

## MEMORANDUM

July 5, 2018

**TO:** MEMBERS, PORT COMMISSION  
Hon. Kimberly Brandon, President  
Hon. Willie Adams, Vice President  
Hon. Gail Gilman  
Hon. Victor Makras  
Hon. Doreen Woo Ho

**FROM:** Elaine Forbes  
Executive Director

**SUBJECT:** Request (1) Adoption of the Final Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program under the California Environmental Quality Act for the 88 Broadway & 735 Davis Street Project (*Planning Department File No. 2016-007850ENV*); (2) Approval of an Option Agreement and attached Form of Ground Lease (“Lease”) with 88 Broadway Family LP, a California limited partnership, with a term of 57 years with one 18-year extension option for development and operation of affordable housing on Seawall Lot 322-1 located at Broadway and Front Streets (also known as 88 Broadway) (subject to Board of Supervisors approval); (3) Approval of Schematic Drawings for the proposed project at 88 Broadway; and (4) Approval of a Memorandum of Understanding between the Port and the San Francisco Mayor’s Office of Housing and Community Development regarding payment of fair market value and ongoing coordination and cooperation relating to the proposed Lease (the “Development MOU”) (subject to Board of Supervisors’ approval).

**Director’s Recommendation:** Approve the attached Resolution

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### EXECUTIVE SUMMARY

This Memorandum provides an overview of three transaction documents negotiated by Port staff, Mayor’s Office of Housing and Community Development (the “Housing Office”) staff and 88 Broadway Family LP, a California limited partnership (the “Developer”) to enable an affordable housing development (the “Development”) proposed for Seawall Lot 322-1 (the “Site”), a land parcel bounded by Broadway, Front, and Vallejo Streets and on its eastern boundary by two buildings and an adjacent City-own parcel at 735 Davis Street, as shown in the attached **Exhibit “A,” Site Map**. Staff is seeking approval of:

**THIS PRINT COVERS CALENDAR ITEM NO. 12A**

1. an Option to Lease Agreement (the “Option Agreement”) between the Port and the Developer;
2. a Form of Ground Lease (“Lease”) between the Port and Developer attached to the Option Agreement, with a term of 57 years with one 18-year extension option for development and operation of affordable housing at 88 Broadway; and
3. the Development MOU between the Port and the San Francisco Mayor’s Office of Housing and Community Development regarding payment of fair market value and ongoing coordination and cooperation relating to the proposed Lease (Option Agreement, Lease and Development MOU, collectively, the “Transaction Documents”).

Port staff recommends that the Port Commission adopt the resolution attached to this report approving the Transaction Documents and Schematic Drawings for the proposed project at 88 Broadway.

An informational presentation on the proposed development was provided to the Port Commission at its June 12, 2018 public meeting<sup>1</sup>. Material updates to the June 8, 2018 memorandum are presented here in underlined text.

The proposed development is anticipated to provide a number of benefits to the Port, the City and the State including :(a) an estimated \$14.9 million net present value (“NPV”) of lease revenues for the Port over the initial term of the Lease, excluding the value of the land and improvements returning to the Port; (b) much needed affordable housing for very low, low- and moderate-income households; and (c) economic benefits in construction and permanent jobs. As proposed, the Development will produce 124 units of rental housing affordable to families earning 30-120% of Area Median Income, a manager’s unit, a childcare center, restaurant space, a community room and open space. In comparison, the Port currently receives \$465,065 in revenue annually from leasing the Site for parking, which if extended over the same period is estimated to generate approximately \$11.3 million in NPV without the other benefits of the Development.

The planning for the proposed development began with State Assembly Bill 2649 (2012, Ammiano), as amended, which permits the lifting of public trust use restrictions from the Site to allow construction and operation of affordable housing development for up to 75 years, subject to State Lands Commission’s concurrence that the Site is no longer necessary for public trust or Burton Act purposes and that lifting the use requirements of the public trust, Burton Act and transfer agreement until January 1, 2105 is in the best interest of the people of the State of California. On March 11, 2014, by Resolution No. 14-16,<sup>2</sup> the Port Commission approved a Memorandum of Understanding (the

<sup>1</sup> [https://sfport.com/sites/default/files/Commission/Item%2012C%20SWL%20322-1%20informational%20memorandum\\_0.pdf](https://sfport.com/sites/default/files/Commission/Item%2012C%20SWL%20322-1%20informational%20memorandum_0.pdf)

<sup>2</sup> <http://sfport.com/ftp/meetingarchive/commission/38.106.4.220/modules/Item%2011C%20SWL%20322-1%20MOU-documentid=7738.pdf>

“Predevelopment MOU”) between the Port and the Housing Office to explore the feasibility of developing the Site with affordable housing.

Most of the key feasibility tasks to be completed under the Predevelopment MOU have been completed. These include the competitive solicitation and selection of a developer team led by Bridge Housing (“Bridge”) and the John Stewart Company (“JSCo”) which formed 88 Broadway Family LP (the “Developer”) to undertake the proposed development; extensive community outreach to gather input and keep community members informed; and the procurement of land use entitlements including completion of the required California Environmental Quality Act (“CEQA”) evaluation for the proposed development. The Site is proposed to be developed with the adjacent land parcel (the “City Parcel”), owned by the City and County of San Francisco (the “City”) through the San Francisco Department of Public Works; the two projects being collectively referred to herein as the “Development”. A map showing these sites is attached as **Exhibit “A,” Site Map**.

The Development is summarized in the table below.

**Development Summary**

	88 Broadway Family Project	735 Davis Senior Project	Total
<b>Location</b>	SWL 322-1	SFDPW Site	
<b>Housing Units</b>	125	53	178 Units
<b>Affordability</b>	30% to 120% AMI	20% to 70% AMI	
<b>Other Uses</b>	<u>Incidental/Ancillary Uses</u>		
	Restaurant: 4,300 nsf	Café: 1,100 nsf	
	Childcare: 3,900 nsf	Community Room: 700 nsf	
	Community Room: 1,500 nsf		
<b>Public Parking</b>	None	None	None
<b>Residential/Childcare</b>	\$88,677,000	\$36,863,000	\$125,540,000
<b>Retail</b>	\$ 2,053,000	\$ 697,000	\$ 2,750,000
<b>Total Development Cost</b>	\$90,730,000	\$37,560,000	\$128,290,000
<b>Funding Sources</b>			
<b>Developer</b>	\$53,565,000	\$16,044,000	\$69,609,000
<b>Housing Office</b>	\$37,165,000	\$21,516,000	\$58,681,000
<b>Port</b>	\$0	\$0	\$0
<b>Total Sources</b>	\$90,730,000	\$37,560,000	\$128,290,000

The key goals of this Development for the Port are: (a) the leasing of the Site, which is no longer needed for trust purposes, for development of affordable housing and using the funds generated from its leasing to address a portion of the Port's capital funding needs and (b) contributing to City and State affordable housing objectives. Port, Housing Office, and Developer staff are nearing completion of entitlement and feasibility requirements that has cleared the way for Port staff to seek approval of the agreements intended to achieve these twin goals, including the three key transaction documents to implement the Development.

The proposed Transaction Documents are:

**Option to Lease Agreement** (the "Option Agreement") between the Port and the Developer. Its purpose is to provide the Developer with evidence of site control to support its application for an allocation of tax credits from the California Low-income Tax Credit Allocation Committee ("TCAC"). This agreement provides, among other things: (i) the preconditions the Developer must meet to exercise the option to lease and (ii) the form of ground lease governing use of the premises. The preconditions are detailed under the discussion section of this staff report. When approved by the Port Commission, and State Lands Commission ("SLC"), this agreement will be effective for approximately two years or until replaced by the ground lease. A form of the Lease will be attached to the Option Agreement and if approved, it will become effective after it has been duly executed, the Developer has received all required financing and closed escrow, and the Lease is recorded.

