

FILE NO. 001531

RESOLUTION NO. 877-00

(Approval of Rincon Park Restaurant Site Lease)

APPROVING LEASE WITH RINCON PARK RESTAURANTS, LLC, AND THE CITY AND COUNTY OF SAN FRANCISCO, OPERATING BY AND THROUGH THE SAN FRANCISCO PORT COMMISSION, FOR THE DEVELOPMENT OF THE RINCON PARK RESTAURANT SITE, SAN FRANCISCO, CALIFORNIA.

WHEREAS, City Charter Section B3.581 (g) authorizes the Port Commission to enter into leases and franchises for the operation of property within the jurisdiction of the Port Commission; and,

WHEREAS, in 1981, the San Francisco Board of Supervisors and the San Francisco Redevelopment Agency ("Redevelopment Agency") adopted the Rincon Point-South Beach *Redevelopment Plan*, including the *Design for Development* (the "Redevelopment Plan") which designated a future park along The Embarcadero roughly between Harrison and Howard Streets ["Rincon Park" or "Park"] and earmarked 12,000 square feet of the Park north of Folsom Street for restaurant uses [the "Restaurant Site"]; and,

WHEREAS, in January 1995, the Redevelopment Agency issued a variance (Resolution 7-95) which, among other things, relocated the Restaurant Site within the Park from north of Folsom Street to south of Folsom Street and expanded the Restaurant Site from 12,000 square feet to 20,000 square feet, limiting the building site area to 12,000 square feet and allowing the additional 8,000 square feet of Restaurant Site area as an outdoor terrace dining area; and,

WHEREAS, the Port owns the property comprising Rincon Park, including the Restaurant Site; and,

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1 WHEREAS, in June 1995, the Port Commission entered into an Agreement to Lease
2 (“Agreement to Lease”) with the Redevelopment Agency in which the Redevelopment Agency
3 agreed to lease and operate Rincon Park as a public park, the Port reserved from the Park lease
4 the Restaurant Site, and the parties agreed that: (1) no more than 12,000 square feet of the
5 Restaurant Site would be used for the restaurant building; (2) the restaurant type would be
6 “first-class”; (3) the restaurant height would not exceed “approximately seventeen (17) feet
7 from the finished grade of the Park, including any rooftop utility penthouses”; (4) the
8 remaining 8,000 square feet of restaurant site area may be used for purposes consistent with
9 and ancillary to restaurant related uses (i.e. tables, chairs, benches); (5) parking and driveway
10 access may also be provided within the site; and (6) the Redevelopment Agency delegated to
11 the Port complete control over the design of the restaurant, provided that the design conformed
12 to the guidelines set forth in the Redevelopment Plan, as modified by Redevelopment Agency
13 Resolution 7-95; and,

14 WHEREAS, the Port’s Waterfront Land Use Plan including the Design & Access
15 Element of the Plan (the Waterfront Plan), adopted by the Port Commission in 1997 envisions
16 the development of Rincon Park and the Restaurant Site at a location south of Folsom Street;
17 and,
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19 WHEREAS, on July 23, 1998, the Port issued a Request for Proposals (“RFP”) for the
20 Restaurant Development Opportunity at Rincon Park; and,

21 WHEREAS, the Port Commission on March 9, 1999 approved an Exclusive Right to
22 Negotiate Agreement with Nice Ventures, Inc., by Resolution 99-10; and,
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1 WHEREAS, during the Exclusive Negotiation Period, Rincon Park Restaurants, LLC,
2 a California limited liability company, was formed, with Nice Ventures, Inc., as managing
3 member, to pursue development of the Restaurant Site (the "Project"); and,

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

7 WHEREAS, Port staff and Rincon Park Restaurants, LLC (the Developer) negotiated
8 the terms of a Development Agreement (the "Development Agreement") which includes
9 exhibits including a form of Ground Lease ("Ground Lease") for the Restaurant Site which
10 memorializes the agreement between the Port and the Developer for the Developer to lease the
11 Restaurant Site from the Port at fair market value upon the satisfaction of certain conditions
12 precedent, and further describes the terms and conditions governing the Developer's
13 obligations to construct and operate the Restaurant Site; and,

14 WHEREAS, the design and scope of the Project, which is reflected in the Scope of
15 Development (an attachment to the Development Agreement) and Schematic Drawings for the
16 Project have been refined; and,

17 WHEREAS, on November 5, 1980, the San Francisco Planning Commission reviewed
18 and considered the Rincon Point-South Beach Redevelopment Plan Final Environmental
19 Impact Report 80.267 ("FEIR") and by Resolution No. 8760 found the FEIR to be adequate,
20 accurate and objective, and certified the completion of the FEIR in compliance with CEQA, the
21 CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code; and,

