

MEMORANDUM

May 24, 2012

TO: MEMBERS, PORT COMMISSION
Hon. Doreen Woo Ho, President
Hon. Kimberly Brandon, Vice President
Hon. Francis X. Crowley
Hon. Leslie Katz
Hon. Ann Lazarus

FROM: Monique Moyer
Executive Director

SUBJECT: Request adoption of the required California Environmental Quality Act Findings and the Mitigation Monitoring and Reporting Program in connection with the development of a triangular lot located at Washington Street and The Embarcadero having an address at 8 Washington Street together with Seawall Lot ("SWL") 351 by San Francisco Waterfront Partners II, LLC, a Delaware limited liability company ("Developer"). (Resolution No. 12-46)

Request approval of the (1) Disposition and Development Agreement, (2) Lease No. L-15110 for a term of 66 years, (3) Purchase and Sale Agreement, and (4) Maintenance Agreement, all with San Francisco Waterfront Partners II, LLC, a Delaware limited liability company, (5) Trust Exchange Agreement with the California State Lands Commission, and (6) Schematic Drawings; all in connection with the development of SWL 351 and adjacent private parcel at 8 Washington Street (located on the Embarcadero at Washington Street). (Resolution No.12-47)

Director's Recommendation: Approve the Attached Resolutions

SUMMARY

The purpose of this memorandum is to provide the Port Commission and the public with information and analysis regarding Port staff's recommendation to approve the development of SWL 351 in conjunction with the adjacent 8 Washington property (the "**Project**"). The Port approval actions needed for the Project include approval of California Environmental Quality Act Findings, the Disposition and Development Agreement, Lease No. L-15110, the Purchase and Sale Agreement, the Trust Exchange Agreement, the Maintenance Agreement, and the Schematic Drawings.

THIS PRINT COVERS CALENDAR ITEM NO. 9A

Port staff recommends approval because the Project activates a vital piece of the City's waterfront and fills a seam in the city fabric still remaining from the removal of Interstate 480, the Embarcadero freeway. Additionally, the Project contributes strong financial returns to the City and the Port. Specifically, the Project generates \$3 million in near term payments, enhances long term revenue and provides the Port with new mechanisms to participate in the long term appreciation of the Port's real estate asset that will generate revenues to address Port capital and public trust needs. The Project's finance structure allows the Port to realize the site's value and sets valuable precedent for future development efforts. The Project results in the Port acquiring land valued in excess of \$8,600,000, improvements costing \$9.5 million, and generates revenue streams to the Port exceeding \$100 million with a net present value of \$14.3 million. The Project generates over \$3 million of new property tax annually and an estimated \$1.25 million of new revenues to the City General Fund.

The Project fulfills the Port's obligation to provide public parking and represents the Port's commitment to the overall economic success of businesses in the Ferry Building Waterfront Area, including existing investments of approximately \$250 million at the Ferry Building, Pier 1, Piers 1½-3-5, Pier 7 and Pier 9.

BACKGROUND

SWL 351 is subject to the common law public trust for commerce, navigation, and fisheries and the statutory trust imposed by the Burton Act, Chapter 1333 of the Statutes of 1968, as amended, by which the State of California (the "**State**") conveyed to the City and County of San Francisco (the "**City**"), in trust and subject to certain terms, conditions and reservations, the State's interest in certain tidelands (collectively, the "**Public Trust**").

Since 2009, Port and Developer have been working toward the development of SWL 351, currently a surface parking lot, located on The Embarcadero at Washington Street, in conjunction with the adjacent private property west and north of SWL 351, commonly referred to as 8 Washington. SWL 351 and the adjacent private property together constitute the project site ("**Site**"). The majority of the adjacent private property is home to a private athletic club formerly known as the Golden Gateway Tennis and Swim Club (the "**Club**"), now known as Bay Club at the Gateway.

Previous Port Commission staff reports and other City reports provide important background information about the Port's actions¹ regarding the Project and related planning efforts, including the following:

¹ All listed Board of Supervisors and the Port Commission approvals were subject to the completion of environmental review of the Project under CEQA.

- **Port Commission Authorization of Developer Solicitation:** The Port Commission authorized the request for proposal process for SWL 351 in July 2008 (Resolution No. 08-45)².
- **Port Commission Award of Development Opportunity:** After staff analysis of their development proposal, Developer was awarded the SWL 351 development opportunity and authorized to enter an Exclusive Negotiation Agreement in February 2009 (Resolution No. 09-12)³.
- **Planning Commission Support of Northeast Embarcadero Study:** The Northeast Embarcadero Study (“NES”) is an urban design analysis for the northeast embarcadero area and provides recommendations to improve the public realm and the design of new development in the area. Planning Department staff published the NES in May 2010 and on July 8th 2010, the Planning Commission passed a Resolution in support of the study⁴.
- **Port Commission Endorsement of Term Sheet:** Developer received approval of a Project term sheet in September 2010 (Resolution No. 10-66). The term sheet presents a conceptual agreement by the parties of the terms of the transaction, based on policy direction by the Port Commission and approval of a revised project design responding to the NES⁵.
- **California Environmental Quality Act (“CEQA”):** On March 22, 2012, the Planning Commission reviewed and considered the Final Environmental Impact Report (“**Final EIR**”) in Planning Department File No. 2007.0030E and found that the contents of said report and the procedures through which the Final EIR was prepared, publicized and reviewed complied with the provisions of the California Environmental Quality Act (“**CEQA**”), the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code and found further that the Final EIR reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, and that the Comments and Responses document contains no significant revisions to the Draft EIR, and certified the completion of said Final EIR in compliance with CEQA and the CEQA Guidelines. For copies of CEQA documents in the San Francisco Planning Department’s file for CEQA Case No. 2007.0030E *8 Washington Street/ Seawall Lot 351 Project*, including the Draft Environmental Impact Report (“EIR”)

²See link:

[http://www.sfport.com/ftp/uploadedfiles/meetings/supporting/2008/Item%209A%20SWL351%20RFP%20issuance\(1\).pdf](http://www.sfport.com/ftp/uploadedfiles/meetings/supporting/2008/Item%209A%20SWL351%20RFP%20issuance(1).pdf)

³ See link:

<http://www.sfport.com/ftp/uploadedfiles/meetings/supporting/2009/Item%2011b%20SWL351%20Staff%20Report.pdf> and

<http://www.sfport.com/ftp/uploadedfiles/meetings/supporting/2009/Item%2011b%20SWL351%20Revised%20Resolution.pdf>

⁴ See link: <http://www.sf-planning.org/index.aspx?page=1662>

⁵ See link: <http://sf-port.org/Modules/ShowDocument.aspx?documentid=154>

and Comments & Responses/Final EIR⁶, please see the Planning Department's Environmental Planning Division website. Copies of these documents are also on file with the Port Commission Secretary.

Developer has conducted extensive due diligence investigations of the Site and presented the Project drawings to the *Waterfront Design Advisory Committee* (“**WDAC**”) and made in excess of 70 presentations of the plans to various community groups, stakeholders and the Port's Northeast Waterfront Advisory Group (“**NEWAG**”).

PROPOSED PROJECT

The Project presents an opportunity to promote Public Trust objectives and to realize the vision put forth in the Waterfront Plan by, among other things:

1. Creating important new visual and pedestrian public access linking Jackson Street to The Embarcadero and augmenting significant existing public investment in the area.
2. Achieving a long term solution to parking needs of the Ferry Building waterfront area, as well as a central parking location for visitors to the northeastern waterfront.
3. Improving the visual quality of the Ferry Building waterfront area by locating parking underground and creating an attractive mixed use development that enhances the land side of The Embarcadero and reconnects San Francisco with the waterfront.
4. Creating new parks along The Embarcadero, enhancing the waterfront visitor experience.
5. Providing visitor-serving retail uses, including a café in a prominent location adjacent to the proposed Pacific Park with waterfront views.
6. Creating new view corridors of the San Francisco Bay through the Project site.
7. Creating significant structures that recognize, respect and compliment the Port's bulkhead structures across The Embarcadero.

Public Trust Exchange

The State Lands Commission (“**State Lands Commission**”) has authority to approve the public trust exchanges of Port property (the (“**Trust Exchange**”) pursuant to Section 5 of Chapter 310, Statutes of 1987 (“**Chapter 310**”). Under Chapter 310, the City has the authority, subject to State Lands Commission approval, to exchange City property subject to the Public Trust with public or private entities for property not subject to the

⁶ See link: <http://www.sf-planning.org/index.aspx?page=1828>

Public Trust if the City and State Lands Commission make certain findings. The findings are further discussed in the "Public Trust Analysis" section below.

The proposed Project is premised on a Trust Exchange involving the removal of the Public Trust from approximately 23,020 square feet of SWL 351 (the "**Trust Termination Parcel**") in exchange for the imposition of the Public Trust on approximately 28,241 square feet of adjacent property that is not subject to the Public Trust (the "**Trust Parcel**"), as shown on Attachment C. At closing, Developer will convey the Trust Parcel to the Port. The Port in turn will convey both the Trust Termination Parcel and the Trust Parcel to the State Lands Commission. The State Lands Commission will then remove the Public Trust from the Trust Termination Parcel and impress the Public Trust on the Trust Parcel and convey such parcels back to the Port. The Port will then convey the Trust Termination Parcel to the Developer.

Although SWL 351 is currently used for vehicle parking serving the Ferry Building and surrounding area, the Developer will be required as a condition of approval to provide no less than 175 spaces for the public in perpetuity within an underground parking garage on the development site (see "Parking Garage" below). This arrangement allows for a reconfiguration of SWL 351 and the adjacent site that actively promotes and improves Public Trust uses and purposes, without any loss of public parking capacity. The proposed Project also would relocate the existing private tennis and swim club that currently blocks public access and use of this prime waterfront site. Such relocation allows for significantly improved visual and physical access to the waterfront, particularly in an area that has seen heavy investment of public funds. The Project would provide complementary Public Trust uses, such as passive open space and visitor-serving retail.

Non-Trust Uses on Private Property ("Private Improvements")

Residential Buildings with Ground Floor Retail

Under the proposed Project, the Site would be developed with two mixed-use buildings containing approximately 134 residential units, ground floor restaurants and retail, a new indoor and outdoor health club and aquatics facility, new public parks and open space, and an underground parking garage. The proposed buildings would be built to Leadership in Energy and Environmental Design ("LEED") Gold standards. One of the two residential buildings would be built along The Embarcadero (4-6 stories, 48-70 feet tall) and the other would be built along Drumm Street (7-12 stories, 81-136 feet tall). The Drumm Street building would be situated across from Embarcadero 4 (45 stories, 571 feet tall) and the Golden Gateway apartment building (22 stories, 230 feet tall). The residential buildings would be connected at the ground floor by a one-story central space along Washington Street, marking the main residential entrance to the buildings. A private central courtyard would be located in the ground-floor area between the two buildings. Setbacks would be incorporated into the building along The Embarcadero at the fifth and sixth levels, and into the building along Drumm Street at the eighth, ninth and twelfth levels.



View from Southeast

The ground floor of the proposed residential buildings would contain a lobby and common areas, private residential amenities, retail spaces, and restaurants. The retail spaces would range in size from approximately 835 gross square feet to approximately 6,670 gross square feet each. A proposed restaurant would occupy the southern portion of the east building at the ground floor and would front on The Embarcadero and Washington Street. The entrance to this restaurant would be at the chamfered southeast corner of the ground floor. Outdoor seating areas would be provided within covered patios along The Embarcadero and Washington Street. A small café/retail space is proposed for the southwest corner of the Site, at Drumm Street and Washington Street.

