

1 [Approval of the Amended Ground Lease for the Rincon Park Restaurants Project.]

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3 **Resolution approving the Amended Ground Lease between the Port Commission and**
4 **JMA Waterfront Properties, LLC, a Delaware limited liability company, for the Rincon**
5 **Park Restaurants Project, located on The Embarcadero between Howard and Folsom**
6 **Streets, for a total term, including renewal options, of sixty years.**

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8 WHEREAS, in 1981, the San Francisco Board of Supervisors and the San Francisco
9 Redevelopment Agency ("Redevelopment Agency") adopted the Rincon Point-South Beach
10 Redevelopment Plan, including the Design for Development (collectively, the "Redevelopment
11 Plan") which designated a future park along The Embarcadero roughly between Harrison and
12 Howard Streets (the "Rincon Park" or "Park") and a site in the Park for restaurant uses (the
13 "Restaurant Site"); and

14 WHEREAS, the Port owns the real property comprising Rincon Park, including the
15 Restaurant Site, and City Charter Section B3.581 (g) authorizes the Port Commission to enter
16 into leases and franchises for the operation of real property within Port jurisdiction; and

17 WHEREAS, the Port's Waterfront Land Use Plan, including the Design & Access
18 Element (collectively, the "Waterfront Plan"), adopted by the Port Commission in 1997 after a
19 six-year public planning process, mirrors the Redevelopment Plan with respect to the
20 development of Rincon Park and the Restaurant Site; and

21 WHEREAS, in July 1998, Clifford Associates prepared an appraisal of the Restaurant
22 Site for the Port that determined the fair market rental value of the Restaurant Site for
23 restaurant uses to be at least \$195,000 per year minimum rent and \$270,000 total rent
24 including participation (the "Clifford Appraisal"); and

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1 WHEREAS, on July 23, 1998, the Port issued a Request for Proposals (the "RFP") for
2 the development and operation of up to two restaurants on the Restaurant Site (the "Project"),
3 specifying a minimum rent of \$200,000 per year based on the Clifford Appraisal; and

4 WHEREAS, pursuant to the RFP, the Port Commission awarded Nice Ventures, Inc.
5 the opportunity to enter into exclusive negotiations with the Port for the Project and, on March
6 9, 1999, approved an Exclusive Right to Negotiate Agreement; and

7 WHEREAS, during the Exclusive Negotiation Period, Nice Ventures, Inc., formed
8 Rincon Park Restaurants, LLC, a California limited liability company ("RPR"), to pursue the
9 Project, naming Nice Ventures, Inc. as its managing member; and

10 WHEREAS, on February 29, 2000, the Port Commission and the Redevelopment
11 Agency jointly approved the design and layout of Rincon Park which depicted a park partially
12 surrounding the Restaurant Site at a location south of Folsom Street; and

13 WHEREAS, at its public meeting on July 25, 2000, the Port Commission in Resolution
14 No. 00-60 approved for the Project the Rincon Park Restaurants Project Development
15 Agreement (the "DA") with RPR and a form Ground Lease (the "Lease") attached to the DA,
16 which documents are on file with the Clerk of the Board of Supervisors in File No. _____ and
17 hereby declared to be a part of this resolution as if set forth fully herein; and

18 WHEREAS, pursuant to its authority under Section 9.118 of the Charter of the City and
19 County of San Francisco (the "City"), the Board of Supervisors approved on August 18, 2000,
20 in Resolution No. 877-00 under File No. 001531, the form Lease (including without limitation
21 the terms of the DA to the extent incorporated or referenced in the Lease); and

22 WHEREAS, between October 2000 and October 2001, RPR attempted unsuccessfully
23 to obtain equity and traditional lender financing for the Project and discussed potential
24 amendments to the DA and Lease that could improve its ability to obtain financing for the
25 Project; and

1 WHEREAS, on October 19,2001, the Port entered into an amended DA (with the
2 unmodified form Lease approved by the Board of Supervisors attached) with RPR, including a
3 modified Schedule of Performance that stipulated milestone dates for the resumption and
4 finalization of the Project design, application for BCDC permit and submittal of a financing
5 plan for the Project; and

6 WHEREAS, between October 2001 and April 2002, RPR attempted unsuccessfully to
7 either obtain financing or find a joint venture partner for the Project; and

8 WHEREAS, between October 2001 and April 2002, the Port notified RPR of various
9 events of default under the DA triggered by RPR's failure to meet performance benchmarks
10 stipulated in the Schedule of Performance which is incorporated into the DA and other
11 obligations in the DA such as payment of DA fees; and

12 WHEREAS, on April 26, 2002, pursuant to its rights in the DA, the Port notified RPR of
13 its election to exercise the "Assignment Remedy" with respect to certain events of default,
14 which requires RPR to assign all of its right, title and interest in the DA and Lease to another
15 developer acceptable to the Port in its sole and absolute discretion; and

16 WHEREAS, the Port had negotiated the Assignment Remedy with RPR as a part of the
17 DA to ensure that, in the event of a default by RPR, the Port had immediately available an
18 efficient mechanism to find a financially viable developer capable of completing the Project
19 within or close-to the originally expected time frame and maintain continuity with respect to the
20 overall design and entitlements process of the Project; and

21 WHEREAS, during the Assignment Remedy process, RPR introduced JMA Waterfront
22 Properties, LLC ("JMA") to the Port as a candidate assignee; and

23 WHEREAS, after numerous discussions and negotiations with JMA and based upon its
24 experience with RPR and further financial analysis of the Project, Port staff concluded (1) that
25 JMA is qualified and capable of completing the Project and fulfilling the obligations set forth in

