

1 [Endorsement of Term Sheet - Port Commission - Seawall Lot 351/8 Washington Project at
2 Washington/The Embarcadero]

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4 **Resolution endorsing the proposed Seawall Lot 351/8 Washington Project at**
5 **Washington/The Embarcadero Term Sheet between San Francisco Waterfront**
6 **Partners II, LLC and the San Francisco Port Commission.**

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8 WHEREAS, The City, through its Port Commission (the “Port”), owns Seawall Lot 351
9 (“SWL 351”), located at Washington and The Embarcadero as shown on the map attached as
10 Exhibit A, which is subject to the common law public trust for commerce, navigation, and
11 fisheries and the public trust under the Burton Act (Stats. 1968, ch. 1333, as amended)
12 (collectively, the “public trust”); and

13 WHEREAS, By Port Commission Resolution 09-12, the Port Commission awarded to
14 San Francisco Waterfront Partners II, LLC (“Developer”) the exclusive right to negotiate with
15 the Port to develop SWL 351 in combination with the real property located at Assessor’s
16 Blocks 168, 171, and 201, commonly known as 8 Washington Street (together, the “Site”), in
17 accordance with terms and conditions in the Port’s Request for Proposals for SWL 351; and

18 WHEREAS, Developer entered into an Exclusive Negotiation Agreement, effective
19 August 26, 2009 (the “ENA”), setting forth the process, terms, and conditions upon which the
20 Port and Developer agreed to negotiate a lease, purchase and sale agreement, and other
21 transaction documents for the disposition and development of SWL 351 and requiring the Port
22 and Developer to negotiate a Term Sheet to describe the basic elements of the proposed
23 project, site plan, use program, economic parameters, and other fundamental terms that will
24 serve as the basis for defining the proposed project for the purpose of undertaking

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1 environmental review under the California Environmental Quality Act (“CEQA”) and
2 negotiating transaction documents; and

3 WHEREAS, Port Commission Resolution 09-12 also directed Developer and Port staff
4 to participate in the Northeast Embarcadero Study (the “NES”), a community planning process
5 for the Port’s seawall lots between Washington and North Point Streets, including SWL 351,
6 led by the San Francisco Planning Department, as recommended in the February 19, 2009
7 letter to the Port Commission from Supervisor David Chiu; and

8 WHEREAS, The Planning Department presented the NES recommendations on
9 July 8, 2010 to the Planning Commission and on July 13, 2010 to the Port Commission; and

10 WHEREAS, Developer has submitted a development proposal for the Site (the
11 “Proposed Project”) responding to the recommendations of the NES, proposing, among other
12 things, that the Port: (1) enter into a trust exchange agreement with the State Lands
13 Commission authorizing the Port to exchange portions of SWL 351 proposed for residential
14 development with land owned by Developer proposed for public access, open space, and
15 other trust-consistent uses, on condition that the Port receives land of equal or greater value
16 than that exchanged; (2) sell that portion of SWL 351 removed from the public trust to
17 Developer; and (3) lease the public trust areas of the Site to Developer for development and
18 operation of the proposed trust-consistent uses; and

19 WHEREAS, In accordance with the ENA, Developer and Port staff have negotiated
20 the Term Sheet, which is on file with the Clerk of the Board of Supervisors in File No. 101291
21 and incorporated in this resolution as if set forth fully, setting forth the essential terms upon
22 which the Port and Developer will negotiate in good faith under the ENA to reach agreement
23 on the terms of a proposed lease, purchase and sale agreement, trust exchange agreement,
24 and other transaction documents for consideration by the Port Commission; and

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1 WHEREAS, The Term Sheet is not itself a binding agreement that commits the City or
2 Developer to proceed with the approval or implementation of the Proposed Project and that
3 the Proposed Project will first undergo environmental review under CEQA and will be subject
4 to public review in accordance with the processes of the City, and other government agencies
5 with approval over the Proposed Project before any entitlements and other regulatory
6 approvals required for the Proposed Project will be considered; and

7 WHEREAS, Consistent with the terms of the Request for Proposals, the Term Sheet
8 specifies that, if the Proposed Project is approved and developed, the Port would receive land
9 payments representing fair market value for the portions of SWL 351 proposed to be
10 conveyed to Developer, rent payments at fair market rents for the portions of SWL 351
11 proposed to be leased to Developer, and land impressed with the public trust of equal value to
12 land free of the public trust proposed to be exchanged with Developer; and

13 WHEREAS, The Port Commission endorsed the Term Sheet by Resolution No. 10-66
14 and directed Port staff to work with Developer to conduct environmental review of the
15 Proposed Project and to present the Term Sheet to the Board of Supervisors for an early
16 review of the proposed terms of a lease, purchase and sale agreement, and trust exchange
17 agreement; and

18 WHEREAS, The Board of Supervisors has reviewed and considered the Term Sheet
19 and its terms for the Port's possible lease and sale to Developer of portions of SWL 351 and a
20 possible exchange of property subject to the public trust for property not subject to the public
21 trust under a trust exchange agreement as set forth in the Term Sheet; now, therefore, be it

22 RESOLVED, That the Board of Supervisors endorses the Term Sheet and its terms as
23 appropriate to serve as the basis for negotiations between the Port and Developer for the
24 lease, purchase and sale, and exchange transactions contemplated; and, be it

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1 FURTHER RESOLVED, That endorsement of the Term Sheet does not commit the
2 Board of Supervisors to approval of the terms of a final lease, purchase and sale agreement,
3 or trust exchange agreement or grant any entitlements to Developer, nor does the Term Sheet
4 foreclose the possibility of considering alternatives to the proposal or mitigation measures to
5 reduce or avoid significant environmental impacts or preclude the City, after conducting
6 appropriate environmental review under CEQA, from deciding not to grant entitlements or
7 approve or implement the Proposed Project, and while the Term Sheet identifies certain
8 essential terms of a proposed transaction with the City through the Port, it does not set forth
9 all of the final, material terms and conditions of a lease, purchase and sale agreement, trust
10 exchange agreement, or other transaction documents; and, be it

11 FURTHER RESOLVED, That the Board of Supervisors will not take any discretionary
12 actions committing the City to implement the Proposed Project, and the provisions of the Term
13 Sheet are not intended to and will not become contractually binding on the City unless and
14 until: (1) the Planning Commission has reviewed and considered environmental
15 documentation prepared in compliance with CEQA for the Proposed Project and has
16 determined that the environmental documentation complies with CEQA; (2) the Port
17 Commission has adopted appropriate CEQA findings in compliance with CEQA and has
18 approved the terms of the final transaction documents for the Proposed Project; and (3) the
19 Board of Supervisors has adopted appropriate CEQA findings in compliance with CEQA and
20 approved the terms of the final lease, purchase and sale agreement, and trust exchange
21 agreement for the Proposed Project.

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