

File No. 120270

Committee Item No. 7

Board Item No. 20

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Sub-Committee Date June 6, 2012

Board of Supervisors Meeting Date 6/12/12

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | **Purchase and Sale Agreement |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | **May 24, 2012 Memo to the Port Commission |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | **March 23, 2012 Memo to the Port Commission |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | **Lease No. L-5110 with Waterfront Partners II, LLC. |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | **Maintenance Agreement for Open Space |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | September 23, 2010 Memo to Port Commission |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | **February 19, 2009 |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | July 2, 2008 Memo to the Port Commission |

Completed by: Victor Young Date June 1, 2012

Completed by: Victor Young Date 6-7-12

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

FILE NO. 120270

RESOLUTION NO.

05
1 [Approval of Public Trust Exchange; Agreement to Sell Portion of Seawall Lot No. 351 in
2 Exchange for Portion of Block No. 168-Lot No. 58, Block No. 171-Lot No. 69, and Block No.
3 201-Lot No. 12; Approval of Lease and Maintenance Agreement]

4 **Resolution approving and authorizing a Purchase and Sale Agreement with San**
5 **Francisco Waterfront Partners II, LLC for the sale by the San Francisco Port**
6 **Commission of unimproved real property located on Seawall Lot No. 351 at the corner**
7 **of The Embarcadero and Washington Street in exchange for a portion of real property**
8 **located on Block No. 168-Lot No. 58, Block No. 171-Lot No. 69, and Block No. 201-Lot**
9 **No. 12 having an address at 8 Washington; approving and authorizing a Trust**
10 **Exchange Agreement with the California State Lands Commission that would remove**
11 **the public trust from such portion of Seawall Lot No. 351 and impressing the public**
12 **trust on such portion of real property located on Block No. 168-Lot No. 58, Block No.**
13 **171-Lot No. 69, and Block No. 201-Lot No. 12; approving and authorizing a 66-year**
14 **Lease with San Francisco Waterfront Partners II, LLC for real property near The**
15 **Embarcadero and former Pacific Street; approving and authorizing a Maintenance**
16 **Agreement with San Francisco Waterfront Partners II, LLC for the maintenance of open**
17 **space bound by The Embarcadero, Washington Street and Drumm Street; adopting**
18 **environmental findings and findings of consistency with the General Plan and the eight**
19 **Priority Policies of City Planning Code Section 101.1; and authorizing the Port's**
20 **Executive Director and the City's Director of Property to execute documents, make**
21 **certain modifications and take certain actions in furtherance of this Resolution.**

22
23 Note: Additions are single-underline italics Times New Roman;
24 deletions are strike-through italics Times New Roman.
25 Board amendment additions are double-underlined;
Board amendment deletions are ~~strike-through normal~~.

1 WHEREAS, The Port of San Francisco Waterfront Land Use Plan, including the Design
2 and Access Element (collectively, the "Waterfront Plan") is the Port's adopted land use
3 document for property within Port jurisdiction, which provides the policy foundation for
4 waterfront development and improvement projects; and

5 WHEREAS, The Port owns Seawall Lot No. 351 ("SWL 351"), a triangular lot located at
6 Washington and The Embarcadero, and is adjacent to the Golden Gateway residential site
7 having an address at 8 Washington ("8 Washington site," together with SWL 351, the "Project
8 Site"); and

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

15 WHEREAS, By Resolution No. 08-45, the Port Commission authorized Port staff to
16 issue a Request for Proposals (the "RFP") to solicit proposals from qualified parties to develop
17 and operate on SWL 351 a mixed-use project to promote Public Trust purposes and the
18 Waterfront Plan, including the Development Standards for the Ferry Building Mixed Use
19 Opportunity Area; and

20 WHEREAS, The RFP was issued on November 10, 2008, two respondents submitted
21 timely proposals, including San Francisco Waterfront Partners II LLC ("SFWP"), and the other
22 respondent later withdrew its submittal; and

23 WHEREAS, SFWP's proposal was reviewed and analyzed by Port staff, an
24 independent real estate economics consultant, and an evaluation review panel of three
25

1 persons with experience in real estate economics, land use planning and architecture/urban
2 design; and

3 WHEREAS, The Port Commission (i) reviewed and evaluated the summary and
4 analyses of the SFWP proposal prepared by Port staff, its independent real estate economics
5 consultant, and the evaluation panel, (ii) reviewed the Port staff recommendations set forth in
6 the Staff Report accompanying Resolution 09-12, (iii) considered the public testimony on
7 SFWP's proposal given to the Port Commission, and (iv) determined that the SFWP proposal
8 met the requirements set out in the RFP and achieved the Port's objectives for SWL 351; and

9 WHEREAS, By Resolution 09-12, the Port Commission (i) awarded to SFWP an
10 exclusive right to negotiate with the Port to develop the Project Site, and (ii) directed SFWP
11 and Port staff to participate in a community planning process (the "NES") led by the San
12 Francisco Planning Department, as recommended in the February 19, 2009 letter to the Port
13 Commission from Supervisor David Chiu; and

14 WHEREAS, The Port and SFWP entered into an Exclusive Negotiating Agreement,
15 effective August 26, 2009 (as may be amended from time to time, the "ENA"), setting forth the
16 process, terms and conditions upon which the Port and SFWP agreed to negotiate certain
17 transaction documents for the development of the Project Site and requiring the Port and
18 SFWP to negotiate a Term Sheet to describe the basic elements of the proposed project, site
19 plan, use program, economic parameters, and other fundamental terms that will serve as the
20 basis for negotiating the transaction documents; and

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

23 WHEREAS, SFWP is proposing to build on portions of the Project Site that will be held
24 in private ownership after the Trust Exchange (as defined below), the following improvements:
25 (i) two mixed-use buildings containing approximately 134 residential units, (ii) an underground

1 parking garage for residents of the buildings and the public, and (iii) a new health and fitness
2 club (collectively, the "SFWP Improvements"); and

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

15 WHEREAS, On March 22, 2012, the Planning Commission reviewed and considered
16 the Final Environmental Impact Report ("Final EIR") in Planning Department File No.
17 2007.0030E, consisting of the Draft Environmental Impact Report and the Comments and
18 Responses document, and found that the contents of said report and the procedures through
19 which the Final EIR was prepared, publicized and reviewed complied with the provisions of
20 the California Environmental Quality Act ("CEQA"), the CEQA Guidelines and Chapter 31 of
21 the San Francisco Administrative Code and found further that the Final EIR reflects the
22 independent judgment and analysis of the City and County of San Francisco, is adequate,
23 accurate and objective, and that the Comments and Responses document contains no
24 significant revisions to the Draft EIR, and certified the completion of said FEIR in compliance
25 with CEQA and the CEQA Guidelines in its Motion No. 18560; and

1 WHEREAS, On March 22, 2012, the Planning Commission adopted findings as
2 required by CEQA ("CEQA Findings"), which findings included a Statement of Overriding
3 Considerations and adoption of a Mitigation Monitoring and Reporting Plan ("MMRP") by its
4 Motion No. 18561, which material was made available to the public and the Board for the
5 Board's review, consideration and action; and

6 WHEREAS, This Board affirmed the certification of the Final EIR by Motion No. 12-061 on
7 May 15, 2012; and

8 WHEREAS, This Board has reviewed and considered the information contained in the
9 Final EIR, the CEQA Findings, all written and oral information provided by the Planning
10 Department, the public, relevant public agencies, and other experts and the administrative
11 files for the Project and the Final EIR; and

12 WHEREAS, The Project and Final EIR files have been made available for review by
13 the Board and the public, and those files are part of the record before this Board by this
14 reference herein; and

15 WHEREAS, The Planning Department, Linda Avery, is the custodian of records,
16 located in File No. 2007.0030E, at 1650 Mission Street, Fourth Floor, San Francisco,
17 California; and

18 WHEREAS, In order to develop the proposed Project, the California State Lands
19 Commission ("State Lands") must approve a Public Trust exchange authorizing a realignment
20 of the Public Trust between the 8 Washington site and SWL 351 (the "Trust Exchange")
21 pursuant to Section 5 of Chapter 310, Statutes of 1987 ("Chapter 310") and the Port has
22 negotiated with the State Lands staff a trust exchange agreement (the "Trust Exchange
23 Agreement") whereby the Public Trust will be lifted from approximately 23,020 square feet of
24 SWL 351 (the "Trust Termination Parcel") in exchange for impressing the Public Trust on
25

1 approximately 28,241 square feet of the 8 Washington site that is not currently subject to the
2 Public Trust (the "Trust Parcel"); and

3 WHEREAS, As required by Chapter 310, the Board of Supervisors makes the
4 following findings with respect to the Trust Termination Parcel:

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

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

14 3. *The Trust Termination Parcel is a very small portion of the Port's trust grant.* The
15 total area of the Trust Termination Parcel is approximately 23,020 square feet (approximately
16 ½ acre). The total amount of granted tide and submerged lands held by the Port is
17 approximately 725 acres, of which the Trust Termination Parcel represents 0.07%.

18 4. *The Trust Termination Parcel is no longer needed or required for the promotion of*
19 *the Public Trust.* Except for ferry operations at the Ferry Building and limited boat docking at
20 Pier 1 ½ and 3, maritime activities are no longer significant in the Ferry Building Waterfront
21 area. The Ferry Building Waterfront area abuts downtown San Francisco's diverse mix of
22 urban activities. SWL 351 is immediately adjacent to a private swim and tennis club and is
23 near low to high-rise residential and commercial development. For many years, the site has been
24 used as a surface parking lot. Because SWL 351 is physically cut-off from the water, ~~and~~ serves
25 no purpose in furthering maritime commerce, navigation or fisheries, and the existing surface

1 parking will be replaced with more public parking spaces in an underground parking garage, it is not
2 no longer needed or required for the promotion of the Public Trust. In addition, although SWL 351
3 is currently in use as a surface parking lot serving primarily the Ferry Building it is, the San Francisco
4 Public Utilities Commission ("SFPUC") operates a force main that services the northeastern portion
5 of San Francisco which runs through the entire width of SWL 351. No structures can be built over the
6 length of the force main, including a buffer zone around the force main, which in effect, further divides
7 SWL 351 into two smaller and separate areas, making development of Public Trust consistent
8 commercial uses that much more difficult. SWL 351's relatively small ~~in~~ size and ~~has an~~ unusual
9 shape ~~that~~ (as currently configured), in addition to the inability to build structures over the SFPUC
10 force main that runs through the entire width of SWL 351 (i) does not allow for the development of
11 any of the uses that would further the overall Public Trust goals of the Waterfront Plan. ~~As~~
12 currently configured, SWL 351 would not allow for or promote other Public Trust uses such as
13 useable or desirable open space or park use (ii). ~~The unusual size and shape of the existing~~
14 footprint makes development of a Public Trust-consistent commercial use, such as hotel or
15 retail, economically infeasible, as further evidenced by the withdrawal of the only other
16 respondent to the RFP before the Port's review of the proposal even began. Its current use
17 for parking serving the Ferry Building Waterfront area could be better continued as sub-surface
18 parking (as proposed), which would improve the appearance of the site and allow for
19 development of better and additional public-serving Public Trust uses, as further described in
20 item #5 below.

