

1 [Lease Agreement - Andre-Boudin Bakeries, Inc. - Seawall Lot 301 (2890 Taylor Street) -
2 Minimum Base Rent of \$19,087 Per Month]

3 **Resolution approving Lease L-16697 between the Port Commission and Andre-Boudin**
4 **Bakeries, Inc. for the Chowder Hut, located at Seawall Lot 301 (2890 Taylor Street), for a**
5 **term of ten years with one five-year option to extend for a monthly minimum base rent**
6 **of \$19,087 to commence following Board approval.**

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8 WHEREAS, California Statutes of 1968, Chapter 1333 (the "Burton Act") and Charter,
9 Sections 4.114 and B3.581, empower the San Francisco Port Commission ("Port
10 Commission") with the power and duty to use, conduct, operate, maintain, manage, regulate,
11 and control the lands within Port Commission jurisdiction; and

12 WHEREAS, In September 2020, through Resolution 20-44, the Port Commission
13 approved Lease No. L-16697 ("Lease") with Andre-Boudin Bakeries, Inc. ("Boudin") for
14 premises in Fisherman's Wharf known as the Chowder Hut which consists of a one-story free
15 standing building with mezzanine of about 2,651 square feet and which includes a restaurant
16 and public restrooms and about 2,749 square feet of exterior dining seating area; and

17 WHEREAS, The permitted uses under the Lease are a continuation of existing and
18 related uses and are not a project under California Environmental Quality Act; and

19 WHEREAS, Since January 2010, Boudin has operated the Chowder Hut under Lease
20 L-14814 (Port Commission Resolutions 10-76 and 12-94) which expired on December 31,
21 2019, and has since been on month to month holdover status with the Port's consent; and

22 WHEREAS, On March 8, 2011, the Port Commission adopted Resolution No.11-15,
23 which establishes its Retail Leasing Policy which includes conditions for consideration for
24 lease renewals without competitive bidding, and obligations to be included in renewed leases

1 (“Retail Leasing Policy”); and

2 WHEREAS, The Lease has a ten-year term with one five-year extension option at
3 tenant’s option (“Extension Option”); and

4 WHEREAS, As material consideration for the Lease, as further described in the
5 Memorandum to the Port Commission dated September 18, 2020, the proposed Lease
6 includes the following significant terms: (1) Tenant will pay base rent of \$19,087 and a
7 percentage of 9% of its gross sales which is greater, monthly; (2) On each fifth (5th)
8 anniversary of the Lease, base rent shall be adjusted to the greater of a defined percentage of
9 the previous three (3) years gross sales or the increase in the Consumer Price Index; (3) as a
10 condition precedent to the Extension Option, Tenant must invest a minimum of \$800,000 in
11 specified tenant improvements by specified dates and meet a minimum sales per square foot
12 threshold over the prior year; (4) At the end of the ten (10) Term, should Tenant elect to
13 exercise its Extension Option, percentage rent due to Port will be reset to fair market value
14 through an appraisal process; (5) Port’s transfer participation in net proceeds from sales and
15 re-financing will increase from the current 10% to 12%; (6) the proposed Lease sets forth the
16 parties’ respective obligations with respect to the public restrooms that are part of the leased
17 premises including, as under the current lease, an indemnity by Port which has been
18 approved by the City’s Risk Manager under San Francisco Administrative Code, Section 1.24;
19 and (6) the Lease contains all standard Hazardous Materials, Insurance, Indemnity and
20 Release, Damage and Destruction, Sea Level Rise and Seawall provisions and all current
21 City ordinances and requirements as necessary; and

22 WHEREAS, Under the new lease, rent relief will continue on the same bases as under
23 the current lease per Port rent relief programs adopted in Port Commission Resolutions 20-
24 18, 20-27, 20-30 and 20-41 including rent forgiveness for up to 14 months under an
25 anticipated amendment to the new lease; and

1 WHEREAS, San Francisco Charter, Section 9.118, requires Board of Supervisors'
2 approval of the modification, amendment or termination of any lease which when entered into
3 was for a period of ten or more years or having anticipated revenue to the City of One Million
4 Dollars (\$1,000,000) or more; and

5 WHEREAS, The Port Commission has determined that the Lease meets the criteria of
6 the Retail Leasing Policy and that, in this circumstance, competitive bidding is impractical
7 and/or impossible and that approval of the Lease is in the best interest of the Port; and

8 WHEREAS, The proposed rent under the Amended Lease, along with the other
9 negotiated terms, is not less than Market Rent as defined in Administrative Code,
10 Section 23.2; and now, therefore, be it;

11 RESOLVED, That the Board of Supervisors' approves the Lease; and, be it;

12 FURTHER RESOLVED; That the Board of Supervisors authorizes the Executive
13 Director of the Port ("Executive Director") to execute the Lease in a form approved by the City
14 Attorney and in substantially the form on file with the Clerk of the Board of Supervisors in File
15 No. _____; and, be it;

16 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
17 Director to enter into any additions, amendments or other modifications to Lease (including,
18 without limitation, preparation and attachment of, or changes to, any or all of the exhibits and
19 ancillary agreements) that the Executive Director, in consultation with the City Attorney,
20 determines when taken as a whole, are in the best interest of the Port, do not materially
21 increase the obligations or liabilities of the Port or City or materially decrease the public
22 benefits accruing to the Port, and are necessary or advisable to complete the transactions
23 contemplated and effectuate the purpose and intent of this Resolution, such determination to
24 be conclusively evidenced by the execution and delivery by the Executive Director of any such
25 documents; and, be it;

1 FURTHER RESOLVED; That within thirty (30) days of the Lease being fully executed
2 by all parties, the Port shall provide copies of the Lease to the Clerk of the Board for inclusion
3 into the official file.

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