

1 [Approval of Port Lease to Pilara Family Foundation Lease No. L14144 at Pier 24 Annex]

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3 **Resolution approving Port Commission Lease No. L-14144 with the Pilara Family**
4 **Foundation, a Nevada Non-Profit Corporation (“Pilara”) for certain real property located**
5 **at Pier 24 Annex in the City and County of San Francisco.**

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7 WHEREAS, California Statutes of 1968, Chapter 1333 (the "Burton Act") and the San
8 Francisco Charter Section 4.114 empower the San Francisco Port Commission with the power
9 and duty to use, conduct, operate, maintain, manage, regulate and control the lands within
10 Port Commission jurisdiction; and

11 WHEREAS, on August 1, 2007 the Port Commission approved a 7 ½ year Lease with
12 Pilara for rental of 27,311 square feet of pier shed at Pier 24 Annex at rental rates that are
13 consistent with the Port Commission approved FY 2007-2008 Rental Rate Schedule. The
14 Lease requires the Tenant to make an initial capital investment of \$3.2 million of which \$1.7
15 million is for core and shell improvements to the building which benefit the Port, and

16 WHEREAS, the Port and Pilara subsequently executed a First Amendment the Lease
17 June 6, 2008. The First Amendment made certain revisions to the Lease including providing
18 for a Personal Guaranty by the Tenant in the amount of \$6 million dollars, and

19 WHEREAS, during construction, Pilara encountered unforeseen conditions, including
20 extensive dry rot and termite damage resulting in the deterioration of the structural beams and
21 the supporting piles on the eastern side of the Annex. Port agrees that these critical structural
22 elements require complete replacement, and

23 WHEREAS, the Port agrees that these conditions could not have been known prior to
24 execution of the Lease without conducting invasive and destructive testing, and

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1 WHEREAS, Pilara now estimates the total project cost at \$11 million, of which
2 approximately \$7.5 million is for core and shell improvements, and

3 WHEREAS, this represents an increase of \$5.8 million in direct benefit to a Port asset
4 over the original amount of \$1.7 million, and

5 WHEREAS, due to the unexpected increase in costs and the direct benefits to the Port
6 that Pilara is willing to offer, the Port and Pilara have agreed to amend certain terms of the
7 Lease through a Second Amendment to: (i) Increase the amount of Base Rent from \$0.40 per
8 square foot to an initial amount of \$1.02 per square foot effective January 1, 2009; (ii) extend
9 the initial term by two and a half years for a total ten year term; and (iii) provide rent credits to
10 Pilara for approved improvements to the core and shell of the building not to exceed \$3 million,
11 and

12 WHEREAS, San Francisco Charter Section 9.118 requires Board of Supervisors
13 approval of agreements having a term of ten (10) or more years or having anticipated revenue
14 to the City of One Million Dollars (\$1,000,000.00) or more; and

15 WHEREAS, this Lease is likely to meet the One Million Dollar (\$1,000,000.00) criteria
16 and meets the ten (10) year criteria; and, therefore, be it

17 RESOLVED, that the Board of Supervisors approves the Lease and the transactions it
18 contemplates; and, be it

19 FURTHER RESOLVED, that the Board of Supervisors authorizes the Executive Director
20 of the Port (the "Executive Director") to execute the Second Amendment to Lease No. L-
21 14144, including all exhibits thereto in a form approved by the City Attorney and in the
22 substantial form of the Second Amendment to Lease No. L-14144 on file with the Clerk of the
23 Board of Supervisors in File No.081581; and, be it

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

7 FURTHER RESOLVED, that the Board of Supervisors authorizes the Executive Director
8 to enter into any additions, amendments or other modifications to the Lease (including, without
9 limitation, preparation and attachment of, or changes to, any or all of the exhibits and ancillary
10 agreements) that the Executive Director, in consultation with the City Attorney, determines is in
11 the best interest of the Port, do not alter the rent or the Port's projected income from the
12 Lease, do not materially increase the obligations or liabilities of the Port or City or materially
13 decrease the public benefits accruing to the Port, and are necessary or advisable to complete
14 the transactions contemplates and effectuated the purpose and intent of this Resolution, such
15 determination to be conclusively evidenced by the execution and delivery by the Executive
16 Director of any such documents; and, be it

17 FURTHER RESOLVED, that the Board of Supervisors approves, and ratifies all prior
18 actions taken by the officials, employees and agents of the Port Commission, Planning
19 Comission, or the City with respect to the Lease.

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