21 5. The Trust Termination Parcel can be removed without causing substantial
22 interference with Public Trust uses and purposes and the Trust Parcel is useful for the particular
23 trust purposes authorized by the Burton Act. In exchange for the lifting of the Public Trust from
24 the Trust Termination Parcel, a greater square footage of land immediately adjacent to SWL
25 351 will be impressed with the Public Trust. By combining SWL 351 and the 8 Washington

1 site, the resulting land configuration allows for the development of a mixed use project that
2 further promotes Public Trust uses and purposes and realizes the vision put forth in the
3 Waterfront Plan, by, among other things, (i) creating important new visual and pedestrian
4 public access linking Jackson Street to The Embarcadero; (ii) achieving a long term solution
5 to parking needs of the Ferry Building Waterfront area, as well as a central parking location for
6 visitors to the northeastern waterfront; (iii) improving the visual quality of the Ferry Building
7 Waterfront area by locating parking underground and creating an attractive mixed use
8 development that enhances the land side of The Embarcadero and reconnects San Francisco
9 with the waterfront; (iv) creating new parks along The Embarcadero, enhancing the waterfront
10 visitor experience; (v) providing visitor-serving retail uses, including a café in prominent
11 location adjacent to the proposed Pacific Park with waterfront views, (vi) creating new view
12 corridors of the San Francisco Bay through the Project Site, and (vii) creating significant
13 structures that recognize and respect the Port's bulkhead structures across The
14 Embarcadero; and

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

20 WHEREAS, the Board of Supervisors has reviewed and concurs with the determination
21 made by the City's Director of Property of the appraised value of each of the Trust
22 Termination Parcel and the Trust Parcel, which determination is on file with the Clerk of the
23 Board of Supervisors in File No. 120270 and is hereby declared to be a part of this resolution
24 as if set forth fully herein; and
25

1 WHEREAS, In order to accomplish the proposed Trust Exchange, the Board of
2 Supervisors wishes to approve the Trust Exchange on the material terms set forth in the Port
3 Commission Memorandum and in substantially the form of the Trust Exchange Agreement
4 which is on file with the Clerk of the Board of Supervisors in File No. 120270, which is hereby
5 declared to be a part of this resolution as if set forth fully herein; and

6 WHEREAS, The Port Commission, At its regular at a special public meeting on of May 29,
7 2012, ~~the Port Commission~~ reviewed and considered the Final EIR and adopted CEQA
8 Findings and a MMRP for the Project, including a Statement of Overriding Considerations, by
9 Resolution No. 12-46, a copy of which is on file with the Clerk of the Board of Supervisors in
10 File No. 120270, and is hereby declared to be a part of this resolution as if set forth fully
11 herein; and

12 WHEREAS, The Port Commission At its regular at a special public meeting of on May 29,
13 2012, ~~the Port Commission~~ adopted findings regarding the Trust Exchange, and took other
14 related actions by Resolution No. 12-47, a copy of which is on file with the Clerk of the Board
15 of Supervisors in File No. 120270, and is hereby declared to be a part of this resolution as if
16 set forth fully herein; and

17 WHEREAS, The Port Commission At its regular at a special public meeting of on May 29,
18 2012, ~~the Port Commission~~ approved the (1) Disposition and Development Agreement (the
19 "DDA") and 66-year Lease ("Lease") governing the construction of the Public Improvements,
20 public financing for certain public improvements, and operation of the Trust Retail Parcel, (2)
21 Purchase and Sale Agreement ("PSA"), (3) Trust Exchange Agreement governing the
22 conditions to the Trust Exchange, (4) Maintenance Agreement for the maintenance of the
23 Open Space Parcel by SFWP, and (5) related exhibits and attachments to the DDA, Lease,
24 PSA, Trust Exchange Agreement, and Maintenance Agreement (all of the foregoing,
25 collectively, (collectively the "Project Documents") described in the Memorandum for Agenda

1 Item 9A for the Port Commission *special* meeting of May 16~~29~~, 2012 (the "Port Commission
2 Memorandum"), by Resolution No. 12-47, a copy of which, along with the Port Commission
3 Memorandum, are on file with the Clerk of the Board of Supervisors in File No. 120270, and
4 are hereby declared to be a part of this resolution as if set forth fully herein; and

5 WHEREAS, The PSA sets forth the terms and conditions under which (i) the Port will
6 convey the Trust Termination Parcel to SFWP, (ii) SFWP will convey the Trust Parcel to the
7 Port; (iii) SFWP will develop the SFWP Improvements, and (iv) the Port can exercise an
8 option to purchase after completion of the Project an air space parcel within the underground
9 parking garage that can accommodate up to 175 cars; and

10 WHEREAS, In addition to receiving the Trust Parcel, the Port shall receive the
11 following payments from the sale of the Trust Termination Parcel: (i) a lump sum payment of
12 \$3 million, (ii) transfer fees (equaling ~~1%-5%~~ of the purchase price) in perpetuity ~~from~~ *after but*
13 *not including the first* ~~the~~ sale (or lease with a term of thirty-five (35) years or longer) of each of
14 the (a) residential condominiums; and (b) commercial condominiums (excluding the new
15 health and fitness club) ~~after (but not including) the first sale of the applicable commercial~~
16 ~~condominium, of which \$2 million is guaranteed~~, and (iii) an ongoing revenue stream of \$120,000
17 per year for 66-years, commencing upon completion of Public Improvements, adjusted every
18 5 years by the CPI with a minimum increase of 10% and a maximum of 20%; and

19 WHEREAS, In addition to the payments described in the immediately foregoing clause, SFWP
20 will pay to Port or a City agency or its designee, an amount that will be used to fund affordable
21 housing projects in the City, which amount will be determined by the type of the 134 residential units to
22 be built in the Project and as described in the PSA, and Port staff estimates that based on the type of
23 the 134 residential units approved by the Planning Commission for the Project, the additional
24 contribution SFWP will make for affordable housing projects in the City is estimated to be around \$2.2
25

1 million, which may be adjusted upwards or downwards depending on the final type of units set forth in
2 the Project's building permit; and

3 WHEREAS, After completion of the Project, Port and SFWP will enter into a
4 Maintenance Agreement for the management, maintenance, repair, and operation by SFWP
5 of the Open Space Parcel requiring SFWP, or its successor or assignee (which may be the
6 homeowner's association for the condominium project), to be responsible for the
7 management, maintenance, repair and operation of the Open Space Parcel at its sole
8 expense; and

9 WHEREAS, A copy of the proposed PSA, Lease, Trust Exchange Agreement, and
10 Maintenance Agreement are on file with the Clerk of the Board of Supervisors in File No.
11 120270, and are hereby declared to be a part of this resolution as if set forth fully herein; and

12 WHEREAS, The Project Documents conform to all local laws and regulations and are
13 not prohibited by the City's Charter; and

14 WHEREAS, City and Port staff and consultants have conducted substantial economic
15 analysis of the Project impacts and benefits on the Port and City; and

16 WHEREAS, The Project will generate additional significant public benefits for the Port
17 and the City, including: (i) the replacement of an underutilized Port seawall lot currently used
18 for surface parking with a below grade parking structure that meets the needs of Port
19 businesses and visitors; (ii) the creation of significant new jobs and economic development;
20 and (iii) both a lump sum payment and an ongoing revenue stream for the Port to help the
21 Port continue to promote Public Trust uses and purposes; and

22 WHEREAS, On March 22, 2012, the San Francisco Planning Commission ("Planning
23 Commission") by Motion No. 18565 found that the Project is consistent with the objectives
24 and policies of the San Francisco General Plan, and the Priority Policies of Section 101.1; and

1 WHEREAS, Charter Section 9.118(b) requires Board of Supervisors approval of
2 contracts having a term of ten or more years and Charter Section 9.118(c) requires Board of
3 Supervisors approval of leases having a term of ten or more years or anticipated revenues of
4 one million dollars or more, and of sales of City-owned real property; now, therefore, be it

5 RESOLVED, That the Board of Supervisors has reviewed and considered the
6 information contained in the Final EIR, the CEQA Findings, the Project Documents and all
7 other matters and actions approved by the Board of Supervisors by this Resolution, *finds that*
8 *the approval of the Public Trust Exchange, PSA, Lease, and Maintenance Agreement* reflect the
9 Project examined in the Final EIR and the Board hereby adopts the CEQA Findings, including
10 the Statement of Overriding Considerations and MMRP, adopted by the Planning Commission
11 by its Motion No. 18561, which CEQA Findings are on file with the Clerk of the Board of
12 Supervisors in File No. 120271, and are hereby declared to be a part of this resolution as if
13 set forth fully herein; and

14 FURTHER RESOLVED, That the Board of Supervisors finds that since the Planning
15 Commission certified the Final EIR, which certification the Board affirmed on May 15, 2012, there
16 have been no substantial project changes and no substantial changes in project circumstances that
17 would require major revisions to the Final EIR due to the involvement of the new significant
18 environmental effects or an increase in the severity of previously identified significant impacts, there is
19 no new information of substantial importance that would change the conclusions set forth in the Final
20 EIR, and the Board has not identified any feasible alternative or additional feasible mitigation
21 measures within its powers that would substantially lessen or avoid any significant effect the project
22 would have on the environmental; and

23 FURTHER RESOLVED, That SFWP was selected to develop SWL 351 pursuant to a
24 validly authorized and conducted RFP process; and be it

1 FURTHER RESOLVED, That the Board of Supervisors hereby finds that the Project is
2 consistent with the objectives and policies of the San Francisco General Plan, and the Priority
3 Policies of Section 101.1 for the same reasons as set forth in Motion No. 18565, adopted by
4 the Planning Commission on March 22, 2012; and be it

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

7 FURTHER RESOLVED, For reasons set forth herein, the Board of Supervisors finds
8 that the Trust Termination Parcel (i) has been filled and reclaimed, (ii) is cut off from access to
9 the waters of the Bay, (iii) is a very small portion of the Port's trust grant, (iv) is no longer
10 needed or required for the promotion of the Public Trust, and (v) can be removed without
11 causing substantial interference with Public Trust uses and purposes and the Trust Parcel is
12 useful for the particular trust purposes authorized by the Burton Act; and be it

13 FURTHER RESOLVED, That with the exchange of the Trust Termination Parcel for the
14 Trust Parcel and the additional monetary payments to the Port as described herein, the sales
15 price of the Trust Termination Parcel is at least 100% of the City's Director of Property's
16 determination as to the appraised value of the Trust Termination Parcel; and be it

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

21 FURTHER RESOLVED, That the Board of Supervisors hereby approves the
22 transactions contemplated by the Trust Exchange and the Trust Exchange Agreement
23 including all attachments and exhibits thereto, and the transactions which such agreements
24 contemplate, materially on the terms and conditions set forth in the Port Commission
25 Memorandum and in such final form as is approved by the City Attorney; and be it

1 FURTHER RESOLVED, That the Board of Supervisors approves the form and the
2 substance of the PSA, Lease, and the Maintenance Agreement, including all attachments and
3 exhibits thereto, and the transactions which such agreements contemplate, incorporating the
4 material business terms set forth in the Port Commission Memorandum; and be it

5 FURTHER RESOLVED, That the Board of Supervisors authorizes and directs the
6 Executive Director of the Port (the "Executive Director") to execute the PSA in substantially
7 the form presented to this Board, and in such final form as if approved by the Executive
8 Director in consultation with the City Attorney; and be it

9 FURTHER RESOLVED, That the Board of Supervisors authorizes and directs the
10 Executive Director to execute the Trust Exchange Agreement in substantially the form
11 presented to this Board, and in such final form as if approved by the Executive Director in
12 consultation with the City Attorney; and be it

13 FURTHER RESOLVED, That the Board of Supervisors authorizes and directs the
14 Executive Director to execute the Lease and the Maintenance Agreement upon satisfaction or
15 waiver of the conditions precedent set forth in the DDA in substantially the form presented to
16 this Board, and in such final form as is approved by the Executive Director in consultation with
17 the City Attorney; and be it

18 FURTHER RESOLVED, That the City's Director of Property and the Executive Director
19 are hereby authorized and urged, in the name and on behalf of the City and the Port, to
20 (i) execute and deliver any and all conveyance deeds and instruments, and (ii) to take any
21 and all steps (including, but not limited to, the execution and delivery of any and all
22 certificates, agreements, notices, consents, escrow instructions, closing documents and other
23 instruments or documents) as they deem necessary or appropriate in order to implement the
24 Trust Exchange in accordance with the terms of the PSA and the Trust Exchange Agreement,
25 or to otherwise effectuate the purpose and intent of this resolution, such determination to be

1 conclusively evidenced by the execution and delivery by the Director of Property and/or the
2 Executive Director of any such documents; and be it

3 FURTHER RESOLVED, That the City's Director of Property and the Port's Executive
4 Director are hereby authorized and urged, in the name and on behalf of the City and the Port,
5 to (i) execute and deliver the deed to the Trust Termination Parcel to SFWP, and (ii) accept
6 the Trust Parcel from SFWP, upon the closing in accordance with the terms and conditions of
7 the PSA, and to take any and all steps (including, but not limited to, the execution and delivery
8 of any and all certificates, agreements, notices, consents, escrow instructions, closing
9 documents and other instruments or documents) as they deem necessary or appropriate in
10 order to consummate the conveyance of the Trust Termination Parcel to SFWP and
11 acceptance of the Trust Parcel from SFWP pursuant to the PSA, or to otherwise effectuate
12 the purpose and intent of this resolution, such determination to be conclusively evidenced by
13 the execution and delivery by the Director of Property and Executive Director of any such
14 documents; and be it

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

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

24 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
25 Director, and as to the PSA, the Executive Director and the City's Director of Property, to

1 enter into reciprocal easement agreements, easement agreements, and or other related
2 covenants and property documents necessary to implement the transactions contemplated by
3 the Project Documents, and to enter into any additions, amendments or other modifications to
4 the Project Documents including preparation and attachment of, or changes to, any or all of
5 the attachments and exhibits that the Executive Director, in consultation with the City
6 Attorney, determines are in the best interests of the City, do not materially decrease the
7 benefits or otherwise materially increase the obligations or liabilities of the City or Port, and
8 are necessary or advisable to complete the transactions that the Project Documents
9 contemplate and effectuate the purpose and intent of this resolution, such determination to be
10 conclusively evidenced by the execution and delivery by the Executive Director of such
11 reciprocal easement agreements, easement agreements, or other covenants and property documents,
12 additions, amendments or other modifications to the Project Documents; and be it

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

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

| | |
|--|---|
| Items 7 and 8 Files 12-0270 and 12-0278 | Department: Port of San Francisco |
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EXECUTIVE SUMMARY

Legislative Objective

The proposed resolutions request Board of Supervisors approval of various transactions required for the development of combined properties at 8 Washington Street and Seawall Lot (SWL) 351.