**Ground Lease** (the "Lease"), between the Port and the Developer. The Lease's purpose is to convey property rights subject to the negotiated terms and conditions under which the Site is being leased to the Developer. Proposed key terms include: (a) a 57-year initial term with an 18-year extension option; (b) rent to include (i) \$20,000 per year for the residential portion, in recognition of the fact that the Port will receive upfront a prepayment of the Site's fair market value from MOHCD; (ii) 30% of the annual residual receipts collected by the Developer for the proposed restaurant sublease or other retail operation; (iii) 50% of excess rent from other subleases; and (iv) a mechanism for the Port to benefit from an increase in market value over the life of the Lease in a sale or refinancing and (c) Port's standard lease provisions, including insurance, indemnity, sea level rise and flooding provisions, and prior consent for transfers and assignments, among others. The lease is subject to approval by the City's Board of Supervisors ("Board of Supervisors") and SLC regarding rent payments and lifting of the trust restrictions. In addition, because of its role in administering the Lease, the Lease will be subject to the Housing Office's consent.

**Development MOU** between the Port and the Housing Office. Its purpose is to document Port's and Housing Office's respective roles and responsibilities in moving forward with the Development. Its key terms include how and when the Housing Office will pay Port for the Site's FMV, interest accrual on the outstanding land payment (if any) and rights of the Housing Office to cure a Developer default, and to protect the City affordable housing funds invested in the Project. The Development MOU is subject to approval by the Port Commission and the Board of Supervisors, with endorsement by SLC as to provisions regarding the FMV payment.

The remainder of this staff report provides background information and discusses the Site, state and local legislation providing the impetus for the proposed development, accomplishments to date, and elaboration on the key terms proposed for the Transaction Documents. If the Port Commission approves the attached resolution, the Executive Director and Port staff will seek necessary approvals from the Board of Supervisors and SLC.

## **BACKGROUND**

### *Site Description and Allowed Use*

The Site is bounded by Broadway, Front, and Vallejo Streets and on its eastern boundary by two buildings and an adjacent City-owned parcel at 735 Davis Street, as shown in the attached **Exhibit “B,” Development Schematic Design**. The Site is a paved, flat, rectangular land parcel, approximately 37,810 square feet in area, currently being used as surface parking under lease to SP Plus – Hyde Parking Joint Venture. Current zoning for the Site is C-2 (Community Business), which allows residential as a permitted use. Ground floor retail and commercial are appropriate ancillary uses which were found acceptable during the entitlement process. The Site is in the City’s Northeast Waterfront Historic District (“Historic District”) and a 65-foot height limit applies to the Site. Currently the Site generates approximately \$465,065 annually or \$38,755 per month in rental revenue to the Port.

### *Legislative Efforts/MOU*

The Port faces some challenges in developing its properties because of expensive piles to support buildings on filled tidelands, high historic building rehabilitation costs, potential environmental remediation cost, complex regulatory compliance requirements including development impact fees, and shoreline park/open space (public access) development and cost obligations. Among the strategies for addressing these financial challenges is leasing Port properties no longer needed for trust purposes because they are cut off from the Bay, and using the funds generated by such leasing for Port capital funding needs.

~~To implement this strategy and to address affordable housing needs, Senate Bill 815 (Migden, 2007); Assembly Bill 2649 (Ammiano, 2012); and Assembly Bill 2797 (Chiu, 2016) (collectively, the “State Legislation”) were adopted to permit the lifting of Public Trust use restrictions from a number of Port properties on specific conditions. AB 2649 identified Seawall Lot 322-1 was identified in the State Legislation as a site to be considered for affordable housing development under a lease with term of up to 75 years, provided the development proposal is feasible.~~

In November 2012, the Board of Supervisors adopted Ordinance No. 232-12 which allows the Port and Housing Office to enter into the Pre-Development MOU. This MOU provides, among other things, a mechanism for the Port to receive fair market value if it enters into a below-market lease with Housing Office for affordable housing on the Site. This payment mechanism has evolved from using Jobs-Housing Linkage Program (“JHLP”) credits (which is not the exclusive mechanism for compensating the Port) to using Affordable Housing In Lieu Fee as described under the “Analysis of Proposed Project Terms and Conditions” below. This MOU also provided that the Port would

contribute no funding to the project, unless a public parking garage was deemed feasible and included in the Development. This Predevelopment MOU provided for a term of three years to complete all feasibility tasks required to close escrow, and a delegation to the Port Executive Director to extend the term by up to twelve months.

#### *Accomplishments to Date*

Between April 2014 and May 2018, the Port and Housing Office completed most of the feasibility tasks enumerated in the Predevelopment MOU, including (i) Housing Office's competitive solicitation and selection of the Developer; (ii) the Port's consent to the Developer selection; (iii) the Developer's submission of its initial development proposal; (iv) the Port's determination to exclude the public parking garage from the development due to financial infeasibility; (v) Housing Office provision of predevelopment funding for the Development; (vi) Port, Housing Office, and the Developer negotiating and drafting required transaction documents for execution; and (vii) the Developer's completion of a number of entitlement tasks, including completion of CEQA through a Final Mitigated Negative Declaration and other land use authorizations required for the Development.

#### *Major Tasks to be Completed Prior to Construction*

Other major tasks which must be completed to begin construction of the Project include: (a) approval of the transaction documents by Port Commission, the Board of Supervisors, and SLC; (b) the Developer securing required site control (achieved through the proposed transaction documents) to complete submission of funding applications to public and private funding sources; and (c) confirming overall project feasibility including financing plan.

#### *Public Outreach*

During completion of the tasks noted above staff of the Port, Housing Office and the Developer have also conducted a more extensive community outreach program than had been anticipated under the Predevelopment MOU, to better inform the public and generate community support for the Development. As such, the three-year Predevelopment MOU term was extended for the maximum time extension allowed without further Port Commission authorization. On April 29, 2018, the Predevelopment MOU expired. Port staff proposes to request an extension of the Predevelopment MOU to complete the remaining tasks as part of its request to approve the Transaction Documents.

#### *The Proposed Development*

The Developer's initial proposed development had included up to 130 affordable, rental family housing units with ground level spaces for retail, commercial, other ancillary uses, and two mid-block open spaces on the Site (the "Family Project"). In response to the community's desire for seniors to benefit from the development as well, the Housing Office sought and received City's consent to add the adjacent City property located at 735 Davis Street ("City Parcel") to the proposal to provide up to 50 to 55 senior housing units (the "Senior Project").

The two existing surface parking lots at the Site and the City Parcel will be demolished and then improved with two new six-story residential buildings for family and senior housing, respectively. The Family and Senior projects will be connected by open mid-

block passageways as shown on the attached **Exhibit “B,” Development Schematic Design.**

*The Family Project*

The Family Project will include approximately 124 affordable units and one manager housing unit totaling approximately 137,100 gross square feet (gsf) of residential dwelling space and approximately 8,700 gsf of nonresidential space. Residents would have access to a common, community room on the ground floor, an open podium courtyard on the second floor, two open decks on the fifth and sixth floors, and a rooftop terrace and community garden. Ancillary ground-level uses could include retail/commercial, a childcare center with an outdoor play area, and a childcare arcade.

