

1 [Approval of Port Lease for TCHO Ventures, Inc. at Pier 17]

2

3 **Resolution approving Port Commission Lease No. L-14584 with TCHO Ventures, Inc.**
4 **(“TCHO”) for a five (5) year term for certain real property located at Pier 17 in the City**
5 **and County of San Francisco.**

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

10 WHEREAS, Under Port Resolution No. 93-52 the Port’s Retail Leasing Policy, Inc. it is
11 the policy of the Port Commission to competitively bid retail opportunities by the issuance of a
12 Request for Proposal (“RFP”), and

13 WHEREAS, The Retail Leasing Policy does allow for direct negotiation
14 of retail leases with existing tenants if: (I) the Tenant is a tenant in good standing, (II) the
15 direct and indirect benefits exceed the benefits of a public offering, (III) the Tenant’s existing
16 lease term does not support its business plan and strategy for significant capital investment
17 into Port property, (IV) the investment will benefit the Port, and if the benefits of direct
18 negotiation outweigh the benefits of competitive bidding, (V) if the Tenant has a good record
19 of non-discrimination in its hiring and retail practices and is committed to adhering to a
20 program of non-discrimination during the term of the proposed lease; and

21 WHEREAS, The Port Commission determined that TCHO met the criteria for direct
22 negotiations: (I) TCHO is a tenant in good standing, (II) TCHO’s current lease term does not
23 support its business plan and strategy for significant capital investment into Port property, (III)
24 TCHO is the highest and best use for Pier 17 since the Port could typically only attract storage
25 and warehouse use which provide lesser benefit to the Port, and these types of tenants would

1 not be willing or have the necessary resources to make significant capital investment into
2 Port property, (IV) the opportunities for leasing at Pier 17 are limited if not impossible due to
3 the upcoming Exploratorium Development Project at Pier 15, and subsequently at Pier 17,
4 scheduled for construction in 2009, which limits the Port's ability to offer any prospective
5 tenants an appropriate lease term; (V) TCHO affirmatively states its commitment to non-
6 discrimination in its hiring and retail practices and is committed to adhering to a program of
7 non-discrimination during the term of the proposed lease; and

8 WHEREAS, by Port Commission Resolution 08-09, The Port Commission approved
9 Lease No. L-14584 with TCHO ("Lease") for a five (5) year term, for certain real property
10 located at Pier 17 in the City and County of San Francisco for rent equal to the greater of 7%
11 of gross sales from retail uses or base rent for the retail parcels of C \$13,774.60 per month in
12 the first year, which shall be increased at a rate of 3% per year. Total base rent in the first
13 year is \$23,223.70 per month which meets or exceed the fair market value; and

14 WHEREAS, The San Francisco Planning Department's Major Environmental Analysis
15 Division issued to the Port a Categorical Exemption ("CATX"), which satisfies environmental
16 review requirements under the California Environmental Quality Act, for Port actions to enter
17 into new leases where there would be a continuation of an existing use for which there would
18 be no substantial physical changes to the site or substantial intensification use of the Lease is
19 covered by this CATX; and

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

23 WHEREAS, this Lease is likely to meet the One Million Dollar (\$1,000,000.00) criteria;
24 and, therefore, be it

25

1 RESOLVED, That the Board of Supervisors approves the Lease and the transactions it
2 contemplates; and, be it

3 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
4 Director of the Port (the "Executive Director") to execute Lease No. L-14584, including all
5 exhibits thereto in a form approved by the City Attorney and in the substantial form of Lease
6 No. L-14584 on file with the Clerk of the Board of Supervisors in File No. _____; and, be it

7 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
8 Director to execute and enter into any additional agreements and documents as he or she
9 deems necessary or appropriate, in consultation with the City Attorney, to consummate the
10 transactions contemplated hereby or to otherwise effectuate the purpose and intent of this
11 resolution, such determination to be conclusively evidenced by the execution and delivery by
12 the Executive Director of any such documents; and, be it

13 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
14 Director to enter into any additions, amendments or other modifications to the Lease
15 (including, without limitation, preparation and attachment of, or changes to, any or all of the
16 exhibits and ancillary agreements) that the Executive Director, in consultation with the City
17 Attorney, determines is in the best interest of the Port, do not alter the rent or the Port's
18 projected income from the Project, do not materially increase the obligations or liabilities of the
19 Port or City or materially decrease the public benefits accruing to the Port, and are necessary
20 or advisable to complete the transactions which the Lease contemplates and effectuates the
21 purpose and intent of this resolution, such determination to be conclusively evidenced by the
22 execution and delivery by the Executive Director of the Lease and any such amendments to
23 such document; and, be it

24

25

1 FURTHER RESOLVED, That the Board of Supervisors approves, and ratifies all prior
2 actions taken by the officials, employees and agents of the Port Commission, Planning
3 Commission, or the City with respect to the Lease.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