File 12-0270 would approve a:

- (1) Purchase and Sale Agreement (PSA) between the Port and San Francisco Waterfront Partners II, LLC (SFWP) by which the Port would sell a portion of Seawall Lot (SWL) 351 to the SFWP and SFWP, a private developer, would sell to the Port a portion of 8 Washington Street comparable to SWL 351 in size and appraised value;
- (2) Trust Exchange Agreement between the City and the State Lands Commission governing the conditions under which the portion of SWL 351 sold by the Port to SFWP would be removed from the public trust and the portion of 8 Washington sold by SFWP to the Port would be placed into the public trust;
- (3) 66-year ground lease between the Port and SFWP for Port-owned property, in which SFWP would construct an approximately 4,000 square foot café/restaurant/ancillary retail building; and
- (4) Maintenance Agreement between the Port and SFWP in which SFWP would be responsible for maintaining the public open space.

File 12-0278 would amend a prior resolution (File 12-0128) which declared the Board of Supervisors intent to establish an infrastructure financing district (IFD) on Port property and established seven project areas, by adding SWL 351 as an eighth project area in the IFD. This resolution is a statement of intent and would not obligate the Board of Supervisors to establish the IFD and does not constitute approval of any specific land uses on such property.

Key Points

Approval of the proposed resolutions would allow development of the combined properties of 8 Washington Street and SWL 351. The resulting project would consist of a residential and commercial condominium development on the SFWP privately-owned property, and public and commercial improvements on Port-owned property. The private improvements, owned by SFWP, would include:

- Two mixed-use buildings with approximately 134 residential condominiums, and ground floor restaurant and retail (commercial) condominiums;

- A 388 underground parking garage for residents of the building and the public; and
- A 27,150 square foot health and fitness club that would replace an existing health club at the same location.

Public improvements to be owned by the Port include:

- 25,180 square feet of public open space in three parcels,
- A 4,000 square foot café/restaurant/retail building, and
- Improved and widened sidewalks along the west side of The Embarcadero, immediately south of Pacific Park, and fronting a portion of the east side of the newly built health and fitness club.

SWL 351, which is located at the corner of Washington Street and The Embarcadero, is currently used as surface parking for the Ferry Building Waterfront Area.

In 2009, based on a competitive Request for Proposals (RFP) process, the Port Commission authorized Port staff to enter into exclusive negotiations with SFWP in order to develop SWL 351.

Proposed Purchase and Sale Agreement (PSA)

Under the proposed PSA between the Port and SFWP:

- (1) The Port would sell to SFWP a portion of SWL 351, totaling 23,020 square feet, with an appraised value of \$7,560,000.
- (2) In return SFWP would sell to the Port portion of 8 Washington Street, totaling 28,241 square feet, with an appraised value of \$8,630,000.

Although the Port would be receiving property having an assessed value of \$1,070,000 in excess of the appraised value that SFWP will receive, SFWP would not be directly compensated for the difference in assessed value.

Proposed Trust Exchange Agreement

Under the proposed Trust Exchange Agreement (PSA) between the City and the State Lands Commission, the portion of SWL 351 being sold by the Port to SFWP would be removed from the public trust and become private property, while the portion of 8 Washington Street being purchased by the Port from SFWP would become part of the public trust.

Proposed Ground Lease and Maintenance Agreement

The Port will enter into a 66-year ground lease with SFWP for Port property bound by The Embarcadero, Washington Street, and Drumm Street. The Port property is open space, in which SFWP will construct a café/restaurant/ancillary retail building and public improvements.

Under the proposed Maintenance Agreement between the Port and SFWP, SFWP will be responsible for maintaining the Port-owned property, including the open space and public improvements.

Development and Disposition Agreement and Infrastructure Financing District (IFD)

The Port Commission and SFWP propose to enter into a Development and Disposition Agreement (DDA) governing the transfer of the café/restaurant/ancillary retail building to SFWP, the obligation of and conditions under which SFWP is to construct public improvements on the open space parcels, and the terms and conditions of public financing for the open space parcels. The proposed DDA is not subject to Board of Supervisors approval. However, Board of Supervisors approval of the Purchase and Sale Agreement, the Trust Exchange and the Ground Lease and Maintenance Agreement are required before the DDA can be implemented.

The Board of Supervisors previously approved a resolution declaring their intent to establish an IFD on Port property, consisting of seven project areas. Board of Supervisors approval of the intent to include SWL 351 as an eighth IFD project area (an area from which IFD revenues may be generated) in the previously approved Port IFD is required before the Port Commission and SFWP can implement the DDA.

Fiscal Impact

Under the Purchase and Sale Agreement, SFWP will pay the Port:

- (1) \$3,000,000 in a one-time lump sum payment;
- (2) Transfer fees to be paid to the Port by the condominium owners of 1.0% of the price of any subsequent, but not initial, sale of commercial and residential condominiums in perpetuity. The transfer fees are estimated to have a net present value of \$9.0 million over 66 years; these calculations are discussed in detail below. Ms. Joanne Sakai of the City Attorney's Office reports that the proposed transfer fee is not considered to be a tax requiring a 2/3 vote, but rather is considered to be a private, contractual agreement to provide the Port with revenue participation in the condominium sales.
- (3) \$120,000 per year as an open space fee, adjusted every 5 years by the Consumer Price Index (CPI) with a minimum increase of 10% and a maximum of 20% every five years.

Under the 66-year ground lease, SFWP will pay annual rent to the Port of 15% of gross income generated by the approximately 4,000 square foot café/restaurant/ancillary retail building to be

constructed by SFWP on Port property. There is no MAG (Minimum Annual Guarantee) in rent, as is generally included in other Port leases.

SFWP would also pay the Port \$60,000 per year during the construction of the residential and commercial condominiums as partial compensation for lost parking revenues for SWL 351, or \$180,000 during the three-year construction period, which is \$73,659 less than the \$253,659 in parking revenue that the Port would have received for the three-year period under the existing parking agreement. The net present value of the estimated future parking revenues that the Port would permanently forego is \$1,897,867, once the residential and commercial condominiums are completed (see table below).

The net present value of the estimated revenues to be paid by SFWP to the Port, offset by foregone future parking revenues would be \$12,408,945, as shown in the table below.

Net Present Value of Estimated Future Revenues Generated by the Proposed Purchase and Sale Agreement and 66-Year Ground Lease between the Port and SFWP

| Revenue | NPV | Time Period |
|---|---------------------|--------------|
| One Time Payment of \$3,000,000 | \$2,448,894 | Year 3 to 4 |
| 1.0% Transfer Fee Paid to the Port by Condominium Owners on the Future Sale of the Residential and Commercial Condominiums ¹ | 9,010,086 | Year 4 to 66 |
| 66-Year Ground Lease | 2,277,641 | Year 4 to 66 |
| Parking Revenues During Construction | 157,459 | Year 1 to 3 |
| Foregone Future Parking Revenues on Completion of Construction | (1,897,867) | Year 4 to 66 |
| 15% of Park Café and Other Retail Revenues | 412,732 | Year 4 to 66 |
| Total | \$12,408,945 | |

Source: Port

¹ Assumes approximately 14% of residential units and 10% of condominium units are sold each year.

Under the DDA between the Port and SFWP, project-related City costs for legal services provided by the City Attorney, and for the administrative costs of the Port and other City departments, and for various outside consulting costs, will be paid by SFWP. The Port is being reimbursed quarterly by SFWP for these costs, which in calendar year 2011 totaled \$311,189 and since entering into exclusive negotiations with SFWP in February, 2009 have totaled \$465,222.

Proposed IFD and \$5 Million in Tax Increment Revenues to be Paid by the Port to SFWP

According to the Port, the proposed residential and commercial condominium are expected to generate tax increment revenues over 30 years with an estimated net present value of \$44 million. Under the DDA between the Port and SFWP, the Port is required to reimburse SFWP up

to \$5 million in IFD project area tax increment revenues for SFWP's cost to construct improvements to the public open space.

Development Impact Fees

The proposed residential and commercial condominium development and the commercial café restaurant and retail building to be constructed by SFWP would generate an estimated \$12,106,366 in one-time development impact fees to the City, as follows:

Development Impact Fees

| | |
|--|---------------------|
| <u>Mandated Fees</u> | |
| Affordable Housing | \$8,844,176 |
| Jobs-Housing Linkage | 643,125 |
| Transit Impact Development | 376,875 |
| Subtotal, Mandated Fees | \$9,864,176 |
| Additional Affordable Housing Fees under the Purchase and Sale Agreement | 2,242,190 |
| Total Fees | \$12,106,366 |

- Mandated Affordable Housing Fees (\$8,844,176). This represents payment of the inclusionary housing fee for the equivalent of 20% of the condominium development's 134 units, or 27 units.
- Additional Affordable Housing Fees under the Purchase and Sale Agreement (\$2,242,190). SFWP has agreed to pay additional inclusionary housing fees for the equivalent of another 5% of the condominium development's 134 units, or 7 units.
- Mandated Jobs-Housing Linkage Program Fees (\$643,125) calculated at \$20.58 per each of 31,250 square feet of retail and health club development facilities at the site.
- Mandated Transit Impact Development Fees (\$376,875), calculated at \$12.06 per each of 31,250 square feet of retail and health club development facilities at the site.

Under the City's fee deferral program, SFWP would be required to pay 15% of \$9,864,176 in mandated development impact fees, or \$1,479,626, to the City on receipt of a building permit, with the remaining 85%, or \$8,384,550 due on certificate of occupancy. For the additional development impact fees for affordable housing of \$2,242,190, the Purchase and Sale Agreement requires 20%, or \$448,438, to be paid at project initiation, with the remaining 80% (\$1,793,752) paid on certificate of occupancy. Thus, \$1,928,064 in development impact fees (\$1,479,626 in mandatory fees and \$448,438 in additional fees) will be made available to the City on project initiation.

General Tax Revenues

According to the Port, the City will receive an estimated \$1.26 million annually in Sales, Transfer, and Utility and Taxes from development of the project. According to the Port, these

estimates will be further refined before the Board of Supervisors considers approval of the infrastructure financing plan.

Summary

The proposed resolutions provide for development of private property owned by SFWP and public property owned by the Port, bound by The Embarcadero, Washington Street, and Drumm Street, including:

- (1) Construction by SFWP of residential and commercial condominiums, underground parking for residential and public use, and a health and fitness club on the private property owned by SFWP ; and
- (2) Open space and public improvements on property owned by the Port, including a café/restaurant and ancillary retail building to be constructed by SFWP.

SFWP benefits from the proposed transactions by gaining the right to develop the residential and commercial condominiums on SWL 351, which is currently Port-owned property. The estimated value to SFWP of the residential and commercial condominium development, based on the initial sales value of the commercial and residential condominiums, is \$469.7 million (\$391 million for the initial sale of the residential condominiums and \$78.7 million for the initial sale of the commercial condominiums). In addition, SFWP will receive rental income from the café/restaurant/ancillary retail uses, estimated at a net present value of \$2,751,547 over 66 years.

The net present value of financial benefits to the City from the proposed transaction are estimated to be up to \$63.5 million, including (1) \$12.4 million to the Port under the Purchase and Sale Agreement and 66-year ground lease, (2) \$12.1 million in development impact fees to the City, and (3) \$39.0 million in tax increment revenues (net present value of \$44 million in tax increment revenues, less \$5 million allocated to SFWP for the costs to develop public improvements).

The City could also realize additional Sales, Transfer, and Utility Tax revenues to be generated by the proposed residential and commercial condominium and other development, estimated to be \$1.26 million annually.

Policy Considerations

The DDA between the Port and SFWP obligates the City to reimburse \$5,000,000 in open space improvement costs through tax increment revenues generated by the proposed development

Although the Board of Supervisors has not yet approved the proposed IFD or financing plan, the DDA between the Port and SFWP obligates the City to spend \$5,000,000 of IFD tax increment revenues on public open space improvements bound by The Embarcadero, Washington Street, and Drumm Street. The DDA contains a license between the Port and SFWP that requires the Port to create the IFD and reimburse \$5 million to SFWP for SFWP's costs for public improvements.