Unit Type	Studio	1 Bedroom	2 Bedroom	3 Bedroom	Manager Unit	Total
No. of Units	4618	37	4846	23	1	125
Square Footage	430	590	900	1,240	1,240	

*The Senior Project*

The Senior Project will include approximately 53 affordable units totaling approximately 44,136 gsf of residential dwelling space and approximately 1,260 gsf of non-residential space. Seniors in this project will have access to a community room, an open courtyard on the first floor, and a roof deck on the fifth floor. Ground-level uses would include retail/commercial, and a community room.

Unit Type	Studio	1 Bedroom	Manager Unit	Total
No. of Units	23	29	51	53
Square Footage	430	590	623	

Each building will be approximately 65-feet tall (with an additional 10 feet for the elevator penthouse with variations in height between four and six stories at the streetwall to break up the massing on Front Street and “stepping down” as the Projects get closer to Davis Street to the east. The first floor would provide ground floor units, commercial space, bike parking, common space and social services for residential use, as well as property management space. Floors two through six would consist primarily of residential dwelling units, shared laundry rooms, mechanical spaces, and common spaces for residential use. A variety of open spaces is proposed on the roof and terrace levels. Both projects would include solar panels and green roofs on the roof level. In addition, heating, ventilation, and air conditioning equipment, and an emergency back-up diesel generator would be located on the rooftop of each building. Pedestrian bulb-outs are proposed on Front Street and Broadway. No off-street parking is proposed. Approximately 120 class 1 bicycle parking spaces and 20 class 2 bicycle parking spaces are proposed. Combined, both projects would contain approximately 178 affordable family and senior housing units and approximately 9,260 square feet of

restaurant and child care space resulting in an approximately 190,496-square-foot Development.

The buildings generally extend to the property line. Setbacks away from the streetwall exist at the upper levels of the buildings. Along Front Street, a substantial setback of the upper level is approximately 30 feet, making the upper floors minimally perceptible from the pedestrian's perspective. Project renderings show the proposed two six-story buildings having a contemporary architectural style.

The Project's architecture and urban design have been reviewed by the Architectural Review Committee ("ARC") of the Historic Preservation Commission ("HPC") and the Waterfront Design Advisory Committee ("WDAC") for compatibility with the Historic District and both ARC<sup>3</sup> and WDAC<sup>4</sup> found the overall design acceptable and provided a few comments. On April 4, 2018, HPC adopted Motion No. 0335<sup>5</sup> recommending the combined projects for a Certificate of Appropriateness.

### **Environmental Review under California Environmental Quality Act**

On November 15, 2017, the Developer filed Building Permit Applications with the City Department of Building Inspection ("DBI"). The Planning Department prepared a Draft Initial Study/Preliminary Mitigated Negative Declaration ("IS/PMND") for the Development and published the Draft IS/PMND for public review on October 25, 2017. The Draft was available for public comment until November 27, 2017. On November 27, 2017, an appeal of the IS/PMND was filed.

At a duly noticed public hearing held on March 8, 2018, the Planning Commission reviewed and considered the Preliminary Mitigated Negative Declaration ("PMND") and the appeal, upheld the PMND, and approved the issuance of the Final Mitigated Negative Declaration (FMND) as prepared by the Planning Department in compliance with CEQA, CEQA Guidelines (Title 14 California Code of Regulations Sections 15000 et seq.), and San Francisco Administrative Code Chapter 31 ("Chapter 31").

The Planning Department, after reviewing and considering the FMND and Initial Study, found that the contents of said report and the procedures through which the FMND and Initial Study were prepared, publicized, and reviewed are in compliance with CEQA, the State CEQA Guidelines, and Chapter 31 and that the FMND and Initial Study are adequate, accurate and objective, reflect the independent analysis and judgment of the Department and the Planning Commission. Planning Department staff prepared a Mitigation Monitoring and Reporting program ("MMRP"), which was made available to the public and the Planning Director for review, consideration, and action. The MMRP will be incorporated into the Lease.

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<sup>3</sup> [http://commissions.sfplanning.org/hpcpackets/88%20Broadway\\_2016-007850COA\\_ARC031517.pdf](http://commissions.sfplanning.org/hpcpackets/88%20Broadway_2016-007850COA_ARC031517.pdf)

<sup>4</sup> [https://sfport.com/sites/default/files/Planning/WDAC%20Meeting%20Documents/Staff\\_Report-1\\_1-29-18.pdf](https://sfport.com/sites/default/files/Planning/WDAC%20Meeting%20Documents/Staff_Report-1_1-29-18.pdf)

<sup>5</sup> [http://commissions.sfplanning.org/hpcpackets/20180404\\_hpc\\_min.pdf](http://commissions.sfplanning.org/hpcpackets/20180404_hpc_min.pdf)

On March 9, 2018, under Planning Code Section 315, the Planning Director adopted the FMND and authorized the Affordable Housing Project Authorization requested by the Developer to be in general conformance with plans on file with the Planning Department.

## **STRATEGIC OBJECTIVE**

The proposed Development is expected to contribute in a substantial way to meeting the *livability, sustainability, and economic vitality objectives* of the Port's Strategic Plan.

- *Livability Objectives*: The Development will provide much needed housing in premium location to serve a wide a range of households at various affordability levels and create living wage jobs and provide business opportunities for local businesses.
- *Sustainability Objectives*: The Development is expected to incorporate a variety of sustainable practices including environmentally sensitive construction techniques, recycling of construction waste, installation of high-efficiency building systems, storm water management, and green building standards.
- *Economic Vitality Objectives*: The proposed Development is anticipated to contribute to the Port's capital fund to support other projects.

To achieve these strategic objectives, Port, Housing Office, and the Developer staff are seeking approval of the proposed Transaction Documents discussed earlier in this Memorandum. The following provide more details on each transaction document.

## **DISCUSSION**

### **THE PROPOSED TRANSACTION DOCUMENTS**

The transaction documents' key terms are summarized below.

#### **I. The Development MOU**

##### **Parties to Agreement: the Port and the Housing Office**

The proposed Development MOU documents the terms and conditions Port and Housing Office staff have negotiated regarding the agencies' respective roles and responsibilities prior to closing of escrow on the Lease and during the term of the Lease. The Development MOU would also extend the Predevelopment MOU to enable Port and MOHCD to complete predevelopment tasks prior to close of escrow for the Lease. Other key terms and conditions include:

## **A. Economic Terms**

1. Term: The term will run from the date the Development MOU is executed and terminate or expire conterminously with the Lease. The Lease term is 57 years with one 18-year extension option for up to a total of 75 years.
2. Payment of FMV to Port: Immediately upon the Developer's close of escrow on the Lease, a Fair Market Value ("FMV") payment will be due from the Housing Office to Port, and if the full payment is not made at close of escrow, then interest will accrue at 1.5% during the first and second years after closing escrow and at 3% from the third year until the FMV is paid in full. The FMV has been determined by an appraisal, jointly ordered by the Housing Office and Port through the City's Department of Real Estate ("DRE"). DRE Director of Property, in consultation with the Port staff and in accordance to appraisal instructions drafted by DRE, reviewed by SLC staff and approved by the Port and Housing Office, conducted an appraisal of the Site dated June 29, 2018 with an indicated value of \$14.9 million.

If escrow closes within nine months of the date of the appraisal indicated above, the FMV will be deemed reflective of economic conditions current at the time of the Ground Lease execution. If not, the FMV will be reset based on updated appraisal subject to approval by SLC.

3. Payment Source: While the MOU does not restrict the Housing Office from using a particular source to pay the FMV to Port, the parties understand that the likely, first available source will be affordable in lieu fees paid to the Housing Office from the development of Pier 70 Parcel K North site or through other inclusionary housing fees or other fees received by Housing Office from Port-controlled properties or the Hoedown Yard in the Pier 70 Special Use District and not specifically allocated to on-site affordable housing at Pier 70.
4. Payment Due: The Housing Office will pay Port the FMV of the site as soon as fees are paid to it from the Pier 70 Parcel K North development and within not more than three years from the close of escrow on Parcel K North this period is projected to be between February 2019 and February 2022). If Parcel K North fees are not paid within three years, interest will continue to accrue.

