



## MEMORANDUM

September 18, 2020

**TO:** MEMBERS, PORT COMMISSION  
Hon. Kimberly Brandon, President  
Hon. Willie Adams, Vice President  
Hon. Gail Gilman  
Hon. Doreen Woo Ho

**FROM:** Elaine Forbes   
Executive Director

**SUBJECT:** Request approval of Lease No. L- 16697 for a lease with Andre Boudin Bakeries, Inc. for the Chowder Hut located at Seawall Lot 301 at The Embarcadero and Taylor Street for a term of 10 years with a 5-year option.

**DIRECTOR'S RECOMMENDATION:** Approve Attached Resolution No. 20-44

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### Executive Summary

Andre-Boudin Bakeries, Inc. ("Boudin"), an affiliate of Boudin Properties, which operates the Boudin flagship location on Jefferson Street, is currently the tenant under Port Lease No. L-14814 which expired December 31, 2019. Boudin and the Port wish to renew the lease for an additional ten-year term, subject to the conditions of the Port's Retail Leasing Policy. On February 11, 2020 Port staff made an informational presentation regarding the financial analysis and proposed lease renewal terms. Boudin proposes to enclose the outdoor dining area (estimated minimum cost of approximately \$800,000), which would allow for year-round use of the outdoor area and thus add seating capacity and increase sales, all as further described below. Based on consultant and staff analysis, Port staff believes that the proposed lease satisfies the requirements of the direct negotiation exception to the Port's Retail Leasing Policy.

Since the informational report was presented, (1) Port staff have finalized a draft lease with Boudin and, significantly, (2) the Port and its tenants are enduring the most significant health and economic crisis in recent history. Regarding (2), Port staff's February informational report noted that lease terms regarding the parties' respective

**THIS PRINT COVERS CALENDAR ITEM NO. 11A**

obligations regarding the public restrooms within the premises remained to be negotiated. Those have now been finalized, including rent credits for Boudin and a Port indemnity, and are described below. No changes were made to the base or percentage rent formulations, capital improvements or tenant performance obligations.

Regarding (2), the impact of COVID 19 is deeply affecting workers, business owners, visitors and the Port to an extent that is still being determined. To ensure the past financial projections and analysis still remains relevant and valid, the Port engaged Seifel Associates to re-evaluate the comparison, projections, and assumptions of the February 11<sup>th</sup> informational report. Overall Seifel Associates confirmed that, while there will likely be a delay in the projected revenue increases associated with the planned capital improvements, the investment in protection against inclement weather for patrons is likely to increase the tenant's capture of revenue during the non-peak season. Boudin will have up to 2 years to make these outdoor improvements.

During this severe downturn, similar to many Port restaurants, Boudin deferred rent beginning in March. Similar to its existing lease, Boudin will be eligible for any rent relief available to tenants under the Port's COVID-19 Rent Relief programs adopted in Port Commission Resolutions 20- 18, 20-27, 20-30 and 20-4. The Chowder Hut opened its existing outdoor dining within its premises on reduced seating basis to account for proper distancing in Mid-May. Monthly sales are currently approximately 40% of last year's sales however is generating and reporting percentage to the Port.

### **Strategic Objective**

The proposed new lease is expected to contribute in a substantial way to meeting the Stability Objective of the Port's Strategic Plan by managing the 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 pandemic crisis.

### **Background**

Boudin currently operates a casual take-out restaurant called the Chowder Hut ("Chowder Hut") also known as the Octagon Building in the heart of Fisherman's Wharf, located at 2890 Taylor Street under Lease No. L-14814. The current lease expired on December 31, 2019 and has been on a month to month holdover basis since that time. The lease covers approximately 5,400 square feet of existing building and exterior patio space and operates as an indoor/outdoor casual dining restaurant. Boudin is one of San Francisco's oldest continuously operating companies with roots back to the Gold Rush days of 1849. Boudin has been in business for over 170 years and is known world-wide for its famous sourdough French bread. Its cafés and bakeries serve its signature sourdough bread baked daily with a stated mission to offer fresh, quality food at fair, affordable prices. Boudin also has a long history of investing in Fisherman's Wharf highlighted by the 2005 opening of its flagship location: a 26,000 square foot Baker's Hall demonstration bakery, marketplace, café and restaurant, and Bakery Museum on Jefferson Street.

Boudin has also operated the Chowder Hut at the Taylor Street location for approximately 20 years in close proximity to the flagship location. Together these

operations contribute greatly towards attracting the estimated 19.1 million visitors to Fisherman’s Wharf annually. Boudin has consistently been a tenant in good standing.

Pursuant to the current lease, as amended, Boudin was required to complete two capital improvement projects to enable outdoor seating: (1) investment of at least \$335,000 -completed in 2011; and (2) investment of another \$365,000 - completed in 2013. In both cases the work was completed in an efficient and timely manner.

**Current Lease Summary**

The current lease provides for the Port to receive the greater of guaranteed monthly base rent or percentage rent. Current monthly Base Rent is \$7,714.92, which equates to \$92,579 per year. Percentage rent is set at 9% of Gross Sales for food, beverage and retail sales. For the 12-month period ending in December 2019, Boudin reported total Annual Gross Sales of \$4,004,333, which resulted in \$267,811 of Percentage Rent plus Base Rent of \$92,579 being paid to the Port. Moreover, until the current COVID-19 crisis, Percentage Rent has always exceeded Base Rent since the commencement of the lease in 2011. The Port is also entitled to a 10% participation in the proceeds of a transfer of the current lease.

