



MEMORANDUM

April 21, 2023

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

FROM: Elaine Forbes
Executive Director 

SUBJECT: Proposed lease amendment (“Second Amendment”) to L-16997 Lease with Andre-Boudin Bakeries, Inc. for Chowder Hut restaurant to extend the deadline for construction of improvements to patio and revise the scope of development to patio improvements to reduce total patio area enclosed.

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution No. 23-19

EXECUTIVE SUMMARY

Andre-Boudin Bakeries, Inc, a California corporation dba Chowder Hut Restaurant (“Tenant”) operates under Port lease No. L-16697 (“Lease”). The Port Commission approved the 10-year Lease with one 5-year option to extend in September 2020; the Board of Supervisors approved it in December 2020 and the Lease commenced January 1, 2021 and expires December 31, 2030. Under the terms of the Lease, Tenant is required to make specified capital improvements at a cost of no less than \$800,000 by January 1, 2023 in order for Tenant to keep its right to the 5-year extension option in the Lease.

Given the difficulty of conducting business or commencing construction in San Francisco in 2020, 2021, and into 2022, it was not feasible to construct the enclosure as timely as originally contemplated. In August 2022, Tenant approached Port staff to advise that the scope of the project in the work letter to the Lease will cost from \$1.9 million to enclose 50% of the outdoor area to \$4.5 million for 100% enclosure of the outdoor area. This cost

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is not financially feasible; therefore, the Tenant refined the scope of the project to better meet their budget and operational needs.

The revised scope includes enclosing three of the eight sides with louvered glass enclosures that can open in good weather and close in bad weather. The Tenant determined that many customers prefer al fresco dining and that neither the public bathroom entrance nor restaurant order area need to be enclosed to achieve the sales goals.

Port staff support this request because the Port has already gained proforma revenue increases under the Lease; therefore, providing this extension does not substantively reduce the Port's bargained-for benefits in the Lease. The work will improve seating options for Chowder Hut customers and make it more likely the tenant will exercise its five-year option.

BACKGROUND

The Chowder Hut is in the Octagon Building in the heart of Fisherman's Wharf at 2890 Taylor Street. The Lease covers approximately 5,400 square feet of existing building and exterior patio space and operates as an indoor/outdoor casual dining restaurant, including providing public restrooms.

Tenant has operated the Chowder Hut since 1993 when Tenant assumed the Lease. Under earlier versions of the Lease, Tenant was required and did complete two capital improvement projects on the premises – an investment of \$335,000 was completed in 2011 and a \$365,000 investment was completed in 2013. In both cases the work was finished in an efficient and timely manner.

Tenant, under the Lease, is required to install new improvements at a cost of no less than \$800,000 by January 1, 2023 to preserve Tenant's eligibility for the 5-year extension in the Lease. The proposed Second Amendment will extend the deadline to March 31, 2024, increase the minimum investment to \$900,000 (estimated actual cost is \$1.15 million), and incentivize the Tenant to exercise its five-year option. The completion of the work and exercise of the option will provide more revenue (and percentage rent to the Port) and commit the Tenant to an additional five years of Lease term.

The Lease provides the Executive Director the ability to consider tenant requests to extend timeframes as part of the Work Letter exhibit to the Lease. This common provision in many Port leases recognizes that planning, permitting, and construction timeframes often are longer than anticipated.¹ While staff may use this provision to extend deadlines when

¹ Work Letter (Exhibit C to the Lease) gives the Executive Director authority as follows... "1.5. Extensions by Port. Upon the request of Tenant, Port's Executive Director may, by written instrument, extend the time for Tenant's performance of any term, covenant or condition of this Work Letter or permit the curing of any default of this Work Letter upon such terms and conditions as she or he determines appropriate, including but not limited to the time within which Tenant must perform such terms and/or conditions..."

tenants are working on projects, out of an abundance of caution and in consultation with the City Attorney, staff wish to bring this proposed Amendment to the Port Commission for approval.

PROPOSED TERMS OF AMENDMENT

Port staff prepared a Second Amendment to the Lease with the following terms:

1. The deadline to construct the improvements is extended from December 31, 2023 to March 31, 2024.
2. The minimum investment in the improvements will increase from \$800,000 to \$900,000. The actual cost for the work is estimated to be \$1.15 million.
3. Revised the scope of the improvement to still demolish a significant portion of the existing patio enclosure and replace it with a new patio enclosure with louvered openings on three sides of the Premises at an approximate cost of \$1.15 million.

STAFF ANALYSIS AND DISCUSSION

Chowder Hut consistently maintains its Good Standing status and is eligible to enter the Second Amendment.

Staff believes that the proposed extension of the completion date is beneficial to the Port because completion of the improvements will add approximately 100 seats in a controlled outdoor environment leading to higher sales and percentage rent.

This lease Amendment supports the Port's Strategic Plan Stability Goal. By extending the date which allows Chowder Hut to qualify for its 5-year option, Port will secure continued and improved revenue over a longer term which helps achieve the goal of managing the Port's real estate portfolio to maximize value and income to the Port and to foster a tenant that would be better able to perform through economic cycles. Strategic contributions to meeting this objective are of particular importance during the current recovery cycle.

