

1 [Real Property Lease - Twin Peaks Petroleum, Inc. - 598 Portola Drive - \$156,600 Initial
2 Annual Base Rent]

3 **Resolution approving and authorizing the Director of Property to enter into a real**
4 **property lease with Twin Peaks Petroleum, Inc., a California corporation, doing**
5 **business as Twin Peaks Auto Care, successor-in-interest to Michael Gharib, for**
6 **approximately 14,499 square feet located at 598 Portola Drive, for an initial term of**
7 **twenty years with one ten-year option to extend, at an initial base rent of \$156,600 with**
8 **annual adjustments of three percent thereafter, effective upon approval of this**
9 **Resolution by the Board of Supervisors and Mayor, and full execution of the Lease;**
10 **requiring Tenant to complete certain improvements by December 31, 2025, with a**
11 **waiver of rent up to three months; approving a finding that competitive bidding**
12 **procedures required under San Francisco Administrative Code, Chapter 23, Section**
13 **23.33 are impractical; approving a finding that the Premises is exempt surplus land**
14 **under California Code, Section 54421(f)(1)(B); and authorizing the Director of Property**
15 **to enter into amendments or modifications to the lease that do not materially increase**
16 **the obligations or liabilities to the City and are necessary to effectuate the purposes of**
17 **the lease or this Resolution.**

18
19 WHEREAS, The Board of Supervisors passed and the Mayor signed Ordinance
20 No. 279-94 on August 4, 1994, on file with the Clerk of the Board of Supervisors in File
21 No. 65-94-11, authorizing a lease (“Original Lease”) of 14,499 square feet at 598 Portola
22 Drive (“Premises”) between the City and County of San Francisco (“Landlord”) and Michael
23 Gharib, dba Twin Peaks Mobil (“Tenant”) for use as a gasoline service station and related
24 convenience store and garage; and
25

1 WHEREAS, The Board of Supervisors passed and the Mayor signed Resolution
2 No. 364-04 on June 21, 2004, on file with the Clerk of the Board of Supervisors in File
3 No. 040636, authorizing an extension of the Original Lease through June 30, 2014 (“First
4 Amendment to Lease,” collectively with the Original Lease, the “Original Lease”); and

5 WHEREAS, The Original Lease became a month-to-month at will lease on June 30,
6 2014, and Tenant continued to occupy the Premises and conduct business as Twin Peaks
7 Auto Care; and

8 WHEREAS, The Board of Supervisors passed and the Mayor signed Resolution
9 No. 394-15 on October 29, 2015, on file with the Clerk of the Board of Supervisors in File
10 No. 150895, authorizing a new lease of 14,499 square feet at the Premises with the Tenant,
11 now “Twin Peaks Gas,” for a term of five years with one five-year option to extend the term;
12 and

13 WHEREAS, On January 7, 2019, Tenant gave timely and proper written notice of his
14 exercise of the five-year option to extend the term, which commenced on November 1, 2020;
15 and

16 WHEREAS, Tenant is a local small business which owns the tanks, dispensers, gas
17 lines and other fixtures and equipment on the Premises; and

18 WHEREAS, On August 3, 2016, Tenant received legacy business status and is on the
19 Legacy Business Registry under Administrative Code, Section 2A.242(b)(2); and

20 WHEREAS, The City, through its Real Estate Division and with consultation from the
21 Office of the City Attorney, and Tenant have negotiated the proposed Lease, which provides
22 an initial Base Rent of \$156,600 per year or \$13,050 per month (\$10.80 per square foot per
23 year) which is at the opined value for Market Rent based upon a third-party appraisal, with
24 increases to Base Rent of three percent per year on each anniversary of the commencement
25 of Lease; and

1 WHEREAS, For the safe operation of the Premises, and to comply with State Codes,
2 Tenant shall be required to complete replacement of its underground tanks at its expense on
3 or before December 31, 2025, or the Lease automatically terminates; and

4 WHEREAS, Base Rent may be waived for up to three months during the Tenant’s
5 underground tank replacement project; and

6 WHEREAS, The City will grant Tenant an additional option to extend the term for 10
7 years with rent to be at the then Market Rent (as defined in Section 23.2 of the San Francisco
8 Administrative Code (“Code”), as of the exercise of the option as determined by an
9 independent Appraisal, as set forth in Section 23.30 of the Code, and subject to three percent
10 annual increases; and

11 WHEREAS, The Tenant shall be responsible for all utilities and services within the
12 Premises; and

13 WHEREAS, Due to the Tenant’s long-term occupancy, ownership of the tanks,
14 dispensaries and other related equipment and fixtures, and legacy business status,
15 competitive bidding procedures were impractical; and

16 WHEREAS, The Premises is zoned “P – Public” and limited to those uses identified
17 under Planning Code, Sections 211.1 or 211.2; and

18 WHEREAS, The Premises is owned in fee simple by City and County of San Francisco
19 (“City”), under the jurisdiction of the Department of Public Health, and it is “exempt surplus
20 land,” under the State’s Surplus Land Act, as defined in California Government Code, Section
21 55421(f)(1)(B), because it is less than one-half acre in size and is not contiguous to land
22 owned by a state or local agency that is used for open-space or low- and moderate-income
23 housing purposes; now, therefore, be it

24 RESOLVED, That in accordance with the recommendation of the Director of Property,
25 that the Director of Property on behalf of the City, as Landlord, be and is hereby authorized to

1 take all actions necessary to execute the Lease (a copy of which is on file with the Clerk of the
2 Board of Supervisors in File No. 240731) at 598 Portola Drive in San Francisco, California;
3 and, be it

4 FURTHER RESOLVED, That the Director of Property shall be authorized to enter into
5 any additions, amendments or other modifications to the Lease that the Director of Property
6 determines, in consultation with the City Attorney, are in the best interests of the City, do not
7 materially increase the obligations or liabilities of the City, and are necessary or advisable to
8 complete the transaction and effectuate the purpose and intent of this Resolution; and, be it

9 FURTHER RESOLVED, That the Lease contains language indemnifying and holding
10 harmless the City from, and agreeing to defend the City against any and all claims, costs and
11 expenses, including, without limitation, reasonable attorney's fees, incurred as a result of
12 Tenant's use of the Premises, any default by the Tenant in the performance of any of its
13 obligations under the Lease or any acts or omissions of Tenant or its agents, in, on or about
14 the Premises or the property on which the Premises are located, except those claims, costs
15 and expenses incurred exclusively as a result of active gross negligence or willful misconduct
16 of City or its agents; and, be it

17 FURTHER RESOLVED, That the Competitive Bidding Procedures would be impractical
18 in light of the existing zoning limitations and that the Tenant is a successful local small
19 business which owns the tanks, dispensers, gas lines and other fixtures and equipment on the
20 Premises, and if not the Tenant, would then remove said improvements from the Premises;
21 and, be it

22 FURTHER RESOLVED, In consideration of the foregoing, that the Premises is surplus
23 to the City's needs and not necessary for the Department of Public Health's use, and further
24 declares it to be "exempt surplus land" under Government Code, Sections 54221(b)(1) and
25 54221(f)(1)(B); and, be it