**Proposed Lease Terms**

The schedule below outlines the terms and conditions of the new lease.

<i>Tenant:</i>	Andre-Boudin Bakeries, Inc., a California Corporation
<i>Premises:</i>	Parcel A: approx. 1,226 sq. ft. of interior restaurant space. Parcel B: approx. 660 sq. ft. of mezzanine space. Parcel C: approx. 2,749 sq. ft. of outdoor dining area. Parcel D: approx. 765 sq. ft. of restrooms. Premises as described above on the attached Exhibit A
<i>Term:</i>	Ten (10) years. As further described below, Tenant shall have one (1) Option to Extend the Lease for an additional five (5) years at fair market value.
<i>Commencement Date:</i>	Upon the full execution of the Lease subject to Port Commission and Board of Supervisors approval.
<i>Total Rent:</i>	Total Rent shall be equal to the higher of Base or Percentage Rent calculated on a monthly basis.
<i>Base Rent:</i>	Subject to rent credits as described below, on the Commencement Date, Monthly Base Rent shall be 70% of the average annual aggregate total Rent due for Fiscal Years 2017-2018, 2018-2019 and 2019-2020 under the current lease divided by twelve (12) which equates to \$19,087.00 per month.

	On the 5 <sup>th</sup> Anniversary Date, Base Rent shall be adjusted to equal the greater of (a) 70% of the average annual aggregate total rent for preceding 3 years, or (b) the Base Rent prior to the Rent Adjustment Date multiplied by the CPI increase in the over the prior 5-year period. If the adjusted rent is less than the current Base Rent, it shall remain unchanged.
<i>Percentage Rent:</i>	Percentage Rent for Food & Beverage and Off-Premises sales shall remain at 9% of gross revenue for all sales, payments and revenues transacted, arranged or performed, in whole or in part, on the Premises.
<i>Covid-19 Rent Relief:</i>	Under the new lease, rent relief will continue on the same bases as under the current lease per Port rent relief programs adopted in Port Commission Resolutions 20-18, 20-27, 20-30 and 20-41 including rent forgiveness for up to 14 months under an anticipated amendment to the new lease.
<i>Transfer Participation:</i>	The Port's transfer participation in Net Proceeds from defined capital transactions will be increased from 10% in the current lease to 12%.
<i>Security Deposit:</i>	Two times the monthly Base Rent on the Commencement Date increased as Base Rent is adjusted over the Term.
<i>Permitted Use:</i>	The Premises shall be used solely for indoor and outdoor casual dining, including the on-site sale only of alcoholic beverages. Tenant shall be permitted to hold special events within the Premises.
<i>Required Improvements:</i>	<p>No later than twenty-four (24) months after the Commencement Date, Boudin must construct a patio enclosure around the outdoor seating area including a pony wall with wood facade and retractable glass windows and ceiling that can be opened and closed. (“<b>Initial Tenant Improvements</b>”). Completion of the Initial Tenant Improvements is material consideration for this Lease and Port would not have entered into this Lease absent such terms. The Initial Tenant Improvements shall be constructed at Tenant's sole cost and expense and in accordance with the Work Letter. Tenant agrees that it will invest a minimum of \$800,000 in the Initial Tenant Improvements. Proposed Project renderings attached as Exhibit C.</p> <p>Except for the Extension Option, Tenant understands and agrees that it will not receive or seek rent credits or other compensation or consideration for any improvements including without limitation the Initial Tenant Improvements and agrees</p>

	<p>that it will not seek additional term for the purpose of amortizing any improvements.</p> <p>The obligation to construct the Initial Tenant Improvements is separate and in addition to any required repair and maintenance obligations and Damage and Destruction obligations.</p>
<p><i>Conditions to 5-Year Extension Term:</i></p>	<p>Boudin must exercise the option between 18 and 24 months prior to expiration of the lease. In addition to completion of the Initial Tenant Improvements in the first 24 months of the lease, Port can reject the option if sales per square foot over the 12 months prior to Tenant's exercise of the option are less than 70% of same metric in the preceding 12 months.</p>
<p><i>Rent During Option Period:</i></p>	<p>Base Rent will be adjusted based on the same formula as on the 5<sup>th</sup> Anniversary Date. Percentage Rent shall be reset to fair market value, using an appraisal process if disputed, however in no event shall Percentage Rent be below 8% or above 10%.</p>
<p><i>Obligations Regarding Public Restrooms:</i></p>	<p>The Restrooms shall be open to the public during restaurant opening hours to supplement other public restroom facilities in the vicinity. Port and Tenant will share responsibilities for the Restrooms as follows:</p> <p>Boudin shall at its sole cost and expense:</p> <ol style="list-style-type: none"> <li>1. Clean and maintain the public restrooms;</li> <li>2. Provide janitorial services seven (7) days per week per a mutually agreed schedule and scope;</li> <li>3. Reimburse the Port's cost of up to \$25,000 as a contribution towards costs of installation of public restroom fixtures, repairs or replacements; subject to Port providing Tenant with at least sixty (60) days' prior written notice detailing the type of fixture being repaired or replaced and the estimated date and costs of repair.</li> <li>4. If necessary, hire a City approved plumbing vendor, at its initial cost and expense, to make any emergency repairs for any repairs needed as of Monday-Friday after 4 pm / Weekends / Holidays if the Port is unable to do so. The cost estimate and scope of repairs must be pre-approved in writing by the Port's property manager or maintenance supervisor. Boudin shall be eligible to a full rent credit for the cost of the repairs against Base Rent.</li> </ol> <p>Port shall at its sole cost and expense:</p> <ol style="list-style-type: none"> <li>1. Provide water, sewer and electric utilities;</li> </ol>

