



MEMORANDUM

April 21, 2023

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

FROM: Elaine Forbes
Executive Director

SUBJECT: Request approval of a Mutual Termination Agreement with D & G Company dba Lou's Pier 47; Lease No. L-14630 and License No 14651 for Premises at 300 Jefferson Street, SWL 302 San Francisco, CA 94111, subject to Board of Supervisor's approval.

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution No. 23-17

EXECUTIVE SUMMARY

D & G Company, a California limited liability company dba Lou's Pier 47 ("Tenant") ceased operations in March 2020 due to the devastating financial impacts of the pandemic. Business and convention travelers and international tourism have not returned to pre-pandemic levels, and the Tenant claims to be unable to profitably operate citing unaffordable start-up costs, difficulty hiring personnel, and lack of customers.¹ Port staff is proposing to enter a termination agreement as described in this memorandum.

As of February 15, 2023, the Tenant owes the Port \$514,346 (after application of security and environmental oversight deposits to the balance due) in past due rent and interest.

¹ See attached "Profit and Loss – Detail" provided by the Tenant for CY 2019 through 2021.

As part of the Mutual Termination, Tenant would, among other things, (i) pay Port (a) a lump-sum \$200,000 termination fee and (b) \$7,676.01 to reimburse Port for costs to board up exterior windows at the leased premises with Tenant's approval, and (ii) transfer to Port title to Tenant's various personal property at the leased premises in exchange for the Port waiving \$314,346 in past due rent and interest covering charges through February 15, 2023. . Rent and finance charges accruing from February 16, 2023 through date of full approval by the Board of Supervisors is also proposed to be waived. Tenant's lease expires December 31, 2025.

Tenant has struggled with base rent payments during the pandemic. Tenant did not qualify for 14 months of base rent forgiveness (which would have totaled about \$211K in forgiveness) under the Port's standard rent relief program because it was not in good standing due to its failure to open.² Port staff recommend approval of the proposed termination agreement in light of similar termination agreements Port has entered into with other Port restaurant tenants. As proposed, this termination agreement would allow the Port to regain possession of a Port property in relatively good condition (renovated in 2012 and located on land on Jefferson Street, thus no substructure maintenance issues), in the heart of Fisherman's Wharf.

BACKGROUND

Lou's Pier 47 is in the heart of the Fisherman's Wharf Historic Fish Alley District.³ The restaurant offered Cajun seafood cuisine, outdoor dining, and music. The site has continuously operated as a restaurant since 1977, first as the Sports Fishing Center and subsequently as Lou's Blues. Lou's Blues declared bankruptcy in 1997, and on December 16, 1997, the Lou's Blues Lease was sold at a Bankruptcy Court auction to Lou's Pier 47.

On March 9, 2010, under Resolution 10-13, the Port Commission approved Lease No. L-14630 (the "Lease") with Tenant for operation of a restaurant and entertainment venue and a companion non-exclusive sidewalk license approved by the Port Commission under Resolution 10-14 (License No. 14651 the ("License")) at 300 Jefferson Street for a fifteen-year six-month lease with one five-year renewal option. In 2012, the Tenant reconfigured and replaced fixtures in the bar and kitchen areas and performed a general renovation of the entire premises at a Tenant-estimated cost of over \$1 million. Tenant advises there are no recorded loans or mortgages in place. Subsequent discussions determined that Tenant obtained Paycheck Protection Program and Economic Injury Disaster Loan loans but since the Tenant did not reopen for business the loans are required to be repaid. Tenant will represent and warrant in the termination agreement that both loans will be paid in full before the effective date of the termination agreement after it is approved by the Board of Supervisors.

² See attached L-14630 ledger provided by the Port's accounting supervisor.

³ See attached location map.

Failure to pay Rent

Because of the COVID pandemic and the loss of customers, the Tenant stopped paying rent as of March 1, 2020. Under the Lease, the Tenant is obligated to pay base rent or percentage rent, whichever is more. The Tenant would have been eligible for the Port's standard 14-month forgiveness program for percentage rent tenants, but the restaurant never reopened. Tenant has no plans to reopen citing unaffordable start-up costs, difficulty hiring personnel, and lack of customers.