Rebuilt Health Club

The approximately 16,350 square foot new indoor fitness and health club would be located in a new building north of Jackson Street along The Embarcadero. The building form would be defined by a sloping green roof that is predominantly 17 feet in height at the southern end of the health club, and rise to a peak of 35 feet at the northern end to conceal an elevator shaft providing access to the second floor of the health club. Approximately 21,500 square feet of outdoor recreation space including at least one large lap and recreation pool would be constructed.⁷ While the programming of the outdoor recreation space is conceptual at this point, the outdoor space may be programmed with a patio lounging area, a Jacuzzi, and a barbecue area in addition to one or more pools and outdoor recreation space. An approximately 1,800 square foot café at The Embarcadero and Jackson Street would also be situated within the health club building and would be open to the public with outdoor seating within Jackson Commons (described below).

Parking Garage

Parking for the public and residents would be provided in a parking garage on three

⁷ The current health club measures approximately 7,500 square feet of indoor space and 81,645 square feet of outdoor space.

levels below the proposed buildings that form the Project’s southern edge (the "**Parking Garage**"). The proposed Parking Garage would include up to 389 spaces, including up to 255 public spaces to serve the Ferry Building waterfront area businesses, onsite retail, restaurant, and health club uses and up to 127 spaces for residents. Of the available public spaces, as described below in the Purchase and Sale Agreement section, up to 175 spaces will be reserved to serve the Ferry Building Waterfront subarea of the Waterfront Plan, achieving a long term solution to parking needs of the Ferry Building Waterfront area, as well as a central parking location for visitors to the northeastern waterfront. The Parking Garage improves the visual quality of the Ferry Building Waterfront area by locating underground all of the currently existing 105 spaces of surface parking at SWL 351.

Parking Garage

| | | |
|---|-----|------------|
| Public Parking Spaces for Vehicles | | |
| Maximum covenanted for Ferry Building Area Short Term Use | 175 | |
| Maximum Available for Project and Ferry Building Area Use | 80 | |
| Maximum Total | | 255 |
| Residential Parking Spaces | | 127 |
| Car Share Spaces | | 6 |
| Maximum Total Garage Parking Spaces for Vehicles | | 388 |
| | | |
| Parking Spaces for Bicycles | | |
| Commuters (with lockers, showers, changing rooms) | 27 | |
| Residents | 134 | |
| Total Garage Parking Spaces for Bicycles | | 161 |

Convenient and efficient pedestrian access to the public parking garage would be through an elevator entrance along Washington Street entered to the east of the residential lobby and an elevator entrance along Jackson Commons. Elevators would connect the private residential underground parking to the ground and upper floors of the proposed residential buildings. Vehicle access to the parking garage would be through a two-way ramp directly off of Washington Street west of the residential lobby entrance. The curb cut along The Embarcadero would be eliminated, enhancing safety for bicyclists and pedestrians by removing existing conflicts presented by vehicles that must cross the popular bike lane and busy sidewalk to access the surface parking lot. 161 bicycle parking spaces and 6 car share spaces would be provided along with showers and lockers for bicyclists’ use recognizing the bicycle’s continuing emergence as a principle means of transit for residents, area workers and visitors alike. .

If Developer fails to commence or complete the Parking Garage, the Port, as its sole remedy, may require Developer to provide the Port with at least 110 valet parking spaces until the Parking Garage is completed (the "**Replacement Spaces**"). If the Replacement Spaces cannot be accommodated on the Site, or if construction is underfow for the open space parcels within the Site, Developer must provide to Port, at no charge, the remaining parking spaces within a nearby site, which may include the public parking garage at One Maritime Plaza, the parking garage at the Golden Gateway Center, or such other parking facility reasonably satisfactory to Port until the

Parking Garage is constructed. At Close of Escrow, Developer must deliver to the Port a guaranty, securing its obligation to provide the Replacement Spaces.

Trust-consistent Uses on Port Property ("Public Improvements")

Jackson Commons Open Space

A new public open space totaling approximately 10,450 square feet would be developed to the north of the residential buildings along the Jackson Street alignment ("**Jackson Commons**")⁸. Jackson Commons would provide pedestrian views and access to the waterfront that would connect Jackson Street to The Embarcadero tying Sidney Walton Park, Golden Gateway, Jackson Square, Chinatown and North Beach neighborhoods to the Port's Ferry Building, Pier 1, Piers 1½-3-5, Pier 7 and Pier 9 development projects, representing approximately \$250 million in public-private investments. Landscape and a meandering pedestrian path would lead to a more hardscaped area with public seating at The Embarcadero. Jackson Commons would be dedicated as a public right-of-way for parks and open space use only. In addition, the current Drumm Street Garden Walk would be widened and increased in size by approximately 2,890 square feet and improved to create a better pedestrian experience and connection to the waterfront in response to recommendations expressed through the Planning Department's Northeast Embarcadero Study ("NES"). Individually and together, these beautiful new and expanded public open space improvements will be enjoyed by today's residents and visitors as well as the generations to follow.

Trust Retail Parcel

An approximately 4,000 square foot, one-story, 18-foot-tall restaurant building ("**Trust Retail Building**") would be constructed immediately to the north of the proposed health club building and swim deck area. The Port would own this building and lease it back to the Developer as described below. The restaurant would include an approximately 4,000 square foot rooftop deck with public access via an elevator and stairway. The building would be a semi-transparent pavilion with an enclosable outdoor patio that is designed for year round use to activate the proposed publicly accessible open space, compliment the City's investments in The Embarcadero roadway, and add to the increasing number of restaurants and retail establishments in the area.

Pacific Park Open Space

The Retail Building would front on a new, approximately 11,840 square foot, publicly accessible open space ("**Pacific Park**") at the northern end of the Site, which would contain an approximately 4,500 square foot children's interpretive sculptural garden. Pacific Park would connect the Pacific Street walkway to the Embarcadero, creating a vibrant and active waterfront park connecting the City to the waterfront with views of the Bay, the Port's historic Pier 5 bulkhead and the Pier 7 public pier. All or a portion of Pacific Park may be dedicated as a public right-of-way for parks and open space use only. In addition, approximately 4,835 square feet of sidewalk along the west side of The Embarcadero, immediately south of Pacific Park and fronting a portion of the east side of the Health Club would be improved and widened to attract pedestrians to the

⁸ Existing public space for the Project Site is approximately 1,500 square feet.

west side of The Embarcadero in response to recommendations in the NES.

PLANNING COMMISSION APPROVALS

The San Francisco Planning Commission took the following actions in connection with the Project at its March 22, 2012 meeting:

- Certified the Final EIR;
- Approved a General Plan amendment to allow an increase in height on portions of the Site from 84 feet to 92 feet and 136 feet and to allow the bulk⁹ of the Project;
- Approved a Zoning Map amendment to allow an increase in height on portions of the Site as stated above and to allow the bulk of the Project;
- Approved a Planned Unit Development/Conditional Use Permit pursuant to Planning Code Sections 303 (Conditional Use), 304 (PUD), 253 (review of structures over 40 feet in any "R" District), 271(b) (Bulk Limit Exception), 151 and 204.5(c) (off-street parking for residential uses in excess of maximum accessory amounts), 151 (reduction in off-street parking requirements for non-residential uses), 209.7(d) (provision of a public parking garage for spaces to serve the Ferry Building and Waterfront area), 209.8(c) (commercial use above ground floor for the health club), 209.8(f) (non-residential use exceeding 6,000 gross square feet), 134 (rear yard requirement);
- Made a determination of consistency with the City's *General Plan* pursuant to Charter Section 4.105 and Administrative Code Section 2A.53;
- Joint adoption by the Planning Commission and the Recreation and Park Commission of a resolution establishing a new absolute cumulative limit for allowable new shadow on Sue Bierman Park to accommodate the new shadow on that park that would result from the Project (no cumulative limit currently exists for Sue Bierman Park); and
- Made a shadow impact determination, after review and comment by the San Francisco Recreation and Park Department and its Commission under Section 295 of the Planning Code.

In addition, the San Francisco Recreation and Park Commission determined at its joint meeting with the Planning Commission on March 22, 2012, pursuant to Resolution No. 1203-014 that the shadows cast by the Project on Sue Bierman Park will not be adverse. Based on detailed technical analysis, the additional new shadow is very small, approximately 0.00067 percent of the total annual available sunlight for the park. The new shadow would occur for about 15 minutes in the morning and evening during the summer. The amount of new shadow would not be significant and the new shadow cast by the Project would not adversely affect use of the park and its facilities.

⁹ Bulk regulations are the combination of controls (lot size, floor area ratio, lot coverage, open space, yards, height and setback) that determine the maximum size and placement of a building on a zoning lot.

The Planning Department also is the lead agency for completing environmental review pursuant to CEQA. On June 15, 2011, the Environment Planning Division of the San Francisco Planning Department published a draft Environmental Impact Report (“**EIR**”) for public review (Case No. 2007.0030E). The draft EIR was available for public comment until August 15, 2011. On July 21, 2011, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to solicit comments regarding the draft EIR. On December 22, 2011, the Planning Department published a Comments and Responses document, responding to comments made regarding the draft EIR prepared for the Project. On March 22, 2012, the Planning Commission certified the Final EIR.

Before the Port Commission can approve any implementing agreements for the Project, it must review and consider the Final EIR information and adopt findings in accordance with CEQA (“**CEQA Findings**”). The CEQA Findings are presented in Attachment A to Port Resolution 12-46, which describe the Project and conclusions in the Final EIR regarding the Project’s significant environmental impacts, required mitigation measures, alternatives studied in the EIR, reasons for rejecting alternatives and selecting the Project, and overriding considerations that outweigh any significant environmental effects that could not be remedied by mitigation measures.

TRANSACTION DOCUMENTS

The major documents relating to the Trust Exchange, conditions to conveyance of the Trust Parcel and the Trust Termination Parcel between Port and Developer, development of the Project, lease of the retail parcel, and maintenance of the Open Space Parcel are as follows: (collectively, the “**Transaction Documents**”):

1. Disposition and Development Agreement (“**DDA**”) between Port and Developer governing development of the Public Improvements, Trust Retail Parcel and terms of public financing
2. Lease No. L-15110 (“**Lease**”) between Port and Developer for the Trust Retail Parcel
3. Purchase and Sale Agreement (“**PSA**”) between Port and Developer governing the conditions for the conveyance of the Trust Parcel and Trust Termination Parcel and development of the Private Improvements
4. Trust Exchange Agreement between Port and the State Lands Commission for the realignment of the Public Trust within the Site
5. Maintenance Agreement between Port and Developer for the maintenance of the Open Space Parcel

The DDA and PSA will be executed by the Port following approval of such documents by the Port Commission and approval by the Board of Supervisors and Mayor Edwin Lee of the PSA. The Trust Exchange Agreement will be executed by the Port following approval of such agreement by the Port Commission, the Board of Supervisors, the

Mayor, and the State Lands Commission. Port will execute the Lease and the Maintenance Agreement after approval of such documents by the Port Commission, the Board of Supervisors, and the Mayor, approval of the Trust Exchange Agreement by the State Lands Commission, the Board of Supervisors, and the Mayor, and upon satisfaction of various conditions set forth in the DDA.

The Transaction Documents are described in greater detail below:

Disposition and Development Agreement (“DDA”)

The DDA governs: (1) the conditions that must be satisfied prior to Port leasing the Trust Retail Parcel to the Developer, (2) the obligations of the Developer to construct the Public Improvements on the Trust Retail Parcel and the remainder Port property on the Site (the "**Open Space Parcel**"), (3) the conditions for delivery of the Project improvements, and (4) the terms and conditions for the provision of public financing for certain of the Public Improvements (described below).

Port Commission approval of the DDA is required because it concerns a major development on Port property and sets forth requirements for delivering the Site, and the means to reimburse the Developer for its improvements on Port property. Board of Supervisors' approval of the DDA is not required pursuant to City Charter Section 9.118.