Without the potential extension, the Boudin has indicated the investment may not be worth completing due to limited amortization time remaining (7 years versus 13 years). By providing the construction deadline extension, the Tenant is more likely to complete the proposed improvements and retains the ability to exercise its 5-year option to extend the expiration date of the Lease to December 31, 2035.

RECOMMENDATION

Port staff recommends that the Port Commission approve the attached resolution authorizing the Executive Director to enter into the proposed amendment Agreement with Andre-Boudin Bakeries, Inc, a California corporation, and authorize the Executive Director to forward the amendment to the Board of Supervisors for approval and upon the effectiveness of such approval, authorize the Executive Director or designee to execute the amendment.

Prepared by: Don Kavanagh, Senior Property Manager,
Real Estate and Development

For: Rebecca Benassini, Deputy Director
Real Estate and Development

Attachments: Attachment 1 – Original and Proposed Initial Improvements Narrative
and Renderings

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

RESOLUTION NO. 23-19

- 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 Andre-Boudin Properties, Inc. (“Tenant”) entered into that certain Port Lease No. L-16997 (“Lease”) located at 2890 Taylor Street, in the City and County of San Francisco; and
- WHEREAS, Tenant was obligated to complete specified improvements in its lease by December 31, 2022; and
- WHEREAS, Tenant estimated that the cost of the improvements as specified is no longer financially feasible and has asked to reduce the scope of the improvements and extend the deadline to complete the improvements; and
- WHEREAS, Port and Tenant now wish to agree on an amendment to the Lease per the terms of the Second Amendment to Lease on file with the Commission Secretary (the “Second Amendment”) and as described in the memorandum accompanying this resolution; and
- WHEREAS, Among other things, the Amendment requires completion of the improvements by March 31, 2024; a reduction in the scope of improvements from enclosing eight sides of the premises to three sides; and, an increase in the minimum cost of the improvements to \$900,000, all as more particularly described in the Memorandum to the Port Commission dated April 21, 2023; now, be it
- RESOLVED, That, subject to Board of Supervisors’ approval, the Port Commission approves the Second Amendment 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

Attachment 1

Original Narrative

Tenant will demolish the existing patio enclosure which surrounds the Premises and replace with a new attractive patio enclosure with retractable windows. The enclosure will provide a more comfortable dining experience for guests during periods of inclement weather and will allow the business to continue to operate at increased capacity during such time.

The patio enclosure will be constructed to match the architectural design prepared by Tenant's Architect. The cost of the project is estimated to be \$800,000 as estimated by Tenant's contractor. The estimated time of construction is 90 days and will be completed during non-peak season.

Bids from late 2022 range from \$1.9 million to enclose 50% of the building's outdoor area in the style originally contemplated up to \$4.5 million to enclose 100% of the outdoor area. Tenant reports this cost is economically prohibitive.

Original Rendering

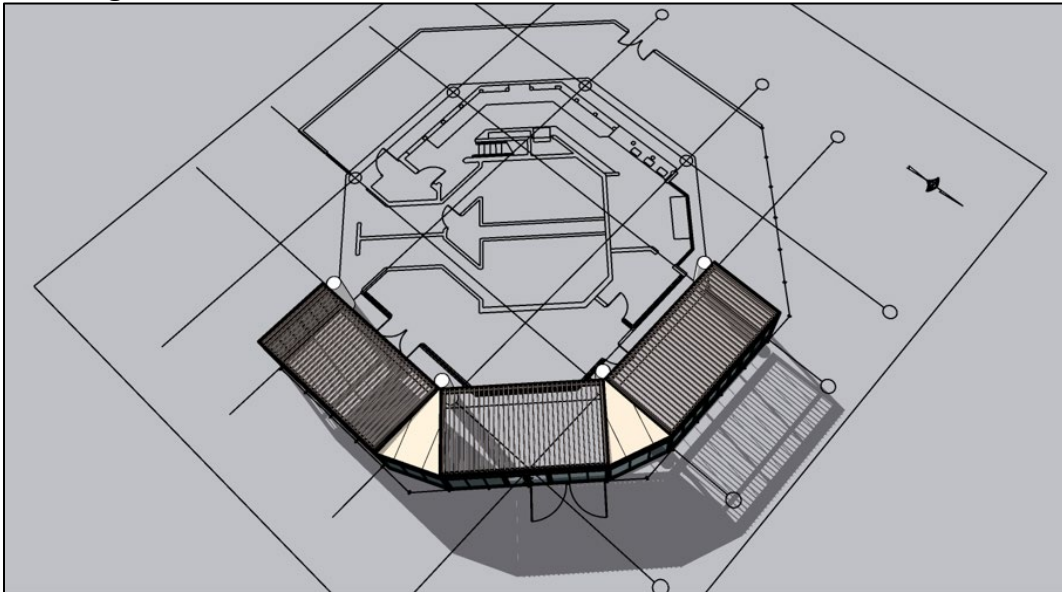


Proposed Amended Narrative

Since Tenant believes that since some of its customers prefer al fresco dining, it would be better to enclose a portion of the patio instead of all of it. Instead of retractable glass windows, Tenant is proposing high-end watertight motorized louvered coverings for the enclosures as shown below. The louvers can be closed during inclement weather or opened during warmer weather for fresh air.

Two of the eight sides are reserved for the entrance to the restaurant and the bathrooms, and the remaining three sides will be open patio areas.

New Rendering



3D New Rendering