22 WHEREAS, on January 5, 1981, the Board of Supervisors adopted Ordinance No. 14-
23 81 in which it reviewed and considered the FEIR and adopted certain findings in connection
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with the approval of the Redevelopment Plan, which findings are incorporated herein by this reference as though fully set forth in this resolution; and,

WHEREAS, on August 22, 1991, the Planning Commission reviewed and considered the supplement to the FEIR entitled Rincon Point-South Beach Redevelopment Plan Supplemental Environmental Impact Report 90-088E ("SEIR") and found by Motion No. 13158 that the SEIR was adequate, accurate, and objective, and certified the completion of the FEIR in compliance with CEQA, the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code; and,

WHEREAS, on November 12, 1991, the Board of Supervisors adopted Resolution Nos. 1002-91 and 1003-91 in which it reviewed and considered the SEIR and adopted certain findings in connection with certain amendments to the Redevelopment Plan, which findings are incorporated herein by this reference as though fully set forth in this resolution; and,

WHEREAS, on June 24, 1997, the Port Commission adopted Resolution No. 97-50, in which it reviewed and considered the Waterfront Land Use Plan Final Environmental Impact Report ("WLUP FEIR") and adopted certain findings in connection with the approval of the Waterfront Land Use Plan, which findings are incorporated herein by this reference as though fully set forth in this resolution; and,

WHEREAS, the Project was adequately described within the scope of the FEIR, the SEIR and the WLUP FEIR (collectively, the "Prior EIRS"), each of which considered the potential environmental impacts of plans which include the Project; and

WHEREAS, the San Francisco Planning Department has prepared, and the Port Commissioners each received and reviewed, a Memorandum to City Planning File No. 90.088E dated June 23, 2000 which is analogous to an Addendum, as described in CEQA Guidelines

Section 15164 (the Memorandum), that analyzed the potential impacts arising from the Project;
and,

WHEREAS, the Planning Department has determined in the Memorandum that the proposed Project is within the scope of the restaurant project contemplated by the Prior EIRs, that no new or more severe significant impacts would result from the Project, no important changes in circumstances involving potential significant impacts have occurred since the Prior EIRs were certified, and no new information has come to light that would involve the potential for new or more severe significant impacts not discussed in the Prior EIRs; and,

WHEREAS, Section 3 of the Burton Act authorizes the Port Commission to enter into leases with terms not exceeding ~~66~~ years provided that the revenues from such leases shall be used for purposes consistent with the trust; and,

WHEREAS, the Ground Lease is for a term not exceeding ⁵⁰~~66~~ years; and,

WHEREAS, the approval of the Development Agreement and Ground Lease for the Restaurant Site will allow for the timely coordination between the design and construction drawings for the Restaurant and Park Sites; and,

WHEREAS, the approval of the Development Agreement and Ground Lease for the Restaurant Site will enable the Port and Redevelopment Agency to implement the goals of the Waterfront Plan and Redevelopment Plan for this area; and,

WHEREAS, the Board of Supervisors has reviewed and considered (1) the Prior EIRs: (2) the Memorandum to City Planning File No. 90.088E dated June 23, 2000; and (3) the Memorandum to Port Commissioners prepared for the July 20, 2000 Port Commission meeting for Agenda Item 8A; and,

WHEREAS, the Development Agreement and Ground Lease are consistent with the Burton Act and are not prohibited by State law or the Charter; and,

WHEREAS, the Development Agreement and Ground Lease are found to be consistent with: (1) the Redevelopment Plan; (2) the Agreement to Lease; and (3) the Waterfront Plan; and,

WHEREAS, on July 25, 2000, the Port Commission, in Resolution No. 00-60: (1) approved the modifications and clarifications to the Waterfront Plan's Design and Access Element in regard to the Project; and, (2) approved the form and substance of the Development Agreement and Ground Lease, and the transactions which the Development Agreement and Ground Lease contemplate, and authorized and directed the Executive Director of the Port, after approval by the Board of Supervisors, to execute the Development Agreement and upon satisfaction or waiver of the conditions precedent, the Ground Lease in substantially the form of such agreements on file with the Port Commission Secretary; and,

WHEREAS, Section 9.118 of the Charter of the City and County of San Francisco requires in relevant part that non-maritime leases of real property for a period of ten (10) years or longer, or contracts or agreements entered into by a City department for a term in excess of ten (10) years are subject to the approval of the Board of Supervisors of the City and County of San Francisco; and,

WHEREAS, a copy of the proposed form of Ground Lease, including a copy of the Development Agreement, is on file with the Clerk of the Board of Supervisors under File No.

