

**SECOND AMENDMENT TO
LEASE No. L-16997
ANDRE-BOUDIN BAKERIES, INC. (DBA CHOWDER HUT)**

This Second Amendment to Lease No. L-16997 (this “**Second Amendment**”), dated for reference purposes only as of _____, 2023, is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (“**City**”), operating through the **SAN FRANCISCO PORT COMMISSION** (“**Port**”), as landlord, and **ANDRE-BOUDIN BAKERIES, INC.**, a California corporation, as tenant (“**Tenant**”).

RECITALS

A. Port and Tenant entered Lease No. L-16697 dated for reference purposes only as of September 8, 2020 for use of that certain real property located at Seawall Lot 301 for the premises known as the Chowder Hut restaurant in the City and County of San Francisco (“**Original Lease**”). The Original Lease commenced on January 1, 2021 and will expire on December 31, 2030 (“**Expiration Date**”) (See Port Commission Reso. 20-44 and Board of Supervisor’s Reso. 560-20.) Since January 2010, Tenant had operated the Chowder Hut under Port Lease L-14814 which expired on December 31, 2019, and was on month-to-month holdover status with the Port’s consent until the Original Lease commenced (“**Prior Lease**”). Prior Lease was terminated on January 1, 2021, the Commencement Date of the Original Lease. Port and Tenant entered the First Amendment to Lease L-16697 dated December 2, 2021 (“**Amendment**”). The Original Lease and the Amendment are collectively referred to herein as the “**Lease.**”

B. Amending the Lease as provided in this Second Amendment is of considerable value to both parties and is intended to improve the financial feasibility of the Lease and preserve Tenant’s ability to operate at the Port, while at the same time meeting the Port’s own goals, including protecting its revenue streams and assets; supporting the Port’s maritime mission; aligning Port’s and Tenant’s interest in promoting a shared prosperity partnership, and is in the best interests of the Port’s long-term financial health.

C. The essential terms of this Second Amendment are to (i) extend the Initial Tenant Improvements Completion Date (the deadline for completion of the Initial Tenant Improvements) to March 31, 2024, (ii) increase the minimum investment for the Initial Tenant Improvements to \$900,000, and (iii) change the scope of the improvements as provided for in Exhibit C, Attachment 1.

D. All capitalized terms used herein but not otherwise defined shall have the meaning given to them in original Lease as amended.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, Port and Tenant hereby amend the Lease as follows:

AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.
2. **Lease Compliance.** Except as explicitly provided in this Second Amendment, this Second Amendment does not excuse, waive, suspend or modify any provision or obligation of Tenant under the Lease. Tenant shall comply with all terms and conditions of the Lease as modified by this Second Amendment. Tenant acknowledges and agrees that compliance with the Lease is a material condition of this Second Amendment and that Port would not have agreed to this Second Amendment absent such terms.
3. **Initial Tenant Improvements Completion Date.** The definition of “Initial Tenant Improvements Completion Date” set forth in the Basic Lease Information is hereby amended to read as follows: “Tenant must Complete the Initial Tenant Improvements by no later than March 31, 2024 (“Initial Tenant Improvements Completion Date”).”
4. **Minimum investment for Initial Tenant Improvements.** The minimum investment for the Initial Tenant Improvements as set forth in the Basic Lease Information is hereby increased from \$800,000 to \$900,000.
5. **Scope of Improvements.** Attachment 1, Scope of Development to Exhibit C in the Lease is deleted and replaced by Exhibit A in this Second Amendment.
6. **Insurance.**
 - 6.1. **Personal Property Insurance.** Section 17.1(d) of the Lease is hereby deleted and replaced with the following:

“**17.1(d) Personal Property Insurance.** Tenant, at its sole cost and expense, shall procure and maintain on all of Tenant’s Property and Alterations, in, on, or about the Premises, personal property insurance on all risk form, excluding earthquake and flood, in an amount not less than full replacement value or a stated value, at Tenant’s sole discretion, for the replacement of Tenant’s Property. In addition to the foregoing, Port may, in its sole discretion, insure any personal property leased to Tenant by Port pursuant to this Lease in such amounts as Port deems reasonably appropriate and Tenant shall have no interest in the proceeds of such personal property insurance. Port shall have no responsibility or obligation to maintain insurance or replace Tenant’s Property, Alterations, or any Improvements regardless of cause of loss.”
7. **Exhibits and Schedules.**
 - 7.1. **Schedule 3**, FEMA Disclosure Notice, is hereby replaced with **Schedule 3 – Revised** attached hereto.
 - 7.2. Attachment 1, Scope of Development to Exhibit C in the Lease is deleted and replaced by Exhibit A in this Second Amendment.
8. **Exculpation.** Tenant, for itself and on behalf of its officers, employees, owners, successors, and assigns, if any, and on behalf of its agents and invitees, hereby agrees to fully and forever release and discharge the City and County of San Francisco, its elective and/or

appointive boards, agents, employees, departments, commissioners, and officers, including without limitation the San Francisco Port Commission from any and all claims, actions, causes of action, liabilities, damages, loss of business or profits, demands, attorneys' fees, expenses and costs (including without limitation court costs) of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which have existed or may have existed, or which do exist, or which hereafter shall or may exist, and which arise out of or are in any way related to any of the transactions, occurrences, acts or omissions related to the matters described in the Lease or this Second Amendment.

As to such claims, Tenant waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Initials: _____

Tenant *Tenant*

Tenant understands and acknowledges that, as a consequence of this waiver of Section 1542, even if Tenant should eventually suffer additional or further loss, damages or injury arising out of or in any way related to any of the events which gave rise to this Second Amendment, Tenant will not be permitted to make any claims to recover for such loss, damages or injury against the City and County of San Francisco, its elective and/or appointive boards, agents, employees, departments, commissioners, and officers, including without limitation the San Francisco Port Commission. Tenant acknowledges that it intends these consequences even as to claims that may exist as of the date of this Second Amendment but which Tenant does not know exist, and which, if known, would materially affect Tenant's decision to execute this Second Amendment, regardless of whether Tenant's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

The provisions of this Section 8 shall survive the expiration or earlier termination of the Lease.

9. **Notification of Limitations on Contributions.** Through its execution of this Second Amendment, Tenant acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the

date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Tenant further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten (10%) percent in Tenant; and any subcontractor listed in the Tenant's bid or contract; and (ii) within thirty (30) days of the submission of a proposal for the contract, the Port is obligated to submit to the Ethics Commission the parties to the Lease and any subtenant(s). Additionally, Tenant certifies that if this Section applies, Tenant has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract and has provided to City the names of the persons required to be informed.

10. **City Requirements.**

10.1. Section 5.1 of the Lease is hereby deleted and replaced with the following:

“5.1 Payment of Taxes. During the Term, Tenant agrees to pay, when due, to the proper authority any and all real and personal property taxes, general and special assessments, real property transfer taxes, license fees, permit fees and all other governmental charges of any kind or nature whatsoever, including without limitation all penalties and interest thereon, levied or assessed on the Premises, on Tenant's Property, the leasehold or subleasehold estate or Tenant's use of the Premises, or any transfer of a leasehold interest or subleasehold interest in the Premises (including but not limited to the transfer of the leasehold interest in the Premises pursuant to the Lease) whether in effect at the time this Lease is entered into or which become effective thereafter, and all taxes levied or assessed on the possession, use or occupancy, as distinguished from the ownership, of the Premises. Tenant further recognizes and agrees that its leasehold interest may be subject to the payment of special taxes, including without limitation a levy of special taxes to finance energy efficiency, water conservation, water pollution control and similar improvements under the Special Tax Financing Law in Chapter 43 Article X of the Administrative Code. Tenant shall not permit any of the above taxes, assessments or other charges to become a defaulted lien on the Premises or the Improvements thereon; provided, however, that in the event any such tax, assessment or similar charge is payable in installments, Tenant may make, or cause to be made, payment in installments; and provided, further, that Tenant may, through such proceeding as Tenant considers necessary or appropriate, contest the legal validity or the amount of any tax, assessment or similar charge so long as such assessment or charge does not become a defaulted lien. In the event of any such dispute, Tenant shall Indemnify Port, City, and their Agents from and against all Claims resulting therefrom.”

