

1 [Approval of Port Lease Amendment and Restatement for Pier 23 Café, Inc.]

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4 **Resolution approving Lease Amendment and Restatement of Port Lease No. 12275**
5 **between the San Francisco Port Commission and Pier 23 Cafe, Inc., a California**
6 **corporation, for the lease of real property commonly known as the Pier 23 Café.**

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8 WHEREAS, Charter Section B3.581 of the City and County of San Francisco (the
9 "City") empowers the Port Commission ("Port") with the power and duty to use, conduct,
10 operate, maintain, manage, regulate and control Port areas of the City, including the power to
11 enter into leases and franchises for the use of real property within Port jurisdiction; and

12 WHEREAS, The real property located at Pier 23, The Embarcadero, San Francisco,
13 California (the "Property") is within Port jurisdiction; and

14 WHEREAS, Charter Section 9.118 (c) requires the Board of Supervisors to approve
15 any leases of real property with a term of ten or more years or having anticipated revenue to
16 the City of one million dollars or more; and

17 WHEREAS, The Port Commission and Pier 23 Cafe, a California general partnership,
18 entered into Port Lease No. L-12275 dated November 4, 1996 (the "Lease") for the lease of
19 real property defined in the Lease as the "Premises" and commonly known as the Pier 23
20 Café; and

21 WHEREAS, Pier 23 Café has been reorganized under the laws of the State of
22 California as Pier 23 Café, Inc., a California corporation; and

23 WHEREAS, The San Francisco Administrative Code Section 2.6-1 provides that retail
24 sites should generally be offered to the public through competitive bidding; and

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1 WHEREAS, The Port Commission adopted the Policy for Leasing Retail Business Sites
2 by resolution on April 18, 1993 to balance the City's preference for competitive bidding with
3 the need for the Port to negotiate lease extensions with existing tenants who satisfy the
4 following conditions: the tenant is in good standing, the tenant is committed to making a
5 significant capital investment supported by a sound business plan which benefits the Port; the
6 tenancy is in the best economic interests of the Port and the best economic tenant available,
7 and the tenant is in compliance with the Port's affirmative action criteria; and

8 WHEREAS, Pier 23 Café, Inc. is in good standing, is committed to making a significant
9 capital investment supported by a sound business plan that benefits the Port, Pier 23 Café,
10 Inc.'s continued tenancy is in the best economic interests of the Port and Pier 23 Café, Inc. is
11 the best economic tenant available, and Pier 23 Café, Inc. is in compliance with the Port's
12 affirmative action criteria; and

13 WHEREAS, Pier 23 Café, Inc. proposes to amend the Lease and to assume the
14 obligation to repair and maintain the substructure of the Premises, but due to the significant
15 investment required by proposed lease amendment for capital improvements and
16 substructure repairs and maintenance, Pier 23 Café, Inc. requested an extension of the
17 Lease term through April 30, 2030; and

18 WHEREAS, Because the continued integrity of the Premises' substructure requires
19 significant repairs to be performed in the very near future, and the current Lease with Pier 23
20 Café has a remaining term of two years, the Port Commission concluded a public competitive
21 bidding process for this lease opportunity is impractical and impossible since it would require
22 waiting for the expiration of the existing lease term, and that process would be unlikely to
23 result in an economic benefit to the Port equal or greater than that offered by the Pier 23 Café,
24 Inc; and

25 WHEREAS, On July 13, 2004, the San Francisco Port Commission approved

1 Amendment to and Restatement of Lease No. L-12275 with Pier 23 Café, Inc., successor in
2 interest to Pier 23 Café, and a copy of Port Commission Resolution No. 04-62 and the
3 Memorandum to Port Commission summarizing the terms of the Amendment to and
4 Restatement of Lease L-12275 terms are on file with the Clerk of the Board of Supervisors in
5 File No. 041076; now, therefore, be it

6 RESOLVED, Because of the benefits of making repairs to the Premises substructure in
7 the near future, and given the two years remaining under the existing lease, a public
8 competitive bidding process for the Premises would be impractical if not impossible at this
9 time; and, be it

10 FURTHER RESOLVED, That the Board of Supervisors exempts the Amendment to
11 and Restatement of Port Lease L-12275 from the competitive bidding policy set forth in
12 Administrative Code Section 2.6-1; and, be it

13 FURTHER RESOLVED, That the Board of Supervisors approves the Amendment to
14 and Restatement of Lease L-12275 between the Port of San Francisco and Pier 23 Café, Inc.,
15 and, be it

16 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
17 Director of the Port ("Executive Director") to execute the Amendment to and Restatement of
18 Lease L-12275 in substantially the form on file with the Clerk of the Board of Supervisors in
19 File No. 041076 and in such final form as is approved by the Executive Director and the City
20 Attorney; and, be it

21 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
22 Director to enter into any amendments or other modifications (including, without limitation,
23 preparation and attachment of, or changes to, any or all of the exhibits) that the Executive
24 Director, in consultation with the City Attorney, determines is in the best interest of the Port,
25 do not alter the rent or the Port's projected income from the Lease, do not materially increase

SUPERVISOR PESKIN
BOARD OF SUPERVISORS

1 the obligations or liabilities of the Port or City or materially decrease the public benefits
2 accruing to the Port, and are necessary or advisable to effectuate the purpose and intent of
3 the Lease and this resolution, such determination to be conclusively evidenced by the
4 execution and delivery by the Executive Director of the Amendment to and Restatement of
5 Port Lease No. L-12275 and any such amendments; and, be it

6 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
7 Director to execute and enter into any additional documents deemed necessary or
8 appropriate, in consultation with the City Attorney, to effectuate the purpose and intent of the
9 Amendment to and Restatement of the Lease or this resolution, such determination to be
10 conclusively evidenced by the execution and delivery by the Executive Director of any such
11 documents.



City and County of San Francisco

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

Tails Resolution

File Number: 041076

Date Passed:

Resolution approving Lease Amendment and Restatement of Port Lease No. 12275 between the San Francisco Port Commission and Pier 23 Cafe, Inc., a California corporation, for the lease of real property commonly known as the Pier 23 Cafe.

September 21, 2004 Board of Supervisors — ADOPTED

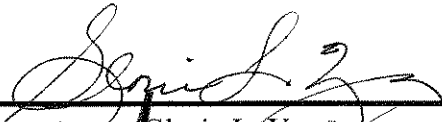
Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Gonzalez, Ma, Maxwell, McGoldrick, Peskin, Sandoval

File No. 041076

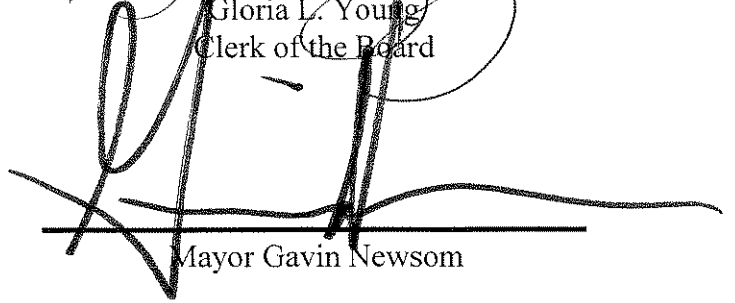
I hereby certify that the foregoing Resolution was ADOPTED on September 21, 2004 by the Board of Supervisors of the City and County of San Francisco.

SEP 30 2004

Date Approved



Gloria L. Young
Clerk of the Board



Mayor Gavin Newsom