PROPOSED TERMS OF AGREEMENT

Port staff propose to accept a \$200,000 termination fee on the following terms to resolve outstanding issues under the Lease and the License:

1. Lease No. L-14630 and License No. 14651 will be simultaneously terminated.
2. The Port will waive all accrued rent, late fees and interest outstanding under the Lease and the License through the effective date of the termination agreement, which date will be after final approval of the termination agreement from the Board of Supervisors.
3. Tenant will ensure the elevator is functional and ready for the next operator to obtain a permit, replace any broken glass in windows, and maintain the premises until the termination is final.
4. Subject to Port's discretion, most Tenant personal property and fixtures to remain on the premises and title will be transferred to Port via Bill of Sale.
5. Tenant will remove exterior signage at its own cost or Tenant may request Port to remove the signage at a cost of \$3,500, which amount must be paid before the effective date of the termination agreement.
6. Tenant will disconnect utilities serving its equipment in adjacent Crab Boat Owner's Association premises before the lease termination date and provide a release of claims for the benefit of Port and City parties from the Crab Boat Owners Association ("**CBOA**") for the disconnection of such utilities and Tenant leaving Tenant's walk-in refrigerator in CBOA's premises.

STAFF ANALYSIS AND DISCUSSION

It is in the Port's best interest to enter into the proposed termination agreement as opposed to initiating litigation to recover sums owed and regain possession of the premises. Under the proposed termination agreement, Port is guaranteed recovery of a portion of the outstanding sums owed to Port and possession of the premises. Litigation on the other hand, will require Port to expend potentially significant costs without a guarantee that Port will recoup all such costs plus the outstanding amounts owed to

tenant. Litigation will most likely also delay return of the premises to the Port beyond the date contemplated in the termination agreement. The premises are in good condition and a new operator has the option of operating almost immediately and can avoid major tenant improvement costs and construction downtime. In addition, the site and its closed, next door neighbor (Pompeii's Grotto) have experienced increasing vandalism and property damage. It is clear this Tenant does not have a plan or means to operate. Regaining possession and working towards a new lease is important to improve the overall Fisherman's Wharf visitor experience.

Port Maintenance staff have inspected the premises twice and found only (other than the broken front and side doors and elevator) small, deferred maintenance items such as a blank in one electrical panel, copper lines in the HVAC system (functional but prone to theft), and a small area on the roof that needs to be repainted.

Port negotiators believe the \$200,000 termination fee is the most the Tenant will agree to pay because multiple attempts to increase the fee, even marginally, were not successful. In summary, staff believes that the proposed terms are beneficial to the Port as: (1) the termination fee of \$200,000 represents 39% of the balance due as of February 15, 2023; (2) Port would obtain possession of premises promptly; (3) the premises are ready for a new restaurant tenant with minimal improvements; and, (4) possession will allow the Port to re-lease the premises and generate revenue faster than going through further negotiations and a civil action; and (5) Port avoids litigation in which there is no guarantee Port would recoup all costs.

Alternatives to negotiating a mutual termination agreement to resolve these issues include:

1. Send the Tenant a 3-day notice to pay rent or quit and pursue an unlawful detainer action should Tenant not pay or vacate. An unlawful detainer action limits recovery to the past 12 months of rent plus interest to a total of approximately \$221,036 (as of March 17, 2023). Port would need to initiate a separate civil action against Tenant to recover the remaining outstanding amounts owed to Port that are not covered by the unlawful detainer action.
2. Tenant may abandon the premises. Significant Port and legal resources would then be needed to manage the abandonment.
3. Tenant may file for bankruptcy making pursuit of the balance due more complicated and may result in little or no recovery (depending on Port's priority among other creditors).

RECOMMENDATION

Port staff recommends that the Port Commission approve the attached resolution authorizing the Executive Director to enter into the proposed Mutual Termination Agreement with D & G Company, a California limited liability company, and authorize the Executive Director to forward the Mutual Termination Agreement to the Board of

Supervisors for approval and upon the effectiveness of such approval, authorize the Executive Director or designee to execute the Mutual Termination Agreement.