	<p>2. Provide a monthly rent credit of \$4,000 against Base Rent for Boudin's costs of cleaning, supplies and light maintenance directly associated with the public restrooms (Rent Credits due but not applied during any period of Base Rent deferral or forgiveness under COVID - 19 tenant relief policies will be credited against future Base Rent payments);</p> <p>3. Maintain and repair all public restroom improvements and fixtures.</p> <p>Indemnity. As under the current lease and subject to the limitations set forth in the Lease, Port shall Indemnify Tenant from and against any claim directly resulting from any accident, bodily injury to or death of any person, with the exception of any employee, agent or invitee of Tenant, which occurs in the Restrooms at a time when the Restrooms are open to the general public as described above. Port's obligation under this paragraph shall only arise if Tenant has maintained the insurance required by this Lease and (i) such insurance coverage has been completely exhausted for the applicable policy period in which the Claim occurred or (ii) the Claim is uninsured. Notwithstanding any other provision herein, in no event shall Port's indemnification obligation exceed \$100,000 per Claim or \$300,000 per year. Port's indemnity of Boudins in these limited circumstances has been approved by the City's Risk Manager as required by SF Admin. Code §1.24.</p>
<i>Utilities:</i>	Except as provided for the restrooms, Boudin shall be responsible for all utilities of the Premises.
<i>Port Development Projects:</i>	If a Port program or project and/or the Development Project(s) results in a direct documented loss of customers in any month such that Tenant's Percentage Rent due is less than that Tenant's Base Rent due for such month, then, upon satisfactory documentation, Port will provide rent abatement to Tenant in the form of a prorata reduction in Base Rent on a per square footage lost basis for up to a maximum of six (6) months. If this continues for more than six (6) consecutive months, Tenant shall have the right to terminate the Lease upon thirty (30) days' prior written notice to the Port.
<i>Form Lease; City Requirements:</i>	The new lease shall be on the Port's form lease for retail uses and include all standard Hazardous Materials, Insurance, Indemnity and Release, Damage and Destruction, Sea Level Rise and Seawall provisions and all current City ordinances and requirements as necessary.

## **Financial Analysis of Improvements and Lease Terms**

### **Proposed Improvements**

Boudin proposes to design and construct a patio enclosure around the restaurant's exterior seating area, which will significantly improve the visual experience of the Chowder Hut for tourists and locals who visit Fisherman's Wharf. The enclosure will include a new pony wall with wood façade with retractable glass windows and ceiling that may be opened or closed as weather permits. This new structure will provide a more comfortable environment for guests, especially during periods of inclement weather. The enclosure will also provide a more secure environment compared with the current open-air seating configuration which is susceptible to vandalism as well as wear and tear due to the harsh weather conditions at the Premises.

The construction will be designed and constructed by a licensed architect and contractor and will also include a refresh of the tables and chairs concurrently with the grand opening of the new enclosure. The cost of these improvements will be approximately \$800,000.

### **Update to Financial Analysis Since February 2020**

Since the informational report was presented on February 11, the COVID-19 pandemic has deeply affected public health and businesses across the globe. The impact on restaurants has been swift as indoor dining closed due to health concerns. With this dire economic condition as a backdrop, Port staff are pleased to bring this new lease to the Port Commission. The lease demonstrates Boudin's commitment to persevere through the downturn and to maintain both of its Fisherman's Wharf locations over the long-term.

To ensure the financial projections and analysis of the new lease remain relevant and valid, the Port engaged Seifel Associates to re-evaluate the comparison, projections, and assumptions of the February 11<sup>th</sup> informational report, in light of the current economic downturn. For ease of reference, new comments and analysis since the Informational Report are shown in italics below.

Key benefits of the proposed improvements are:

- The proposed patio enclosure will upgrade the building's appearance and provide an aesthetically pleasing enhancement to the Chowder Hut in the heart of Fisherman's Wharf.
- The enclosure of the outdoor seating area will allow the Chowder Hut to serve customers during inclement weather conditions, provide a better customer experience for its guests.
- The enclosure will increase sales performance and revenue generation to the Port, as further discussed below.
- The patio enclosure will provide for a more secure environment compared with the open-air barrier that currently surrounds the Chowder Hut dining area.

## Financial Analysis

As mentioned above, Port staff commissioned Seifel to perform a third-party financial analysis of the proposed terms and the likely benefits to the Port. Relevant portions of that analysis are included in this section of the report.

As shown on the Comparative Annual Sales Performance **Table 1.** below, the Chowder Hut performs very well when compared to comparable restaurants along the Waterfront.