1 the DA and Lease; (2) that a fundamental shift in the Port's development approach, along with
2 corresponding amendments to the DA and Lease, is necessary to make the Project
3 economically viable; and (3) the proposed amendments to the DA and Lease will still enable
4 the Port to receive a rate of return from the Restaurant Site consistent with the Clifford
5 Appraisal and the RFP; and

6 WHEREAS, based on its foregoing conclusions, Port staff recommended that the Port
7 Commission approve the (1) assignment of the Project to JMA as reflected in the proposed
8 Consent Agreement (the "Consent Agreement"), which agreement is on file with the Clerk of
9 the Board of Supervisors in File No. and hereby declared to be a part of this resolution as
10 if set forth fully herein; (2) amendments to the DA as reflected in the proposed First
11 Amendment to the Rincon Park Restaurants Development Agreement (the "First Amendment
12 to DA"), which agreement is on file with the Clerk of the Board of Supervisors in File No.
13 and hereby declared to be a part of this resolution as if set forth fully herein; and (3) the
14 amendments to the Ground Lease as reflected in the proposed amended Ground Lease
15 attached to the DA (the "Amended Ground Lease"), which agreement is on file with the Clerk
16 of the Board of Supervisors in File No. and hereby declared to be a part of this resolution
17 as if set forth fully herein; and

18 WHEREAS, at its public meeting on June 12, 2003, the Port Commission in Resolution
19 No. 03-40 approved the assignment of the Project to JMA and proposed amendments, as
20 such transactions are reflected in the Consent Agreement, First Amendment to the DA and
21 Amended Ground Lease; and

22 WHEREAS, Charter Section 9.118 (c) requires the Board of Supervisors to approve
23 any leases of real property for a period of ten or more years or having anticipated revenue to
24 the City of one million dollars or more; now, therefore, be it

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1 RESOLVED, that on August 18, 2000, the Board of Supervisors adopted Resolution
2 877-00 in which it reviewed and considered the Rincon Point-South Beach Redevelopment
3 Plan Final Environmental Impact Report 80.267, Rincon Point-South Beach Redevelopment
4 Plan Supplemental Environmental Impact Report 90-088E, Waterfront Land Use Plan Final
5 Environmental Impact Report, and the Memorandum to City Planning File No. 90.088E dated
6 June 23, 2000 which is analogous to an Addendum as described in CEQA Guidelines Section
7 15164 (collectively, the "Prior EIRs") and adopted certain findings in connection with the
8 approval of the Lease with RPR, which findings are incorporated herein by this reference as
9 though fully set forth in this resolution; and, be it

10 FURTHER RESOLVED, that based upon the Board of Supervisor's review of the Prior
11 EIRs, the Board of Supervisors finds that: (1) modifications incorporated into the Project as a
12 result of the transactions approved by this resolution will not require important revisions to the
13 prior EIRS due to the involvement of the new significant environmental effects or a substantial
14 increase in the severity of previously identified significant effects; (2) no substantial changes
15 have occurred with respect to the circumstances under which the Project is undertaken which
16 would require major revisions to the Prior EIRs due to the involvement of new significant
17 environmental effects identified in the Prior EIRs; and (3) no new information of substantial
18 importance to the Project has become available which would indicate: (a) the Project will have
19 significant effects not discussed in the Prior EIRs; (b) significant environmental effects will be
20 substantially more severe; (c) mitigation measures or alternatives found not feasible which
21 would reduce one or more significant effects have become feasible; or (d) mitigation
22 measures or alternatives which are considerably different from those in the Prior EIRs would
23 substantially reduce one or more significant effects on the environment; and, be it

24 FURTHER RESOLVED, that the Board of Supervisors approves the Amended Ground
25 Lease and the transactions which the Amended Ground Lease contemplates (including

1 without limitation the terms of the DA, First Amendment to DA and Consent Agreement to the
2 extent incorporated or referenced in the Amended Ground Lease); and, be it

3 FURTHER RESOLVED, that the Board of Supervisors authorizes the Executive
4 Director of the Port (the "Executive Director") to execute the Amended Ground Lease upon
5 satisfaction or waiver of the conditions precedent set forth in the DA and First Amendment to
6 DA in substantially the form presented to this Board and in such final form as is approved by
7 the Executive Director in consultation with the City Attorney; and, be it

8 FURTHER RESOLVED, that the Board of Supervisors authorizes the Executive
9 Director to enter into any additions, amendments or other modifications to the Consent
10 Agreement, DA, First Amendment to DA, and Amended Ground Lease (including, without
11 limitation, preparation and attachment of, or changes to, any or all of the Exhibits) that the
12 Executive Director, in consultation with the City Attorney, determines is in the best interest of
13 the Port, do not alter the rent or the Port's projected income from the Project, do not materially
14 increase the obligations or liabilities of the Port or City or materially decrease the public
15 benefits accruing to the Port, and are necessary or advisable to complete the transactions
16 which the Consent Agreement, DA, First Amendment to DA, and Ground Lease contemplate
17 and effectuate the purpose and intent of this resolution, such determination to be conclusively
18 evidenced by the execution and delivery by the Executive Director of the Consent Agreement,
19 DA, First Amendment to DA and the Amended Lease and any such amendments to any such
20 documents; and, be it

21 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
22 Director to execute and enter into any additional documents as he deems necessary or
23 appropriate, in consultation with the City Attorney, to consummate the transactions
24 contemplated hereby or to otherwise effectuate the purpose and intent of this resolution, such
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1 determination to be conclusively evidenced by the execution and delivery by the Executive
2 Director of any such documents; and, be it

3 FURTHER RESOLVED, that the Board of Supervisors approves, confirms and ratifies
4 all prior actions taken by the officials, employees and agents of the Port Commission or the
5 City with respect to the assignment and amendments to the DA and Lease.

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