

1 [Settlement of Lawsuit - BHR Operations LLC, dba Crowne Plaza and dba Holiday Inn
2 Fisherman's Wharf, et al. - \$1,613,554.74]

3 **Ordinance authorizing settlement of two lawsuits filed by BHR Operations LLC, dba**
4 **Crowne Plaza and dba Holiday Inn Fisherman's Wharf, et al. against the City and**
5 **County of San Francisco for \$1,613,554.74 to be distributed as follows: BHR Operations**
6 **LLC \$379,969.68, Hotel Nikko of San Francisco Inc. \$201,741.40, Datam S.F. LLC**
7 **\$277,953.69, RP/Kinetic Parc 55 Owner, LLC \$25,601.63, S.F. Hilton LLC \$447,301.52,**
8 **W2005 Argent Hotel Realty LLC \$42,857.19, British Airways Plc \$163,369.38, Cathay**
9 **Pacific Airways Ltd \$74,760.25; the lawsuits were filed in San Francisco Superior Court,**
10 **as Case No. CGC-10-498514 entitled BHR Operations LLC, dba Crowne Plaza and dba**
11 **Holiday Inn Fisherman's Wharf, et al. v. City and County of San Francisco, et al. filed on**
12 **April 9, 2010, and Case No. CGC-10-505526 entitled British Airways Plc v. City and**
13 **County of San Francisco, et al. filed on November 19, 2010; other material terms of the**
14 **settlement include the City's retaining transient occupancy taxes collected by the Tax**
15 **Collector, and the plaintiffs' agreement to pay transient occupancy taxes in the future**
16 **according to the Tax Collector's regulations; the lawsuits involve a dispute between**
17 **the City and the hotel and airline industry about whether airline crew rooms are exempt**
18 **from the City's transient occupancy tax.**

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20 Be it ordained by the People of the City and County of San Francisco:

21 Section 1. Pursuant to Charter Section 6.102(5), the Board of Supervisors hereby
22 authorizes the City Attorney to settle the actions entitled BHR Operations LLC, dba Crowne
23 Plaza and dba Holiday Inn Fisherman's Wharf, et al. v. City and County of San Francisco, et
24 al., San Francisco Superior Court, Case No. CGC-10-498514 and British Airways PLC v. City
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1 and County of San Francisco, et al., San Francisco Superior Court, Case No. CGC-10-
2 505526, by the payment of a \$1,613,554.74 refund comprising penalties and interest collected
3 by the Tax Collector. Other material terms of the settlement include San Francisco's retaining
4 all of the underlying transient occupancy tax payments and a portion of the interest collected
5 by the Tax Collector, and the plaintiffs' agreement to pay transient occupancy taxes in the
6 future according to the Tax Collector's regulations. The lawsuits involve a dispute between
7 the City and the hotel and airline industry about whether airline crew rooms are exempt from
8 the City's transient occupancy tax, aka "hotel tax."

9 Section 2. The first of the above-named actions was filed in San Francisco Superior
10 Court on April 9, 2010, and the following parties were named in the lawsuit: Defendant City
11 and County of San Francisco; Plaintiffs BHR Operations LLC, dba Crowne Plaza and dba
12 Holiday Inn Fisherman's Wharf, Hotel Nikko of San Francisco, Inc., Datam S.F., LLC, dba
13 Hotel Nikko, RP/Kinetic Parc 55 Owner, LLC, S.F. Hilton LLC, dba Hilton San Francisco Union
14 Square, W2005 Argent Hotel Realty LLC, American Airlines, Inc., Asiana Airlines, Inc., British
15 Airways, plc, Cathay Pacific Airways Limited, Cia. Mexicana de Aviacion, S.A. de C. V., Japan
16 Airlines International Co., Ltd., Korean Air Lines Co., Ltd., and United Air Lines, Inc. The
17 second of the above-named actions was filed in San Francisco Superior Court on November
18 19, 2010, and the following parties were named in the lawsuit: Defendant City and County of
19 San Francisco and Plaintiff British Airways PLC.

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APPROVED AS TO FORM AND
RECOMMENDED:

DENNIS J. HERRERA
City Attorney

JEAN ALEXANDER
Chief Tax Attorney

FUNDS AVAILABLE:

BEN ROSENFELD
Controller

RECOMMENDED:

TREASURER & TAX COLLECTOR

JOSE CISNEROS
Treasurer

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