**Table 1.  
Comparative Annual Sales Performance**

Restaurant	Estimated Square Footage			Estimated Seats	Annual Sales in 2018			
	Outdoor	Indoor <sup>a</sup>	Total		Total	Per Total SF	Per Indoor SF	Per Seat
<b>Hi Dive</b>	500	1,937	2,437	99	\$1,997,751	\$820	\$1,031	\$20,200
<b>Pompei's Grotto</b>	310	4,140	4,450	N/A	\$2,794,849	\$628	\$675	N/A
<b>Pier 23 Café</b>	1,835	3,000	4,835	175	\$5,034,643	\$1,041	\$1,678	\$28,800
<b>Chowder Hut</b>	2,749	1,886	4,635	149	\$4,151,309	\$896	\$2,201	\$27,900

a. Includes mezzanine space for Chowder Hut.

Annual sales from Chowder Hut are significantly higher than nearby Pompei's Grotto in Fisherman's Wharf based on annual sales per square foot for interior and exterior space. Chowder Hut's sales are also higher than Hi-Dive based on all sales metrics. Hi-Dive is primarily a bar that benefits from higher margin alcohol sales, and the Hi Dive is much smaller in size and is located between Piers 28 and 30 on the waterfront in South Beach.

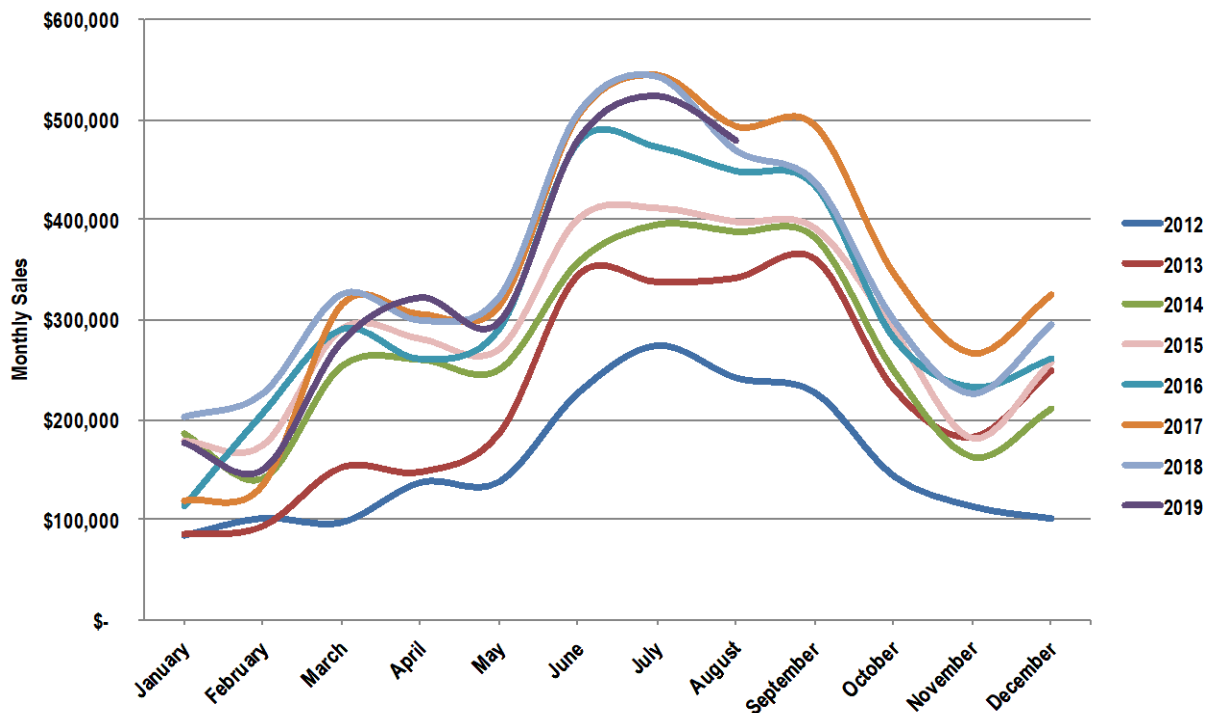
While Pier 23 Café has higher sales than Chowder Hut based on sales per square foot of interior space and on a per seat basis, it also benefits from a greater proportion of bar sales and its more central location along the waterfront. Pier 23 Café is in the high visitor corridor along the Embarcadero between the Ferry Building and Fisherman's Wharf, while also being adjacent to the Financial District and Jackson Square area making it easier to attract business patrons during the week.

Notably, under its current lease, Boudin pays a higher percentage rent (9%) than all these other operators and many other Port tenants, and as such these sales performance numbers are even more impactful in terms of rent paid.

Port staff and Seifel agree with Boudin that the proposed patio improvements are likely to have positive impacts on Chowder Hut's sales performance. The following graph depicts the seasonality of Chowder Hut's sales and shows a clear opportunity to improve performance in the winter and early spring months.