10.2. Section 30.26 is hereby added to read as follows:

“30.26. Notice of Transfers to Port. In addition to the obligations under the Lease with respect to reporting transfers, subleases and/or assignments, within thirty (30) days of entering into any agreement under which Tenant grants any person the right to occupy or use any portion of the Premises for any period of time, including without limitation, any assignment, sublease, license, permit, concession or vendor agreement or other agreement or renewal thereof,

Tenant shall provide written notice to Port and a copy of such agreement, regardless of whether Port consent is required under this Lease for such agreement. Tenant agrees to provide such further information as may be requested by City or Port to enable compliance with reporting obligations under state Law and San Francisco Administration Code Sections 23.38 and 23.39 (or any successor ordinance).”

11. **Venue.** Section 34.1 of the Lease is hereby deleted and replaced with the following:

“**34.1 California Law; Venue.** This Lease is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Any legal suit, action, or proceeding arising out of or relating to this Lease shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Lease has been brought in an inconvenient forum. The parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to federal court.”

12. **Representations and Warranties.** Tenant represents, warrants and covenants to Port that the representations and warranties set forth in Lease Section 32 are true and correct as of the Effective Date of this Second Amendment.

13. **Rights Are Cumulative.** The liability of Tenant and all rights, powers, and remedies of Port under this Second Amendment shall be cumulative and not alternative, and such rights, powers, and remedies given to Port by law or in equity.

14. **Authority.** If Tenant signs as a corporation or a partnership, each of the persons executing this Second Amendment on behalf of Tenant does hereby covenant and warrant that Tenant is at the time of execution and at all times while the Lease is in effect will continue to be: (1) a duly authorized and existing entity, (2) qualified to do business in California; and that Tenant has full right and authority to enter into this Second Amendment, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon Port's request, Tenant shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties, and covenants.

15. **Full Force and Effect.** Except as specifically amended herein, the terms and conditions of the original Lease shall remain in full force and effect.

16. **Entire Agreement.** This Second Amendment contains all the representations and the entire agreement between the parties with respect to the subject matter of this Second Amendment. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of this Second Amendment are superseded in their entirety by this Second Amendment. No prior drafts of this Second Amendment or changes between those drafts and the executed version of this Second Amendment shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider such drafts in interpreting this Second Amendment.

17. **Miscellaneous.** This Second Amendment shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This Second Amendment will be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Second Amendment. The terms of this Second Amendment are contractual and not a mere recital. The liability of and all rights, powers, and remedies of the parties under this Second Amendment shall be cumulative and not alternative. Each party acknowledges that the other party has made no representations, express or implied, to induce that party to enter into this Second Amendment, other than as expressly set forth herein. This Second Amendment is made for the purpose of setting forth certain rights and obligations of Tenant and the Port, and no other person shall have any rights hereunder or by reason hereof as a third-party beneficiary or otherwise. This Second Amendment may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Second Amendment that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. Time is of the essence of this Second Amendment. Neither this Second Amendment nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

18. **Subject to Approvals.** Tenant acknowledges and agrees that no officer or employee of City has authority to commit City to this Second Amendment unless and until the Port Commission and City's Board of Supervisors shall have each approved this Second Amendment and authorized the transactions contemplated hereby. Therefore, any obligations or liabilities of City hereunder are contingent upon such approvals, and this Second Amendment will be null and void if the Port Commission and City's Mayor and the Board of Supervisors do not approve this Second Amendment, in their respective sole discretion.

19. **Effective Date.** This Second Amendment is effective upon the Port's execution as indicated below. The Parties agree that Port has no obligation to execute this Second Amendment until the following conditions precedent have occurred (i) Tenant has executed this Second Amendment, and (ii) the Port Commission and Board of Supervisors have approved this Second Amendment.

Exhibits and Schedules

Exhibit A **Revised Scope of Work**

Schedule 3 **Revised FEMA Disclosure Notice**

(Signatures are on Following Page)

IN WITNESS WHEREOF, Port and Tenant execute this Second Amendment at San Francisco, California, as of the last date set forth below.