Mr. Jonathan Stern, Port Assistant Deputy Director for Development, states that the Port will request at a future date Board of Supervisors' approval for appropriation of approximately \$20,900,000 million, or 47.5% of future IFD tax increment revenues with an estimated net present value of \$44,000,000, for Port capital projects outside of this IFD project area as contained in its capital plan. The future appropriation request of \$20,900,000 is in addition to the \$5,000,000 that the Port is required to reimburse SFWP for public open space improvements, noted above.

The Board of Supervisors has the final authority to determine the allocation of the proposed IFD tax increment revenues to the Port or the City's General Fund. Issuance of tax increment bonds and appropriation of tax increment bond proceeds are subject to Board of Supervisors approval.

The City will receive limited financial benefits beyond that required by statute for payment of development impact fees and taxes

Of the one-time development impact fees of \$12,106,366 to be paid by SFWP to the City, \$9,864,176, or 81.5% represent affordable housing fees, job-housing linkage fees, and transit impact development fees mandated by the Planning Code. \$2,242,190, or 18.5%, in affordable housing fees to be paid by SFWP under the terms of the Purchase and Sale Agreement are in addition to the fees mandated by the Planning Code.

The City could require SFWP to provide other public benefits to the City in exchange for entering into a development agreement, as allowed for under California Government Code section 65864 (the Development Agreement Statute).

The Board of Supervisors should consider amending the proposed resolution by requesting that the Port negotiate further public benefits to be provided by SFWP under the DDA between the Port and SFWP. For example, the proposed DDA requires that the Port reimburse \$5 million in IFD proceeds to SFWP for construction of public improvements. The total cost of the public improvements is estimated by the Port to be approximately \$8 million. Thus, IFD revenues of \$5 million will fund 62.5% of the estimated cost of public improvements while SFWP will fund \$3

million or 37.5%. These improvements will also enhance the financial value of the private improvements. The Port could negotiate to have these improvements of \$8 million entirely funded by SFWP instead of the Port contributing \$5 million in tax increment revenues towards SFWP's cost of constructing the public improvements.

Recommendations of the Budget and Legislative Analyst

Amend the proposed resolution to request the Port to negotiate:

- A minimum annual guarantee (MAG) rent for the café/restaurant and ancillary retail building, which is not currently required by the proposed 66-year ground lease between the Port and SFWP, and is consistent with other agreements between the Port and private developers.
- Additional payment of \$73,659 from SFWP to offset lost parking revenue, which the Port would have received for the three-year period under the existing parking agreement.

Approval of the proposed resolutions (File 12-0270 and File 12-0278), as amended, is a policy matter for the Board of Supervisors.

The Board of Supervisors should also consider amending the resolution by requesting that the Port negotiate further public benefits to be provided by SFWP under the DDA between the Port and SFWP, including SFWP paying the total costs of \$8 million for the public improvements rather than the City allocating \$5 million in IFD proceeds and SFWP paying only \$3 million.

MANDATE STATEMENT

Charter Section 9.118(c) requires Board of Supervisors approval of leases having a term of ten or more years or anticipated revenues of one million dollars or more, and of sales or transfers of City-owned real property. Transfer of the property under the proposed Purchase and Sale Agreement (PSA) depends on the trust exchange being approved between the City and County of San Francisco and the State Lands Commission. The State Lands Commission may approve an exchange pursuant to the provisions of Section 5 of Chapter 310, Statutes of 1987, which details the conditions under which and the purposes for which a trust exchange may be made. Charter Section 9.118(b) requires Board of Supervisors approval of contracts having a term of ten or more years.

California Government Code Section 53395 et seq., which became law in 1990, authorizes cities to establish infrastructure financing districts (IFD) to finance purchasing, constructing, expanding, improving, seismically retrofitting or rehabilitating real or other tangible property with an estimated life of 15 years or longer. Infrastructure financing districts "shall finance only public capital facilities of communitywide significance", including parks, other open space and street improvements. Section 53395.8 allows an infrastructure financing district to be divided into project areas.

BACKGROUND

Seawall Lot (SWL) 351, which is located at the corner of Washington Street and The Embarcadero, is currently used as surface parking for the Ferry Building Waterfront Area. SWL 351 is located in the Ferry Building Waterfront Area in the Port's Waterfront Land Use Plan (Waterfront Plan), which identifies several objectives, including:

- Providing a mix of public and private uses for properties in the Ferry Building Waterfront Area;
- Restoring the Ferry Building Waterfront as a major transit center;
- Maximizing new and existing parking to serve existing businesses in the Ferry Building and Agriculture Building; and
- Obtaining economic value from SWL 351 by combining it with the adjacent Golden Gateway residential site (8 Washington Street) for residential and commercial development.

The Waterfront Plan identifies several acceptable uses for SWL 351, including residential, entertainment, general office, parking, retail, recreation, visitor services, community facilities, and open space.

In 2006, San Francisco Waterfront Partners II, LLC (SFWP) made an unsolicited proposal to the Port to develop SWL 351 in conjunction with the privately-owned 8 Washington Street. In 2008, Port staff provided information to the Port Commission on the options for SWL 351, which included (1) offering SWL 351 for development by competitive bid, (2) responding to SFWP's proposal by initiating a sole source negotiation, or (3) taking no action.

The Port Commission authorized offering development opportunities for SWL 351 through a request for proposal (RFP). The Port received two proposals: SFWP's proposed condominium and commercial development (discussed further below); and a 200-room hotel development proposed by a development group led by Dhaval Panchal. Subsequently, Mr. Panchal withdrew his proposal. In February 2009, the Port Commission authorized Port staff to award the development opportunity for SWL 351 to SFWP and enter exclusive negotiations with SFWP.

DETAILS OF LEGISLATION

Proposed Project

The proposed project consists of a residential and commercial condominium development on privately-owned property, and public and commercial improvements on Port-owned property. The private improvements, owned by SFWP, include:

- Two mixed-use buildings with approximately 134 residential condominiums, and ground floor restaurant and retail (commercial) condominiums;
- An underground parking garage for residents of the buildings and the public; and
- A new health and fitness club.

Public improvements to be owned by the Port include:

- 25,180 square feet of public open space in three parcels;
- An approximately 4,000 square foot café/restaurant/retail building; and
- Improved and widened sidewalks along the west side of The Embarcadero, immediately south of Pacific Park and fronting a portion of the east side of the newly built health and fitness club.

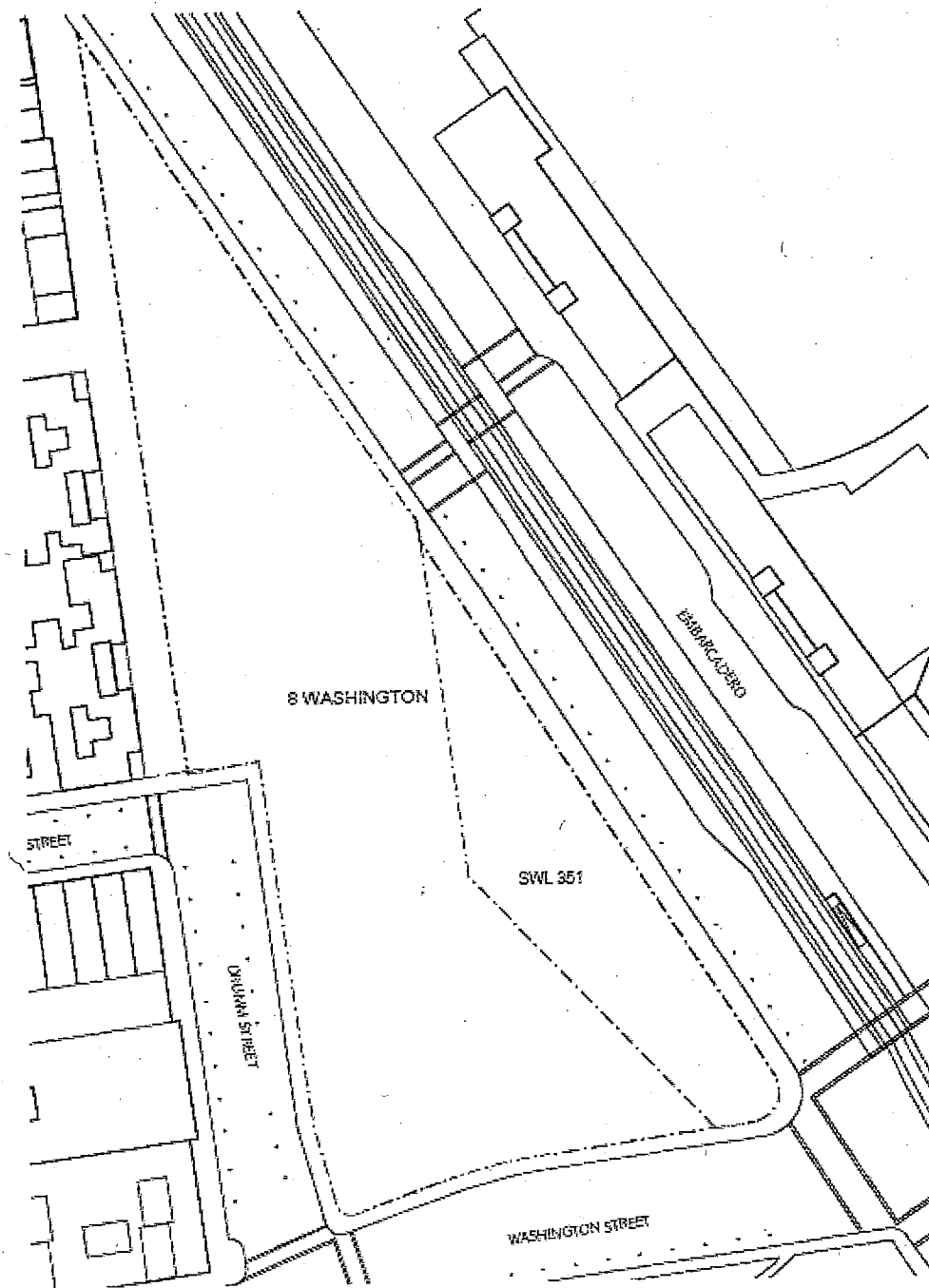
File 12-0270

In order to develop the proposed project, the Board of Supervisors must approve (1) a Purchase and Sale Agreement ("PSA") by which the Port would sell a portion of SWL 351 to and purchase a portion of 8 Washington from San Francisco Waterfront Partners II, LLC (SFWP); (2) a Trust

Exchange Agreement for the same properties governing the conditions of the exchange and in keeping with State law governing exchanges of land in State trust, (3) 66-year ground lease governing the construction of public improvements, provision of some public financing for public improvements, and operation of the a retail parcel on Port property, and (4) a Maintenance Agreement for the maintenance by SFWP of the open space, bound by The Embarcadero, Washington Street and Drumm Street.

1) Purchase and Sale Agreement (PSA)

Adoption of the resolution would authorize the simultaneous sale of a portion of SWL 351, currently owned by the Port, comprising 23,020 square feet, and purchase of a portion 8 Washington, comprising 28,241 square feet. The Port currently owns 27,926 of the square footage in the combined properties, or roughly 20%. Private property owners own 109,224 square feet, or approximately 80% of the land. After the transfer, the Port will own 32,937 square feet, approximately 24% of the total land, and private owners will own 104,213 square feet, or 76% of the land. The map below shows the current configuration of SWL 351 and 8 Washington Street.



Attachment I shows the portion of SWL 351 that would be sold by the Port to SFWP, and Attachment II shows the portion of 8 Washington that would be purchased by the Port from SFWP.

The City's Director of Real Estate has determined, based on an appraisal conducted by Carnegie-Blum & Partners, Inc. on behalf of SFWP, that the portion of SWL 351 to be sold by the Port to SFWP has a current appraised value of \$7,560,000, while the portion of 8 Washington to be purchased by the Port from SFWP has an appraised value of \$8,630,000. The appraisal did not consider increased land value from provision of a conditional use permit to increase the height, bulk and parking at the site.

The sale of a portion of SWL 351 and purchase of a portion of 8 Washington Street would result in an exchange of properties in the public trust. The appraised value of the land to be exchanged into the public trust thus equals or exceeds the value of the land to be exchanged out of the public trust.

In addition to receiving a portion of 8 Washington, the PSA calls for the Port to receive from SFWP the following payments from the sale of a portion of SWL 351:

- A one-time lump sum payment of \$3 million,
- Transfer fees, equaling 1.0% of the purchase price, in perpetuity from the subsequent but not initial sale (or lease with a term of thirty-five (35) years or longer) of each residential and commercial condominium, and
- An ongoing revenue stream of \$120,000 per year for 66 years, commencing upon completion of public improvements, adjusted every 5 years by the Consumer Price Index (CPI) with a minimum increase of 10% and a maximum of 20% every five years.