**Figure 1  
Chowder Hut Monthly Sales**



The Seifel team has undertaken various financial analyses, including cash flow projections of future sales and Port lease revenues in order to determine the potential value to the Port with the proposed new lease (Scenario 1– New Lease) compared to a second lease scenario that assumes the current lease would be terminated and the Port issues a request for bids for a new lessee (Scenario 2–Lease Expiration and Bid). The following sections describe the financial analysis that has been undertaken of these two scenarios beginning with the evaluation of the first scenario. *The financial analysis was prepared prior to the COVID pandemic and utilizes historical Port data through Summer 2019. Given recent events, securing a new lessee could be more difficult for the Port to achieve than modeled under Scenario 2, as further described below.*

**Analysis of Potential Revenue with Lease Amendment  
(Scenario 1– New Lease)**

The first step in the financial analysis was to analyze the proposed new lease based on information provided by Boudin and historical sales for Chowder Hut and other Port properties. As described above, the historical sales revenue analysis of Chowder Hut shows that its lowest revenue months are during the first and fourth quarter indicating that Chowder Hut does not currently provide enough shelter during the cold, rainy season, particularly when compared to other Port properties that experience less fluctuations in monthly sales.

In addition to the historical monthly sales analysis of other comparable businesses, Seifel also reviewed the monthly sales performance of the largely enclosed Bakers Hall in Boudin’s neighboring flagship building. As shown in **Table 2**, Bakers Hall achieves a higher percentage of its annual sales during the colder months as compared to Chowder Hut.

**Table 2**  
**Seasonality of 2018 Monthly Sales Based on Percentage of Annual Sales**  
**Chowder Hut Compared to Boudin Bakers Hall**

Date	Chowder Hut Sales	Chowder Hut Seasonality	Baker's Hall Seasonality
January	\$202,307	4.9%	5.8%
February	\$225,975	5.4%	5.9%
March	\$325,107	7.8%	8.6%
April	\$299,105	7.2%	7.3%
May	\$322,640	7.8%	7.7%
June	\$506,539	12.2%	11.1%
July	\$542,892	13.1%	11.4%
August	\$468,885	11.3%	10.6%
September	\$437,464	10.5%	9.8%
October	\$299,466	7.2%	7.4%
November	\$225,923	5.4%	6.2%
December	\$295,006	7.1%	8.4%

Source: Port of San Francisco.

Boudin Management believes Chowder Hut should be able to increase its share of sales during the colder months to more closely correspond to Bakers Hall once the proposed improvements are undertaken. Seifel tested that hypothesis by evaluating potential monthly revenues on a per seat basis given recent performance at Chowder Hut and Bakers Hall. (Seifel chose 2018 because this is the most recent year where the Port was able to provide complete monthly sales and rent data.)

Table 1 shows that monthly sales in 2018 could have potentially increased to between about \$1,600 –\$2,400 per seat if more protected seating is provided, which is reasonable compared to the per seat revenues during the rest of the year. In addition, the recalculated sales in **Table 3** indicate that annual sales could be expected to increase by about 4%, which also seems reasonable given how sales have grown historically at Chowder Hut and at other comparable businesses that have invested in similar improvements.

In addition, Chowder Hut could generate additional event and group sales because of the ability to hold events within the covered patio area. This could include breakfast and evening meetings from groups staying at nearby hotels, as well as events during conferences held in the City. Boudin Management is projecting an additional \$200,000 in annual revenue from such events, or a 5% increase in sales, which should be achievable. (This is equal to approximately 40-50 events per year at an average

revenue of \$40-\$50 per attendee, and average attendance of 100 people assuming that about two-thirds of the seating capacity is typically used per event.)

Overall, the proposed improvements could result in an increase of 9% in annual sales, which seems reasonable based on the analysis of historical and potential revenues. *Although this projected increase in sales may not occur immediately due to the economic slowdown that has occurred as the result of the COVID pandemic, the proposed improvements will enable Chowder Hut to better serve customers during the colder months and enhance outdoor dining opportunities consistent with the City's health and safety guidelines.*

**Table 3  
Chowder Hut 2018 Sales Recalculated with Proposed Improvements Using Adjusted Seasonality and Showing Impact Per Seat**

Winter Months Difference	Chowder Hut Sales	Chowder Hut Seasonality	Average Sales Per Seat	Seasonality Recalculated	Sales After Seasonality Adjustment	Off Peak Difference in Sales	Off Peak Sales Per Seat
January	\$202,307	4.9%	\$1,358	5.8%	\$239,057	\$36,750	\$1,604
February	\$225,975	5.4%	\$1,517	5.9%	\$244,631	\$18,656	\$1,642
March	\$325,107	7.8%	\$2,182	8.6%	\$355,596	\$30,489	\$2,387
April	\$299,105	7.2%	\$2,007	7.3%	\$302,028		
May	\$322,640	7.8%	\$2,165	7.7%	\$318,039		
June	\$506,539	12.2%	\$3,400	11.1%	\$462,575		
July	\$542,892	13.1%	\$3,644	11.4%	\$471,499		
August	\$468,885	11.3%	\$3,147	10.6%	\$437,977		
September	\$437,464	10.5%	\$2,936	9.8%	\$406,227		
October	\$299,466	7.2%	\$2,010	7.4%	\$307,143	\$7,677	\$2,061
November	\$225,923	5.4%	\$1,516	6.2%	\$257,575	\$31,652	\$1,729
December	\$295,006	7.1%	\$1,980	8.4%	\$348,962	\$53,956	\$2,342
<b>Total</b>	<b>\$4,151,309</b>				<b>\$4,151,309</b>	<b>\$179,180</b>	

***Potential Increase in Annual Sales With Proposed Improvements: 4.3%***

Source: Port of San Francisco, Andre-Boudin Bakeries, Inc.