Prepared by: Don Kavanagh, Senior Property Manager

For: Rebecca Benassini, Deputy Director
Real Estate and Development

Exhibits: Exhibit 1: Tenant Profit & Loss Detail and Table of Other Recent Terminations
Exhibit 2: Tenant Ledger
Exhibit 3: Map and Photo of Lou's Blues

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

RESOLUTION NO. 23-17

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 D & G Company, a California limited liability company dba Lou's Pier 47 ("Tenant") entered into that certain Port Lease No. L-14630 ("Lease") and License No.14651 ("License") located at 300 Jefferson Street, SWL 302, in the City and County of San Francisco; and

WHEREAS, Tenant closed for business in March 2020 due to the COVID pandemic and never reopened leading to a large balance due. Tenant approached the Port to terminate the Lease and License; and

WHEREAS, The Lease expires June 30, 2025 and the License is month-to-month but terminates no later than the Lease termination date; and

WHEREAS, Port and Tenant now wish to agree on an orderly termination of the Lease and License per the terms of the Mutual Termination Agreement on file with the Port Commission Secretary (the "Mutual Termination Agreement") and as described in the memorandum accompanying this resolution; and

WHEREAS, Among other things, the Mutual Termination Agreement requires payment of a termination fee equal to \$200,000, repayment of Port's cost to board-up the exterior windows of the premises, and transfer of title to Port of Tenant's personal property at the premises, all as more particularly described in the memorandum accompanying this resolution; now, be it

RESOLVED, That the Port Commission authorizes the Executive Director or her designee to forward the Mutual Termination Agreement to the Board of Supervisors for their approval; and, but it further

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 25, 2023.

Secretary

Exhibit 1

Tenant Profit and Loss Detail

Lou's Profit and Loss - Detail	Year To Date 12/31/2019	Year To Date 12/31/2020	Year To Date 12/31/2021
Revenue			
Total Gross Sales	2,092,319	307,224	
Total Net Sales	3,053,238	314,279	0
Cost of Goods Sold	726,159	85,920	0
Total Gross Profit	2,327,079	228,359	0
Expenses			
Total Labor & Benefits	1,317,678	166,572	6,530
Total Other Operating Expenses	275,562	60,693	5,963
Total Operating Expenses	1,593,240	227,265	12,499
Total Non-Operating Expenses	254,527	97,340	74,151
Total Occupancy Expense	323,207	80,144	3,032
Total Total Expenses	2,170,974	404,749	89,662
Operating Profit	156,105	(176,390)	(89,682)
Depreciation Expense	108,487	97,893	93,913
Net Income	47,618	(274,283)	(183,595)

Other Recent Terminations⁴

Exhibit 1: Termination Agreement Comparison

Alioto Termination Agreement (restaurant premises, proposed agreement)	Amount	Ferry Plaza Termination Agreement (21-0560)	Amount
Unpaid Rent (March 2020-April 2022)	(\$609,719)	Unpaid rent (Jan 2021 to July 2021)	(\$111,432)
Security Deposit	18,385	Security Deposit	222,866
Termination Fee to Port	200,000	Termination Fee to Port	0
Site Improvement Costs ¹	(350,000)	Site Improvement Costs	(709,000)
Net Fiscal Impact to Port	(\$741,334)	Net Fiscal Impact to Port	(597,566)
Annual Base Rent	\$255,256	Annual Base Rent	\$222,864
Remaining Base Rent (through 2036)	\$3,531,041	Remaining Base Rent (through 2040)	\$4,122,984

Source: Files 21-0560 and 22-0438

⁴ See Board of Supervisors Budget and Legislative Analyst reports:
<https://sfgov.legistar.com/View.ashx?M=F&ID=10956728&GUID=1B8B272C-1607-4D9D-A1AE-33EC352CA41A>

