032.50
12/13/2021	1806340	PY			\$ (807.61)	
1/7/2022	1806340	PY			\$ (1,000.00)	
2/28/2018	1806340	OC	\$ 2,774.83			
3/1/2018	1807153	IN				\$ 8,032.50
3/31/2018	1807153	OC	\$ 2,735.42			
4/1/2018	1808025	IN				\$ 8,032.50
4/5/2018	1808025	PY			\$ (2,276.13)	
4/30/2018	1808025	OC	\$ 1,911.41			
5/1/2018	1809006	IN				\$ 8,032.50
5/7/2018	1809006	PY			\$ (4,552.25)	
5/31/2018	1809006	OC	\$ 1,127.02			
6/1/2018	1809893	IN	IN			\$ 8,032.50
6/5/2018	1809893	PY			\$ (4,552.25)	
6/30/2018	1809893	OC	\$ 1,097.46			
7/1/2018	1900076	IN				\$ 8,032.50
7/13/2018	1900076	PY			\$ (4,552.25)	
7/31/2018	1900076	OC	\$ 1,068.86			
8/1/2018	1900937	IN				\$ 8,032.50
8/8/2018	1900937	PY			\$ (4,552.25)	
8/31/2018	1900937	OC	\$ 1,039.30			
9/1/2018	1901826	IN				\$ 8,032.50
9/21/2018	1901826	PY			\$ (4,552.25)	
9/30/2018	1901826	OC	\$ 1,009.74			
10/1/2018	1902729	IN				\$ 8,032.50
10/12/2018	1902729	PY			\$ (4,552.25)	
10/31/2018	1902729	OC	\$ 981.14			

Acctg Date	Item ID	Entry Type	Late fee	Late Fee Paid	Rent Paid	Entry Amount
11/1/2018	1903661	IN				\$ 8,032.50
11/8/2018	1903661	PY			\$ (4,552.25)	
11/30/2018	1903661	OC	\$ 980.18			
12/1/2018	1904583	IN				\$ 8,032.50
1/4/2019	1904583	PY			\$ (4,552.25)	
12/31/2018	1904583	OC	\$ 982.76			
1/1/2019	1905428	IN				\$ 8,032.50
2/13/2019	1905428	PY			\$ (4,552.25)	
2/28/2019	1905428	OC	\$ 953.20			
2/1/2019	1906368	IN				\$ 8,032.50
2/28/2019	1906368	OC	\$ 2,059.82			
3/1/2019	1907133	IN				\$ 8,032.50
3/31/2019	1907133	OC	\$ 1,998.20			
4/1/2019	1907984	IN				\$ 8,032.50
4/9/2019	1907984	PY			\$ (3,000.00)	
4/30/2019	1907984	OC	\$ 1,209.13			
5/1/2019	1908924	IN				\$ 8,032.50
5/3/2019	1908924	PY			\$ (3,000.00)	
5/31/2019	1908924	OC	\$ 1,167.77			
6/1/2019	1910023	IN				\$ 8,032.50
6/6/2019	1910023	PY			\$ (2,287.44)	
6/30/2019	1910023	OC	\$ 1,284.32			
7/1/2019	2000065	IN				\$ 8,032.50
7/8/2019	2000065	PY			\$ (2,287.44)	
7/31/2019	2000065	OC	\$ 1,237.10			
8/1/2019	2000992	IN				\$ 8,032.50
8/6/2019	2000992	PY			\$ (2,287.44)	
8/31/2019	2000992	OC	\$ 1,188.31			
9/1/2019	2002000	IN				\$ 8,032.50
9/30/2019	2002000	OC	\$ 1,593.28			

