

1 [Approval of Port Lease for the Boudin Restaurant and Bakery at Fisherman’s Wharf.]

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3 **Resolution approving the Lease between the San Francisco Port Commission and**
4 **Boudin Properties, Inc., a California corporation, for the Boudin Restaurant and Bakery**
5 **located at 160 Jefferson Street at Fisherman’s Wharf, for a total maximum term of forty-**
6 **two years.**

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8 WHEREAS, Charter Section B3.581 of the City and County of San Francisco (the
9 “City”) empowers the Port Commission (“Port”) with the power and duty to use, conduct,
10 operate, maintain, manage, regulate and control Port areas of the City, including the power to
11 enter into leases and franchises for the use of real property within Port jurisdiction; and

12 WHEREAS, The real property located on Seawall Lot 301 in Fisherman’s Wharf,
13 commonly known as 160 Jefferson Street, San Francisco, California (the “Property”) is within
14 Port jurisdiction; and

15 WHEREAS, The Port and Exposition Fish Grotto, Inc., a California corporation (“Expo
16 Fish”) entered into that certain Restaurant Lease dated May 1, 1970 (the “Original Lease”),
17 whereby Port leased to Expo Fish, and Expo Fish leased from the Port approximately 14,122
18 square feet of the Property; and

19 WHEREAS, The Port and Expo Fish entered into that certain First Amendment to
20 Restaurant Lease dated September 25, 1970 (the “First Amendment”), modifying certain
21 terms of the Original Lease; and

22 WHEREAS, Expo Fish assigned its rights, title and interest in the Original Lease, as
23 amended by the First Amendment, to Alioto Fish Company, Ltd., a California corporation
24 (“Alioto Fish”) pursuant to that certain Assumption and Assignment dated October 11, 1972

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1 entered into by and between Expo Fish and Alioto Fish (the “Expo Assignment”) and
2 consented to by the Port; and

3 WHEREAS, The Port and Alioto Fish entered into that certain Second Amendment to
4 Restaurant Lease dated February 27, 1974 (the “Second Amendment”), further modifying the
5 Original Lease and expanding the leased premises to approximately 19,490 square feet; and

6 WHEREAS, The Port and Alioto Fish entered into that certain Third Amendment to
7 Restaurant Lease dated April 29, 1994 (the “Third Amendment”), further modifying the
8 Original Lease; and

9 WHEREAS, Alioto Fish assigned the Original Lease, as modified by the Amendments,
10 to Boudin Properties, Inc. (“Boudin”), to which the Port Commission consented at its public
11 meeting of October 8, 2002, by Port Commission Resolution No. 02-47 (the "Boudin Lease");
12 and

13 WHEREAS, The Port and Boudin entered into a Memorandum of Technical
14 Corrections dated as of November 1, 2002 (the “Memorandum of Technical Corrections”),
15 revising the legal description of the Boudin Lease premises to correct certain technical errors
16 in the original description; and

17 WHEREAS, The Port approved, on February 5, 2003, by Port Commission Resolution
18 No. 03-09, a Memorandum of Agreement with Boudin (“Memorandum of Agreement”),
19 allowing the temporary use of a portion of the Property for retail sales and the cessation of
20 restaurant use pending the demolition of the improvements now on the premises in
21 anticipation of the construction of a new restaurant/bakery facility at the same location; and

22 WHEREAS, Boudin has redevelopment plans for the Property that involve the
23 demolition of the existing one-story building of about 9,820 gross square feet and replacement
24 of it with a two-story 24,993 gross square foot building housing a “market hall,” retail bakery
25 and exposition bakery on the first floor, a full service restaurant/café, bar and exhibition space

1 on the second floor and a stand-alone flour silo of approximately 40 feet in height (the
2 “Project”); and

3 WHEREAS, Due to its significant investment in the Property, Boudin has requested
4 that the Port terminate the Boudin Lease and enter into a new lease for the Property with an
5 extended lease period, new financial terms and modified lease premises; and

6 WHEREAS, Port staff and Boudin have negotiated the terms and conditions of a new
7 lease, as reflected in Port Lease No. L-13550 (the “New Lease”), which is on file with the
8 Clerk of the Board of Supervisors in File No. and hereby declared to be a part of this
9 resolution as if set forth fully herein; and

10 WHEREAS, The Waterfront Design Advisory Group has reviewed the Schematic
11 Drawings for the Project on several occasions and approved them at its public meeting held
12 on October 10, 2003, which documents are on file with the Clerk of the Board of Supervisors
13 in File No. and hereby declared to be a part of this resolution as if set forth fully herein;
14 and

15 WHEREAS, The Planning Department issued the Final Mitigated Negative Declaration
16 (“FMND”) for the Project on October 22, 2003, in which it determined that the Project will not
17 have a significant effect on the environment with the implementation of the mitigation
18 measures specified therein (File No. 2003.0186E-160); and

19 WHEREAS, The San Francisco Planning Department (“Planning Department”) issued
20 an Off-Street Parking Exemption under Planning Code Section 161(f) for the Project on
21 October 28, 2003, to exempt the Project from providing parking, which document is on file
22 with the Clerk of the Board of Supervisors in File No. and hereby declared to be a part of
23 this resolution as if set forth fully herein; and

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1 WHEREAS, Port staff concluded that the New Lease is in the best interest of the Port
2 and City and recommended approval of the New Lease on the terms and conditions set forth
3 in the Port Staff Memorandum for Agenda Item 4A for the Port Commission Regular Meeting
4 of October 28, 2003, which document is on file with the Clerk of the Board of Supervisors in
5 File No. and hereby declared to be a part of this resolution as if set forth fully herein; and