DDA Terms:

Term

The DDA is in effect from execution, anticipated this summer once all Project approvals have been obtained, through completion of all Public Improvements required to be constructed thereunder. The construction period is estimated at 27 months. The public financing provisions will continue to remain in effect after construction of the Public Improvements are completed.

Construction Obligations/Schedule of Performance

- Developer must construct the Public Improvements consistent with Port approved construction documents. Subject to force majeure, Developer must commence construction of the Public Improvements within 120 days after close of escrow (expected to occur October 2012), and must complete the Public Improvements within the earlier of 36 months after commencement of Construction or 40 months following Close of Escrow.
- Developer is responsible for paying all costs of developing the Project, including the Public Improvements, subject to reimbursement of certain Project costs from Public Financing (described below) in accordance with the DDA and the Acquisition and Reimbursement Agreement to be attached to the DDA.

- Anticipated Relevant Dates:

| | |
|--------------------|--------------|
| DDA Execution | Summer 2012 |
| Close of Escrow | October 2012 |
| Construction Start | April 2013 |

Outside Close of Escrow
Completion of Public Improvements

Summer 2013
October 2015

Transaction Costs

Developer will reimburse the Port for 100% of transaction costs incurred by the Port. This term is carried over from the Exclusive Negotiating Agreement currently in effect.

Force Majeure

Times for performance will be extended by force majeure, if any, including CEQA litigation and failure for regulatory agencies to issue required permits, for a period of up to 48 months.

License

The DDA grants Developer a license to enter the Open Space Parcel to construct the Public Improvements that begins upon the Close of Escrow and ends upon the recording of the Certificate of Completion. Port staff expect the License to commence October 2012 and terminate in March 2016.

Public Financing

Once constructed, this Project will generate significant tax increment above that generated from the Site today. The Port and Developer have negotiated the following terms to partially reimburse Developer for the Project's public benefits achieved through the new public open spaces and public garage amenities.

- Port will provide public financing through formation of a Port wide Infrastructure Financing District ("**IFD**") that will include SWL 351 and the adjoining private property at 8 Washington as a project area within the IFD ("Project Area").
- Port will pay Developer up to \$5 million from IFD Project Area bond proceeds or increment to pay for qualified project costs of the Public Improvements. These costs will include all public improvements within the Open Space Parcel, but not on the Trust Retail Parcel or any privately held parcels.
- Developer will be reimbursed in any number of installments as Public Financing becomes available, with any unpaid balance deferred without interest until Public Financing becomes available.
- In addition, the Port will cooperate in the formation by the City of a Community Facilities District ("**CFD**"). Proceeds from the CFD will be used to finance qualifying portions of the public parking garage and potentially public improvement costs not reimbursed through the IFD. Such proceeds are expected to be advanced through a bond issuance. Because the parking garage will be privately owned, the CFD bonds are not qualified to be tax-exempt, but will be taxable bonds.
- Since neither Port nor the City will have the obligation to pay for maintenance of the Open Space Parcel, Developer and the Port have agreed to cooperate in the formation of a second CFD over the parcels owned by Developer and the parcel with the newly built health club (the "**Developer Parcels**") to fund ongoing maintenance. If Developer fails to maintain the Open Space Parcels in accordance with the Maintenance Agreement, then maintenance special taxes will be levied against the Developer Parcels in perpetuity. The maintenance special taxes will be used only to

pay for maintenance of the Open Space Parcel and the costs of administering the maintenance CFD, as further described in the DDA.

Assignments and Transfers

Assignment and transfer provisions will be the same as those stated below for the Purchase and Sale Agreement.

Terminating Events

The DDA will terminate if any of the following events occur:

- The Purchase and Sale Agreement terminates before the Close of Escrow.
- The Close of Escrow has not occurred by the Outside Close Date (anticipated summer 2013), subject to force majeure or Developer's extension options.
- Either party may terminate if a title defect exists on the Outside Close Date and Developer has not elected to close subject to the title defect.

Events of Default

The Developer will be in default under the DDA for, among other things, the following actions:

- Failure to commence or complete construction of the Public Improvements or Parking Garage in accordance with the Schedule of Performance.
- Abandonment of construction of the Public Improvements without Port's approval for more than 30 consecutive days, which continues for an additional 60 days after written notice from Port.
- Failure to perform any non-monetary obligation that continues for more than 30 days after notice from Port, or if the cure cannot be completed within 30 days, failure to commence and diligently prosecute a cure.
- An Event of Default under the Purchase and Sale Agreement or Lease (after Close of Escrow).

Remedies

The Port's remedies for Developer default under the DDA include:

- Termination of the DDA, provided that if termination occurs before the Close of Escrow because of a Developer event of default, Port may collect as its sole damages a DDA Termination Fee of \$50,000.00.
- Specific Performance.
- If Developer defaults by failing to commence or complete the Parking Garage, the Port's sole remedy will be the Replacement Parking Remedy, as described in the PSA.

Lease No. L-15110 ("Lease")

Upon Close of Escrow under the DDA, the Port will deliver a ground lease to Developer for the Trust Retail Parcel. The form of Ground Lease is attached to the DDA.

Material lease terms include the following:

- 66-year term
- Approximately 4,000 square feet

- Permitted uses include visitor-serving commercial recreation, including restaurant and recreational facilities (e.g. bicycle rental)
- Construction rent is \$60,000/annum expected to be paid from 2012 to 2016 Upon completion (expected in March 2016), rent is 15% of gross revenues received by Developer from retail operator and is expected to be at least \$25,000 per annum initially and approximately \$4.8 million over the 66-year term.
- Port has reasonable approval over subtenant operators
- Developer may mortgage its leasehold interest in the Trust Retail Parcel to finance its construction

Purchase and Sale Agreement (“PSA”)

The PSA sets forth the terms and conditions under which (i) Port will convey portions of SWL 351 from which the Public Trust will be removed to Developer, (ii) Developer will convey portions of the 8 Washington Site to the Port that will become subject to the Public Trust, (iii) Developer will develop the Private Improvements; and (iv) Developer will record a parking covenant that permanently restricts a portion of the Parking Garage as described below under Covenants Recorded Against Developer's Property.

The PSA covers matters including conditions to the Close of Escrow, manner of payment, the scope of Development on Developer Parcels, Port rights to public parking, Events of Default and certain other matters.

PSA Terms:

Purchase Price

- The Purchase Price for the portion of SWL 351 to be conveyed to Developer is a \$3 million lump sum payment, due one (1) year following the issuance of a temporary certificate of occupancy for the Parking Garage or the rebuilt Health Club, whichever comes first, anticipated no earlier than October 2014..
- A transfer fee covenant will be recorded against the property. The transfer fee covenant requires payment to the Port equaling 1.0% of the purchase price in perpetuity from and after but not including the first sale (or lease with a term of thirty-five (35) years or longer) of each of the (a) residential condominiums and (b) commercial condominiums (excluding the new fitness and health club)
- Conveyance to Port of approximately 28,241 square feet of a portion of 8 Washington site which will be impressed with the Public Trust.
- Conveyance to Developer of approximately 23,020 square feet of a portion of SWL 351 that is free of the Public Trust
- Developer shall also pay to Port, another City agency, or such other City agency’s designee, a certain amount that will be used to fund affordable housing development in the City (“**Developer’s Contribution to Affordable Housing**”). The Developer’s Contribution to Affordable Housing shall be determined by multiplying 5% of each type of residential unit (based on the number of bedrooms) in the Project against a base amount (“**Base Amount**”) for each type of residential unit (the amount contributed for each type of residential unit is to be referred to as “**Unit Type Contribution**”) and then adding each Unit Type

Contribution. The Base Amount for (i) studios shall equal \$179,952; (ii) 1 bedrooms shall equal \$248,210; (iii) 2 bedrooms shall equal \$334,478; and (iv) 3 bedrooms and up shall equal \$374,712. The gross contribution amount is expected to be approximately \$2.2 million. Additionally, the Base Amount for each type of residential unit shall be indexed annually from and after July 1, 2012 based on the annual percent change in the Construction Cost Index for San Francisco as published by Engineering News-Record.

- Developer must pay an ongoing revenue stream to Port of \$120,000/year for 66-years, commencing upon completion of the Public Improvements, adjusted every 5 years by the CPI with a minimum increase of 10% and a maximum of 20%. (Note that the original term sheet proposed rent for the lease of public open space at \$120,000 for 66-years; however, due to laws regarding use of public financing for public improvements, the annual \$120,000 payment will be included in the PSA with the payment obligation included within the covenants, codes and restrictions (“**CC&Rs**”) recorded against the Site.)

Covenants Recorded Against Developer's Property

Developer must record the following covenants against title to the parcels Developer will own as of Close of Escrow, which covenants will run with the land:

- Condominium Sales: A Transfer Fee Covenant to be recorded at Close of Escrow, providing that Port will receive a transfer fee equaling 1.0% of the purchase price in perpetuity from and after but not including the first sale (or lease with a term of thirty-five (35) years or longer) of each of the (a) residential condominiums and (b) commercial condominiums (excluding the new Health Club).
- Public Parking Access: A Public Parking Covenant to be recorded at Close of Escrow that requires a permanent dedication of no less than ninety (90) public parking spaces (or 110 if on a valet basis) serving the Ferry Building Waterfront area prior to issuance of a temporary certificate of occupancy for the Parking Garage or if a lender takes over the Project and builds only two underground levels of parking; and no less than 175 spaces will be permanently dedicated if the Parking Garage is completed in accordance with approved entitlements for the Project.
- Spaces to Serve Port Operations: As part of the Public Parking Covenant, Port would have a right to use 10 spaces within the Parking Garage. The business terms for this use will be subject to an agreement between the parties subject to separate Port Commission review and approval. Currently the Port does not pay for such spaces at SWL 351.

Assignments and Transfers/Sales of Condominiums

- Prior to issuance of a temporary certificate of occupancy for the Parking Garage and the base building shell and core of the condominium project, Developer may transfer its interest or rights in the PSA subject to Port’s approval in its sole discretion. After temporary occupancy occurs, Developer may assign and transfer without Port approval.
- At any time, Developer may transfer its interests and rights in the PSA to any entity of which (i) Developer is, and will continue to be, a direct or indirect

member, and (ii) Pacific Waterfront Partners, LLC, a Delaware limited liability company, provides, and continues to provide, day-to-day operations management and continues to be the managing member of Developer.

- No Port consent is required for sales of condominium units, except if the sale is to an affiliate of Developer. Developer has the right to sell up to and including, five (5) condominiums to an affiliate, whether sequentially or at any one time, without the prior consent of Port, but must obtain Port's prior written consent to the sale of the sixth (6th) and any subsequent condominium sale. In all cases, Port must receive the applicable transfer fee. The transfer fee covenant requires the seller of any unit to provide Port prior notice to the sale.
- Port may not withhold its consent for any reason other than its reasonable determination that the proposed condominium sale price is below fair market value of other similarly situated condominium units of similar size and quality, which determination is subject to the arbitration dispute resolution procedures of the PSA.

Schedule of Performance/Construction Obligations

Subject to force majeure, Developer must commence construction of the Private Improvements 120 days after Close of Escrow, and must complete the Parking Garage within the earlier of 36 months after commencement of Construction or 40 months following Close of Escrow. Close of Escrow is anticipated to be October 2012 and construction would therefore commence by April 2013 and be completed no earlier than October 2014. However, the sole remedy for Developer's failure to meet the schedule of performance and construct the Parking Garage is the Replacement Parking remedy as described below. There is no right of reverter.