Exhibit 2: Tenant Ledger
As of February 15, 2023

D & G Company
Balance as of 02/15/23

L-14630

Item	Customer ID	Status	Entry Type	Days Late	Due	Item Balance	Late Charge
2007761	1000001396	Open	IN	1062	3/20/2020	\$ 888.00	
2009772	1000001396	Open	IN	1015	5/6/2020	\$ 170.17	
2010532	1000001396	Open	IN	984	6/6/2020	\$ 14,267.01	
2100132	1000001396	Open	IN	954	7/6/2020	\$ 14,572.42	
2100919	1000001396	Open	IN	923	8/6/2020	\$ 14,572.42	
2007761	1000001396	Open	OC	898	8/31/2020		\$ 185.12
2007976	1000001396	Open	OC	898	8/31/2020		\$ 2,614.93
2008864	1000001396	Open	OC	898	8/31/2020		\$ 2,614.93
2009772	1000001396	Open	OC	898	8/31/2020		\$ 2,701.42
2010532	1000001396	Open	OC	898	8/31/2020		\$ 2,974.53
2100132	1000001396	Open	OC	898	8/31/2020		\$ 3,038.29
2100919	1000001396	Open	OC	898	8/31/2020		\$ 3,038.29
2101794	1000001396	Open	IN	892	9/6/2020	\$ 14,572.42	
2101794	1000001396	Open	OC	868	9/30/2020		\$ 3,038.29
2102588	1000001396	Open	IN	862	10/6/2020	\$ 14,572.42	
2102588	1000001396	Open	OC	837	10/31/2020		\$ 3,038.29
2103461	1000001396	Open	IN	831	11/6/2020	\$ 14,572.42	
2103461	1000001396	Open	OC	807	11/30/2020		\$ 3,038.29
2104547	1000001396	Open	IN	801	12/6/2020	\$ 14,572.42	
2104547	1000001396	Open	OC	776	12/31/2020		\$ 3,038.29
2105180	1000001396	Open	IN	770	1/6/2021	\$ 14,572.42	
2105180	1000001396	Open	OC	745	1/31/2021		\$ 3,014.33
2106018	1000001396	Open	IN	739	2/6/2021	\$ 14,572.42	
2106018	1000001396	Open	OC	717	2/28/2021		\$ 2,890.56
2106779	1000001396	Open	IN	711	3/6/2021	\$ 14,572.42	
2106779	1000001396	Open	OC	686	3/31/2021		\$ 2,778.77
2107820	1000001396	Open	IN	680	4/6/2021	\$ 14,572.42	
2107820	1000001396	Open	OC	656	4/30/2021		\$ 2,655.01
2108396	1000001396	Open	IN	650	5/6/2021	\$ 14,572.42	
2108396	1000001396	Open	OC	625	5/31/2021		\$ 2,535.23
2109237	1000001396	Open	IN	619	6/6/2021	\$ 14,572.42	
2109073	1000001396	Open	IN	607	6/18/2021	\$ 888.00	
2109073	1000001396	Open	OC	595	6/30/2021		\$ 144.01
2109237	1000001396	Open	OC	595	6/30/2021		\$ 2,411.47
2200122	1000001396	Open	IN	589	7/6/2021	\$ 14,834.20	
2200122	1000001396	Open	OC	564	7/31/2021		\$ 2,332.81
2200894	1000001396	Open	IN	558	8/6/2021	\$ 14,834.20	
2200894	1000001396	Open	OC	533	8/31/2021		\$ 2,206.82
2201690	1000001396	Open	IN	527	9/6/2021	\$ 14,834.20	
2201690	1000001396	Open	OC	503	9/30/2021		\$ 2,080.84
2202546	1000001396	Open	IN	497	10/6/2021	\$ 14,834.20	
2202546	1000001396	Open	OC	472	10/31/2021		\$ 1,958.91

D & G Company

L-14630

Balance as of 02/15/23

2203376	1000001396	Open	IN	466	11/6/2021	\$ 14,834.20	
2203376	1000001396	Open	OC	442	11/30/2021		\$ 1,832.93
2204330	1000001396	Open	IN	436	12/6/2021	\$ 14,834.20	
2204330	1000001396	Open	OC	411	12/31/2021		\$ 1,711.00
2205244	1000001396	Open	IN	405	1/6/2022	\$ 14,834.20	
2205244	1000001396	Open	OC	380	1/31/2022		\$ 1,585.01
2206087	1000001396	Open	IN	374	2/6/2022	\$ 14,834.20	
2206087	1000001396	Open	OC	352	2/28/2022		\$ 1,459.02
2207039	1000001396	Open	IN	346	3/6/2022	\$ 14,834.20	
2207039	1000001396	Open	OC	321	3/31/2022		\$ 1,345.22
2207947	1000001396	Open	IN	315	4/6/2022	\$ 14,834.20	
2207947	1000001396	Open	OC	291	4/30/2022		\$ 1,219.24
2208875	1000001396	Open	IN	285	5/6/2022	\$ 14,834.20	
2209626	1000001396	Open	IN	262	5/29/2022	\$ 888.00	
2208875	1000001396	Open	OC	260	5/31/2022		\$ 1,097.31
2209626	1000001396	Open	OC	260	5/31/2022		\$ 60.09
2210279	1000001396	Open	IN	254	6/6/2022	\$ 14,834.20	
2210279	1000001396	Open	OC	230	6/30/2022		\$ 971.33
2300121	1000001396	Open	IN	224	7/6/2022	\$ 15,139.61	
2300121	1000001396	Open	OC	199	7/31/2022		\$ 866.90
2300898	1000001396	Open	IN	193	8/6/2022	\$ 15,139.61	
2300898	1000001396	Open	OC	168	8/31/2022		\$ 738.32
2301869	1000001396	Open	IN	162	9/6/2022	\$ 15,139.61	
2301869	1000001396	Open	OC	138	9/30/2022		\$ 609.73
2302824	1000001396	Open	IN	132	10/6/2022	\$ 15,139.61	
2302824	1000001396	Open	OC	107	10/31/2022		\$ 485.30
2303849	1000001396	Open	IN	101	11/6/2022	\$ 15,139.61	
2303849	1000001396	Open	OC	77	11/30/2022		\$ 356.71
						\$ 445,678.67	\$ 68,667.54
Total Balance Due						\$	514,346.21