2) Trust Exchange Agreement

Because SWL 351 is part of the public trust for the waterfront as established under the Burton Act, the City must approve and authorize a trust exchange agreement with the California State Lands Commission that would remove the public trust from Seawall Lot 351 and impress it upon 8 Washington. Whereas State legislation (SB 815) declared a number of Port properties along the waterfront surplus to the trust (e.g., not needed for trust purposes), thus requiring no State Lands Commission approval, no properties north of Market Street were included in that legislation in its final form. These properties, including SWL 351, therefore must be considered on a case by case basis by the State Lands Commission.

Port staff has asked the Port Commission to make findings that (a) SWL 351 is no longer needed for trust purposes; and (b) the property to be placed in trust is useful for trust purposes, will not substantially interfere with other public trust purposes, and has a monetary value equal to or greater than that being transferred from the trust. The findings are required under State law.

In particular, Port staff report that:

- As currently configured, SWL 351 would not allow for useable or desirable open space or park use.

- The unusual size and shape of SWL 351 makes development of a public trust-consistent commercial use, such as hotel or retail, economically infeasible.
- The parcel's current parking serving the Ferry Building could be better served through sub-surface parking, which would improve the appearance of the site and allow for development of better public-serving public trust uses.¹

The Port Commission approved the trust exchange on May 29, 2012.

The trust exchange has been negotiated between staff of the California State Lands Commission and the Port staff. The State Lands Commission must also make the above findings. According to State Lands Commission staff, State Land Commission approval, originally sought for May 24, 2012, has been delayed until July, 2012 to allow time for the Board of Supervisors to approve the trust exchange.

3) Lease Agreement

The Port will enter into a 66-year ground lease with SFWP for Port property, in which SFWP will construct a café/restaurant/ancillary retail building. The café/restaurant/ancillary retail building is an approximately 4,000 square foot, one-story, 18-foot-tall building.

After construction by SFWP, the building will be owned by the Port, which in turn will lease it back to the developer under the 66-year ground lease. SFWP will pay the Port 15% of gross income received by SFWP. There is no MAG (Minimum Annual Guarantee) in rent, as is customary for Port rental agreements.

4) Maintenance Agreement

SFWP will provide management, landscape, janitorial, general maintenance, and security services at no cost to the Port for the open spaces in the project. The open space parcel includes Pacific Park, Jackson Commons, a portion of the length of the Drumm Street Garden Walk, a portion of The Embarcadero sidewalk, and other areas of open space. SFWP will also maintain the public restrooms in the café/restaurant/retail building. Under the Maintenance Agreement, SFWP may administer permits, events and concessions within the open space and retain the associated revenue.

A standard of maintenance and a specific scope of services is included in the maintenance agreement. If the Port terminates the maintenance agreement for non-performance by the developer, the DDA provides that a maintenance special tax could be levied against each taxable parcel in an amount needed to finance open space maintenance and administrative expenses.

¹ See page 26, *Waterfront Plan*.

Neither the Port nor the City are obliged to pay for open space maintenance from property taxes or any other source of available City or Port funds.

Infrastructure Financing District (File 12-0278)

File 12-0278 would amend an earlier Board of Supervisors' resolution (File 12-0128), which declared the Board's intent to establish an infrastructure financing district (IFD) for the waterfront and established seven project areas, by adding SWL 351 as an eighth project area under the district. The project area to be added to the IFD contains only the portion of SWL 351 currently owned by the Port.

According to Port staff, the Port will later seek Board of Supervisors approval under California Government Code 53395.8 to include the remaining portion of the 8 Washington project in the IFD. This statute allows private property contiguous to an IFD in San Francisco to petition the Board of Supervisors to join the IFD after it has been established, in exchange for committing to maintain public access to any land within 100 feet of the shoreline. The current resolution is a statement of intent and would not obligate the Board of Supervisors to establish the IFD, and does not constitute approval of any specific land uses on such property. Board of Supervisors approval to include SWL 351 and 8 Washington in the Port IFD must be obtained before the Port Commission and SFWP can implement the proposed Development and Disposition Agreement (DDA), discussed below.

Development and Disposition Agreement

The Port Commission and SFWP propose to enter into a DDA governing the transfer of the café/restaurant/ancillary retail building to SFWP, the obligation of and conditions under which SFWP is to construct public improvements on the open space parcels, and the terms and conditions of public financing for the open space parcels. The DDA is not subject to Board of Supervisors approval. However, Board of Supervisors approval of the PSA, the Trust Exchange and the Ground Lease and Maintenance Agreement are required before the DDA can be implemented.

Public Improvements under the DDA

The proposed DDA requires SFWP to construct public improvements on Port-owned property. The public improvements consist of 25,180 square feet of public open space in three parcels and improved and widened sidewalks to be constructed by SFWP. The Port will reimburse SFWP up to \$5 million, using IFD tax increment revenues generated by the proposed project, for the costs of constructing the public improvements.

The DDA requires that SFWP obtain a letter of credit guaranteeing that it or any successor will construct the public improvements without IFD funds if it fails to proceed with the development.

Community Facilities District

The Port will also assist SFWP by forming a Mello-Roos Community Facilities District (CFD), with SFWP as the sole property owner, which will provide revenues to SFWP for development of the open space parcels, if necessary. Formation of the proposed CFD is subject to future Board of Supervisors approval. The proceeds to the CFD cannot be used for purposes outside of the project site. CFD assessments could be applied to property within the project site, except for a proposed recreational facility, and used for capital costs for public improvements included in the project.

Parking

Development of the private improvements on SWL 351 will entail removing a surface parking lot of 90 to 110 parking spaces currently operated by ACE Parking under an agreement with Ferry Building Associates, LLC². The current parking on SWL 351 represents approximately 2/3 of the 150 parking spaces the Port is required to provide the master tenant of the Ferry Building under its agreement with the Port. The new underground parking garage to be constructed by SFWP will contain up to a total of 388 parking spaces of which 255 will be for the public, comprised of 175 spaces guaranteed under covenant to serve the Ferry Building Waterfront Area and 80 additional public parking spaces. The remaining automobile parking spaces will be reserved for residents (127 spaces) and car sharing (6 spaces). Of the 175 public parking spaces, no fewer than 90 spaces must be permanently dedicated to serving the Ferry Building Waterfront Area. The DDA between the Port and SFWP specifies that SFWP or any successor is obliged to provide the 90 replacement parking spaces in the vicinity if it fails to proceed with the development. During construction, the Port indicates it plans to provide a minimum of 90 temporary parking spaces through use of other nearby parking facilities.

Related Board of Supervisor Actions

Prior Board actions related to these items include:

- Resolution in support of State legislation allowing establishment of infrastructure financing districts (SB 1085).
- 2011 adoption of guidelines recommended by the Capital Planning Committee for the establishment and use of infrastructure financing districts. Under these guidelines, the Port retains all proceeds from the IFD formed on Port property. If the IFD project area includes Port and non-Port property, only the proceeds from the Port property are retained exclusively to fund Port capital projects.

² Ferry Building Associates, LLC is the master tenant of the Ferry Building Market Place under a ground lease with the Port, and consists of CA-Ferry Building Investor Limited Partnership, EOM GP LLC, and Equity Office Management LLC.

- 2012 approval of the Resolution of Intent to establish an infrastructure financing district comprised of the Port's waterfront properties (Resolution #110-12). That resolution established seven infrastructure financing project areas. The Board of Supervisors had excluded SWL 351, the subject of this resolution, from inclusion in the initial list of project areas.
- 2012 rejection of appeals to the EIR and Conditional Use Permit adopted by the Planning Commission.

Other actions related to this item to be introduced to the Board of Supervisors in the future include:

- Approval to expand the IFD project area boundaries to include 8 Washington Street.
- A waiver of 2011 guidelines for establishing IFDs in San Francisco, adopted by the Board of Supervisors with regard to 8 Washington if added to the IFD.
- A future ordinance adopting an infrastructure financing plan for the project, establishing an appropriations limit and giving the City the authority to issue bonds against projected infrastructure financing district. Port management reports that the request for approval of the financing plan is expected to be submitted to the Board of Supervisors in approximately two months.

FISCAL IMPACT

Under the proposed purchase and sale agreement between SFWP and the Port, the Port would transfer to SFWP land with an appraised value of \$7,560,000 and receive from SFWP land with an appraised value of \$8,630,000. In addition the Port would receive from SFWP:

- (1) A one-time payment of \$3,000,000;
- (2) Transfer fees to be paid by the condominium owner of 1.0% of any subsequent sales of commercial and residential condominiums in perpetuity with an estimated net present value of \$9.0 million, based on the 66-year period used by the Port; and
- (3) \$120,000 per year under the proposed purchase and sale agreement between the Port and SFWP for use of the open space, adjusted every 5 years by the CPI, for not less than 10% and not more than 20%; and
- (4) 15% of income to SFWP generated by the proposed park café or other retail under the proposed ground lease between the Port and SFWP. According to Port staff, the Port receives 15% of income generated by projects on Pier 1 ½, Pier 3, Pier 5, and Pier 39; however, at these locations there is a MAG (Minimum Annual Guarantee) in rent.

SFWP would also pay the Port \$60,000 per year during the construction of the residential and commercial condominiums as partial compensation for lost parking revenues from the current parking on SWL 351. Construction is expected to last three years. The Port is currently receiving \$82,066 annually in these parking revenues, which would be foregone during the first year of construction. Under the agreement with EOP, these payments would have increased to \$84,528 in what will now be the second year of construction and \$87,064 in the third year, for a total of \$253,659 in foregone parking revenues during the construction period. The Port will permanently forego future parking revenues from SWL 351, beginning in year four, when construction of the residential and commercial condominiums is completed, with an estimated net present cost of \$1.9 million.³

The net present value (NPV) to the Port of these estimated revenues, offset by the net present cost of foregone parking revenues, is approximately \$12.4 million, as shown in Table 1 below.

Table 1
Net Present Value of Future Estimated Revenues Generated by the Proposed Purchase and Sale Agreement and 66-Year Ground Lease between the Port and SFWP⁴

| Revenue | NPV | Time Period |
|---|---------------------|--------------|
| One Time Payment of \$3,000,000 | \$2,448,894 | Year 3 to 4 |
| 1.0% Transfer Fee Paid to the Port by Condominium Owners on the Future Sale of the Residential and Commercial Condominiums ⁵ | 9,010,086 | Year 4 to 66 |
| 66-Year Ground Lease | 2,277,641 | Year 4 to 66 |
| Parking Revenues During Construction | 157,459 | Year 1 to 3 |
| Foregone Parking Revenues on Completion of Construction | (1,897,867) | Year 4 to 66 |
| 15% of Park Café or Other Retail Revenues | 412,732 | Year 4 to 66 |
| Total | \$12,408,945 | |

Source: Port

Under the DDA between the Port and SFWP, project-related City costs for City Attorney, Port and other City staff, and for consulting will be paid by SFWP. The Port is being reimbursed quarterly by SFWP for these costs, which in calendar year 2011 totaled \$311,189 and since entering into exclusive negotiations with SFWP in February, 2009 have totaled \$465,222.

³ The estimated net present value of the foregone revenues is based on an annual increase of 3% per year. This may be conservative as the existing contract between the Port and EOP for the SWL 351 parking is to be renewed every 10 years at "prevailing parking fees" to be negotiated between the Port and EOP.

⁴ The Port has calculated the NPV based on a 7% discount rate, the current rate for corporate bonds, except for the café lease revenues, in which the Port has calculated a 7.5% discount rate.

⁵ Based on resale of residential and commercial condominiums every 7 years.

Infrastructure Financing District Tax Increment Revenues

The DDA between the Port and SFWP commits the Port to making payments of \$5 million from future IFD revenues to reimburse SFWP for the cost of constructing open space improvements. According to Mr. Jonathan Stern, Port Assistant Deputy Director for Development, the Port estimates that the proposed IFD will generate total estimated tax increment revenues of \$3.1 million per year over 30 years, for a net present value of \$44 million. The first \$5 million in infrastructure financing district tax increment revenue would be provided by the Port to SFWP for construction of open space improvements as revenues became available.