Port Approval of Construction Documents

- To confirm this Project fulfills its commitment toward the long term parking needs of the Ferry Building Waterfront Area, Port has review and reasonable approval rights over the Final Map to determine whether the Parking Garage includes a separate Port Air Space Parcel for no less than 175 public parking spaces.¹⁰
- Port has reasonable approval rights over material changes to project design that faces the Embarcadero, if the changes would require going back to the City's Planning Commission.
- As a condition to Port's approval of construction documents for the Private Improvements, Port may require that Developer require its subcontractors to obtain payment and performance bonds naming Port as a co-obligee in a principal amount of not less than 100% of the estimated costs of the Parking Garage. However, Port may not require a Performance Bond from Developer's general contractor if the general contractor has more than ten (10) years of experience constructing comparable projects in San Francisco and Developer's lender does not require a performance bond from the general contractor. Developer may request a waiver of the performance bond requirement for any

¹⁰ The Parking Garage will be comprised of three separate air space parcels pursuant to a final subdivision map that will be recorded against the Site. The Port Air Space Parcel will contain all of the parking spaces dedicated for public use to serve the Ferry Building Waterfront Area.

subcontractor that has sufficient experience and financial capability to complete the Parking Garage, which approval shall not be unreasonably withheld.

Force Majeure

Times for performance will be extended by force majeure, if any, including CEQA litigation and failure for regulatory agencies to issue required permits, for a period of up to 48 months.

Mortgagee Protections

Developer may mortgage the Developer Parcels as security for loans related to the Developer Parcels, subject to commercially reasonable mortgagee protections set forth in the PSA.

Port Option to Purchase Public Parking

- From completion of the Project to 2 years following the first sale of the last residential condominium unit, Port has the right to purchase the Port Air Space Parcel within the Parking Garage (a condominium portion of the public parking garage) accommodating no less than 175 cars on an individually accessible or valet basis.
- Upon exercise of the Port Parking Option, the parties will meet and confer to establish the price for the Port Air Space Parcel; if the parties cannot agree on valuation procedures within one year after Port's exercise of the Port Parking Option, the option shall terminate.

Events of Default

Developer defaults include:

- Failure to commence construction within 120 days following Close of Escrow.
- Failure to complete construction of the Parking Garage within the earlier of 36 months after commencement of construction, or 40 months following Close of Escrow, provided that the sole remedy is the Replacement Parking Remedy.
- Abandonment of construction of Parking Garage without Port's approval for more than 30 consecutive days, which continues for an additional 60 days after written notice from Port.
- Failure to pay any amount required to be paid under the PSA when due and the failure continues for 5 days after notice from Port to Developer.
- Failure to perform any non-monetary obligation that continues for more than 30 days after notice from Port, or if the cure cannot be completed within 30 days, failure to commence and complete the cure within a reasonable time.

Remedies

Port remedies for Developer event of defaults include:

- Termination of the PSA upon 30 days' notice to Developer.
- If termination occurs before the Close of Escrow because of a Developer Event of Default, Port may collect as its sole damages, a PSA termination fee of \$200,000.00.
- Replacement Parking Remedy. See "Parking Garage" above.

Close Of Escrow/Outside Close Date

Close of Escrow under both the DDA and PSA will occur on the same day. The Outside Close Date for Close of Escrow under both the DDA and PSA is twelve (12) months after the date the PSA and DDA are fully executed, expected in summer of 2013. However, Developer may extend for up to two 6-month additional periods with the payment of \$50,000 for each 6-month period, and thereafter with the Port's consent for additional 6-month/\$50,000 periods. The Outside Close Date is subject to force majeure delay, including CEQA litigation, up to 48 months for each event of force majeure. If Close of Escrow does not occur within the Outside Close Date, as extended and subject to force majeure, the PSA and DDA will terminate.

Guaranties

Under the DDA and PSA, the following guaranties will be provided to the Port:

- A guaranty of the \$3 million land payment (to be provided at Close of Escrow);
- A guaranty of the Replacement Parking Remedy (to be provided at close of escrow);
- A termination fee guaranty (to be provided as of full execution of the DDA and PSA), guarantying the obligation to pay the Port a liquidated sum of \$250,000 if the DDA and PSA terminates prior to close of escrow as a result of an uncured and unexcused Developer event of default; and.
- A completion guaranty guaranteeing the lien-free completion of the Project's public improvements.

Trust Exchange Agreement

The Trust Exchange Agreement with the State Lands Commission sets forth the terms under which the State Lands Commission will approve the Trust Exchange of the Site. See discussion above under Proposed Project for additional description of the proposed Trust Exchange.

Maintenance Agreement

Upon issuance of a Certification of Completion, Port and Developer will enter into a Maintenance Agreement for the management and operation by Developer of the Open Space Parcel in perpetuity. The Maintenance Agreement requires Developer, or its successor, which may be the homeowners' association of the residential condominium project, to be responsible for the maintenance, operation and repair of the Open Space Parcel at their sole expense. The form of Maintenance Agreement is attached to the DDA.

Maintenance Agreement Terms:

Scope of Services

Developer shall provide comprehensive maintenance and property management services including management, landscape, janitorial and general maintenance, and security services to maintain the Open Space Parcel in a first class condition for public use and enjoyment.

Use of Open Space

Subject to Port Code and any rules and regulations promulgated by Port from time to time, Developer is authorized to administer permits, events and concessions within the open space areas consistent with the Port Code and shall provide Port with a quarterly report and calendar of same. Port shall at all times have the right to approve other upcoming events or concessions within the Open Space Parcel not set forth in Developer's quarterly report.

FISCAL ANALYSIS

Land Payments

For the sale of the majority of SWL 351 to Developer, the Port will receive a \$3,000,000 payment upon stabilization (defined as one year following receipt of a temporary certificate of occupancy, expected to occur in March 2016) of the Project. Additionally Port will receive transfer payments equaling 1.0% of the purchase price in perpetuity from and after but not including the first sale (or lease with a term of thirty-five (35) years or longer) of each of the (a) residential condominiums and (b) commercial condominiums (excluding the new Health Club). As a component of the land payment, Developer will also pay Port \$120,000 per year for 66-years, commencing upon completion of the public improvements, adjusted every 5 years by the CPI with a minimum increase of 10% and a maximum of 20%.

Developer will complete the public improvements and manage them, bearing responsibility for all operations and maintenance.

Developer will execute a 66 year ground lease for the construction and operation of an approximately 4,000 s.f. restaurant/café and will pay to Port 15% of gross income generated at the restaurant/café.

During the construction period Developer will pay the Port \$60,000 per year as another component of the overall negotiated land payment.

Developer will pay Port or a City agency or its designee, an amount that will be used to fund affordable housing projects in the City beyond any impact fees required for affordable housing. As explained above, the amount will be determined by the number and type of residential units built in the Project. Port staff estimates that based on the number and type of residential units approved by the Planning Commission for the Project, the additional contribution Developer will make for affordable housing projects in the City is estimated to be around \$2.2 million. Developer's contribution may be adjusted upwards or downwards depending on the final number and type of units set forth in the Project's building permit. This amount is to be paid by Developer prior to issuance of a temporary or final certificate of occupancy for the Private Improvements.

Public Finance

Developer will petition to annex the Developer Parcels into a project area of a Port-wide

IFD as a requirement of acquiring the Trust Termination Parcel. The IFD is expected to generate annual tax increment of \$3.085 million. Based on this estimate, and subject to an agreement with the City, The Port is drafting an infrastructure finance plan (“IFP”) for this project area that would propose the disposition of this tax increment. The IFP, subject to Board of Supervisor approval, will propose reimbursing the Developer for up to \$5 million for qualified project costs of the Public Improvements with tax increment generated before stabilization. These public improvements include sidewalk widening and street furnishings recommended in the Northeast Embarcadero Study (“NES”).

At stabilization, the IFP will direct 50% of available tax increment to the General Fund and allow the Port to issue bonds utilizing 50% of the tax increment as debt service and debt service coverage. Currently 50% of tax increment is estimated at \$1.55 million at stabilization. The IFP will propose that Port debt service coverage grow modestly (the lesser of 2% or the growth rate of all IFD tax increment growth) and that all other growth in tax increment flow to the City General Fund. Based on current projects the Port IFD share would generate \$16 million in bond proceeds that would be dedicated to fund Cruise Terminal costs, Port substructure repair and underpier utility infrastructure. A summary of the IFP is shown in the table below.

| Tax Increment Allocation (45 year lifetime of IFD) | |
|---|----------------------|
| To City General Fund | \$148,860,000 |
| To IFD | \$55,250,000 |
| Total | \$204,110,000 |
| IFD Uses | |
| Pay Go Increment: | |
| Public Improvements reimbursement | \$5,000,000 |
| Bond Uses: | |
| Cruise Terminal | \$5,000,000 |
| Under Pier Utility Infrastructure | \$6,000,000 |
| Pier Substructure Repairs | \$5,000,000 |
| Bond Total | \$16,000,000 |

The Port will work with the City to include the Developer Parcels in a Community Facilities District (“CFD”). CFD assessments would be applied to the Developer Parcels and CFD funds will be used to fund capital costs for public components of the Project such as the parking garage and potentially other public improvements.

Since neither Port nor the City will have the obligation to pay for maintenance of the Open Space Parcel, Developer and the Port have agreed to cooperate in the formation of a second maintenance CFD over the Developer Parcels to fund maintenance expenses. As previously discussed, if Developer fails to maintain the Open Space Parcels in accordance with the Maintenance Agreement, then maintenance special taxes will be levied against the Developer Parcels in perpetuity.

Fiscal Analysis

The Project's significant financial benefits to the Port are summarized in the following table and further described in Attachment D.

| Source | Total | Net Present Value |
|----------------------------------|----------------------|--------------------------|
| Land Purchase Payment | \$3,000,000 | \$2,400,000 |
| On-going Payments from Land Sale | \$22,800,000 | \$2,300,000 |
| Residential Transfer Fees | \$61,000,000 | \$7,600,000 |
| Commercial Transfer Fees | \$8,700,000 | \$1,400,000 |
| Construction Period Rent | \$180,000 | \$157,000 |
| Long-term Restaurant Lease | \$4,800,000 | \$400,000 |
| Total | \$100,000,000 | \$14,300,000 |

A portion of the property tax will be diverted to the IFD for Port projects. AS noted above, the Port is developing an Infrastructure Financing Plan for a Port-wide IFD and a Project Area encompassing the Project. In the stabilized year, property taxes expected to be diverted to the Port through the IFD will be \$1.55 million. The preliminary fiscal analysis for the IFD shows about \$1.25 million annually in *other* taxes flowing from the Project.

This transaction guarantees short term payments, enhances long term lease revenue and provides the Port with new mechanisms to participate in the long term appreciation of this real estate asset. Given the current state of the real estate and financing markets, the finance structure realizes the site's value by accepting payments at stabilization and receiving long term participation in the financial upside of the project equating to \$14.3 million of net present value.

The Project's financial benefits to the City are summarized in the following table.

| Source | Total |
|---|--------------------|
| Property Tax to General Fund (annually) | \$1,550,00 |
| Other Taxes & Revenues(annually) | \$1,250,000 |
| Annual Total | \$2,800,000 |
| Affordable Housing Impact Fees | \$8,800,000 |
| Voluntary Affordable Housing Payment | \$2,200,000 |
| Other Permits and Fees | \$4,700,000 |

PARKING ANALYSIS

Because of the competition from commuter parking in the area, parking for visitors is an important consideration for Port tenants in the Ferry Building Waterfront Area. In 2007, Adavant Consulting conducted a review of the parking options serving the Ferry Building by reviewing previous studies and conducting additional surveys of the area's public parking facilities. This study found that parking lots in the vicinity (within a 15/20

minute walk) had 87% occupancy on weekdays at midday. Lots within a 5-minute walk of the Ferry Building had a similar or higher utilization. The area's parking meters had 88% occupancy at the weekday midday peak.