001531; now therefore, be it,

RESOLVED, that based upon the Board of Supervisor's review of the Prior EIRs and the Memorandum, the Board of Supervisors hereby finds that: (1) modifications incorporated

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1 into the Project will not require important revisions to the Prior EIRs due to the involvement of
2 new significant environmental effects or a substantial increase in the severity of previously
3 identified significant effects; (2) no substantial changes have occurred with respect to the
4 circumstances under which the Project is undertaken which would require major revisions to
5 the Prior EIRs due to the involvement of new significant environmental effects, or a substantial
6 increase in the severity of effects identified in the Prior EIRs; and (3) no new information of
7 substantial importance to the Project has become available which would indicate: (a) the
8 Project will have significant effects not discussed in the Prior EIRs; (b) significant
9 environmental effects will be substantially more severe; (c) mitigation measures or alternatives
10 found not feasible which would reduce one or more significant effects have become feasible; or
11 (d) mitigation measures or alternatives which are considerably different from those in the Prior
12 EIRs would substantially reduce one or more significant effects on the environment; and, be it,

13 FURTHER RESOLVED, that the Board of Supervisors hereby adopts the mitigation
14 monitoring program prepared for the Project, a copy of which is attached to Port Commission
15 Resolution No. 00-60 and is on file with the Clerk of the Board in File No. 001531; and,
16 be it,

17 FURTHER RESOLVED, that the Board of Supervisors approves the form and
18 substance of the Ground Lease, and the transactions which the Ground Lease contemplates,
19 (including without limitation the terms of the Development Agreement to the extent
20 incorporated or referenced in the Ground Lease) incorporating the business terms set forth in
21 the Memorandum for Agenda Item 8A for the Port Commission meeting on July 25, 2000, a
22 copy of which is on file with the Clerk of the Board in File No. 001531; and be it,

1 FURTHER RESOLVED, that the Board of Supervisors hereby authorizes and
2 directs the Executive Director of the Port (the "Executive Director") to execute the Ground
3 Lease upon satisfaction or waiver of the conditions precedent set forth in the Development
4 Agreement in substantially the form of such agreements on file with the Clerk of the Board in
File No. 001531 ; and be it,

5 FURTHER RESOLVED, that the Board of Supervisors authorizes the Executive
6 Director to enter into any additions, amendments or other modifications to the Ground Lease
7 (including, without limitation, preparation and attachment of, or changes to, any or all of the
8 exhibits or the Development Agreement) that the Executive Director, in consultation with the
9 City Attorney, determines are in the best interest of the City, do not materially increase the
10 obligation or liabilities of the City, and are necessary or advisable to complete the transactions
11 which the Ground Lease contemplates and effectuate the purpose and intent of this resolution,
12 such determination to be conclusively evidenced by the execution and delivery by the
13 Executive Director of the Development Agreement and the Ground Lease and any such
14 amendments thereto; and be it,

15 FURTHER RESOLVED, that the Board of Supervisors authorizes and urges the
16 Executive Director and any other appropriate officers, agents or employees of the City to take
17 any and all steps (including, but not limited to, the execution and delivery of any and all
18 certificates, agreements, notices, consents, escrow instructions, closing documents and other
19 instruments or documents) as they or any of them deems necessary or appropriate, in
20 consultation with the City Attorney, in order to consummate the transactions under the Ground
21 Lease and the Development Agreement (to the extent referenced or incorporated in the Ground
22 Lease), in accordance with this resolution, or to otherwise effectuate the purpose and intent of
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1 this resolution, such determination to be conclusively evidenced by the execution and delivery
2 by any such person or persons of any such documents; and, be it,

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

6 APPROVED AS TO FORM

7 LOUISE H. RENNE

8 City Attorney

9 By: 
10 DIANNE MILLNER, Deputy City Attorney



City and County of San Francisco

Tails

Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 001531

Date Passed:

Resolution approving lease with Rincon Park Restaurants, LLC, and the City and County of San Francisco, operating by and through the San Francisco Port Commission, for the development of the Rincon Park Restaurant Site, San Francisco, California.

October 10, 2000 Board of Supervisors — ADOPTED

Ayes: 10 - Ammiano, Becerril, Bierman, Brown, Kaufman, Leno, Newsom, Teng,
Yaki, Yee

Absent: 1 - Katz

File No. 001531

I hereby certify that the foregoing Resolution
was ADOPTED on October 10, 2000 by the
Board of Supervisors of the City and County
of San Francisco.

OCT 20 2000

Date Approved



Jean Lum
Acting Clerk of the Board



Mayor Willie L. Brown Jr.