## **Analysis of Potential Sales with Potential Expiration of Lease and Request for Bids**

### **(Scenario 2– Lease Expiration and Bid)**

Seifel also analyzed the projected sales and lease revenues to the Port assuming the current lease would be terminated, and the Port issues a request for bids for a new lessee (Scenario 2– Lease Expiration and Bid). Under this second scenario, Seifel assumed that the new lessee would begin to generate revenues in 2022, reflecting a 24-month bid to rent commencement process, including the issuance of the bid request, tenant selection and 9 months of improvement work to be completed and paid for by the incoming tenant. Improvement costs under Scenario 2 are assumed to be \$1 million

(about \$200 per square foot), 25% of which the new tenant would get back by way of a rent credit spread over 5 years. Revenues are assumed to increase at a similar rate to that projected for Scenario 1 but delayed as the result of the bid process.

Based on the analysis of Chowder Hut and historical Port rent terms for comparable businesses along the waterfront, the percentage rent has been assumed at 8% in Scenario 2 versus 9% under Scenario 1 for the following reasons:

- The 9% percentage rent that Boudin currently pays is significantly higher than other Port leases for food and drinking establishments, which typically range between 6% to 7.5%. The four other comparable businesses analyzed for this memorandum have a percentage rent of 7%.
- The current lessee is able to efficiently operate Chowder Hut because Boudin combines operation and management responsibilities for Chowder Hut with its adjacent flagship facility, which has a large number of staff and support facilities.
- The responsibility for maintaining the public restrooms is an unusual lease requirement, and the cost of providing these services exceeds what is allowed to be reimbursed in the current lease (\$2,000 current monthly reimbursement). *Port staff determined the credit of \$4,000 would have been the minimum cost for the Port to contract out such services.*
- While Chowder Hut is located in one of the highest visitor attraction areas of the Port, it is also located immediately adjacent to the Port's major Fisherman's Wharf surface parking lot and thus experiences automobile traffic as cars enter and exit the parking lot next to the property.

*Given the significant economic impact that the COVID pandemic has had on restaurant and retail businesses, the lease expiration and bid process could take longer than 24 months, and the proposed lease terms may be less advantageous to the Port than modeled under Scenario 2:*

- *The tenant improvement costs for a new tenant could be higher than \$200 per square foot, and a new tenant may potentially require a higher percentage rent credit than 25% of these improvement costs.*
- *The percentage rent for a new tenant could be lower than 8% and within the more typical range of 6% to 7% for other Port restaurant tenants.*

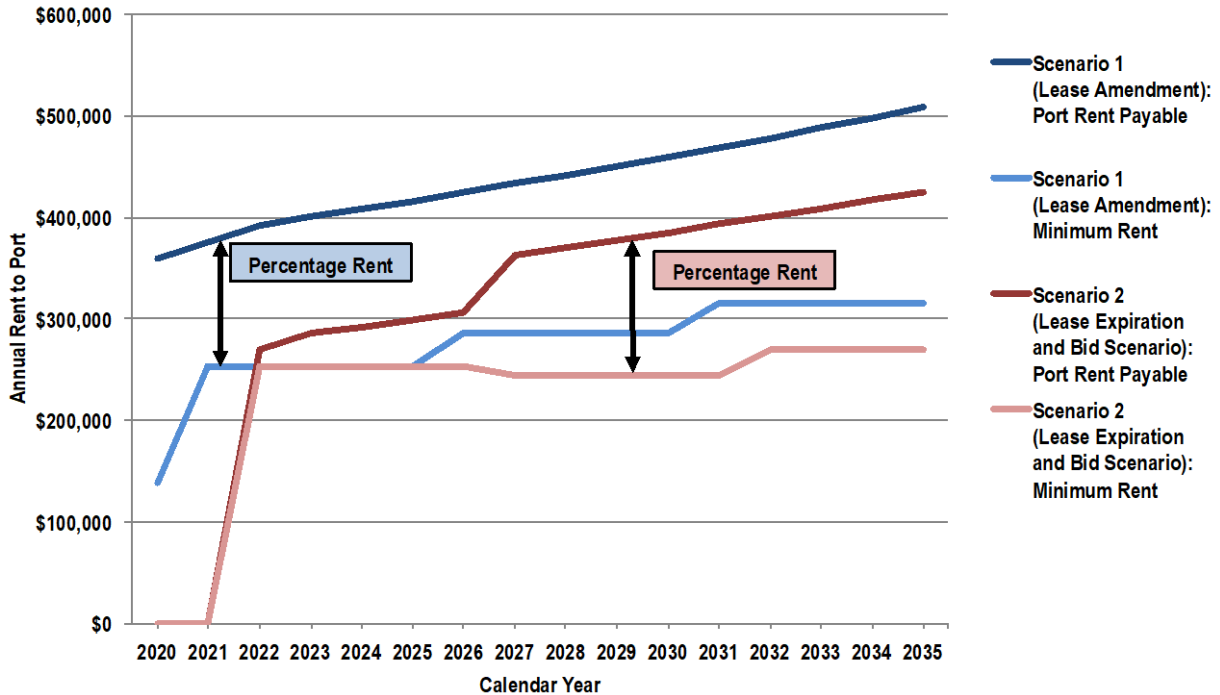
*Given this, the financial results modeled under Scenario 2 could overstate what may be achievable over the next two to three years.*

## **Comparison of Potential Value to the Port Under the Two Lease Scenarios**

**Figure 2** below compares the projected revenue to the Port under the following two lease scenarios as previously described above:

- Scenario 1: New Lease (blue lines) – assumes proposed new lease and extension with current lessee, Boudin
- Scenario 2: Lease Expiration and Bid (red lines) – assumes that the current lease would be terminated, and the Port issues a request for bids for a new lessee.