Interest Accrual: If payment is not made as of the date escrow closes for the Lease, interest will accrue from the date escrow closed on the \$14.9 million FMV at annual simple interest of 1.5% during the first and second years and then at 3% from the third year until the FMV is paid in full.

## **B. Roles and Responsibilities:**

5. The Housing Office will:
  - a. Assist Port in negotiating, reviewing and approving mortgage documents, and other financing related to the affordable housing.

- b. Monitor, administer and help enforce the terms of the Lease relating to the residential component, including affirmative marketing, tenant selection for residential unit leasing.
  - c. Monitor the Tenant's compliance with applicable requirements, including affordability restrictions.
  - d. Help resolve issues relating to affordable housing operation and management, including management performance and compliance with the applicable Good Neighbor Policies.
  - e. Have the right to cure any monetary or non-monetary default by Tenant under the Lease, including the payment of taxes, at Housing Office's option.
  - f. Work with Port regarding Tenant's plan for financing, refinancing, transfer, and sale of any portion of the Project, as applicable.
6. The Port will:
- a. Have all responsibilities as the landlord under the Lease
  - b. Work with the Housing Office to address Tenant's request for consent to a proposed transfer or a lender's loan documents.
  - c. Work with the Housing Office on efforts to cure Tenant's default under the Lease, if applicable.
  - d. Monitor the Tenant's compliance with the Lease.

## **II. Option to Lease Agreement**

### **Parties to Document: Port and Developer**

The Option Agreement provides the Developer an option to lease the Site subject to certain terms and conditions that Port staff recommend, the key among which are the following:

1. The Premises or Site: The site to be leased is SWL 322-1 located at Broadway and Front Street, measuring approximately 37,810 square feet. It will be leased in "As Is" conditions.
2. Development Program: As described earlier in this Memorandum.
3. Total Development Cost and Sources of Funding: The Developer will be responsible for funding the Development currently estimated to cost approximately \$128.29 million (*Family Project: \$90.73 million; Senior Project: \$37.56 million*) It is not responsible for paying Port's transaction costs, except as otherwise provided under indemnity and insurance provisions.
4. Term: Approximately two years or until replaced by the Ground Lease.
5. Preconditions to Exercise the Option to Lease:
  - a. The Housing Office has agreed to the terms and conditions of paying Port for the Site's FMV as evidenced by entering into the Development MOU

- b. Developer has completed all required predevelopment tasks and is ready to close escrow.
  - c. Port and Housing Office staff have reviewed and approved the Developer's financing plan, including lenders' commitment letters, and balanced sources and uses of funds.
  - d. Port and Housing Office staff have reviewed and approved the Developer's updated scope of development and schedule of performance.
  - e. The Port Commission and the SLC have made the findings and approvals required by the State Legislation.
  - f. Developer has received all required approvals required to start construction.
  - g. Developer in not in default under the Option Agreement.
6. City and Other Standard Lease Requirements: The Option Agreement will include all applicable Port and City requirements for option agreements.
7. Key Exhibits to the Option Agreement
- a. *Scope of Development.* The Scope of Development sets forth the improvements that are to be constructed on the Site by the Developer.
  - b. *Schedule of Performance.* The Schedule of Performance sets forth the deadlines by which the Developer or the Port is required to submit or approve documents or complete listed tasks prior to close of escrow. All deadlines are subject to force majeure.
  - c. *Schematic Drawings.* Schematic Design Drawings consisting of site plans and elevations subject to Port Commission approval
  - d. *Development Budget.* The Development Budget for the Project, showing a total development cost of \$128,289,000 million as of June 27, 2018.
  - e. *Form of ground lease.* The form of the Lease includes the terms described in the next section.

### **III. The Lease**

#### *Parties to the Document: Port and Developer*

In addition to the Premises, Development Program and Development Cost specifics set forth above in the Option to Lease, the key business terms and conditions described below are being recommended by Port staff.

- 1. Lease Term: 57 years initial term, plus one 18-year extension option. The 18-year extension is subject to the Developer remaining as a "tenant in good standing" and having exercised the extension option within two years prior to the end of the initial term.
- 2. Conditions to Extend the Term. To extend the Term, the following conditions must be satisfied:
  - a. Developer must provide written notice to Port three years before the Initial Term is due to expire, along with the required assessment report on the property conditions.

- b. Port Chief Harbor Engineer will review the assessment report on the Site and the improvements and consider the effects of sea level rise, the condition of the Seawall, and recommend any mitigation measures required to protect public health and safety or against potential claims against Port during the Extended Term.
  - c. There is no Developer's default under the Lease.
3. Construction Period Rent: There is no construction period rent since the Port is being paid a lump sum by the Housing Office.
4. Operation Period Rent for the Residential Portion of the Development: \$20,000 per year escalating every five-year interval of the lease term at the positive percentage changes to the Area Median Income within the five-year interval, in recognition of the fact that the Port will receive upfront a payment of the FMV from the Housing Office and will not participate in the net proceeds from the refinancing or sale of the residential portion.
5. Operation Period Rent for the Non-Residential Portions of the Development:
  - a. *Participation Rent*: Restaurant Space Rent: 30% of the net annual revenue collected by the Developer for the proposed restaurant sublease.
  - b. *Participation Rent*: Other Subleases: 50% of excess rent from other subleases for microcell antenna tower, or similar sublease.
  - c. *Participation in Growth in Market Value*: 15% of net proceeds from refinancing or sales of the non-residential portion of the Development.
6. Competent Management Required: The Developer has identified JSCo to be the initial management company or operator of the both the residential and retail/commercial elements of the Development.
7. Transfer/Sublease: Except with respect to certain pre-approved related parties, all transfers or subleases are subject to Port's prior consent (with Housing Office consent also required with respect to transfers and subleases of the residential portion). The Parties have also agreed on conditions for pre-approval of certain restaurant subleases.
8. Leasehold Financing: The Developer and its subtenants will have the right to obtain financing from bona fide institutional lenders secured by its leasehold or subleasehold interest.
9. No Subordination of Port's Fee Interest: No lien may be placed on Port's fee ownership of the Site.
10. Public Open Space: There are two midblock passage ways that will be landscaped and made open to the public most of the day.

11. Sea Level Rise: The relevant transactions documents will include the Port's recommended provisions addressing sea level rise.
12. Reversion Interest: Tenant will own the improvements during Lease term and at the end of the term, and at Port's sole discretion, tenant must remove or repurpose the improvements per the State Legislation. The Property will revert back to Port's sole ownership.
13. City and Other Standard Lease Requirements: The Lease includes other standard provisions regarding indemnity and release, insurance, hazardous materials, casualty, mortgages, maintenance and repair, and all of the applicable Port and City requirements and requires compliance with the MMRP.

## **CLIMATE ACTION**

Due to the long-term nature of the proposed Ground Lease, the Lease will provide that it may be terminated due to climate change, sea level rise, or other catastrophic events at the Site that pose a risk to public health and safety. The Developer may be required to implement flood protection measures determined to be necessary by the Chief Harbor Engineer to protect the building and public health and safety. Such measures may include temporary public access closures and sandbagging or similar, temporary measures to minimize the risks associated with flooding or water inundation. If the Chief Harbor Engineer determines that conditions continue to pose a threat to public health and safety, Port may terminate the Ground Lease.