Development Impact Fees

The proposed residential and commercial condominium development and the commercial café restaurant and retail building to be constructed by SFWP would generate an estimated \$12,106,366 in one-time development impact fees to the City, as follows:

Table 2
Development Impact Fees

| | |
|--|---------------------|
| <u>Mandated Fees</u> | |
| Affordable Housing | 8,844,176 |
| Jobs-Housing Linkage | 643,125 |
| Transit Impact Development | 376,875 |
| Subtotal, Mandated Fees | \$9,864,176 |
| Additional Affordable Housing Fees under the Purchase and Sale Agreement | 2,242,190 |
| Total Fees | \$12,106,366 |

- Mandated Affordable Housing Fees (\$8,844,176). This represents payment of the inclusionary housing fee for the equivalent of 20% of the condominium development's 134 units, or 27 units.
- Additional Affordable Housing Fees under the Purchase and Sale Agreement (\$2,242,190). SFWP has agreed to pay additional inclusionary housing fees for the equivalent of another 5% of the condominium development's 134 units, or 7 units.
- Mandated Jobs-Housing Linkage Program Fees (\$643,125) calculated at \$20.58 per each of 31,250 square feet of retail and health club development facilities at the site.
- Mandated Transit Impact Development Fees (\$376,875), calculated at \$12.06 per each of 31,250 square feet of retail and health club development facilities at the site.

Under the City's fee deferral program, SFWP would be required to pay 15% of the mandated development impact fees of \$9,864,176 (\$1,479,626) to the City on receipt of a building permit, with the remaining 85% (\$8,384,550) due on certificate of occupancy. The PSA requires 20%,

or \$448,438, of additional affordable housing fees of \$2,242,190 to be paid at project initiation, with the remaining 80%, or \$1,793,752, paid on certificate of occupancy. Thus, \$1,928,064 in impact fees of \$12,106,366 will be made available to the City on project initiation.

To the extent that more street trees are required than will be provided on the parcel, the developer will also be required to pay \$1,744 in Street Tree In-Lieu Fees for each tree deemed required.

Tax Revenues

The Port's financial consultant has preliminarily estimated that \$1.26 million annually in sales, transfer and utility taxes will be made available to the City from development of the project. According to Mr. Stern, the Port will further analyze these revenue projections when the Port submits the proposed infrastructure financing plan to the Board of Supervisors.

Summary

The proposed resolutions provide for development of private property owned by SFWP and public property owned by the Port, bound by The Embarcadero, Washington Street, and Drumm Street, including:

- Construction of residential and commercial condominiums, underground parking for residential and public use, and a health and fitness club on the private property owned by SFWP ; and
- Open space and public improvements on property owned by the Port, including a café/restaurant and ancillary retail building to be constructed by SFWP.

SFWP benefits from the proposed transactions by gaining the right to develop the residential and commercial condominiums on SWL 351, which is currently Port-owned property and part of the public trust and would be transferred to SFWP in exchange for property currently owned by SFWP. The estimated value to SFWP of the residential and commercial condominium development, based on the initial sales value of the commercial and residential condominiums, is \$469.7 million (\$391 million for the initial sale of the residential condominiums and \$78.7 million for the initial sale of the commercial condominiums). In addition, SFWP will receive rental income from the café/restaurant/ancillary retail uses, estimated at a net present value of \$2,751,547 over 66 years. Finally, SFWP would be reimbursed up to \$5 million in costs for development of public improvements on the site.

Public financial benefits from the proposed transaction are estimated to be \$24.5 million in net present value, which includes (1) \$12.4 million to the Port under the Purchase and Sale Agreement and 66-year ground lease, and (2) \$12.1 million in development impact fees to the City.

The City would also realize additional tax revenues to be generated by the proposed residential and commercial condominium and other development, including an estimated \$44 million net present value in Tax Increment revenues (of which \$5 million would be used to reimburse SFWP for the cost of public improvements), and an estimated \$1.26 annually in sales and other taxes.

POLICY CONSIDERATIONS

The DDA between the Port and SFWP obligates the City to reimburse \$5 million in tax increment revenues generated by the proposed development to SFWP for the costs of constructing open space improvements

Although the Board of Supervisors has not yet approved the proposed IFD or financing plan, including the apportionment of IFD tax increment revenues between the Port, other taxing authorities (e.g., SFUSD, BART) and the City's General Fund, the DDA between the Port and SFWP obligates the City to spend \$5 million of tax increment revenues generated by the proposed residential and commercial condominiums on public open space improvements at the project site.

Total estimated tax increment revenues to be generated by the proposed residential and commercial condominiums are \$3.1 million per year over 30 years, for a net present value of \$44 million. These revenues result directly from the development of the residential and commercial condominiums on SWL 351.

Under State law, the Board is authorized to (1) approve the formation of the IFD, and (2) determine the allocation of the tax increment revenues, resulting from the IFD. The Board of Supervisors previously approved guidelines for forming IFDs that supplement existing State law (Resolution 0066-11). Under State law, IFD proceeds can finance the purchase, construction, expansion, improvement, seismic retrofit or rehabilitation of public property. The public property does not need to be located within the boundaries of the IFD. The Board of Supervisors approved additional criteria that set (1) minimum threshold criteria for when an IFD can be formed; and (2) strategic criteria for forming an IFD.

The Board of Supervisors' guidelines exempt an IFD formed on Port property. As noted in the guidelines, "The Port has over \$1 billion in deferred maintenance and plans to apply different IFD policies to assist in its capital repair and maintenance efforts, and IFD law contains provisions unique to land under Port jurisdiction. The Port plans to independently utilize State IFD law to finance capital improvements that address this need." While the guidelines exempt an IFD formed on Port property, resolution 0066-11 states specifically that, if the IFD includes non-Port property as well as Port property, only the Port-owned property is excluded. Therefore, any IFD project area formed from non-Port property would be subject to the criteria previously established by the Board of Supervisors.

Mr. Stern states that the Port will request at a future date Board of Supervisors' approval for appropriation of approximately \$20,900,000 in addition to the \$5,000,000 noted above. The future request of \$20,900,000, which is 47.5% of future IFD tax increment revenues with an estimated net present value of \$44,000,000, would be used for Port capital projects outside of this IFD project area as contained in its capital plan. These projects include Phase II of the Pier 27 Cruise Terminal, remediation of waste water violations for which it has been cited by the California Regional Water Quality Control Board, and pier substructure repairs.

The Board of Supervisors has the final authority to determine the allocation of the proposed IFD tax increment revenues to the Port or the City's General Fund, consistent with the Board's adopted guidelines. The Board of Supervisors must also approve issuance of tax increment bonds and appropriation of tax increment bond proceeds

The City will receive limited financial benefits beyond that required by statute for payment of development impact fees and taxes

The majority of development impact fees to be paid by SFWP to the City, which include the affordable housing fee, job-housing linkage fee, and transit impact development fees, are those required by statute. Of the one-time development impact fees of \$12,106,366 to be paid by SFWP to the City, \$9,864,176, or 81.4% represent affordable housing fees, job-housing linkage fees, and transit impact development fees mandated under Planning Code Sections 411, 413 and 415. An additional \$2,242,190 in affordable housing fees are to be paid by SFWP voluntarily.

The City could require SFWP to provide greater public benefits in exchange for entering into a development agreement, as allowed under California Government Code section 65864 (the Development Agreement Statute). The Board of Supervisors should consider amending the resolution by requesting that the Port negotiate further public benefits to be provided by SFWP under the DDA between the Port and SFWP. For example, the proposed DDA requires the Port to pay \$5 million in IFD proceeds for construction of public improvements, which are estimated by the Port to cost approximately \$8 million in total. Thus, IFD revenues will fund 62% of the estimated cost of public improvements while SFWP will fund 38%. These improvements will also enhance the financial value of the private improvements. The Port could negotiate to have these improvements funded by SFWP instead of contributing \$5 million in increment finance revenues towards SFWP's cost of doing so.

Questions have been raised about whether the transfer fee mechanism is considered a tax

Ms. Joanne Sakai of the City Attorney's Office reports that the proposed transfer fee is not a tax requiring a 2/3 vote, but a private, contractual agreement to provide the Port with a participation in the condominium sales. Ms Sakai further reports that the proposed fee funds a public benefit, as required under Federal Housing Finance Agency regulations, and that the proceeds from a transfer fee do not have to be used at the site from which they were generated. Port staff offer as an example a 0.5% transfer fee on all new residential property sales and re-sales at the Northstar

Resort at Lake Tahoe, which are deposited into the Northstar Open Space Fund for use by the Truckee Donner Land Trust to purchase and preserve open space in other parts of North Lake Tahoe.

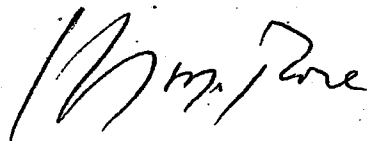
RECOMMENDATIONS

Amend the proposed resolution to request the Port to negotiate:

- A minimum annual guarantee (MAG) rent for the café/restaurant and ancillary retail building, which is not currently required by the proposed 66-year ground lease between the Port and SFWP, and is consistent with other agreements between the Port and private developers.
- Additional payment of \$73,659 from SFWP to offset lost parking revenue, which the Port would have received for the three-year period under the existing parking agreement.

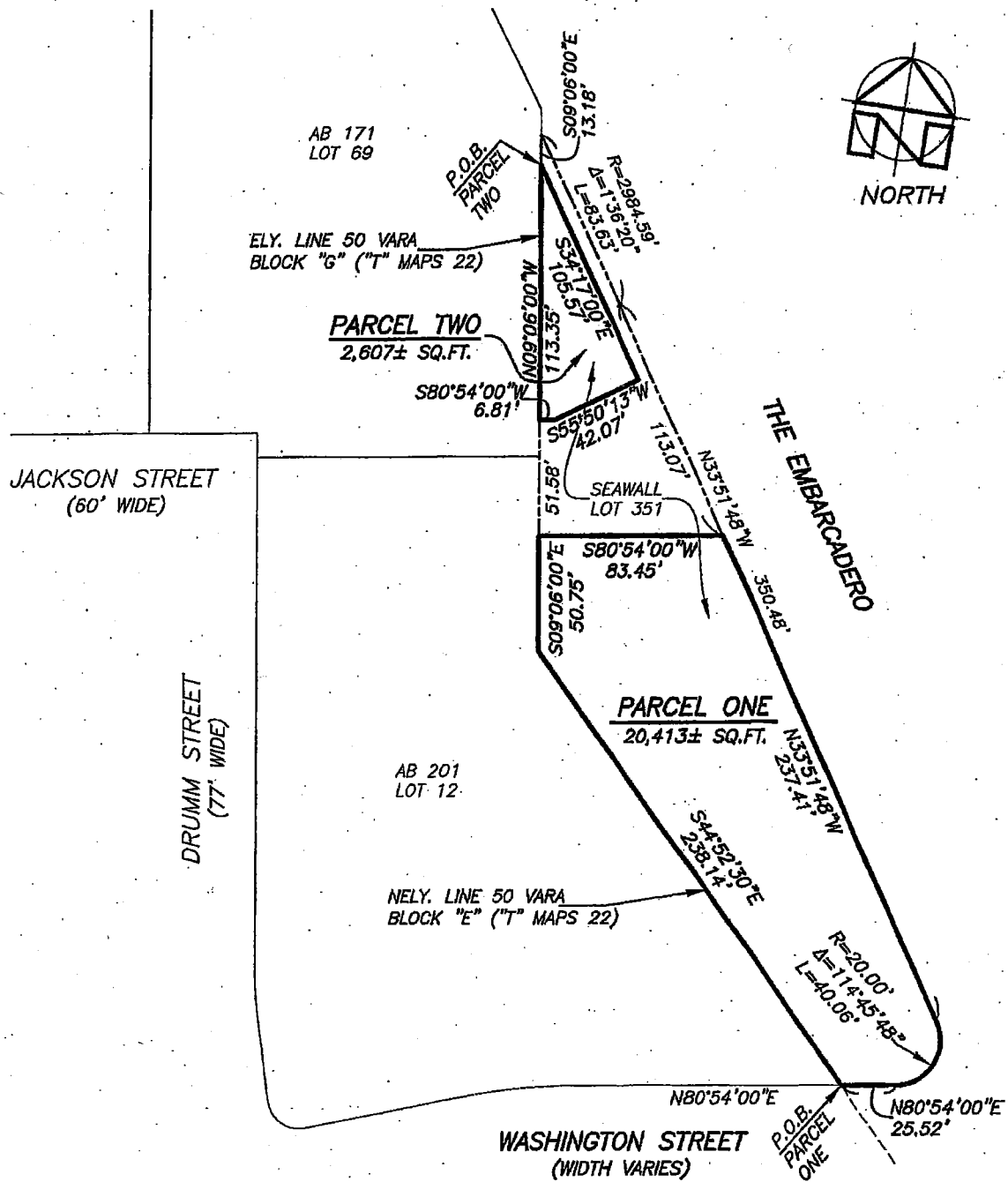
Approval of the proposed resolutions (File 12-0270 and File 12-0278) is a policy matter for the Board of Supervisors.

The Board of Supervisors should also consider amending the resolution by requesting that the Port negotiate further public benefits to be provided by SFWP under the DDA between the Port and SFWP, including SFWP paying the total costs of \$8 million for the public improvements rather than the City allocating \$5 million in IFD proceeds and SFWP paying only \$3 million.