Acctg Date	Item ID	Entry Type	Late fee	Late Fee Paid	Rent Paid	Entry Amount
10/1/2019	2003250	IN				\$ 8,032.50
10/28/2019	2003250	PY			\$ (2,287.44)	
10/31/2019	2003250	OC	\$ 1,092.30			
11/1/2019	2003966	IN				\$ 8,032.50
11/12/2019	2003966	PY			\$ (2,287.44)	
11/30/2019	2003966	OC	\$ 1,043.51			
12/1/2019	2004976	IN				\$ 8,032.50
12/6/2019	2004976	PY			\$ (2,287.44)	
12/31/2019	2004976	OC	\$ 996.29			
1/1/2020	2005917	IN				\$ 8,032.50
1/13/2020	2005917	PY			\$ (2,287.44)	
1/31/2020	2005917	OC	\$ 947.50			
2/1/2020	2007153	IN				\$ 8,032.50
2/14/2020	2007153	PY			\$ (2,250.00)	
2/28/2020	2007153	OC	\$ 904.60			
3/1/2020	2007915	IN				\$ 8,032.50
3/12/2020	2007915	PY			\$ (2,250.00)	
3/31/2020	2007915	OC	\$ 869.75			
4/1/2020	2008801	IN				\$ 8,032.50
5/21/2020	2008801	PY			\$ (4,552.25)	
5/31/2020	2008801	OC	\$ 523.46			
5/1/2020	2009711	IN				\$ 8,032.50
6/30/2020	2009711	PY			\$ (4,552.25)	
6/30/2020	2009711	OC	\$ 523.46			
6/1/2020	2010471	IN				\$ 8,032.50
6/30/2020	2010471	PY			\$ (4,552.25)	
6/30/2020	2010471	OC	\$ 523.46			
7/1/2020	2100071	IN				\$ 8,032.50
6/30/2020	2100071	PY			\$ (4,552.25)	
7/31/2020	2100071	OC	\$ 523.46			

Acctg Date	Item ID	Entry Type	Late fee	Late Fee Paid	Rent Paid	Entry Amount
8/1/2020	2100859	IN				\$ 8,032.50
8/7/2020	2100859	PY			\$ (4,552.00)	
8/31/2020	2100859	OC	\$ 517.80			
9/1/2020	2101735	IN				\$ 8,032.50
9/23/2020	2101735	PY			\$ (4,552.00)	
9/30/2020	2101735	OC	\$ 488.24			
10/1/2020	2102526	IN				\$ 8,032.50
11/5/2020	2102526	PY			\$ (4,552.00)	
11/30/2020	2102526	OC	\$ 490.81			
11/1/2020	2103401	IN				\$ 8,032.50
11/5/2020	2103401	PY			\$ (4,552.00)	
11/30/2020	2103401	OC	\$ 430.07			
12/1/2020	2104487	IN				\$ 8,032.50
12/9/2020	2104487	PY			\$ (4,552.00)	
12/31/2020	2104487	OC	\$ 401.46			
1/1/2021	2105120	IN				\$ 8,032.50
1/13/2021	2105120	PY			\$ (4,552.00)	
1/31/2021	2105120	OC	\$ 371.90			
2/1/2021	2105959	IN				\$ 8,032.50
2/12/2021	2105959	PY			\$ (4,552.00)	
2/28/2021	2105959	OC	\$ 342.34			
3/1/2021	2106720	IN				\$ 8,032.50
3/24/2021	2106720	PY			\$ (8,032.50)	
4/1/2021	2107760	IN				\$ 8,032.50
4/14/2021	2107760	PY			\$ (8,032.50)	
5/1/2021	2108337	IN				\$ 8,032.50
5/19/2021	2108337	PY			\$ (8,032.50)	
6/1/2021	2109177	IN				\$ 8,032.50
6/5/2021	2109177	PY			\$ (8,032.50)	
7/1/2021	2200061	IN				\$ 8,032.50

Acctg Date	Item ID	Entry Type	Late fee	Late Fee Paid	Rent Paid	Entry Amount
7/14/2021	2200061	PY			\$ (8,032.50)	
8/1/2021	2200834	IN				\$ 8,032.50
8/18/2021	2200834	PY			\$ (8,032.50)	
9/1/2021	2201629	IN				\$ 8,032.50
9/3/2021	2201629	PY			\$ (8,032.50)	
10/1/2021	2202485	IN				\$ 8,032.50
10/13/2021	2202485	PY			\$ (8,032.50)	
11/1/2021	2203316	IN				\$ 8,032.50
11/3/2021	2203316	PY			\$ (8,032.50)	
12/1/2021	2204270	IN				\$ 8,032.50
12/13/2021	2204270	PY			\$ (8,032.50)	
1/1/2022	2205182	IN				\$ 8,032.50
1/7/2022	2205182	PY			\$ (8,032.50)	
2/1/2022	2206026	IN				\$ 8,032.50
2/9/2022	2206026	PY			\$ (8,032.50)	
<b>Total</b>			\$42,251.81	\$ (2,862.15)	\$ (260,335.57)	\$435,899.00
				<b>Total Balance Due</b>		<b>\$214,953.09</b>

**Attachment 2:**

2A: Context Map ★ denotes approximate premises location



2B: Proposed Division of Bay Natives Premises into Three New Leased Premises