A parking agreement (“**Parking Agreement**”) with the master tenant of the Ferry Building was executed in 2001 to provide parking spaces for visitors to the Ferry Building Waterfront Area at a number of locations including Pier ½, SWL 351, and the Golden Gateway Garage. The Piers 1½ - 5 project has a similar parking agreement providing 25 Port controlled parking spaces for its users.

Since the opening of the Ferry Building, parking resources in the vicinity have been lost including Ferry Plaza (36 spaces) and the July 2008 closure of Pier ½ (48 spaces). Since the Pier ½ closure, the Port has made many small changes to parking in the vicinity including expanding valet service in front of the Ferry Building, and expanding the availability of street parking by adding additional spaces on Davis Street, moving farmer trucks off-street to free up customer parking on Washington Street and installing new “smart” meters.

Several other proximate parking resources are expected to go away in the near future including parking surrounding the Agriculture Building (72 spaces that will be closed with the expansion of the Downtown Ferry Terminal) and the redevelopment of the 75 Howard parking garage (550 spaces). The Advant Consulting study estimated future conditions after the closure of parking at Pier ½ and the Agriculture Building as well as expected new development in the vicinity. In these future demand scenarios, off-street weekday midday parking occupancy in the Ferry Building Area increased from 87% to 99%, above the effective parking capacity (about 90% of the maximum capacity).

The closure of parking at Ferry Plaza, Pier ½, and the Agriculture Building are all consistent with policies in the Port’s Waterfront Land Use Plan to locate parking on the upland side of the Embarcadero. By providing up to 255 public parking spaces in the underground Parking Garage of the Project, there will be a permanent, reliable source of parking for visitors to the Ferry Building Waterfront Area. By securing permanent parking, the Port will be able to continue development and further improvements to the waterfront without additional expenditures for this ancillary use. The Ferry Building Waterfront Area is a transit-rich area but the high-visitor nature of its uses necessitates a permanent, reliable source of parking.

Ferry Building Parking Agreement: Project Impact on Location of Spaces

| | Prior to Project | Project Construction | Project Completion |
|--------------------|-------------------------|-----------------------------|---------------------------|
| SWL 351 | 90 | | 150 |
| FB Curb White Zone | 30 | 30 | 30 |
| 1 Maritime Plaza | 30 | 30-60 | |
| Ferry Plaza | | 65-80 | |
| Pier 3 | | 25 | |
| Total | 150 | 95-195 | 180 |

Given the ongoing retail and business enterprises in the Ferry Building Waterfront Area, temporary parking may be impacted during the construction period. During the pre-construction period, Port staff will work with all stakeholders to maximize parking availability during construction and fulfill Port obligations under parking agreements.

PUBLIC TRUST ANALYSIS

As mentioned above under the Proposed Project section, the Project includes a Proposed Trust Exchange for a portion of SWL 351 that provides significant benefits to the Public Trust. Under Chapter 310, the City has the authority, subject to State Lands Commission approval, to exchange City property subject to the Public Trust with public or private entities for property not subject to the Public Trust if the City and State Lands Commission determine that the land to be exchanged out of the Public Trust (1) has been filled and reclaimed; (2) is cut off from access to the waters of the Bay; (3) represents a relatively small portion of the granted tide and submerged lands; (4) is no longer needed or required for the promotion of the Trust; and (5) can be removed from the Public Trust without causing any substantial interference with Public Trust uses and purposes. In addition, the Trust Parcel must have value equal to or greater than the value of the Trust Termination Parcel that is useful for the particular trust purposes authorized by the Burton Act.

1. *The Trust Termination Parcel has been filled and reclaimed.* The Trust Termination Parcel is a portion of SWL 351, which was filled as part of the Port's program of reclaiming lands between the new seawall and the previously existing City front, for the purpose of generating revenues used to support the improvement of the harbor.
2. *The Trust Termination Parcel is cut off from access to the waters of the Bay.* All of the Trust Termination Parcel is located on filled land, located on the landside of the 100 foot wide Embarcadero Roadway, which consists of 6 traffic lanes and the MUNI light-rail corridor. No immediate access to the waters of San Francisco Bay exists from any portion of the Trust Termination Parcel.
3. *The Trust Termination Parcel is a very small portion of the Port's trust grant.* The total area of the Trust Termination Parcel is approximately 22,650 square feet (approximately ½ acre). The total amount of granted tide and submerged lands held by the Port is approximately 725 acres, of which the Trust Termination Parcel represents 0.07%.
4. *The Trust Termination Parcel is no longer needed or required for the promotion of the Public Trust.* Except for ferry operations at the Ferry Building and limited boat docking at Pier 1½ and 3, maritime activities are no longer significant in the Ferry Building Waterfront area. The Ferry Building Waterfront area abuts downtown San Francisco's diverse mix of urban activities. SWL 351 is immediately adjacent to a private swim and tennis club and is near low to high-rise residential and commercial development. For many years, the site has been used as a surface parking lot. Because SWL 351 is physically cut-off from the water, serves no purpose in furthering maritime commerce, navigation or

fisheries, and the existing surface parking will be replaced with more public parking spaces in an underground parking garage, it is no longer needed or required for the promotion of the Public Trust. In addition, the San Francisco Public Utilities Commission (“**SFPUC**”) operates a force main that serves much of the northeast waterfront which runs through the entire width of SWL 351. No structures can be built over the length of the force main, including a buffer zone around the force main, which in effect, further divides SWL 351 into two smaller and separate areas, making development of Public Trust consistent commercial uses that much more difficult. SWL 351’s relatively small size and unusual shape (as currently configured), in addition to the inability to build structures over the SFPUC force main that runs through the entire width of SWL 351 (i) does not allow for the development of any of the uses that would further the overall Public Trust goals of the Waterfront Plan or promote other Public Trust uses such as useable or desirable open space or park use, and (ii) makes development of a Public Trust-consistent commercial use, such as hotel or retail, economically infeasible, as further evidenced by the withdrawal of the only other respondent to the RFP before the Port’s review of the proposal even began. Its current use for parking serving the Ferry Building Waterfront area could be better continued as sub-surface parking (as proposed), which would improve the appearance of the site and allow for development of better and additional public-serving Public Trust uses, as further described in item 5 below.

5. *The Trust Termination Parcel can be removed without causing substantial interference with Public Trust uses and purposes and the Trust Parcel is useful for the particular trust purposes authorized by the Burton Act.* In exchange for the lifting of the Public Trust from the Trust Termination Parcel, a greater square footage of land immediately adjacent to SWL 351 will be impressed with the Public Trust. By combining SWL 351 and the 8 Washington site, the resulting land configuration allows for the development of a mixed use project that further promotes Public Trust uses and purposes and realizes the vision put forth in the Waterfront Plan, by, among other things, (i) creating important new visual and pedestrian public access linking Jackson Street to The Embarcadero; (ii) achieving a long term solution to parking needs of the Ferry Building Waterfront area, as well as a central parking location for visitors to the northeastern waterfront; (iii) improving the visual quality of the Ferry Building Waterfront area by locating parking underground and creating an attractive mixed use development that enhances the land side of The Embarcadero and reconnects San Francisco with the waterfront; (iv) creating new parks along The Embarcadero, enhancing the waterfront visitor experience; (v) providing visitor-serving retail uses, including a café in prominent location adjacent to the proposed Pacific Park with waterfront views, (vi) creating new view corridors of the San Francisco Bay through the Project Site, and (vii) creating significant structures that recognize and respect the Port’s bulkhead structures across The Embarcadero.

Attachment C shows the Trust Termination Parcel and the Trust Parcel, including their respective square footages. The Trust Termination Parcel, to be conveyed out of the

Public Trust, has an appraised value of \$7,560,000. The Trust Parcel, to be impressed with the Public Trust, has an appraised value of \$8,630,000 confirming the value of the land to be exchanged into the Public Trust equals or exceeds the value of the land to be exchanged out of the Public Trust¹¹.

For the reasons set forth above, the Trust Exchange meets the requirements of Chapter 310.

CEQA FINDINGS AND OVERRIDING CONSIDERATIONS

On March 22, 2012 the San Francisco Planning Commission certified the 8 Washington Final EIR. Before the Port Commission can approve the 8 Washington project, it must review and consider the information in the certified Final EIR and approve Findings in accordance with CEQA (CEQA Findings). The CEQA Findings are provided in Attachment 1 to Port Resolution 12-46. They describe the Project and Final EIR conclusions regarding the Project's significant environmental impacts, required mitigation measures, alternatives studied in the EIR, reasons for rejecting EIR alternatives and selecting the Project, and overriding considerations that outweigh any significant environmental effects that could not be remedied by mitigation measures.

As described in the CEQA Findings, the Project has been refined to reduce the number of condominium units from 145 to 134, with a commensurate reduction in vehicle parking spaces for the residents of the Project from 145 to 127, and the addition of 134 bicycle parking spaces for the residents in addition to 27 bicycle spaces for commuters. The environmental effects of this revised development program are addressed in the "Project Variant" impact analysis in the Final EIR. The required mitigation measures to avoid or reduce significant environmental effects of the Project are the same as for the Project Variant and are presented in a Mitigation Monitoring and Reporting Program ("MMRP"), which is provided as Exhibit A to the CEQA Findings in Attachment 1. The MMRP describes each required mitigation measure and how it would be implemented by the Project Sponsor, the Port or other agencies or parties.

The CEQA Findings identify the following environmental effects that were concluded to be significant and unavoidable impacts after implementation of the required mitigation measures: Transportation impact TR-9, and Air Quality impacts AQ-3, AQ-7, AQ-8, AQ-10. The EIR analysis is conservative in that it includes an analysis that is not required to be analyzed in an EIR and concluded conservatively that Sea Level Rise Impact SLR-3, pertaining to the increased risk of flooding due to climate-induced sea level rise, as an impact to the Project caused by the environment, is significant and unavoidable. The CEQA Findings conclude that with implementation of the required feasible mitigation measures, all significant effects on the environment from implementation of the Project would be eliminated or substantially lessened. All mitigation measures identified in the FEIR that are applicable to the Project are contained in the MMRP and recommended for adoption as part of this approval action. In approving the CEQA

¹¹ The Carneghi-Blum appraisal dated December 20, 2011 was reviewed by the City's Director of Property on April 2, 2012 and found to be well documented with an appropriate conclusion of value.

Findings, the Port Commission determines that any remaining significant effects on the environment found to be unavoidable are acceptable due to specific overriding economic, technical, legal, social and other considerations described below under Conclusions and Staff Recommendation.

NEXT STEPS

If the Port Commission approves the Project at its May 29, 2012 special meeting, the following additional approvals must be obtained before the Port will convey the transaction documents and before construction can proceed on the Project:

1. State Lands Commission approval of the Trust Exchange Agreement
2. Approval by the Board of Supervisors of the Lease, Purchase and Sale Agreement, Trust Exchange Agreement and the Maintenance Agreement
3. Issuance of building and encroachment permits for construction of the improvements on Port property

CONCLUSION

Today's hearing is a major step forward in the continuing process of transforming the waterfront to the vision set forth in the Waterfront Land Use Plan. The benefits of having this active, new use on the waterfront will be enjoyed for many generations by residents and visitors alike. Additionally, the Project will generate stable new revenues to the City and the region and the Port.