PORT: **CITY AND COUNTY OF SAN FRANCISCO,**
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Rebecca Benassini
Deputy Director, Real Estate and Development

Date Signed: _____

TENANT: **ANDRE-BOUDIN BAKERIES, INC., A CALIFORNIA**
CORPORATION

By: _____
Name: _____
Title: _____

Date Signed: _____

By: _____
Name: _____
Title: _____

Date Signed: _____

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: _____
Name: _____
Deputy City Attorney

Second Amendment Prepared By: Don Kavanagh, Senior Property Manager _____(initial)

Port Commission Reso. No.

Board of Supervisors Reso. No.

EXHIBIT A

Revised Scope of Work

[See Following Pages]

SCHEDULE 3 – REVISED FEMA Disclosure Notice

FEMA-National Flood Insurance Program Disclosure Notice

As part of the National Flood Insurance Program (“NFIP”), Federal Emergency Management Agency (“FEMA”) issued the final flood insurance rate maps (“FIRMs”) for City and County of San Francisco on September 23rd, 2020, concluding a process that had been going on for more than a decade. This is the first time FEMA mapped flood risks for the City and County of San Francisco. FIRMs were later adopted by the Board of Supervisors through Ordinance 226-20 (“Floodplain Management Program Ordinance”) and became effective on March 23, 2021.

Based on detailed studies of coastal flood hazards associated with San Francisco Bay and the Pacific Ocean, the final FIRMs designate portions of the City and County of San Francisco (“City”), including portions of the waterfront, Mission Bay, Islais Creek, Bayview Hunters Point, Hunters Point Shipyard, Candlestick Point, Treasure Island, San Francisco International Airport, and Ocean Beach, in coastal flood hazard areas. Referred to as “Special Flood Hazard Areas” (“SFHAs”), these areas are subject to inundation during a flood having a 1 percent chance of occurrence in any given year. They are shown as zones beginning with the letter “A” or “V” on the FIRMs. Port’s structures over water, including piers and wharfs, are designated as Zone D (area of undetermined flood hazard). Zone D areas are not subject to Building Code and NFIP regulation. Historic structures are also exempted from compliance under the NFIP.

Additionally, the San Francisco Public Utilities Commission (“SFPUC”) has prepared the 100-Year Storm Flood Risk Map to show areas where flooding is highly likely to occur on City streets during a 100-year rain storm. More information about this map, including a searchable web map, is available at <https://www.sfwater.org/floodmaps>. The SFPUC 100-Year Storm Flood Risk Map only shows flood risk from storm runoff and, floodproofing measures are not required at this time.

The SFPUC map does not consider flood risk in San Francisco from other causes, such as inundation from the San Francisco Bay or the Pacific Ocean, which are shown on the FIRMs that FEMA has prepared for San Francisco. Conversely, the FIRMs do not show flooding from storm runoff in San Francisco, because our historical creeks and other inland waterbodies have been built over and are no longer open waterways. In most areas, the flood hazards identified by SFPUC and FEMA are separate. There are a few areas, however, near the shoreline where SFPUC’s Flood Risk Zones overlap with the FEMA-designated floodplains.

The FIRM provides flood risk information for flood insurance and floodplain management purposes under the NFIP. The SFHAs, shown on the FIRM, may impact flood insurance requirements and rates, permitting, and building requirements for tenants and permit holders for property in designated SFHAs on the FIRM. Flood insurance is available through the NFIP and the private market. Flood insurance for Zone D areas is not available through NFIP. Pre-FIRM

buildings of any type are not required to buy flood insurance. For more information on purchasing flood insurance, please contact your insurance agent.

City's Floodplain Management Program ordinance is based on NFIP requirements. Under the ordinance, the Port and the City must regulate new construction and substantial improvements or repairs to structures in SFHAs to reduce the risk of flood damage. The requirements may include elevation or floodproofing of structures and attendant utilities.

Additional information on this matter are available on the City/Port websites and FEMA website as listed below-

San Francisco Floodplain Management Program website:

<https://onesanfrancisco.orgisan-francisco-floodplain-management-program>

Port Floodplain Management Program Website:

<https://sfport.com/flood-plain-management-program>

FEMA's NFIP website:

www.FloodSmart.gov.