D & G Company

L-14630

Balance as of 03/29/23

Item	Customer ID	Status	Entry Type	Days Late	Due	Item Balance	Late Charge
2007761	1000001396	Open	IN	1104	3/20/2020	888.00	
2007761	1000001396	Open	OC	940	8/31/2020		191.93
2007976	1000001396	Open	OC	940	8/31/2020		2,614.93
2008864	1000001396	Open	OC	940	8/31/2020		2,614.93
2009772	1000001396	Open	IN	1057	5/6/2020	170.17	
2009772	1000001396	Open	OC	940	8/31/2020		2,702.73
2010532	1000001396	Open	IN	1026	6/6/2020	14,267.01	
2010532	1000001396	Open	OC	940	8/31/2020		3,083.98
2100132	1000001396	Open	IN	996	7/6/2020	14,572.42	
2100132	1000001396	Open	OC	940	8/31/2020		3,150.08
2100919	1000001396	Open	IN	965	8/6/2020	14,572.42	
2100919	1000001396	Open	OC	940	8/31/2020		3,150.08
2101794	1000001396	Open	IN	934	9/6/2020	14,572.42	
2101794	1000001396	Open	OC	910	9/30/2020		3,150.08
2102588	1000001396	Open	IN	904	10/6/2020	14,572.42	
2102588	1000001396	Open	OC	879	10/31/2020		3,150.08
2103461	1000001396	Open	IN	873	11/6/2020	14,572.42	
2103461	1000001396	Open	OC	849	11/30/2020		3,150.08
2104547	1000001396	Open	IN	843	12/6/2020	14,572.42	
2104547	1000001396	Open	OC	818	12/31/2020		3,150.08
2105180	1000001396	Open	IN	812	1/6/2021	14,572.42	
2105180	1000001396	Open	OC	787	1/31/2021		3,126.12
2106018	1000001396	Open	IN	781	2/6/2021	14,572.42	
2106018	1000001396	Open	OC	759	2/28/2021		3,002.35
2106779	1000001396	Open	IN	753	3/6/2021	14,572.42	
2106779	1000001396	Open	OC	728	3/31/2021		2,890.56
2107820	1000001396	Open	IN	722	4/6/2021	14,572.42	
2107820	1000001396	Open	OC	698	4/30/2021		2,766.80
2108396	1000001396	Open	IN	692	5/6/2021	14,572.42	
2108396	1000001396	Open	OC	667	5/31/2021		2,647.02
2109073	1000001396	Open	IN	649	6/18/2021	888.00	
2109073	1000001396	Open	OC	637	6/30/2021		150.82
2109237	1000001396	Open	IN	661	6/6/2021	14,572.42	
2109237	1000001396	Open	OC	637	6/30/2021		2,523.26
2200122	1000001396	Open	IN	631	7/6/2021	14,834.20	
2200122	1000001396	Open	OC	606	7/31/2021		2,446.61
2200894	1000001396	Open	IN	600	8/6/2021	14,834.20	
2200894	1000001396	Open	OC	575	8/31/2021		2,320.62
2201690	1000001396	Open	IN	569	9/6/2021	14,834.20	
2201690	1000001396	Open	OC	545	9/30/2021		2,194.64
2202546	1000001396	Open	IN	539	10/6/2021	14,834.20	

Exhibit 3

Lous Pier 47 – Map and Photo