Project Benefits to the City and Region

- **Housing.** The Project will increase the City's housing stock by providing up to 134 new housing units, partially addressing the shortage of units at all income levels identified in the City's Housing Needs Assessment. Providing new market rate housing expands the range of housing types that serve the diverse needs of San Francisco's residents and improves San Francisco's jobs/housing balance, an important issue recently spotlighted in local media¹². The Project will also contribute to the production of affordable housing units in the City by the Developer paying an in lieu fee in compliance with the City's Residential Inclusionary Affordable Housing Program. As explained above, the Developer will contribute additional funds to fund affordable housing projects in the City. Furthermore, because there are no existing housing units on the Project site, the Project will not result in the demolition of any existing housing units or the displacement or relocation of any residents.
- **Parks and Open Space.** The Project would create new parks and publicly accessible open space. In particular, the Project would create an approximately 10,450 square foot public open space corridor north of the proposed residential buildings that would reconnect the City with the waterfront along the Jackson Street alignment (Jackson Commons). The Project would also create an approximately 11,840 square foot publicly accessible park at the northern end of

See Link: ¹² <http://www.sfexaminer.com/local/2012/05/housing-creation-lagging-even-demand-booms>

the site along and north of the Pacific Avenue alignment (Pacific Park). These new open spaces would both visually and physically reconnect the City with the waterfront fulfilling a major goal of the Port's Waterfront Land Use Plan by activating the western edge of The Embarcadero with uses that capitalize on over a decade of Public-Private investment in the Ferry Building Waterfront Area. In addition, the Project would provide an additional approximately 2,890 square feet of publically accessible open space along the existing Drumm Street pedestrian path.

- **New Neighborhood-Serving Retail Uses.** The Project would create approximately 19,800 square feet of ground floor, restaurant, retail and café space, where none currently exists, which would serve existing residents in the Golden Gateway area as well as new residents and waterfront visitors. These new uses economically and aesthetically compliment the many successful retail efforts now thriving at the Ferry Building, Piers 1½-3-5 and Pier 7.
- **Transportation.** The Project would provide pedestrian and circulation improvements, including pedestrian access through the former Jackson Street and Pacific Avenue rights-of-way which are currently blocked by the Golden Gateway Tennis & Swim Club. The Project would be located near an abundance of transit options and adjacent to the Downtown, Chinatown, and North Beach areas, which would encourage residents, visitors, and workers to travel to and from the project site by transit, bicycle and foot, rather than by private automobile contributing to the City's Transit First goals through reduced congestion and reduced emissions.
- **Land Use and Urban Design.** The Project would redevelop an underutilized urban infill site, which currently consists of a surface parking lot and health club facilities surrounded by a 14 foot tall chain-link fence, with a new mixed use, high-density development with housing, ground floor retail uses, and new public parks and open space. The Project would enliven and activate the pedestrian experience along The Embarcadero and Washington Street by including multiple, ground floor, retail uses and well-designed public open space that would be located within walking distance of multi-modal transit stations. The Project would reconnect the Downtown and landside neighborhoods with the Waterfront and would make the area inviting to workers and local residents as well as visitors.
- **Economic Development and Jobs.** The Project would generate 250 jobs during the construction of the Project as well as 140 permanent employment opportunities to support the Project's new residential and commercial uses during a period of high unemployment in the City and the region. The Project would encourage participation by small and local business enterprises through a comprehensive employment and contracting policy. The Project's new retail uses would provide opportunities for resident employment and business ownership, and the proposed addition of up to 134 new households would strengthen business at existing establishments in the vicinity of the project site. Furthermore, the Project would provide the City with net new property value by

developing an underutilized infill site with new residential and commercial uses, taxes on which would help fund critical City services and programs.

Project Benefits Specific to the Port

In addition to the benefits described above, the Port achieves many benefits from this Project:

- The Project will continue the Port's efforts, begun with Pier 1, the Ferry Building and Piers 1½-3-5, to revitalize the Port's waterfront and realize the vision put forth in the Waterfront Land Use Plan. The design complements the character of the Embarcadero National Register Historic District, and responds to the design criteria of the Port's Waterfront Design & Access Element of the Waterfront Land Use Plan, and the Northeast Embarcadero Study completed by the Planning Department.
- The Jackson Street and Pacific Avenue corridors will be re-opened to provide public access and new views of the water, thereby fulfilling one of the Port's goals to increase public access to the waterfront and connection to the Bay.
- The Project will provide substantial benefits including both one time payments in connection with the Project applicant's purchase of portions of Seawall Lot 351, and ongoing payments in perpetuity in connection with the transfer of condominium units that will be developed on the Project site. These revenues will be used to support waterfront improvement projects and Port public trust responsibilities. The Port will also receive revenue from the infrastructure financing district that is proposed to be established as part of the Project, and these revenues will be used to fund a variety of Port improvement projects.
- The Project will provide the Port with an underground public parking facility, including no less than 175 public parking spaces to serve and support the continued economic viability of the Ferry Building Waterfront area. Furthermore, the Project will beautify and enliven the Ferry Building Waterfront area by replacing the existing surface parking lot on Seawall Lot 351 with a dense, mixed use development with underground parking and ground floor retail uses.
- The Drumm Street walkway will be enhanced by widening this pedestrian way by 12 feet and Pacific Park and the Port restaurant fronting Pacific Park will provide a destination for this pedestrian walkway.
- The Project will create a distinctive design and presence on the waterfront that will make the Project a destination that appeals to residents of San Francisco and the Bay Area, as well as to visitors from outside the region.
- The Project eliminates the only curb cut on the inland side of The Embarcadero Roadway between King and Bay Streets which will improve bike safety and further The Embarcadero's role as a major bicycle route.
- The Project's proposed below-grade parking garage replaces diminishing parking resources in the Ferry Building waterfront area and ensures the continued

economic vitality of the Ferry Building Marketplace and Farmer's Market, and the retail and restaurant uses at the Ferry Building, Pier 1 and Piers 1½ – 5 and Pier 7.

- Through street-level retail and restaurant uses, the Project creates new or enhanced pedestrian, public access and circulation improvements that will further connect the City with the waterfront and activate, enhance and beautify the Ferry Building waterfront area and the Golden Gateway area.
- The Developer will construct a sustainable project that achieves high-quality urban design and LEED Gold standards that enhance the existing urban design character of the area while recognizing and respecting the character of the Ferry Building, The Embarcadero Roadway and the mid-Embarcadero open space improvements including Harry Bridges Plaza and Sue Bierman Park.
- The Project complements the rich architectural character of the Embarcadero National Historic District including the features of the pier bulkhead buildings on the east side of The Embarcadero.
- The Project reconnects the downtown, Chinatown, and Golden Gateway landside neighborhoods with the waterfront by re-opening up Jackson Street and the Pacific Avenue walkway to The Embarcadero and widening the Drumm Street walkway.
- The Project will widen the Drumm Street garden walkway to increase views, light, safety and encourage pedestrian use and views of the waterfront.
- The reconfiguration of the rebuilt Health Club eliminates tennis courts to focus on aquatic programs and enables widening of the adjacent Embarcadero sidewalk.

Having considered these benefits and Project refinements, the Port Commission finds that the benefits of the Project outweigh the unavoidable adverse environmental effects, and that the adverse environmental effects are disclosed in the Final EIR. The Port Commission further finds that each of the above considerations is sufficient to approve the Project. For each of the reasons stated above, and all of them, the Project should be implemented notwithstanding the significant unavoidable adverse impacts identified in the Final EIR

STAFF RECOMMENDATION

Beginning with the 2008 Request for Proposals, the Port, working with its development partner, the City, Regulatory Agencies and numerous stakeholders, has diligently pursued and patiently shepherded the development project finally before the Port Commission at its May 29, 2012 special meeting. Because of the citywide importance of the SWL 351 site to the Port and to the City, the agreements before the Port Commission and the public contain particular provisions to assure the excellence and integrity of design, construction and management are appropriate for this highly visible, valuable location. Through the provision of market rate and affordable housing, new

parks and expanded open space, vibrant retail and an appropriate amount of off street parking, the SWL 351 / 8 Washington Project completes the vision for the Ferry Building Waterfront Area carefully delineated in the Waterfront Land Use Plan and so well expressed by the public-private investments at the Ferry Building, Pier 1, Piers 1½ – 5, Pier 7 and The Embarcadero Roadway. With great respect for these major accomplishments, Port staff respectfully request the following:

- 1) Adoption of the CEQA findings in Attachment A to Resolution 12-46;
- 2) Adoption of the mitigation and improvement measures and the Mitigation Monitoring and Reporting Program also included as Exhibit A to Attachment A; and
- 3) Approval of the Transaction Documents, in conformance with the terms described above, and of the Schematic Drawings

Prepared by: Phil Williamson, Project Manager
Jonathan Stern, Asst. Deputy Director, Planning & Development

For: Byron Rhett, Deputy Director, Planning & Development

Attachments

Attachment A: CEQA Findings
Exhibit A: Mitigation Monitoring and Reporting Program

Attachment B: Premises Map

Attachment C: Trust Parcel Descriptions

Attachment D: Port Payment Cash Flow Summary

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 12-46

- WHEREAS, The 8 Washington/Seawall Lot 351 Project ("**Project**") comprises the development of approximately 134 residential units, ground floor restaurant and retail space, publicly accessible open spaces, a health club, and an underground parking garage with up to 389 parking spaces on a project site that includes Seawall Lot 351 ("**SWL 351**") and an adjacent, privately held parcel, and includes a public trust exchange to transfer the public trust designation from a portion of SWL 351 to that portion of the project site that will be improved with uses that benefit the public trust and which will be under the jurisdiction of the Port Commission; and
- WHEREAS, On June 15, 2011, the San Francisco Planning Department published a Draft Environmental Impact Report ("**EIR**") which was available for public comment until August 15, 2011, and on July 21, 2011 the Planning Commission held a public hearing to solicit comments regarding the Draft EIR. On December 22, 2011, the Planning Department published the Comments and Responses on the Draft EIR which together with the Draft EIR constitute the Final EIR; and
- WHEREAS, On March 22, 2012, the Planning Commission reviewed and considered the Final Environmental Impact Report ("**Final EIR**") in Planning Department File No. 2007.0030E and found that the contents of said report and the procedures through which the Final EIR was prepared, publicized, and reviewed complied with the provisions of the California Environmental Quality Act ("**CEQA**"), the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code and found further that the Final EIR reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, and that the Comments and Responses document contains no significant revisions to the Draft EIR, and certified the completion of said Final EIR in compliance with CEQA and the CEQA Guidelines; and
- WHEREAS, The Port Commission has reviewed and considered the information contained in the Final EIR, all written and oral information provided by the Planning Department, the public, relevant public agencies and the administrative files for the Project and the Final EIR; and
- WHEREAS, The Project and EIR files have been made available for review by the Port Commission and the public, and those files are part of the record before the Port Commission; and

- WHEREAS, The Planning Department, Linda Avery, is the custodian of records, located in Case Number 2007.0030E, and those files are part of the record before this Port Commission; and
- WHEREAS, Port staff has prepared findings, as required by CEQA (“**CEQA Findings**”), which are attached to this resolution as Attachment A, which includes a Mitigation Measure and Reporting Program (“**MMRP**”); and
- WHEREAS, The CEQA Findings and the MMRP were made available to the public and the Port Commission for the Port Commission’s review, consideration and action; now therefore, be it
- RESOLVED, The Port Commission has reviewed and considered the Final EIR and adopts the CEQA Findings and MMRP for the Project, as presented in Attachment A, and incorporates those findings, including the Statement of Overriding Considerations, in this resolution by this reference; and, be it further
- RESOLVED, The Port Commission, in exercising its independent judgment, has relied upon and reviewed the information contained in the CEQA Findings, which describe the Project and Final EIR, and rejects alternatives to the Project for the reasons set forth in the CEQA Findings; and, be it further
- RESOLVED, The Port Commission adopts the CEQA Findings and the MMRP as the required mitigation measures to be implemented as part of the Project, where the Port Commission finds that all of the mitigation measures set forth in the Final EIR are feasible, and hereby adopts all mitigation measures as described in Attachment A in support of the approval of the Project, including any other actions necessary to secure other regulatory approvals to implement the Project, construction implementation, approval of the Development and Disposition Agreement, Purchase and Sale Agreement, Ground Lease, Trust Exchange Agreement with the California State Lands Commission, Maintenance Agreement, and related actions to implement the Project involving use of SWL 351 located along The Embarcadero waterfront between Washington Street and Broadway.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of May 29, 2012.