## **STATE LANDS APPROVAL**

The State Legislation authorizes nontrust leasing of certain designated seawall lots that are separated from the water, are no longer needed for public trust purposes, and represent a small part of the Port's public trust land.

Under the State Legislation, both the Port Commission and SLC must make certain findings to approve the Lease. Under SB 815, Section 4, the Port may submit a nontrust lease for a designated seawall lot (including Seawall Lot 322-1) for SLC approval under the following conditions:

(1) The nontrust lease is for fair market value and on terms consistent with prudent land management practices as determined by the port and subject to approval by the commission as provided in paragraph (1).

(2) Prior to executing the nontrust lease, the port shall submit the proposed lease to the commission for its consideration, and the commission shall grant its approval or disapproval in writing within 90 days of receipt of the lease and supporting documentation, including documentation related to value. In approving a nontrust lease, the commission shall find that the lease meets all of the following:

- a. Is for fair market value.
- b. Is consistent with the terms of the public trust and the Burton Act trust, other than their restrictions on uses.
- c. Is otherwise in the best interest of the state.

In addition to these findings, under AB 2649, SLC must make the following findings to authorize a nontrust lease of Seawall Lot 322-1:

(AB 2649) SEC. 3. (a) Seawall lot 322-1 shall remain subject to the use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement until the commission finds both of the following:

(1) Seawall Lot 322-1 is no longer necessary for public trust or Burton Act trust purposes.

(2) Lifting the use requirement of the public trust, the Burton Act trust, and the Burton Act transfer agreement until January 1, 2106, is in the best interest of the State.

### **Fair Market Value and Prudent Land Management Practices**

Consistent with the requirements of SB 815 Section 4(c) above, the Port has conducted an appraisal of the Site using appraisal instructions reviewed and approved that State Lands staff reviewed and approved.

The appraisal concluded that the indicated current fair market value of the Site is \$14,900,000.

### **Analysis of Proposed MOU and Lease Financial Terms**

The Port's compensation for the proposed lease consists of (a) under the MOU an upfront payment by the Housing Office to the Port for the Site's appraised Fair Market Value, and (b) under the Lease, additional rental payments by the Tenant, including base and percentage rent, as described above.

The fair market value of the Site was established through an appraisal conducted by the City's Director of Real Estate ("RED") based on appraisal instructions drafted by RED, reviewed by State Land staff and approved by the Port and the Housing Office. The net present value ("NPV") of the upfront payment and base and percentage rent ("SWL 322-1 Consideration") equals \$14.9 million, which is the appraised value. The SWL 322-1 Consideration also exceeds the NPV of the current parking rent, which is \$12.25 million, based on current annual revenues of \$465,000, escalated 3% annually for 75 years, and discounted back to today's dollars using a 6.5% discount rate which represents the Port's blended cost of funds.

Tenant will own the improvements during Lease term. At the end of the term, Tenant must remove or repurpose the improvements per the State Legislation and as directed by Port. Any remaining improvements will become the sole property of the Port.

Based on the foregoing, Port staff has determined that the SWL 322-1 Consideration due under the MOU and the Lease constitute an amount equal to or greater than the fair market value of the leasehold, consistent with the State Legislation.

As described in Memorandum, the Lease includes standard terms and conditions included in all Port leases, including indemnity, insurance and default provisions, including termination for cause. Accordingly, Port staff has determined that the Lease terms are consistent with prudent land management practices.

### **Seawall Lot 322-1 No Longer Needed for Public Trust or Burton Act Purposes**

The Legislature made the following findings in the State Legislation:

#### SB 815, Section 2

(f) Because of its limited backland area, the northeastern waterfront was not suited for containerized shipping and was no longer a center of maritime and railroad operations. The seawall lots north of Second Street, separated from San Francisco Bay by the Embarcadero roadway, were further cut off from the water by light rail tracks that were recently constructed in the median of the roadway.

(h) As a result of these developments, certain of the seawall lots or portions thereof, including the designated seawall lots addressed in this act, have ceased to be useful for the promotion of the public trust and the Burton Act trust, except for the production of revenue to support the purposes of the Burton Act trust...

(i) Presently, the designated seawall lots are leased on an interim basis for commuter parking or are vacant land...

(j) The designated seawall lots constitute approximately 4 percent of the lands granted to the city under the Burton Act, not including lands currently subject to tidal action;

(k) The designated seawall lots were filled and reclaimed as part of a highly beneficial plan of harbor development, have ceased to be tidelands, and constitute a relatively small portion of the tidelands granted to the city.

(l) Given the foregoing lack of public trust use needs for the designated seawall lots, the designated seawall lots are not necessary for public trust or Burton Act trust purposes, with the exceptions described in subdivision (i) of this section and in Section 6 of this act.

AB 2649 Section 2

(f) Seawall lot 322-1 is presently used for surface parking primarily serving commuters. The lot was not included in Chapter 660, but like the other designated seawall lots, seawall lot 322-1 was filled and reclaimed as part of a highly beneficial plan of harbor development, has ceased to be tidelands, is cut off from the water, constitutes a relatively small portion of the tidelands granted to the city, is not currently being used, and is not anticipated in the foreseeable future to be used, for public trust or Burton Act trust purposes. It is the intent of the Legislature that, conditioned on the approval by the commission, seawall lot 322-1 be freed of the use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement in the same manner and subject to the same requirements as the designated seawall lots under Chapter 660, subject to the additional provisions of this act.

Port staff conducted a review of the leasing history of Seawall Lot 322-1. The Site has been used for commuter parking since 1998; before that time, the lot was used for tour bus parking, and a service station, storage, and parking, dating back to 1966.

The Port has not received maritime or other public trust-related proposals for Seawall Lot 322-1 since it was offered for hotel development in the late 1990s, a project that was not ultimately approved. The Port has subsequently entered into an exclusive negotiating agreement with TZK Broadway, LLC for development of a hotel and dinner theater on Seawall Lots 323 and 324 which separate Seawall Lot 322-1 from the water.

Based on the location of the Site in relation to the water and intervening development, the leasing history of the Site, and the lack of expressed interest in public trust development of the Site, Port staff has determined that Seawall Lot 322-1 is not needed for public trust or Burton Act purposes, and that the findings made by the Legislature remain accurate.

**Lifting the Trust Use Requirement, and Approval of the Proposed Lease, Are in the Best Interest of the State**

Port staff believes that it is in the best interest of the State to lift the use requirement of the public trust, the Burton Act trust, and the Burton Act transfer agreement from Seawall Lot 322-1, and to approve the Lease, because (1) (as discussed above) Seawall Lot 322-1 is not needed for any trust purposes, (2) the proposed Transaction Documents would provide the Port with greater revenues than the Port can expect to receive under its current interim nontrust leasing program at the Site, (3) the increased revenues would help the Port implement its 10 Year Capital Plan, which serves important trust purposes, and (4) the Lease would provide new affordable housing.

In SB 815 and AB 2469, the Legislature affirmed that the generation of additional lease revenues on the designated seawall lots (including Seawall Lot 322-1) to address the implementation of the Port's capital plan, including the preservation of the historic piers and other historic structures and the construction of waterfront plazas and open space,

is a matter of statewide importance and furthers the purposes of the public trust and the Burton Act trust.

The Transaction Documents will generate an estimated \$14.9 million for the Port over the term of the Lease. Under the State Legislation, the Port is required to use the net revenues, estimated at \$14.9 million for purposes consistent with the State Legislation to implement the Port's capital plan.

