

AMENDMENT OF THE WHOLE
6/4/03

FILE NO. 030400

RESOLUTION NO.

1 [Approval of Lease Amendment for Waterfront Restaurant]

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3 **Resolution approving Fourth Lease Amendment to Port Lease No. L-11859 between the**
4 **Port Commission and Bundox Restaurant, Inc., a California corporation (“Tenant”) for**
5 **the lease of real property commonly known as the Waterfront Restaurant for the term**
6 **commencing on November 1, 2002 and ending January 31, 2025.**

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8 WHEREAS, City Charter Section B3.581(g) authorizes the Port Commission to enter
9 into leases and franchises for the operation of property within the jurisdiction of the Port
10 Commission; and

11 WHEREAS, The Port Commission and Tenant entered into Port Lease No. L-11859
12 dated December 20, 1994, as amended by the (a) Reaffirmation and Amendment to Lease
13 and Consent to Encumbrance dated as of June 28, 1996; (b) Second Amendment to Lease
14 and Consent to Encumbrance dated as of November 13, 1996; and (c) Third Amendment to
15 Lease dated as of July 22, 1997 (as amended, the “Lease”), for the lease of real property
16 defined in the Lease as the “Premises” and commonly known as the Waterfront Restaurant;
17 and,

18 WHEREAS, The City, acting by and through the Mayor’s Office of Community
19 Development (“MOCD”), loaned to Tenant three million two hundred fifty thousand dollars
20 (\$3,250,000) for improvements at the Premises (the “MOCD Loan”), as evidenced by a loan
21 agreement and related loan documents dated as of November 1, 1996, as amended by
22 Amendment No. 1 to Loan Agreement dated as of May 9, 2000 (as amended, the “Loan
23 Documents”); and,

24 WHEREAS, Tenant has been unable to meet its obligations under the Lease and the
25 Loan Documents due to the poor economic climate and other financial reasons; and,

1 WHEREAS, Tenant’s restaurant, Waterfront Restaurant, has a long history of over
2 twenty years on San Francisco’s waterfront and serves as an important commercial enterprise
3 on Port property; and,

4 WHEREAS, In Resolution No. 02-70 adopted on December 17, 2002, the Port
5 Commission agreed to amend the rent structure and term of the Lease on the terms and
6 conditions set forth in the Fourth Amendment to Lease No. L-11859 (the “Lease Amendment”)
7 and the Memorandum to the Port Commission for the December 17, 2002 meeting, Agenda
8 Item 5B (“Port Staff Memorandum”); and,

9 WHEREAS, Copies of the Lease Amendment and the Port Staff Memorandum are on
10 file with the Clerk of the Board of Supervisors in File No. _____, and such documents are
11 hereby declared to be a part of this resolution as if set forth fully herein; and,

12 WHEREAS, Charter Section 9.118(c) requires the Port to submit an amendment of the
13 Waterfront Restaurant Lease to this Board of Supervisors for its approval; and,

14 WHEREAS, Concurrently with the Lease Amendment, MOCD staff has agreed to
15 amend the payment structure and term of the MOCD Loan on the terms and conditions set
16 forth in the Second Amendment to Loan (the “Loan Amendment”); and,

17 WHEREAS, A copy of the Loan Amendment is on file with the Clerk of the Board of
18 Supervisors in File No. _____, and such document is hereby declared to be a part of this
19 resolution as if set forth fully herein; and,

20 WHEREAS, The Lease Amendment and the Loan Amendment represent a
21 comprehensive restructure package offered by the City to the Tenant; now, therefore, be it

22 RESOLVED, That this Board of Supervisors approves the Lease Amendment [for the](#)
23 [term commencing on November 1, 2002 and ending January 31, 2025](#); and, be it

24 FURTHER RESOLVED, That this Board of Supervisors authorizes the Executive
25 Director of the Port (the “Executive Director”) to execute the Lease Amendment upon

1 satisfaction or waiver of the conditions precedent set forth therein, in substantially the form of
2 such agreement on file with the Clerk of the Board of Supervisors in File No. _____ and in
3 such final form as is approved by the Executive Director and the City Attorney; and, be it
4 FURTHER RESOLVED, That this Board of Supervisors authorizes the Executive
5 Director to enter into any additions, amendments or modifications (including, without limitation,
6 preparation and attachment of, or changes to, any or all of the exhibits) to the Lease
7 Amendment that the Executive Director, in consultation with the City Attorney, determines are
8 in the best interests of the City, do not materially increase the obligations or liabilities of the
9 City and the Port Commission, are necessary or advisable to complete the transaction which
10 the Lease Amendment contemplates, and effectuate the purpose and intent of this resolution,
11 such determination to be conclusively evidenced by the execution and delivery by the
12 Executive Director of the Lease Amendment and any amendments thereto.

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