**Figure 2**  
Annual Rent Payable to Port  
Chowder Hut Lease Analysis



The value to the Port is calculated based on the net present value of the future base rent and percentage rent that the Port is projected to receive as the result of projected increases in sales and resulting lease revenues under the two lease scenarios described above. **Table 4** summarizes the results of the financial analysis, which compares the revenues to the Port under the proposed new lease (Scenario 1: New Lease) with the Port’s potential revenues if the existing lease were to expire and the Port issued a request for bids for a new lease (Scenario 2: Lease Expiration and Bid).

**Table 4**  
**Summary of Value Analysis**  
**Comparing Projected Performance under Future Lease Scenarios**  
**Showing Nominal Value and Net Present Value (NPV) at Six Percent (2020 \$)**

<b>Port Value Analysis (Based on Projected Lease Revenues)</b>	<b>Scenario 1 - Lease Extension</b>	<b>Scenario 2 - Lease Expiration and Bid</b>	<b>Value Benefit from Lease Amendment</b>	<b>Percent Increase</b>
Total Value (Nominal \$)	\$7,004,923	\$4,994,285	\$2,010,638	40%
Total Net Present Value (2020 \$)	\$4,568,431	\$3,022,844	\$1,545,586	51%

As shown in **Table 4**, the Port is projected to receive additional value from the proposed new lease when compared to the lease expiration and bid scenario. Over the entire term, including the 5-year option, the value to the Port is projected to be between 40% higher on a nominal basis and 51% higher on a Net Present Value basis.

While the financial analysis has been performed based on historical data and projections that do not account for the COVID pandemic, the relative financial benefit of Scenario 1 is still superior to Scenario 2 because Boudin is a long-standing Port tenant with a proven track record of financial performance and continual investment in their operations and retail space, and their percentage rent is higher than comparable Port restaurant leases. Furthermore, the lease terms for a new tenant would not likely be as advantageous to the Port as what is modeled under Scenario 2, which reflect normalized economic conditions.

**Capital Amortization Analysis under Proposed New Lease**

Boudin originally proposed to invest \$500,000 for new tenant improvements under the new lease. The amount of capital expense for the proposed tenant improvements has been increased by Boudin to approximately \$800,000. Therefore, the new lease now requires a minimum capital expenditure of \$800,000 by Boudin as a condition of the lease extension.

Table 9 shows the anticipated amortization of the capital expense assuming the existing lease is extended for an additional 10 years, with a 5-year option to renew for a total of 15 years, versus the capital amortization that would occur if the lease were only to be extended for 5 years.

**Table 5  
Capital Amortization Analysis  
Calculated at a Six Percent Annual Rate**

	Capital Expense	Years to Amortize	Monthly Amortization	% of Sales		% of Rent	
				2024	2034	2024	2034
<b>New</b>	\$300,000	5	(\$5,800)	1.5%	1.3%	17.0%	14.0%
<b><u>Original</u></b>	<b><u>\$500,000</u></b>	5	<b><u>(\$9,666)</u></b>	<b><u>2.6%</u></b>	<b><u>2.1%</u></b>	<b><u>28.4%</u></b>	<b><u>23.3%</u></b>
<b>Total</b>	<b>\$800,000</b>	5	<b>(\$15,466)</b>	<b>4.1%</b>	<b>3.4%</b>	<b>45.4%</b>	<b>37.3%</b>
<b>New</b>	\$300,000	15	(\$2,532)	0.7%	0.5%	7.4%	6.1%
<b><u>Original</u></b>	<b><u>\$500,000</u></b>	15	<b><u>(\$4,219)</u></b>	<b><u>1.1%</u></b>	<b><u>0.9%</u></b>	<b><u>12.4%</u></b>	<b><u>10.2%</u></b>
<b>Total</b>	<b>\$800,000</b>	15	<b>(\$6,751)</b>	<b>1.8%</b>	<b>1.5%</b>	<b>19.8%</b>	<b>16.3%</b>

As can be seen in **Table 5**, amortization of the capital expenses over a 5-year term for either the original proposed capital expense of \$500,000 or the total estimated investment of \$800,000 would place an infeasible monthly burden on the Tenant. If the lease is extended for an additional 15 years, including the option, then the burden drops to 1.8% of sales and 19.8% of rent by 2024, when stabilized revenues occur, which is manageable.

**Retail Leasing Policy**

The Port Commission adopted the attached Retail Leasing Policy (Resolution 11-15) for existing retail tenants which calls for Port staff to evaluate renewals and extension requests on a case-by-case basis based on proposed improvements, capital costs, the Port’s future plans for the site and tenant history. Port staff may negotiate with an existing tenant where a tenant proposes to make capital improvements; in such cases

a lease extension may include the term required to amortize the planned improvements.