6 WHEREAS, Based on staff's recommendation and its own review and consideration,
7 the Port Commission, at its public meeting on October 28, 2003, by Resolution No.03-65, (1)
8 adopted the FMND for the Project, including the mitigation measures set forth therein; (2)
9 approved the Schematic Drawings for the Project; and (3) approved the New Lease, including
10 all exhibits thereto; and

11 WHEREAS, Charter Section 9.118 (c) requires the Board of Supervisors to approve
12 any leases of real property for a period of ten or more years or having anticipated revenue to
13 the City of one million dollars (\$1,000,000) or more; and

14 WHEREAS, The policy of the Board of Supervisors, as set forth in Administrative Code
15 Section 2.6-1, is to approve only proposed leases involving property or facilities of the City
16 that have been awarded to the highest responsible bidders in accordance with the competitive
17 bidding procedures, except where impractical or impossible; and

18 WHEREAS, Boudin currently has leasehold control of the Property for approximately
19 another thirty-two years under the Boudin Lease; and

20 WHEREAS, The Project proposed to be developed by Boudin at the Property pursuant
21 to the New Lease offers substantial economic benefits to the Port and the City and will create
22 a unique visitor destination at the Fisherman's Wharf; and

23 WHEREAS, A public competitive bidding process at this time is impractical for a lease
24 opportunity that would not commence for approximately thirty-two years, upon expiration of

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1 the Boudin Lease, and it would be impossible to obtain the economic and other benefits
2 offered by Boudin now without a New Lease; now, therefore, be it

3 RESOLVED, That this Board of Supervisors has reviewed and considered the FMND
4 and finds that it reflects the independent judgment and analysis of the Planning Department,
5 and this Board of Supervisors finds that it is adequate, accurate, and objective, and that there
6 is no substantial evidence that the Project, as mitigated, will have a significant effect on the
7 environment, and hereby adopts the following findings with respect to the FMND for the
8 Project (File No. 2003.0186E-160):

9 1. The Planning Department fulfilled all procedural requirements of the
10 California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 et seq.,
11 “CEQA”), the State CEQA Guidelines (Cal. Admin. Code Title 14, Section 15000 et
12 seq., “CEQA Guidelines”) and Chapter 31 of the San Francisco Administrative Code
13 (“Chapter 31”); and

14 2. On September 27, 2003, the Planning Department issued a Preliminary
15 Mitigated Negative Declaration for the Project, and in accordance with CEQA, the
16 CEQA Guidelines, and Chapter 31, the Planning Department posted the document in
17 its offices and mailed a copy to the Project sponsor. The Planning Department
18 provided notice of the preparation of the Preliminary Mitigated Negative Declaration in
19 a newspaper of general circulation and this notice was mailed to the Planning
20 Department’s list of interested parties; and

21 3. In accordance with CEQA Section 21091(b) and CEQA Guidelines
22 Section 15073, the Preliminary Mitigated Negative Declaration was available for a
23 twenty-day public review period; and

24 4. No protests or appeals were received in response to the Preliminary
25 Mitigated Negative Declaration; and

1 5. The Planning Department issued the FMND on October 22, 2003; and

2 6. The Project is within the scope of the FMND, an addendum to the FMND
3 is not required and pursuant to CEQA Guidelines Section 15162, (1) no substantial
4 changes are proposed which would require major revisions to the FMND; (2) no
5 substantial changes have occurred with respect to the circumstances under which the
6 Project is being undertaken which would require major revisions in the FMND; and (3)
7 no new information of substantial importance, which was not known or could not have
8 been known at the time the FMND was adopted, has become available; and, be it
9 FURTHER RESOLVED, Based on the foregoing findings, the Board of Supervisors

10 hereby adopts the FMND, including the mitigation measures set forth therein; and, be it

11 FURTHER RESOLVED, Because of the thirty-two years remaining in the lease term of
12 the Boudin Lease, a public competitive bidding process for the Property would be impractical
13 if not impossible at this time; and, be it

14 FURTHER RESOLVED, That the Board of Supervisors exempts the New Lease from
15 the competitive bidding policy set forth in Administrative Code Section 2.6-1; and, be it

16 FURTHER RESOLVED, That the Board of Supervisors approves the New Lease and
17 the transactions which it contemplates (including without limitation the terms of all exhibits
18 incorporated or referenced in the New Lease); and, be it

19 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
20 Director of the Port (the "Executive Director") to execute the New Lease upon satisfaction or
21 waiver of the conditions precedent set forth therein in substantially the form presented to this
22 Board and in such final form as is approved by the Executive Director in consultation with the
23 City Attorney; and, be it

24 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
25 Director to enter into any additions, amendments or other modifications to the New Lease

1 (including, without limitation, preparation and attachment of, or changes to, any or all of the
2 Exhibits) that the Executive Director, in consultation with the City Attorney, determines is in
3 the best interest of the Port, do not alter the rent or the Port's projected income from the
4 Project, do not materially increase the obligations or liabilities of the Port or City or materially
5 decrease the public benefits accruing to the Port, and are necessary or advisable to complete
6 the transactions which the New Lease contemplates and effectuate the purpose and intent of
7 this resolution, such determination to be conclusively evidenced by the execution and delivery
8 by the Executive Director of the New Lease and any such amendments to any such
9 documents; and, be it

10 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
11 Director to execute and enter into any additional documents as he deems necessary or
12 appropriate, in consultation with the City Attorney, to consummate the transactions
13 contemplated hereby or to otherwise effectuate the purpose and intent of this resolution, such
14 determination to be conclusively evidenced by the execution and delivery by the Executive
15 Director of any such documents; and, be it

16 FURTHER RESOLVED, That the Board of Supervisors approves, confirms and ratifies
17 all prior actions taken by the officials, employees and agents of the Port Commission or the
18 City with respect to the New Lease.

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