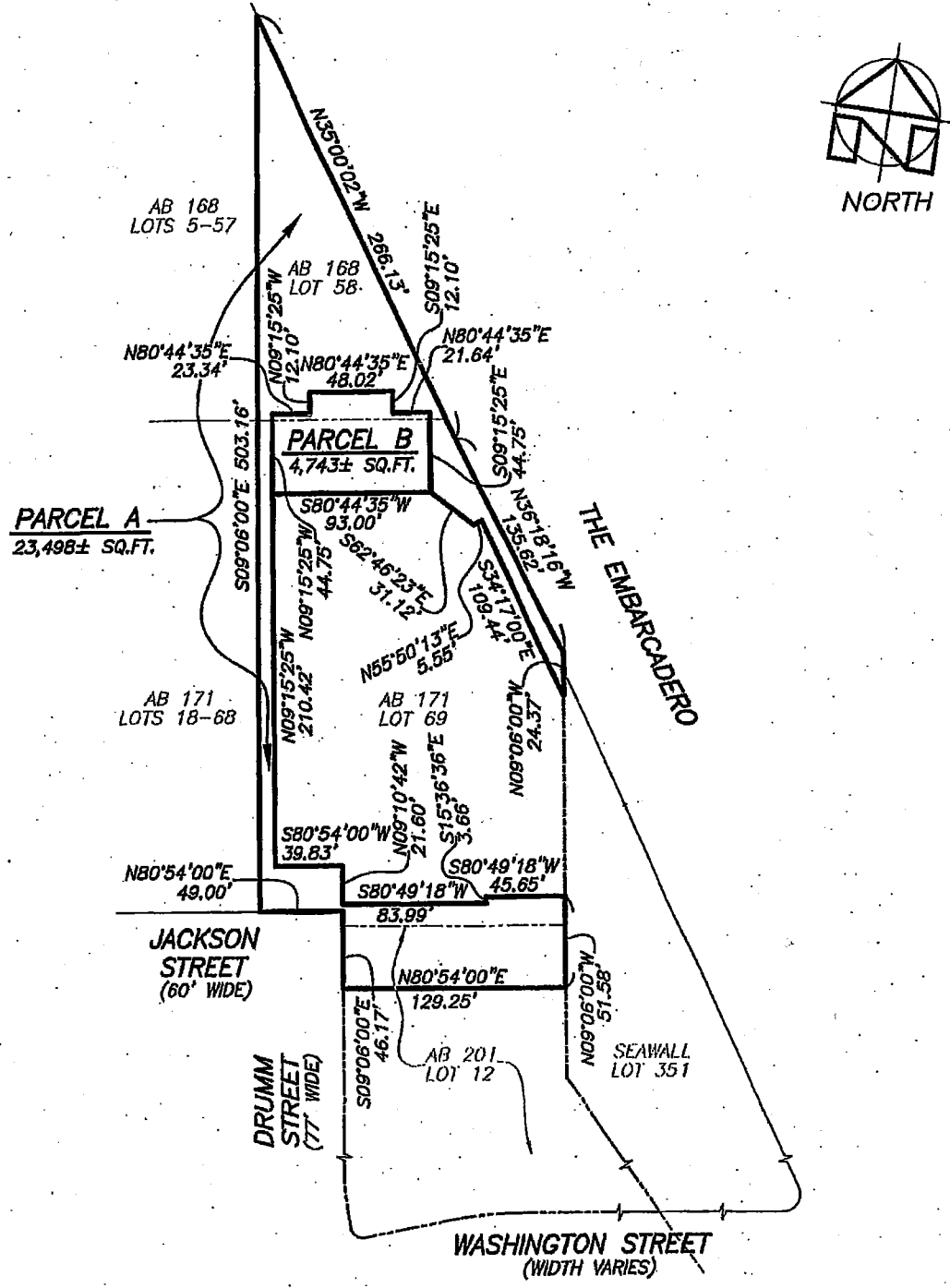
Harvey M. Rose

cc: Supervisor Chu
Supervisor Avalos
Supervisor Kim
President Chiu
Supervisor Campos
Supervisor Cohen
Supervisor Elsbernd
Supervisor Farrell
Supervisor Mar
Supervisor Olague
Supervisor Wiener
Clerk of the Board
Cheryl Adams
Mayor Lee
Controller
Kate Howard



SWL 351 comprises 27,926 square feet, of which 23,020 would be sold by the Port to SFWP:

- Parcel One for 20,413 square feet
- Parcel Two for 2,607 square feet



8 Washington comprises 109,224 square feet, of which 28,241 would be purchased by the Port from SFWP.

- Parcel A comprises 23,498 square feet
- Parcel B comprises 4,743 square feet



File 120270

RECEIVED
SUPERVISORS
BOARD OF SUPERVISORS
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BC

March 26, 2012

Angela Calvillo, Clerk of the Board
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Subject: Seawall Lot 351/8 Washington

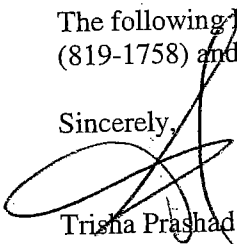
Dear Ms. Calvillo:

Attached please find an original and four copies of a proposed resolution for Board of Supervisors approval and the following supporting documents:

1. Four copies of the Port Commission Staff Report and companion Resolutions 12-27 requesting adoption of the required California Environmental Quality Act Findings and the Mitigation Monitoring and Reporting Program in connection with the development of Seawall Lot 351 by San Francisco Waterfront Partners II, LLC, located on the Embarcadero at 8 Washington Street; Resolution 12-28 requesting approval of the Disposition and Development Agreement, Lease No. L-15110 for a term of 66 years, Purchase and Sale Agreement, Trust Exchange Agreement, Maintenance Agreement, and Schematic Drawings all in connection with the development of SWL 351; and Resolution No. 12-29 requesting approval of the First Amendment to Exclusive Negotiation Agreement with the San Francisco Waterfront Partners II, LLC in connection with the development of SWL 351.
2. Four copies of Lease No L-15110 between the City and County of San Francisco operating by and through the San Francisco Port Commission subject to Board of Supervisors approval.
3. Four copies of the Purchase and Sale Agreement between the City and County of San Francisco operating by and through the San Francisco Port Commission and San Francisco Waterfront Partners II, LLC.
4. Four copies of the Maintenance Agreement for Open Space by and between the City and County of San Francisco, operating by and through the San Francisco Port Commission and San Francisco Waterfront Partners II, LLC, A Delaware Limited Liability Company.
5. Four copies of the Seawall Lot 351/8 Washington Public Trust Exchange Agreement through the California State Lands Commission.

The following Port staff may be contacted regarding the matter: Brad Benson, Special Projects Manager (819-1758) and Trisha Prashad, Special Projects (274-0421). Thank you for your consideration.

Sincerely,


Trisha Prashad
Port of San Francisco

PORT OF SAN FRANCISCO

TEL 415 274 0400

TTY 415 274 0587

Pier 1, The Embarcadero

FAX 415 274 0528

www.sfpd.com

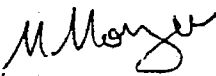
San Francisco, CA 94111



MEMORANDUM

February 19, 2009

TO: MEMBERS, PORT COMMISSION
Hon. Rodney Fong, President
Hon. Stephanie Shakofsky, Vice President
Hon. Kimberly Brandon
Hon. Michael Hardeman
Hon. Ann Lazarus

FROM: Monique Moyer 
Executive Director

SUBJECT: Request approval (1) to award the SWL 351 development opportunity at Washington and The Embarcadero to San Francisco Waterfront Partners II LLC and (2) to enter into exclusive negotiations to explore a mixed used development project combining SWL 351 with the adjacent privately owned Blocks 168, 171 and 201

DIRECTOR'S RECOMMENDATION: Adopt Attached Resolution

EXECUTIVE SUMMARY

This staff report provides information on the result of the Request for Proposals ("RFP") offered in 2008 to develop SWL 351, currently a surface parking lot, located on The Embarcadero at Washington Street. This report analyzes the qualified and responsive proposal received from San Francisco Waterfront Partners II LLC (SFWP). SFWP has proposed to combine SWL 351 with the adjacent privately owned Golden Gate Tennis and Swim Club (GGTSC) site, for which it has an option to purchase. This proposal would allow the entire block bounded by The Embarcadero, Washington and Drumm Streets to be developed as one 3.2 acre project.

Based on the analysis presented in this report, Port Staff recommends that San Francisco Waterfront Partners II LLC be awarded the opportunity to enter into an Exclusive Negotiation Agreement (ENA) with the Port for development of SWL 351 as part of a larger mixed use project.

This Print Covers Calendar Item No. 11B

** Complete copy of document is located in

File No. 120270



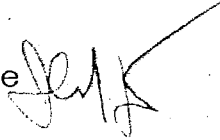
John Updike
Acting Director of Real Estate



MEMORANDUM

Date: April 2, 2012

To: Phil Williamson, Project Manager, Port of San Francisco

From: John Updike, Acting Director of Real Estate 

Subject: **Appraisal Review of Seawall Lot 351 Development Site
8 Washington Project**

I am in receipt of a Carneghi-Blum & Partners, Inc. appraisal with a date of valuation of December 20, 2011 regarding the subject property. It is intended to be used in conjunction with a proposed exchange of property rights between the City (acting by and through the Port, subject to the Public Trust) and San Francisco Waterfront Partners II, LLC. The appraisal was completed by Tim Runde and Chris Carneghi, with a date of report of December 23, 2011.

The property which is the subject of the appraisal is a portion of Seawall Lot 351, APN's 0168-058, 0171-069, 0201-012 and 0201-013, consisting of a larger parcel definition of 3.18 acres (inclusive of SWL 351 and privately owned property interests adjacent). The proposed transaction would be an exchange of fee interests and that of the Public Trust, and the underlying valuation seeks to determine the fee values of the affected portions of the larger parcel, subject to appropriate restrictions, conditions or easements of record.

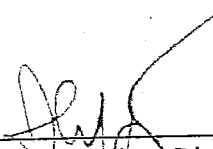
The property is zoned RC-4 (Residential-Commercial Combined District, High Density), with a density of 1 dwelling unit/200 sf, a height limit of 84' and an FAR of 4.8:1 (not applicable to residential). The improvements on the parcel consist of surface parking, landscaping and the Golden Gateway Swim & Tennis Club. The appraisal addresses the fee simple market value of the vacant land only.

The highest & best use conclusion of the appraiser was as proposed by the developer, which would maximize the development density potential of the site, and meets the test of highest and best use as being legally permissible, physically possible, financial feasible and maximally productive. The appraiser's conclusion in this regard was well supported. The valuation of the subject's land value is most appropriately gained through a sales comparison approach as the cost and income approaches to value lack relevance.

The comparables used were reasonable, and the adjustments made were sound. The conclusion of value for the residential development site of \$350/sf was within the range of comparables as adjusted and supported. The final conclusion of land values for the various aspects of the proposed exchange of property interests, shown in Table 3 (page 26.1) of the report following page 26 has adjustments made for enhanced water views (positive), easement restrictions (negative), and size/configuration (negative) Table 3 is attached for the convenience of the reader. After these adjustments, the report concludes at a value of \$7,560,000 for the land to be removed from the Public Trust, and \$8,630,000 for the land to be added to the Public Trust, for a net gain in value to the Trust of \$1,070,000. The rationale for the adjustments are detailed in pages 26-28, and this reviewer finds that rationale detailed and compelling.

In summary, the appraisal is well documented and conclusion of land value appropriate.