Secretary

ATTACHMENT A TO RESOLUTION NO. 12-46

THIS PAGE IS LEFT INTENTIONALLY BLANK

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 12-47

WHEREAS, Charter Section B3.581 empowers the Port Commission (“**Port**”) with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port jurisdiction; and

WHEREAS, The Port of San Francisco Waterfront Land Use Plan, including the Design and Access Element (collectively, the “**Waterfront Plan**”) is the Port’s adopted land use document for property within Port jurisdiction, which provides the policy foundation for waterfront development and improvement projects; and

WHEREAS, The Port owns Seawall Lot 351 (“**SWL 351**”), a triangular lot located at Washington Street and The Embarcadero, which lot is also within both of the Waterfront Plan’s Ferry Building Waterfront area and Ferry Building Mixed Use Opportunity Area, and is adjacent to the Golden Gateway residential site having an address at 8 Washington Street (“**8 Washington site**,” together with SWL 351, the “**Project Site**”); and

WHEREAS, SWL 351 is subject to the common law public trust for commerce, navigation, and fisheries and the statutory trust imposed by the Burton Act, Chapter 1333 of the Statutes of 1968, as amended, by which the State of California (the “**State**”) conveyed to the City and County of San Francisco (the “**City**”), in trust and subject to certain terms, conditions and reservations, the State’s interest in certain tidelands (collectively, the “**Public Trust**”); and

WHEREAS, The Waterfront Plan includes the following Development Standards for the Ferry Building Mixed Use Opportunity Area:

"Explore the possibility of obtaining economic value from SWL 351 by combining it with the adjacent Golden Gateway residential site [the 8 Washington site] to provide expanded opportunities for mixed residential and commercial development.

"Maximize efficient use of new and existing parking to serve existing business, further promote public use of the Ferry and Agriculture Buildings, stimulate reuse of Piers 1, 1-1/2, 3 and 5.

"The design of new development should respect the character of the Ferry Building, the mid-Embarcadero open space improvements, and the Golden Gateway project.

"The design of new development should minimize the perceived barrier of The Embarcadero and encourage a pleasant pedestrian connection between the City and the waterfront.

"Allow...restaurants and other eating and drinking establishments that both attract and benefit from visitors to the waterfront. (Waterfront Plan, pp. 128-130);" and

- WHEREAS, The acceptable land uses for SWL 351 identified in the Waterfront Plan include open space, residential, parking, and retail (including restaurants), recreational enterprises and visitor services (*Waterfront Plan, Table (1, 2, 3, 4), p. 126*); and
- WHEREAS, By Resolution No. 08-45, the Port Commission authorized Port staff to issue a Request for Proposals (the "**RFP**") to solicit proposals from qualified parties to develop and operate on SWL 351 a mixed-use project to promote Public Trust purposes and the Waterfront Plan, including the Development Standards for the Ferry Building Mixed Use Opportunity Area; and
- WHEREAS, The Port Commission (i) reviewed and evaluated the summary and analyses of San Francisco Waterfront Partners II, LLC's ("**Developer**") proposal prepared by Port staff, its independent real estate economics consultant, and the evaluation panel, (ii) reviewed the Port staff recommendations set forth in the Staff Report accompanying Resolution 09-12, (iii) considered the public testimony on Developer 's proposal given to the Port Commission, and (iv) determined that the Developer's proposal met the requirements set out in the RFP and achieved the Port's objectives for SWL 351; and
- WHEREAS, By Resolution 09-12, the Port Commission (i) awarded to Developer an exclusive right to negotiate with the Port to develop the Project Site, and (ii) directed Developer and Port staff to participate in a community planning process (the "**NES**") led by the San Francisco Planning Department, as recommended in the February 19, 2009 letter to the Port Commission from Supervisor David Chiu; and
- WHEREAS, The Port and Developer entered into an Exclusive Negotiating Agreement, effective August 26, 2009 (as may be amended from time to time, the "**ENA**"), setting forth the process, terms and conditions upon which the Port and Developer agreed to negotiate certain transaction documents for the development of the Project Site and requiring the Port and Developer to negotiate a term sheet to describe the basic elements of the proposed project, site plan, use program, economic parameters, and other fundamental terms that will serve as the basis for negotiating the transaction documents (the "**Term Sheet**"); and

WHEREAS, By Resolution 10-66, the Port Commission approved the Term Sheet containing the business terms for the proposed Project (as defined below); and

WHEREAS, Developer is proposing to build on portions of the Project Site that will be held in private ownership after the Trust Exchange (as defined below), the following improvements: (i) two mixed-use buildings containing approximately 134 residential units, (ii) an underground parking garage for residents of the buildings and the public, (iii) a new fitness and health club, and (iv) a café adjacent to the new fitness and health club (collectively, the "**Developer Improvements**"); and

WHEREAS, Developer is proposing to build on portions of the Project Site the Port will own after the Trust Exchange, the following improvements: (i) approximately 10,450 square feet of public open space to be known as "**Jackson Commons**" located on the former Jackson Street right-of-way, (ii) approximately 11,840 square feet of public open space to be known as "**Pacific Park**" immediately north of the Trust Retail Parcel, (iii) approximately 2,890 square feet of additional public open space along the Drumm Street pedestrian path, (iv) an approximately 4,000 square foot, one-story, 18-foot-tall retail building on a parcel adjacent to Pacific Park (the "**Trust Retail Parcel**"), and (v) approximately 4,835 square feet of improved and widened sidewalk along the west side of The Embarcadero, immediately south of Pacific Park and fronting a portion of the east side of the newly built fitness and health club (collectively, the "**Public Improvements**;" together with the Developer Improvements, the "**Project**");and

WHEREAS, In connection with the use of Jackson Commons and Pacific Park as public open space, the Port and Developer are proposing that Jackson Commons and all or a portion of Pacific Park be dedicated as a public right-of-way for use as parks and open space only; and

WHEREAS, In order to develop the proposed Project, the California State Lands Commission ("**State Lands Commission**") must approve a Public Trust exchange authorizing a realignment of the Public Trust between the 8 Washington site and SWL 351 pursuant to Section 5 of Chapter 310, Statutes of 1987 ("**Chapter 310**") (the "**Trust Exchange**") and the Port has negotiated with the State Lands Commission staff a trust exchange agreement (the "**Trust Exchange Agreement**") whereby the Public Trust will be lifted from approximately 23,020 square feet of SWL 351 (the "**Trust Termination Parcel**") in exchange for impressing the Public Trust on approximately 28,241 square feet of the 8 Washington site that is not currently subject to the Public Trust (the "**Trust Parcel**"); and

WHEREAS, As required by Chapter 310, the Port Commission makes the following findings with respect to the Trust Termination Parcel:

1. *The Trust Termination Parcel has been filled and reclaimed.* The Trust Termination Parcel is a portion of SWL 351, which was filled as part of the Port's program of reclaiming lands between the new seawall and the previously existing City front, for the purpose of generating revenues used to support the improvement of the harbor.

2. *The Trust Termination Parcel is cut off from access to the waters of the Bay.* All of the Trust Termination Parcel is located on filled land, located on the landside of the 100 foot wide Embarcadero Roadway, which consists of 6 traffic lanes and the MUNI light-rail corridor. No immediate access to the waters of San Francisco Bay exists from any portion of the Trust Termination Parcel.

3. *The Trust Termination Parcel is a very small portion of the Port's trust grant.* The total area of the Trust Termination Parcel is approximately 22,650 square feet (approximately ½ acre). The total amount of granted tide and submerged lands held by the Port is approximately 725 acres, of which the Trust Termination Parcel represents 0.07%.

4. *The Trust Termination Parcel is no longer needed or required for the promotion of the Public Trust.* Except for ferry operations at the Ferry Building and limited boat docking at Pier 1½ and 3, maritime activities are no longer significant in the Ferry Building Waterfront area. The Ferry Building Waterfront area abuts downtown San Francisco's diverse mix of urban activities. SWL 351 is immediately adjacent to a private swim and tennis club and is near low to high-rise residential and commercial development. For many years, the site has been used as a surface parking lot. Because SWL 351 is physically cut-off from the water, serves no purpose in furthering maritime commerce, navigation or fisheries, and the existing surface parking will be replaced with more public parking spaces in an underground parking garage, it is no longer needed or required for the promotion of the Public Trust. In addition, the San Francisco Public Utilities Commission (“**SFPUC**”) operates a force main that serves much of the northeast waterfront which runs through the entire width of SWL 351. No structures can be built over the length of the force main, including a buffer zone around the force main, which in effect, further divides SWL 351 into two smaller and separate areas, making development of Public Trust consistent commercial uses that much more difficult. SWL 351's relatively small size and unusual shape (as currently configured), in addition to the inability to build structures over the SFPUC force main that runs through the entire width of SWL 351 (i) does not allow for the development of any of the uses that would further the overall Public

Trust goals of the Waterfront Plan or promote other Public Trust uses such as useable or desirable open space or park use, and (ii) makes development of a Public Trust-consistent commercial use, such as hotel or retail, economically infeasible, as further evidenced by the withdrawal of the only other respondent to the RFP before the Port's review of the proposal even began. Its current use for parking serving the Ferry Building Waterfront area could be better continued as sub-surface parking (as proposed), which would improve the appearance of the site and allow for development of better and additional public-serving Public Trust uses, as further described in item #5 below.

5. The Trust Termination Parcel can be removed without causing substantial interference with Public Trust uses and purposes and the Trust Parcel is useful for the particular trust purposes authorized by the Burton Act. In exchange for the lifting of the Public Trust from the Trust Termination Parcel, a greater square footage of land immediately adjacent to SWL 351 will be impressed with the Public Trust. By combining SWL 351 and the 8 Washington site, the resulting land configuration allows for the development of a mixed use project that further promotes Public Trust uses and purposes and realizes the vision put forth in the Waterfront Plan, by, among other things, (i) creating important new visual and pedestrian public access linking Jackson Street to The Embarcadero; (ii) achieving a long term solution to parking needs of the Ferry Building Waterfront area, as well as a central parking location for visitors to the northeastern waterfront; (iii) improving the visual quality of the Ferry Building Waterfront area by locating parking underground and creating an attractive mixed use development that enhances the land side of The Embarcadero and reconnects San Francisco with the waterfront; (iv) creating new parks along The Embarcadero, enhancing the waterfront visitor experience; (v) providing visitor-serving retail uses, including a café in prominent location adjacent to the proposed Pacific Park with waterfront views, (vi) creating new view corridors of the San Francisco Bay through the Project Site, and (vii) creating significant structures that recognize and respect the Port's bulkhead structures across The Embarcadero; and

WHEREAS, The City's Director of Property has determined based on an independent MAI appraisal that the Trust Termination Parcel has an appraised value of \$7,560,000 and the Trust Parcel has an appraised value of \$8,630,000, confirming that the value of the land to be exchanged into the Public Trust equals or exceeds the value of the land to be exchanged out of the Public Trust; and

