

1 [Amended and Restatement of Lease - Java House Restaurant - \$4,000 Monthly Base Rent]

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3 **Resolution approving the Amended and Restatement of Lease No. L-14100 between the**
4 **Port Commission and Java House, LLC, a California limited liability company, for the**
5 **Java House Restaurant located at Pier 40½ at the Embarcadero and Townsend Street,**
6 **increasing the monthly base rent from \$3,314 to \$4,000 including a conditional tenant**
7 **option to extend for ten years, with no change to the initial length of term through**
8 **August 31, 2023.**

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10 WHEREAS, California Statutes of 1968, Chapter 1333 (the "Burton Act") and Charter,
11 Sections 4. 114 and B3.581 empower the Port Commission with the power and duty to use,
12 conduct, operate, maintain, manage, regulate and control the Port area of the City and County
13 of San Francisco; and

14 WHEREAS, On May 9, 2006, through Resolution 06-36, the Port Commission
15 approved Lease No. L-14100 ("Lease") with Java House, LLC ("Java House"), subsequently
16 approved by the Board of Supervisors (Resolution 555-07) for approximately 1,490 square
17 feet of restaurant space located at Pier 40½; and

18 WHEREAS, The Lease includes provisions typical for a restaurant lease, requires the
19 tenant to make \$346,140 in capital improvements, and expires on August 31, 2023; and

20 WHEREAS, Java House has proposed to sell substantially all of its assets and assign
21 all of Java House's interest in the Lease to a new entity called Frankie's Java House, LLC
22 ("Frankie's") and Frankie's has proposed a ten (10) year lease extension; and

23 WHEREAS, As material consideration for consenting to the sale of the Java House
24 lease and as a condition to granting the tenant's extension option, the amended and restated
25 lease ("Amended Lease") will include the following significant terms as more fully described in

1 the Memorandum to the Port Commission dated July 3, 2019: (i) increases the monthly base
2 rent to \$4,000, (ii) increases the Port's share of net sale proceeds from a sale of the lease
3 from 10% to 12% (including from this sale), (iii) requires a \$51,000 payment to the Port for
4 Java House's failure to complete capital improvements required under the Lease, (iv) requires
5 Frankie's to make no less than \$737,000 of capital improvements (to include an outdoor
6 dining area and including those improvements that should have been completed under the
7 current Lease) and conditions the extension option on timely completion of such
8 improvements, and (v) updates the Lease to include all current City requirements and
9 standard Port conditions; and

10 WHEREAS, Charter, Section 9.118, requires Board of Supervisors' approval of the
11 modification, amendment or termination of any lease which when entered into was for a
12 period of ten or more years or having anticipated revenue to the City of \$1,000,000 or more;
13 and

14 WHEREAS, As set forth in Administrative Code, Sections 2.6-1 and 23.33, it is Board
15 of Supervisors' policy that leases be awarded in accordance with competitive bidding
16 procedures, unless such procedures are impractical or impossible and that any lease awarded
17 without competitive bidding be in an amount not less than the fair market value of the leased
18 property; and

19 WHEREAS, The Port Commission has determined that, in this circumstance,
20 competitive bidding is impractical and/or impossible and that approval of the Amended Lease
21 is in the best interest of the Port; and

22 WHEREAS, The proposed rent under the Amended Lease, along with the other
23 negotiated terms, is not less than Market Rent as defined in Administrative Code,
24 Section 23.2; and

1 WHEREAS, The Planning Commission issued a Categorical Exemption 2019-
2 006140ENV (State CEQA Guidelines, Section 15332) for the project; now, therefore, be it

3 RESOLVED, That the Board of Supervisors exempts the Amended Lease from the
4 competitive bidding policies, approves the Amended Lease and authorizes the Executive
5 Director of the Port or her designee to execute such Amended Lease in substantially the
6 same form on file with the Clerk of the Board; and, be it

7 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
8 Director to enter into any additions, amendments or other modifications to the Amended
9 Lease that the Executive Director, in consultation with the City Attorney, determines, when
10 taken as a whole, to be in the best interest of the Port, do not materially increase the
11 obligations or liabilities of the City or the Port, and are necessary or advisable to complete the
12 transactions which this Resolution contemplates and effectuate the purpose and intent of this
13 Resolution, such determination to be conclusively evidenced by the execution and delivery by
14 the Executive Director of such documents; and, be it

15 FURTHER RESOLVED, That within thirty (30) days of the Amended Lease being fully
16 executed by all parties, the Port shall provide a copy of the Amended Lease to the Clerk of the
17 Board for inclusion into the official file.