In addition to providing additional revenue for Capital Plan implementation, the Transaction Documents will contribute to expansion of affordable housing opportunities to accommodate some of the housing needs of very low-, low- and moderate-income California households and provide economic benefits to segments of the community. The proposed project at Seawall 322-1 will produce 124 units of rental housing affordable to families earning 30-120% of Area Median Income, as well as provide planned associated childcare facility, a restaurant space and a community room. The provision of affordable housing furthers important State interests. In Section 2(g) of AB 2649, the Legislature found as follows:

The lack of affordable housing is a critical problem that threatens the economic, environmental, and social quality of life in California, and is a matter of statewide concern. The Legislature has previously found that attainment of the state's housing goals requires the cooperative participation of government and the private sector in an effort to expand housing opportunities and accommodate the housing needs of Californians of all economic levels. The Legislature has also found that the provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government, and that local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provisions for the housing needs of all economic segments of the community. The Legislature has also recognized that local jurisdictions should encourage, to the maximum extent practicable, infilling existing urban areas.

***The Lease Is Consistent with the Terms of the Public Trust and the Burton Act Trust, Other than Use Restrictions.***

The Lease is consistent with all applicable requirements of the public trust and the Burton Act, as modified by the State Legislation. The maximum term of the Lease is 75 years, as provided by the State Legislation. As discussed above, the Transaction Documents will provide fair market value to the Port, and the revenues from the Transaction Documents will be used for public trust and Burton Act purposes.

**ANALYSIS OF THE PROPOSED PROJECT TERMS AND CONDITIONS**

Port staff have been collaborating and negotiating with the Housing Office and the Developer since last year to bring this complex but beneficial tri-party transaction into its current form. Port staff analysis of the proposed terms and conditions of the transaction is provided below.

1. The \$20,000 (Minimum Base Rent) per year rent for the residential project is reasonable given that the Development MOU will require that the Port be paid the present value of the fair market rent the Site would command in the today's real estate market and conditions of the proposed transaction. In addition, Port is to receive 30% of the net annual cash flow that Developer will receive from the proposed restaurant sublease during the retail space operation.
2. Port staff has renegotiated a number of terms to enhance Port's participation in the growth of the Development's market value while still complying with applicable tax credit regulations, including the following key terms:
  - a. Minimum Base Rent of \$20,000 per year as material consideration for Port forgoing participation in net proceeds from the refinancing or sale proceeds attributable to the residential portion of the Development. (Total of all minimum base rent is \$20,000)
  - b. The Minimum Base Rent per year to escalate every five-year interval of the lease term with the positive percentage change of the AMI within each five-year interval of the lease term;
  - c. Increased Port's participation in the net operation cash flow from the retail-restaurant operation from 20% to 30%;
3. While the State Legislation provided for lifting trust restrictions from the Site for up to 75 years and not beyond 2105, Port staff is concerned with potential effects of Sea Level Rise and Climate Change. As a result, Port staff is recommending a shorter initial term of 57 years to allow for the review of conditions at that point to define what measures would be required in extending the term to the full 75 years allowed by law. In addition, affordable housing projects financed with low income housing tax credits and City's residual receipt loans usually require a long-term lease to allow the tax credit investors enough time to recapture their investment. The tax credit allocation regulations require a minimum affordability period of 50 years or more. Given these considerations, Port staff recommends the initial 57-year term and associated option to extend as reasonable and appropriate to support prudent development and operation of the Project.
4. Port staff recommends that the Transaction Documents require no Port funding for any part of the Development; all costs incurred by the Developer in implementing the Development are to be borne by the Developer, with funding assistance from the Housing Office. Port costs are limited to Port staff costs, Port appraisal costs, and Port's City Attorney costs in support of Port activities.
5. Expected benefits of the proposed Development include, among other things, the much-needed affordable housing to be added to the City housing stock and the addition of two architecturally-fitting buildings to the Northeast Waterfront Historic District, replacing the existing surface parking lots. The Development will add to the welcoming ambiance and will help activate a gateway to North Beach and Chinatown. Other non-Port benefits include property, sales, and gross receipts

taxes and other direct and indirect revenues for the City. The Development is anticipated to generate approximately 288 construction jobs, and over 75 permanent and part-time jobs.

6. The proposed transaction documents include provisions addressing or limiting potential exposure of Port to risks including development, cost, and limited revenue risks, among others (described further below).

### Development Risks

The Port owns the Site unencumbered and the Site was generating approximately \$465,000 annually or \$38,916 per month, as of 2017, in net revenue to the Port. The net present value (“NPV”) of Port lease revenues from the current parking use if extended over the 75-year term of the proposed Lease is estimated at approximately \$11.3 million without the additional benefits of 125 housing units, construction and permanent jobs, tax revenues to the City, etc. The current parking operation is an interim use not representing the Site’s highest and best use. In comparison, the proposed development is anticipated to provide a number of benefits to the Port, the City and the State including (a) an estimated \$14.9 million in NPV of lease revenues for the Port over the Lease initial term, including projected participation rent; (b) contribution to expansion of affordable housing opportunities to accommodate some of the housing needs of very low-, low- and moderate-income California households; and (c) economic benefits in the form construction and permanent jobs, and tax revenues to the City. The proposed Development does pose some risks to the Port, but staff believes most of these are being mitigated through the transaction document requirements and lease provisions. The Development represents collaboration with the State and a concerted effort by Port and Housing Office to achieve multiple objectives. In particular, the Project represents a fairly unique stand-alone opportunity to advance the Port’s livability objective in the face of the City’s housing crisis. A more detailed review of the risks is set forth below.

### *Land Payment Risk*

Payment to the Port by the Housing Office is likely to occur within three years after close of escrow on the Lease, but could occur within two years later if Housing Office is not able to pay within the first three years. The Port will experience the loss of existing cashflow from the surface parking lot once it is conveyed to the Developer until the FMV is paid; however, Port staff believes that some portion of the displaced parking demand will accrue to the Port through its nearby parking leases. As described above, under Ordinance 232-12 the Housing Office was previously intending to pay the FMV using JHLP credits. Port and Housing Office staff have since decided that the JHLP fees generated at the Port’s master planned development projects at Mission Rock and the Pier 70 Waterfront Site were best utilized for those projects’ respective affordable housing programs. Instead the Housing Office anticipates utilizing affordable in lieu fees paid to it from a future developer of Pier 70 Parcel K North, a site to be sold by the Port in connection with funding the Pier 70 project. If the sale of the site or the construction of the project is delayed or never materializes, the Housing Office will need to identify another funding source. To mitigate the timing aspect of this land payment risk, Port staff has negotiated provisions to charge interest at reasonable rates to maintain the value of the FMV payment relative to the time between close of

escrow and full payment and the escalation of minimum base rent to maintain its value over time.

#### *Entitlement Risk*

The Developer has completed a majority of the entitlement tasks and has received Planning Department's authorization to continue proceeding with the Development. Port's exposure to this risk is considered minimal both under its proprietary status as a landowner and as a regulator.

#### *Financing Risk*

Funding for this Development is primarily from the State, TCAC, and the Housing Office with secondary funding sources more readily available once the Development has received State and local funding commitments. The Port's exposure to this risk is minimal since the Port is not providing any capital funding for the Project. The Port's parking operation at the Site will continue and the Site will not be transferred to the Developer until all financing is in place and escrow is closed.

#### *Cost Risk*

The Project is subject to expected construction cost increases if building permit review and approval and low income tax credit syndication take longer than the Developer anticipates. Measures to mitigate this risk include cost projections that provide ample construction contingency, using guaranteed maximum pricing for the construction contract, providing for performance and payment bonds, and using competent project managers. Port's exposure to this risk is considered minimal since the Port is not providing any capital funding for the Project.

#### *Market Risk*

Competition and business cycle risks for the proposed development are considered minimal given the supply and demand conditions of housing in San Francisco. Port's exposure to this risk is considered nonexistent.

