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

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

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

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

WHEREAS, The Port Commission determined that TCHO met the criteria for direct negotiations: (I) TCHO is a tenant in good standing, (II) TCHO’s current lease term does not support its business plan and strategy for significant capital investment into Port property, (III) TCHO is the highest and best use for Pier 17 since the Port could typically only attract storage and warehouse use which provide lesser benefit to the Port, and these types of tenants would
not be willing or have the necessary resources to make significant capital investment into Port property, (IV) the opportunities for leasing at Pier 17 are limited if not impossible due to the upcoming Exploratorium Development Project at Pier 15, and subsequently at Pier 17, scheduled for construction in 2009, which limits the Port's ability to offer any prospective tenants an appropriate lease term; (V) TCHO affirmatively states its commitment to non-discrimination in its hiring and retail practices and is committed to adhering to a program of non-discrimination during the term of the proposed lease; and

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

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

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

WHEREAS, this Lease is likely to meet the One Million Dollar ($1,000,000.00) criteria; and, therefore, be it
RESOLVED, That the Board of Supervisors approves the Lease and the transactions it contemplates; and, be it

FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive Director of the Port (the "Executive Director") to execute Lease No. L-14584, including all exhibits thereto in a form approved by the City Attorney and in the substantial form of Lease No. L-14584 on file with the Clerk of the Board of Supervisors in File No. 081415; and, be it

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

FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive Director to enter into any additions, amendments or other modifications to the Lease (including, without limitation, preparation and attachment of, or changes to, any or all of the exhibits and ancillary agreements) that the Executive Director, in consultation with the City Attorney, determines is in the best interest of the Port, do not alter the rent or the Port's projected income from the Project, do not materially increase the obligations or liabilities of the Port or City or materially decrease the public benefits accruing to the Port, and are necessary or advisable to complete the transactions which the Lease contemplates and effectuates the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of the Lease and any such amendments to such document; and, be it
FURTHER RESOLVED, That the Board of Supervisors approves, and ratifies all prior actions taken by the officials, employees and agents of the Port Commission, Planning Commission, or the City with respect to the Lease.
Resolution approving Port Commission Lease No. L-14584 with TCHO Ventures, Inc. ("TCHO") for a five (5) year term for certain real property located at Pier 17 in the City and County of San Francisco.

December 16, 2008 Board of Supervisors — ADOPTED
Ayes: 11 - Alioto-Pier, Campos, Chu, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

File No. 081415

I hereby certify that the foregoing Resolution was ADOPTED on December 16, 2008 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Date Approved: 12/19/2008

Mayor Gavin Newsom