- WHEREAS, Developer is proposing to subdivide the Project Site into separate land and air space parcels such that, among other things, the Trust Retail Parcel and the portions of the Project Site that will be owned by the Port after the Trust Exchange (not including the Trust Retail Parcel, "**Open Space Parcel**") shall be their own separate legal parcels; and
- WHEREAS, On November 21, 2011, the Waterfront Design Advisory Committee reviewed the design of the Project and found it consistent with the Waterfront Design and Access goals, objectives and criteria; and
- WHEREAS, Schematic Drawings of the proposed Project, a copy of which is on file with the Port Commission are consistent with the Waterfront Plan applicable to the Ferry Building Waterfront Area; and
- WHEREAS, Port staff and Developer have negotiated the terms of the (1) Disposition and Development Agreement, (2) Lease No. L-15110, (3) Purchase and Sale Agreement, (4) Trust Exchange Agreement, (5) Maintenance Agreement, and (6) related exhibits and attachments to all of the foregoing (collectively, the "**Project Documents**") described in the Memorandum accompanying this Resolution, copies of which are on file with the Port Commission Secretary; and
- WHEREAS, The Purchase and Sale Agreement for the Project ("**PSA**") sets forth the terms and conditions under which (i) the Port will convey the Trust Termination Parcel to Developer, (ii) Developer will convey the Trust Parcel to the Port, (iii) Developer will develop the Developer Improvements, (iv) Developer will dedicate in perpetuity, no less than 175 parking spaces in the underground parking garage, which spaces may be provided on an independently accessible or valet basis to serve the Ferry Building Waterfront area, (v) the Port can exercise an option to purchase an air space parcel within the underground parking garage that can accommodate no less than 175 cars after completion of the Project until two years following the initial sale of the last residential condominium unit, and (vi) the Port may require Developer to provide replacement parking spaces in the event Developer fails to commence or complete construction of the underground parking garage; and
- WHEREAS, In addition to receiving the Trust Parcel, the Port shall receive the following payments from the sale of the Trust Termination Parcel: (i) a lump sum payment of \$3 million, (ii) transfer fees (equaling 1.0% of the purchase price) in perpetuity from and after but not including the first sale (or lease with a term of thirty-five (35) years or longer) of each of the (a) residential condominiums, and (b) commercial condominiums (excluding the new fitness and health club), and (iii) an ongoing revenue stream of \$120,000 per year for 66-years, commencing upon completion of Public Improvements, adjusted every 5 years by the CPI with a minimum increase of 10% and a maximum of 20%; and

- WHEREAS, Developer will pay to Port or a City agency or its designee, an amount that will be used to fund affordable housing projects in the City, which amount will be determined by the number and type of residential units built in the Project as described in the Memorandum accompanying this Resolution and Port staff estimates that based on the number and type of residential units approved by the Planning Commission for the Project, the additional contribution Developer will make for affordable housing projects in the City is estimated to be around \$2.2 million, which may be adjusted upwards or downwards depending on the final number and type of units set forth in the Project's building permit; and
- WHEREAS, The Disposition and Development Agreement ("**DDA**") sets forth Developer's obligations to construct the Public Improvements, the conditions upon which the Port will deliver Lease No. L-15110 to Developer for the Trust Retail Parcel (the "**Lease**"), and public financing provisions for certain qualified costs of the Project; and
- WHEREAS, Material terms of the Lease include a 66-year term, permitted uses for visitor-serving commercial/recreation, including restaurant and recreational facilities (e.g. bicycle rental), construction period rent of \$60,000/annum, and percentage rent equal to 15% of gross revenues received by Developer from future retail operator(s); and
- WHEREAS, Upon issuance of a Certification of Completion for the Project, Port and Developer will enter into a Maintenance Agreement for the management, maintenance, repair, and operation by Developer of the Open Space Parcel requiring Developer, or its successor or assignee (which may be the homeowner's association for the condominium project), to be responsible for the management, maintenance, repair and operation of the Open Space Parcel at its sole expense; and
- WHEREAS, On March 22, 2012, the San Francisco Planning Commission by Motion No. 120272 found that the Project is consistent with the objectives and policies of the San Francisco General Plan, and the Priority Policies of Section 101.1; and
- WHEREAS, The Project Documents conform to all local laws and regulations and are not prohibited by the City's Charter; and
- WHEREAS, The Project is consistent with the Waterfront Plan uses and policies as described above; and
- WHEREAS, The Port and Developer are committed to improvements consistent with the Waterfront Plan and San Francisco General Plan policies intended to preserve the strong architectural and historic character of the Ferry Building Waterfront area; and

- WHEREAS, City and Port staff and consultants have conducted substantial economic analysis of the Project impacts and benefits on the Port and City; and
- WHEREAS, The Project will generate additional significant public benefits for the Port and the City, including: (i) the replacement of an underutilized Port seawall lot currently used for surface parking with a below grade parking structure that meets the needs of Port businesses and visitors; (ii) the creation of significant new jobs and economic development; and (iii) both a lump sum payment and an ongoing revenue stream for the Port to help the Port continue to promote Public Trust uses and purposes; and
- WHEREAS, On March 22, 2012, the Planning Commission held a duly-noticed public hearing to consider certification of the Final Environmental Impact Report for the 8 Washington Street/Seawall Lot 351 Project (Planning Dept. Case No. 2007.0030E) (the “**FEIR**”), and certified the FEIR and made findings (“**CEQA Findings**”) as required by the California Environmental Quality Act (“**CEQA**”) and certified the completion of the FEIR in compliance CEQA, the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code; now therefore, be it
- RESOLVED That the Port Commission has reviewed and considered the information contained in the FEIR, the CEQA Findings, and the Project Documents and all other matters and actions approved by the Port Commission by this Resolution reflect the Project examined in the FEIR for which the Port Commission by Resolution No. 12-46 has adopted findings with respect to the FEIR as required by CEQA, including the Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program, which findings are on file with the Secretary of the Port Commission; and be it further
- RESOLVED, For reasons set forth herein, the Port Commission finds that the Project is consistent with the Public Trust and the Waterfront Plan; and be it further
- RESOLVED, For reasons set forth herein, the Port Commission finds that the Trust Termination Parcel (i) has been filled and reclaimed, (ii) is cut off from access to the waters of the Bay, (iii) is a very small portion of the Port’s trust grant, and (iv) is no longer needed or required for the promotion of the Public Trust; and be it further
- RESOLVED, For reasons set forth herein, the Port Commission further finds that (i) the Trust Termination Parcel can be removed without causing substantial interference with Public Trust uses and purposes, (ii) the Trust Parcel is useful for the particular trust purposes authorized by the Burton Act, and (iii) the value of the land to be exchanged into the Public Trust equals or exceeds the value of the land to be exchanged out of the

Public Trust; and be it further

RESOLVED, The Trust Exchange Agreement is in conformance with the Burton Act and Chapter 310, subject to approval by the State Lands Commission; and be it further

RESOLVED, That the Port Commission approves the form and the substance of the Project Documents, including all attachments and exhibits thereto, and the transactions which such Project Documents contemplate, incorporating the material business terms set forth in the Memorandum accompanying this Resolution; and be it further

RESOLVED, That the Port Commission hereby approves the Schematic Drawings of the proposed Project, a copy of which is on file with the Port Commission Secretary, and authorizes the Executive Director to approve non-material changes in the Schematic Drawings; and be it further

RESOLVED, That it is in the City's and Port's best interest to convey the Trust Termination Parcel to Developer, that the public interest or necessity demands, or will not be inconvenienced by the sale of the Trust Termination Parcel directly to Developer pursuant to the PSA; and be it further

RESOLVED, That with the exchange of the Trust Termination Parcel for the Trust Parcel, the sales price of the Trust Termination Parcel is at least 100% of the City's Director of Property's appraisal of the Trust Termination Parcel; and be it further

RESOLVED, That the Port Commission authorizes and directs the Executive Director of the Port (the "**Executive Director**") to forward Lease No. L-15110, the PSA, and the Maintenance Agreement to the Board of Supervisors for approval pursuant to its authority under Charter Sections 9.118(b) and (c), and upon the effectiveness of such approval, to execute the DDA, and the PSA, and subject to the terms of the DDA and the PSA, as applicable, execute the Lease and Maintenance Agreement, in substantially the form of such agreements on file with the Port Commission Secretary, and in such final form as is approved by the Executive Director in consultation with the City Attorney; and be it further

RESOLVED, That the Port Commission authorizes and directs the Executive Director to forward the Trust Exchange Agreement to (i) the Board of Supervisors for approval pursuant to its authority under Charter Section 9.118(c), and (ii) the State Lands Commission for approval pursuant to its authority under Chapter 310, and upon the effectiveness of such approval and subject to the terms of the DDA and the PSA, as applicable, execute the Trust Exchange Agreement in substantially the form of such agreement on file with the Port Commission Secretary, and in such final form as is

approved by the Executive Director in consultation with the City Attorney;
and be it further

RESOLVED, That the City's Director of Property and the Executive Director are hereby authorized and urged, in the name and on behalf of the City and the Port, to (i) accept the Trust Parcel from Developer, (ii) execute and deliver deeds conveying the Trust Termination Parcel and Trust Parcel to the State Lands Commission, (iii) accept the Trust Termination Parcel and the Trust Parcel from the State Lands Commission, and (iv) execute and deliver the deed to the Trust Termination Parcel to Developer, upon the closing in accordance with the terms and conditions of the Trust Exchange Agreement and the PSA, and to take any and all steps (including, but not limited to, the execution and delivery of any and all certificates, agreements, parking covenants, notices, consents, escrow instructions, closing documents and other instruments or documents) as they deem necessary or appropriate in order to consummate the conveyance of the Trust Termination Parcel to Developer and acceptance of the Trust Parcel from Developer pursuant to the PSA, or to otherwise effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by the Director of Property and/or Executive Director of any such documents; and be it further

RESOLVED, That the Executive Director shall determine satisfaction of the conditions precedent under the PSA to the conveyance of the Trust Termination Parcel and the acceptance by the Port of the Trust Parcel, such determination to be conclusively evidenced by the execution and delivery by the Executive Director and/or the City's Director of Property of the applicable deeds; and be it further

RESOLVED, That the Executive Director shall determine satisfaction of the conditions precedent under the DDA to the conveyance of the leasehold estate in the Trust Retail Parcel, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of the Lease; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director, and as to the PSA, Executive Director and/or the City's Director of Property, to enter into reciprocal easement agreements, easement agreements, and other covenants and property documents necessary to implement the transactions contemplated by the Project Documents, and to enter into any additions, amendments or other modifications to the Project Documents including preparation and attachment of, or changes to, any or all of the attachments and exhibits that the Executive Director, in consultation with the City Attorney, determines are in the best interests of the City, do not materially decrease the benefits or otherwise materially increase the obligations or liabilities of the City or Port, and

are necessary or advisable to complete the transactions that the Project Documents contemplate and effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of such reciprocal easement agreements, easement agreements, and other covenants and property documents, additions, amendments or other modifications to the Project Documents; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director and any other appropriate officers, agents or employees of the City to take any and all steps (including if necessary, obtaining Board of Supervisors approval and the execution and delivery of any and all applications, recordings, maps, certificates, agreements, notices, consents, and other instruments or documents) as they or any of them deems necessary or appropriate, in consultation with the City Attorney, in order to consummate the (i) dedication of Jackson Commons as a public right-of-way for parks and open space use only, (ii) widening of the sidewalk along the west side of The Embarcadero, immediately south of Pacific Park and fronting a portion of the east side of the newly built fitness and health club; and (iii) all or partial dedication of Pacific Park as a public right-of-way for parks and open space use only; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director and any other appropriate officers, agents or employees of the City to take any and all steps (including the execution and delivery of any and all certificates, agreements, notices, consents, escrow instructions, closing documents and other instruments or documents) as they or any of them deems necessary or appropriate, in consultation with the City Attorney, in order to consummate the transactions contemplated under the Project Documents, in accordance with this resolution, or to otherwise effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by any such person or persons of any such documents; and be it further

RESOLVED, That the Port Commission approves, confirms and ratifies all prior actions taken by the officials, employees and agents of the Port Commission or the City with respect to the Project Documents.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of May 29, 2012.

Secretary