#### *Counterparty Risk*

This risk usually arises from poor project oversight brought on by lack of requisite development expertise and financial capacity. The Developer's lead-team members are Bridge Housing and JSCo; based on its participation in the Project negotiations, Port staff believes the team has the requisite qualifications and the wherewithal to perform as co-developers and project managers. These co-developers have developed several projects in San Francisco with similar complex profiles. Port's exposure to this risk is considered minimal and it is mitigated by conditions to escrow closing and the provision of construction security, such as a payment and performance bonds.

#### *Operating Risk*

This risk usually arises from inadequate budgeting, planning and project management. This risk is being mitigated by requiring competent project manager with oversight from the Housing Office. The manager will be required to monitor compliance with the City's Good Neighbor Policy to maintain good relations with the all stakeholders at its location.

Port's exposure to this risk is considered minimal and mitigated through performance standards in the Lease.

## **COMMUNITY OUTREACH**

From 2014 to the present time, the Housing Office, Port staff and the Developer have collectively conducted extensive community outreach and solicited comments and feedback from stakeholders to form general consensus on the goals/objectives of the Development, including its architectural design, compatibility with the Historic District and its targeting of a wide spectrum of households with limited incomes. The Housing Office hired a joint venture team of Mark Cavagnero Architects and Cary Bernstein Architects to conduct site design analysis and to hold a community design workshop, where design criteria were discussed with the public for the Site, and an adjacent City Parcel was added to provide housing for seniors. These outreach efforts took over 36 months and resulted in the Development being supported by almost all stakeholders including members of the Northeastern Waterfront Advisory Group (NEWAG). The Development has been presented to NEWAG many times, the last being its April 4, 2018 meeting.

## **NEXT STEPS**

With Port Commission's consideration and approval of the Transaction Documents, the Development's schematic design, and findings that the Project is consistent with applicable State Legislation as requested, Port staff will proceed to seek the necessary approvals for the Transaction Documents from the Board of Supervisors and SLC. The tentative proposed approval schedule is set forth below:

- Introduction to Full Board of Supervisors ("Board") – June 26, 2018
- Hearing at Board Government Audit and Oversight Committee – July 18, 2018
- Board of Supervisors Approval – July 24, 2018
- Mayor Signs Resolution – August 3, 2018
- Hearing at SLC: August 23, 2018
- Port signing of MOU and Option Agreement (assumes all approvals successful): August 27, 2018
- Developer Submission of California Debt Limit Allocation Committee ("CDLAC") application: September 12, 2018
- CDLAC Allocation meeting: November 14, 2018

## **CONCLUSION**

Port staff recommends that the Port Commission adopt the attached Resolution approving the Transaction Documents and the Schematic Drawings for the proposed project at 88 Broadway, and authorize the Executive Director and Port staff to seek approval of the Lease and Development MOU by the Board of Supervisors and SLC.

Prepared by: Ricky Tijani, Manager  
Real Estate & Development

Through: Rebecca Benassini, Assistant Deputy Director  
Waterfront Development

For: Michael Martin, Deputy Director  
Real Estate and Development

**Attachments:** Exhibit "A" Site Map  
Exhibit "B," Development Schematic Design

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

**RESOLUTION NO. 18-42**

- WHEREAS, California Statutes of 1968, Chapter 1333 (“Burton Act”) and Charter, Sections 4.114 and B3.581, empower the City and County of San Francisco, acting through the San Francisco Port Commission (“Port”), with the power and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port Commission jurisdiction consistent with the public trust for commerce, navigation and fisheries and the Burton Act (collectively, the “Public Trust”); and
- WHEREAS, The Port owns Seawall Lot 322-1, also known by its street address as “88 Broadway” (the “Property”), a land parcel with approximately 37,810 square feet area bounded by Broadway, Front, and Vallejo Street and buildings and 735 Davis Street, a vacant City property; and
- WHEREAS, The California Legislature has adopted a series of statutes that authorize nontrust leasing of seawall lots that are separated from the water, are no longer needed for public trust purposes, and represent a small part of the Port’s public trust land; and
- WHEREAS, These statutes include SB 815 (Chapter 660 of the Statutes of 2007) as amended by AB 2649 (Chapter 757 of the Statutes of 2012) and AB 2797 (Chapter 529 of the Statutes of 2016), collectively the “State Legislation”; and
- WHEREAS, Under the State Legislation, both the Port Commission and State Lands must make certain findings to temporarily lift the trust use restrictions and approve the Development MOU and Option Agreement (including the form of Ground Lease (“Transaction Documents”) discussed in this Resolution; and
- WHEREAS, In November 2012, the Board of Supervisors adopted Ordinance No. 232-12 which allows the Port and the Mayor’s Office of Housing and Community Development (“MOHCD”) to enter into a Memorandum of Understanding (the “Pre-Development MOU”) for development of the Property for affordable housing and providing for Port to receive Jobs Housing Linkage Program (“JHLP”) credits equal to the difference in the value of a Port below-market lease and the fair market value of the Property; and
- WHEREAS, Port and MOHCD staff have since decided that the preferred payment strategy for the Project is to utilize the anticipated affordable in lieu fees paid to MOHCD from a future developer of Pier 70 Parcel K North (“PKN”), a site to be sold by the Port in connection with funding the Pier 70 project, with the condition that if the sale of PKN or the construction of

the PKN project is delayed or never materializes, MOHCD will need to pay the Port the Property's fair market value from another source; and

WHEREAS, Between April 2014 and May 2018, the Port and MOHCD entered into the Pre-Development MOU and completed most of the tasks enumerated, therein including, among others, MOHCD's competitive solicitation and selection of the Developer led by Bridge Housing ("Bridge") and the John Stewart Company ("JSCo") which formed 88 Broadway Family LP (the "Developer") to undertake the proposed development; and

WHEREAS, Staff of the Port, MOHCD and the Developer have collectively conducted extensive community outreach and solicited comments and feedback from stakeholders to form general consensus on the goals/objectives of the Development, as elaborated in the accompanying staff report dated July 3, 2018 ("Staff Memorandum"); and

WHEREAS, The Department of City Planning ("Planning Department") prepared a Draft Initial Study/Preliminary Mitigated Negative Declaration ("PMND") and Mitigation Monitoring and Reporting Program ("MMRP") for the Project and published the Draft PMND and MMRP for public review on October 25, 2017 which were available for public comment until November 27, 2017; and

WHEREAS, The Planning Commission held a public hearing to consider an appeal of the PMND and found that the contents of the PMND and the procedures through which the PMND was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) (CEQA), 14 California Code of Regulations Sections 15000 et seq. (the "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code ("Chapter 31") and finalized the PMND (the Final MND); and

WHEREAS, On May 3, 2018, the Planning Director found the FMND was adequate, accurate and objective, reflected the independent analysis and judgment of the Planning Director, and adopted the FMND and the MMRP, and authorized the Project in the Affordable Housing Project Authorization; and

WHEREAS, The Historic Preservation Commission approved with conditions the Certificate of Appropriateness Motion No. 0335) for the Project on April 4, 2018, on file with the Planning Department and incorporated herein by this reference; and

WHEREAS, The Planning Department Commission Secretary is the custodian of record for the file for Case No. 2016- 007850PRJ at 1650 Mission Street, Suite 400, San Francisco, California; and

WHEREAS, The FMND and the MMRP have been made available to the public, and the Port Commission for its review and action and incorporated herein by this reference; and

WHEREAS, Port and Developer have negotiated an Option to Lease Agreement (the "Option Agreement") which includes the form of ground lease (the "Form of Ground Lease") to provide the Developer with evidence of site control to support its application for an allocation of low-income housing tax credits from the California Tax Credit Allocation Committee, and Developer is required to exercise its option by June 30, 2020 subject to extension; and