Under the policy, the Port Commission determines whether a Direct Negotiation Exception from competitive solicitation is granted based on the following criteria:

- Tenant is compliant with the Tenant in Good Standing Policy;
- Evaluate whether the tenant is the most suitable economic tenant based on reasonably projected sales and revenues to the Port, using comparable retail rents on a per square foot basis; and
- Request a written business plan and evaluate the plan to determine the cost and value of the capital improvements to Port property and viability of revenue projections.

Accordingly, Boudin meets all three requirements as outlined in the Port Commission's Retail Leasing Policy to justify the bidding exemption as requested.

**California Environmental Quality Act (CEQA).** The permitted uses under the proposed lease are a continuation of existing and related uses and are not a project under CEQA.

### **Port Staff Policy / Financial Analysis**

Port staff has determined that the proposed lease with Boudin, the proposed capital improvements and associated lease term noted above meet the criteria of the Retail Leasing Policy. As described above, with the assistance of Seifel, Port staff has evaluated the projected sales and revenues projections as viable and has determined the proposed capital improvements will likely generate additional revenue that the Port would not otherwise receive. In summary, Port staff agrees with Seifel's conclusions that:

1. The proposed patio improvements would likely improve the Tenant's ability to generate sales in more challenging weather months, provide a better customer experience for its patrons, increase event and group sales opportunities, and enable Boudin to better respond to the City's health and safety guidelines for outdoor dining.
2. The proposed business plan would likely outperform a base case of terminating the lease and seeking a new operator, due in part to the time period required to establish a new operation and in part to the above-market percentage rent metric under the Lease that a competitive process in the current market would be unlikely to match.
3. The proposed new lease term (10 years, with a 5-year Tenant option so long as performance requirements are met) is reasonable in relation to the size of the operation and the need to amortize the investment over a manageable period.

## **Recommendation**

Port Staff recommends that the Port Commission adopt the attached resolution approving Lease No. L- 16697 with Andre Boudin Bakeries, a California corporation, for the Premises located at Taylor and the Little Embarcadero. If the Port Commission approves the new lease, it will be subject to approval by the Board of Supervisors.

Prepared by: Jay Edwards  
Senior Property Manager

Vicky Lee, Property Manager

Prepared for: Rebecca Benassini  
Acting Deputy Director, Real  
Estate and Development

## **Attachments –**

Exhibit A: Premises Plan

Exhibit B: Retail Leasing Policy

Exhibit C: Proposed Project Renderings



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

**RESOLUTION NO. 20-44**

- 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, Andre-Boudin Bakeries. Inc., a California corporation (“Boudin”), has operated the Chowder Hut restaurant in Fishermen’s Wharf on Seawall Lot 301 for about 20 years; the current lease, Port Lease No. L-14814, expired December 31, 2019 and is on month to month holdover status; and
- WHEREAS, Boudin wishes to renew its lease for the Chowder Hut; and
- WHEREAS, on March 8, 2011, the Port Commission adopted Resolution No.11-15, which establishes its Retail Leasing Policy which includes conditions for consideration for lease renewals without competitive bidding, and obligations to be included in renewed leases (“Retail Leasing Policy”); and
- WHEREAS, on February 11, 2020, the Port Commission heard an informational presentation for proposed Lease No. L- 16697 (“Lease”) with Boudin for a lease renewal and directed staff to return to the Port Commission for approval of a negotiated Lease; and
- WHEREAS, Staff has completed negotiations and the terms of the proposed Lease are summarized in the Memorandum dated September 11, 2020 accompanying this Resolution (the “Memorandum”); and
- WHEREAS, as described in the Memorandum, the proposed Lease meets the criteria in the Retail Leasing Policy; and
- WHEREAS, the initial term of the Lease will be ten (10) years, and Boudin will have a five (5) year option to extend; provided that Boudin completes the required capital improvements within twenty-four (24) months from lease commencement at a minimum cost of \$800,000; and, in Port’s discretion, sales per square foot over the 12 months prior to Tenant’s exercise of the option are at least 70% of sales per square foot over the preceding 12 months; and
- WHEREAS, the term and rent for the Lease, including adjustments to base and percentage rent during the initial term and extension term (if any), were established based on an analysis of comparable restaurant operations performed by Seifel and Associates, a third-party financial expert, and

was recently updated to analyze any changes caused by the impacts of COVID-19; and

WHEREAS, the proposed Lease sets forth the parties' respective obligations with respect to the public restrooms that are part of the leased premises including, as under the current lease, an indemnity by Port which has been approved by the City's Risk Manager under SF Administrative Code Section 1.24; and

WHEREAS, the Lease will require Boudin to pay the Port 12% of the net sale proceeds from a sale or financing of the Lease; and

WHEREAS, the permitted uses under the proposed Lease are a continuation of existing and related uses and are not a project under the California Environmental Quality Act; and therefore, be it

RESOLVED, that the Port Commission finds that the proposed Lease qualifies for approval under the terms of the Retail Leasing Policy and so is not subject to competitive bidding; and be it further

RESOLVED, that, subject to Board of Supervisor's approval, the Port Commission approves Lease No. L- 16697 and authorizes the Executive Director or her designee to execute such Lease 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 Lease, including without limitation, the appropriate form of amendment (as revised or incorporated into the proposed Lease in a manner convenient to the parties) to implement the Port's Rent Forgiveness Program approved by Port Commission Resolution 20-41, 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 September 22, 2020.***

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Secretary