WHEREAS, The Port and MOHCD have negotiated a Memorandum of Understanding for interdepartmental coordination to be effective during the Lease term (the "Development MOU") including, among other things, an extension of the Predevelopment MOU to complete the remaining tasks, the amount and manner in which MOHCD will pay the Port the Property's fair market value and MOHCD's consent to the Lease, and coordination between the departments in administering and enforcing the Lease; and

WHEREAS, Under Charter Section B7.320, the Board of Supervisors may approve a memorandum of understanding between the Port Commission and another department of the City, approved by the Port Commission by resolution; and

WHEREAS, The Developer has been formed by BRIDGE, Bridge Housing Corporation, and JSCo, The John Stewart Company, to lease the Property and develop the Family Project and the Senior Project and BRIDGE and JSCo each has the requisite qualifications and the wherewithal to perform as co-developers and project managers and have developed several projects in San Francisco with similar complexity profiles; and

WHEREAS, MOHCD is providing the Developer with financial assistance to acquire a leasehold interest in the Property and to leverage equity from an allocation of low-income housing tax credits and other funding sources to construct and operate the Development; and

WHEREAS, The Developer is required to execute the Lease substantially in the Form of the Lease attached to the Option Agreement; and

WHEREAS, The material terms of the Lease include: (i) a term of 57 years with an extension option for 18 additional years; (ii) tenant responsibility for all property taxes and assessments levied against the Property; (iii) uses only for affordable housing with maximum tenant rent and income levels set at between 30% to 120% of the area median income ("AMI") and other ancillary purposes permitted by the State Legislation and AB 1423 if enacted into law; (iv) annual base rent for the residential portion of \$20,000 with escalation every 5 years in line with changes to the AMI; (v) except as provided in (viii), all net sales or refinancing proceeds to be

used for the benefit of the Development, including required maintenance, needed capital improvements, and operational subsidy; (vi) at Lease termination, the Property with or without the building at Port's sole discretion shall revert to the Port; (vii) 30% of net annual revenue from a restaurant or retail operation paid to Port as additional rent; (viii) 15% of net proceeds from any refinancing or sales of the retail/restaurant space paid to Port as additional rent; (ix) 50% of the net revenue from all other nonresidential subleases are paid to Port as additional rent; (x) tenant responsibility for construction, operation and maintenance of the Property; (xi) Port ownership fee title to the land and tenant ownership of fee title to all improvements; (xii) Port notice of defaults to the tenant and MOHCD, and the tenant's limited partners and lenders and allow any such parties the right to cure such default; and (xiii) encumbrance of the leasehold interest to secure loans, subject to approval by the Port and MOHCD; and

WHEREAS, The Director of Property, in consultation with the Port and the California State Lands Commission conducted an appraisal of the Property which appraisal is dated June 29, 2018 with an indicated value of \$14.9 million; and

WHEREAS, Seawall 322-1 was filled and reclaimed as part of construction of the Embarcadero Seawall under Chapter 219 of the Statutes of 1878, a highly beneficial plan of harbor development; and

WHEREAS, Since its transfer from the State of California to the Port of San Francisco, Seawall Lot 322-1 has been used for predominantly nontrust uses, including commuter parking since 1998; and

WHEREAS, The seawall lots north of Second Street, separated from San Francisco Bay by the Embarcadero roadway, were further cut off from the water by light railtracks that were constructed in the median of the roadway in 2000; and

WHEREAS, Seawall Lot 322-1 is further separated from the water by Seawall Lot 324 and 323; and

WHEREAS, Seawall Lot 322-1 represents a small portion (under 1%) of the lands granted to the city under the Burton Act, not including lands currently subject to tidal action; **NOW, THEREFORE, BE IT**

RESOLVED, That the Port Commission has reviewed and considered the FMND and the record as a whole, finds that the FMND is adequate for its use as the decision-making body for the Project, that there is no substantial evidence that the Project will have a significant effect on the environment with the adoption of the measures contained in the MMRP to avoid potentially significant environmental effects associated with the Project, and hereby adopts the FMND; and be it further

RESOLVED, That the Port Commission hereby adopts the FMND and the MMRP attached hereto as Attachment A and incorporated herein as part of this Resolution by this reference thereto and all required mitigation measures identified in the FMND and contained in the MMRP will be included in the Lease between the Port and Developer; and be it further

RESOLVED, As a result of the foregoing, and as described in the Staff Memorandum, the Port Commission finds that Seawall Lot 322-1 has ceased to be useful for the promotion of the public trust and the Burton Act trust, except for the production of revenue to support the purposes of the Burton Act trust; and, be it further

RESOLVED, That the Port Commission finds that the combined payments due under the Development MOU and the Lease constitute fair market value and includes lease terms that are consistent with prudent land management practices as defined in the State Legislation and urges the Board of Supervisors to affirm this finding; and, be it further

RESOLVED, The Port Commission urges the San Francisco Board of Supervisors to affirm the findings of the Port Commission relating to the Public Trust and State Legislation and urges the California State Lands Commission to take the necessary actions to allow the Development to proceed; and, be it further

RESOLVED, That the Port Commission finds that the Lease is otherwise consistent with the terms of the Public trust, other than its restrictions on uses; and be it further

RESOLVED, The Port Commission believes, and urges California State Lands Commission to find, that lifting the public trust and Burton Act trust use restrictions from Seawall Lot 322-1, and the use of Seawall Lot 322-1 for an affordable housing project at fair market value on the terms and conditions set forth in the Transaction Documents, is in the best interests of the State of California; and, be it further

RESOLVED, That the Port Commission approves the Development MOU, and authorizes the Port's Executive Director (or her designee) to seek Board of Supervisors' approval under Charter Section B7.320 and the California State Lands Commission's approval as required by the State Legislation (including a determination that such approval does not require the Port to acquire land, deposit funds into the Kapiloff Land Bank, or otherwise incur liabilities beyond those provided in the Transaction Documents); and be it further

RESOLVED, That the Port Commission approves the Option Agreement and the form and substance of the form Lease attached thereto, subject to approval by the Board of Supervisors of the form of lease under its authority under Charter Section 9.118 and subject to the approval of the California State

Lands Commission (including a determination that such approval does not require the Port to acquire land, deposit funds into the Kapiloff Land Bank, or otherwise incur liabilities beyond those provided in the Transaction Documents); and be it further

RESOLVED, That the Port Commission hereby approves the Schematic Drawings of the proposed the Family Project on file with the Port Commission Secretary and the representative Schematic Drawings of the building within the Project Site, as shown in the attachment to the Memorandum for Agenda Item 12C for the Port Commission meeting on June 12, 2018, and authorizes the Executive Director to approve non-material changes in the Schematic Drawings; and be it further

RESOLVED, That, subject to obtaining the approvals discussed above, the Port Commission authorizes the Port's Executive Director to execute the Development MOU and the Option Agreement and, if the Developer properly exercises the Option, to execute the Lease 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 the Port's Executive Director to enter into other additions, amendments, ancillary agreements, consents covenants and property documents necessary to implement the transactions contemplated by the Transaction Documents, and to enter into any additions, amendments or other modifications to the Transaction 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 consistent with approvals made by the California State Lands Commission and, when taken as a whole, are in the best interests of the Port, do not materially decrease the benefits or materially increase the obligations or liabilities of the Port, and are necessary or advisable to complete the transactions that the Transaction 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 documents

***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of July 10, 2018.***

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**Secretary**



***Exhibit "B,"  
Development Schematic Design***