Submitted this 2nd day of April, 2012:



John Updike, Acting Director of Real Estate

Attachment: Table 3

Valuation Summary
Appraisal of Seawall Lot 351 Development Site
San Francisco, California

| PUBLIC TRUST LAND VALUATION | | | | | |
|--|-------------------------|-----------------|----------|--------|--------------------|
| | Property Size | Unit Value | Interest | Valued | Total |
| Seawall Lot 351 (south portion) | 19,562 Sq.Ft. Land Area | \$350.00 per SF | x | 100% | = \$6,846,700 |
| Seawall Lot 351 (north portion) | 3,408 Sq.Ft. Land Area | \$210.00 per SF | x | 100% | = \$715,680 |
| TOTAL MARKET VALUE LAND REMOVED FROM PUBLIC TRUST | | | | | \$7,562,380 |
| 22,970 SF Total | | | | | \$7,560,000 |

| PRIVATE LAND VALUATION | | | | | |
|---|-------------------------|-----------------|----------|--------|-----------------------------|
| | Property Size | Unit Value | Interest | Valued | Total |
| Pacific Pacific Park (north ptn) | 11,560 Sq.Ft. Land Area | \$400.00 per SF | x | 100% | = \$4,624,000 |
| Pacific Park (Café & south ptn) | 7,345 Sq.Ft. Land Area | \$350.00 per SF | x | 100% | = \$2,570,750 |
| Jackson Common (sewer easement) | 5,502 Sq.Ft. Land Area | \$210.00 per SF | x | 100% | = \$1,155,437 |
| Jackson Common (remainder) | 813 Sq.Ft. Land Area | \$350.00 per SF | x | 100% | = \$284,550 |
| TOTAL MARKET VALUE OF LAND ADDED TO PUBLIC TRUST | | | | | \$8,634,737 |
| 25,220 SF Total | | | | | Rounded: \$8,630,000 |

| | | | |
|---|-----------------------------------|-----------------|----------------------|
| TOTAL MARKET VALUE LAND REMOVED FROM PUBLIC TRUST | 22,970 SF Total | \$329.12 per SF | (\$7,560,000) |
| TOTAL MARKET VALUE OF LAND ADDED TO PUBLIC TRUST | 25,220 SF Total | \$342.19 per SF | \$8,630,000 |
| NET | 2,250 SF Net Gain To Trust | | \$1,070,000 |

Source: Carnegie-Blum & Partners, Inc., December 2011, 11-ASF-436

President, Board of Supervisors
District 3



City and County of San Francisco

DAVID CHIU

邱信福 · 市參事主席

February 19, 2009

Hon. Rodney Fong, President
Hon. Stephanie Shakofsky, Vice President
Hon. Kimberly Brandon
Hon. Michael Hardeman
Hon. Ann Lazarus

Port of San Francisco
Pier 1, The Embarcadero
San Francisco, CA 94111

Dear Commissioners

As you know, many of my constituents along the City's northern waterfront have called for an update to the Port's Waterfront Plan. Given the current discourse regarding the development proposal at Seawall Lot 351, I believe that the time is right for this effort.

Port development in the northern waterfront is an extremely important issue to many of the residents of my district. In recent years, several Port-initiated development efforts have failed in the face of community opposition. Similar concerns are currently being raised regarding the proposed development at SWL 351 and the future development of seawall lots on the northern waterfront, and I share many of these concerns.

To address these concerns, I would strongly urge the Port Commission to work with the City's Planning Department to lead a focused public planning process for the Port's surface parking lots north of Market Street. This effort could recommend possible amendments to the Port's Waterfront Land Use Plan and Design and Access Element, and to the San Francisco Planning Code. I urge the Port Commission to condition any negotiations regarding SWL 351 upon the full participation of both the Port and the project proponent in the planning process, and require any development proposal to respond to development guidelines established through the process. This planning effort can be structured to not delay current efforts that have broad community support to rebuild Port piers across the street, such as the Exploratorium or Pier 27 International Cruise Terminal.

City Hall • 1 Dr. Carlton B. Goodlett Place • Room 244 • San Francisco, California 94102-4689 • (415) 554-7450
Fax (415) 554-7454 • TDD/TTY (415) 554-5227 • E-mail: David.Chiu@sfgov.org

Supervisor David Chiu
February 19, 2009
Page 2 of 2

The Planning Department has undertaken several successful community-based planning efforts, including a recent effort involving Upper Market, to resolve land use conflicts. From my perspective, this is a successful model to address valid community concerns and the Port's financial condition.

I believe that a focused, six to eight month process managed by the Planning Department could foster community consensus for a SWL 351 project and design, as well as for future development along the northern waterfront. The community and Port have legitimate goals and concerns, and I hope that by bringing all stakeholders to the same table, we can build consensus for the future of our waterfront.

Sincerely,



Supervisor David Chiu

CC: Monique Moyer, Executive Director, Port of San Francisco

ORIGINAL

**FIRST AMENDMENT TO
EXCLUSIVE NEGOTIATING AGREEMENT**

This FIRST AMENDMENT TO EXCLUSIVE NEGOTIATING AGREEMENT (this "First Amendment") dated for reference purposes only as of May 15, 2012 (the "Reference Date"), is between the CITY AND COUNTY OF SAN FRANCISCO (the "City"), a municipal corporation acting by and through the SAN FRANCISCO PORT COMMISSION ("Port" or the "Port Commission"), and SAN FRANCISCO WATERFRONT PARTNERS II, LLC, a Delaware limited liability company ("Developer" or "SFWP").

RECITALS

A. Port and Developer previously entered into an Exclusive Negotiating Agreement (the "Original Agreement") dated for reference purposes only as of August 20, 2009 setting forth the terms and conditions under which Port and Developer would negotiate a Term Sheet, a Lease Disposition and Development Agreement, a Lease and other Transaction Documents required to implement the portions of the Project within Port jurisdiction as more particularly described in the Agreement. The Original Agreement, as amended by this First Amendment, shall be referred as the "Agreement." Capitalized terms that are not defined in this First Amendment have the meanings set forth in the Agreement.

B. Pursuant to their obligations under the Original Agreement, Port and Developer have negotiated a purchase and sale agreement (the "PSA"), disposition and development agreement (the "DDA"), a public trust exchange agreement, a lease, and a maintenance agreement relating to the development project at Seawall Lot 351 and the 8 Washington site contemplated under those agreements (the "Project").

C. The Port and Developer have extended the Exclusive Negotiating Period of the Original Agreement by the First Extended Term and the Second Extended Term in accordance with the Original Agreement. On May 11, 2011, Developer provided a Force Majeure Notice to the Port which stated that as a result of a Litigation Force Majeure Event, Developer reasonably estimated that Developer would need until May 16, 2012 to complete the remaining Performance Benchmarks, thereby extending the Exclusive Negotiating Period until May 16, 2012.

D. Port and Developer desire to provide for a Third Extended Term, to modify the force majeure provisions, and to make certain other modifications to the Original Agreement as more particularly described in this First Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Port and Developer agree as follows:

JAN 20 10 50 AM '12

1. **Effective Date.** This First Amendment shall become effective (the "**First Amendment Effective Date**") on the later of: (i) the date this First Amendment is fully executed and delivered by the parties hereto, and (ii) the date that Port Commission approves this First Amendment.

2. **Term.** Section 2 (Term; Required Performance Benchmarks) of the Original Agreement shall be amended to add the following Section 2.3.1:

"2.3.1. Third Extension. The Second Extended Term has been extended by Force Majeure through May 16, 2012. Commencing on May 16, 2012, this Agreement will automatically be extended for a Third Extended Term, which shall expire upon the earlier of October 31, 2012, or the Effectiveness of the Transaction Documents, unless in each case, such dates are extended in accordance with Section 2.4 below, or terminated in accordance with the provisions of this Agreement (the "**Third Extended Expiration Date**").

Subject to Section 2.4 herein, this Agreement shall automatically terminate upon the expiration of the Exclusive Negotiation Period and neither party shall have any further rights or obligations except with respect to those matters that survive expiration, unless the Exclusive Negotiation Period is further extended by mutual written agreement of the parties. For purposes hereof, the "**Effectiveness of the Transaction Documents**" shall mean the date the Parties duly execute and deliver the (i) DDA following approval by the Port Commission in its sole and absolute discretion, and (ii) PSA following approval by the Port Commission, Board of Supervisors and Mayor, in their respective sole and absolute discretion."

3. RESERVED.

4. **Force Majeure.** Section 2.4 of the Original Agreement shall be amended in its entirety to read as follows:

"Section 2.4. Force Majeure; Extension of Time of Performance.

(a) **Effect of Force Majeure.** For the purpose of this Agreement, neither Developer, Port, nor any successor in interest (the "**Delayed Party**," as applicable) will be considered in breach of or default in any obligation or satisfaction of a condition to an obligation of the other party in the event of Force Majeure, and the time fixed for performance of any such obligation or satisfaction of conditions shall be extended by a period of time equal to the duration of the Force Majeure event; provided, however, within thirty (30) days after the beginning of (or the parties' becoming aware of) any such Force Majeure event other than a CEQA Delay, the Delayed Party shall have first notified the other Party of the cause or causes of such delay and claimed an extension for the reasonably estimated

period of the enforced delay. Terms not defined herein shall have the meanings ascribed to them in the PSA.

(b) Definition of Force Majeure. "Force Majeure" means events beyond the Delayed Party's reasonable control that prevent the action that is being delayed, including: acts of nature or of the public enemy; war; acts of the government (not including issuance of Regulatory Approvals by Regulatory Agencies); fires; floods; tidal waves; epidemics; quarantine restrictions; freight embargoes; earthquakes; unusually severe weather (but only if such unusually severe weather causes actual delays); strikes or other substantial interruption of work because of labor disputes; inability to obtain materials or reasonably acceptable substitute materials that Developer has ordered on a timely basis; delays caused directly and solely by the SFPUC's North Shore Force Main Improvement Project; a CEQA Delay; an event of Permit Force Majeure; Port's failure to vacate the Trust Termination Parcel of all tenants and occupants before the Close of Escrow; an event of Litigation Force Majeure (provided that the Delayed Party proceeds with due diligence to defend such action or proceeding or take other appropriate measures to resolve any dispute that is the subject of such action or proceeding), and any time required to comply with any Mitigation Measures imposed on the Project relating to previously unknown conditions or conditions that could not have been reasonably anticipated and that, by their nature require a delay or stoppage in work, including investigation and remediation activities required thereby, provided that the Party claiming delay is taking such required actions and resolving the issues causing delay in a timely and diligent manner. The following are excluded from the definition of Force Majeure: (1) Developer's failure to secure anticipated financing for the Project unless caused by a direct result of some other event of Force Majeure; (2) sea level rise; and (3) any event that does not cause an actual delay.

(c) Definition of CEQA Delay. "CEQA Delay" means: (i) such period as may be required to complete any additional environmental review required under CEQA after the certification of the Project EIR by the Planning Commission and the filing of a notice of determination following approval of the Project by the Board of Supervisors; (ii) any time during which there are litigation or other legal proceedings pending involving the certification or sufficiency of the Project EIR or any other additional environmental review, regardless of whether development activities are subject to a stay, injunction, or temporary restraining order or other prohibition on development action; and (iii) any time required by Port or the City to prepare additional environmental documents in response to a pending Regulatory Approval by the City or Port that requires additional environmental review; provided that the Party claiming delay has timely taken reasonable actions to obtain any such Regulatory Approval or action.

(d) Definition of Litigation Force Majeure. "Litigation Force Majeure" means any action or proceeding before any judicial, adjudicative, or legislative decision-making body, including any administrative appeal, brought by a third party before the Close of Escrow under the PSA that challenges, (i) the validity of any action taken by the City in connection with the Project or any findings upon which any of action is predicated; or (ii) the failure of any Regulatory Agency to impose conditions to a Regulatory Approval or the validity of any other Regulatory Approval required in connection with the Construction of the Improvements, ending on the date a judgment, order, or other decision resolving the matter has become final and unappealable. With respect to an event of Litigation Force Majeure occurring after the Close of Escrow under the PSA, such event will not be considered Litigation Force Majeure unless such event would enjoin construction or other work on the project site or any portion thereof, cause a lender to refuse to commit, close, fund, disburse or cause an acceleration of payment on a loan, or prevent or suspend construction work on the Project Site except to the extent caused by the Party claiming an extension. Notwithstanding the foregoing, Litigation Force Majeure shall exclude any action or proceeding brought by an Affiliate of Developer, any of Developers' members or their Affiliates, any consultant or Agent of Developer, or any other third party assisted by Developer (whether directly or indirectly), in such action or proceeding. Performance by a party hereunder shall be deemed delayed or made impossible by virtue of Litigation Force Majeure during the pendency thereof, and until a judgment, order, or other decision resolving such matter in favor of the party whose performance is delayed has become final and unappealable. The Parties shall each proceed with due diligence and shall cooperate with one another to defend the action or proceeding or take other measures to resolve the dispute that is the subject of such action or proceeding.

(e) Permit Force Majeure. If Developer is diligently proceeding to obtain necessary Building Permits, or Port or Developer are diligently proceeding to obtain other necessary Regulatory Approvals for the Improvements as required hereunder, Force Majeure includes such Party's inability to obtain in a timely manner Building Permits or other Regulatory Approvals ("Permit Force Majeure").

(f) Limitations on Force Majeure. Notwithstanding anything to the contrary in this Agreement, in no event shall any delay caused by an event of (i) Litigation Force Majeure or CEQA Delay extend beyond the earlier of (A) three (3) months after a final, non-appealable judgment is issued or affirmed, or (B) forty-eight months after the start of the event of Litigation Force Majeure or CEQA Delay, as applicable; and (ii) all other Force Majeure events, forty-eight (48) months after the start of the event of Force Majeure.

5. **Assignment.** Section 7.1 of the Original Agreement is amended to add a new subsection 7.1(d) to read as follows:

“(d) Notwithstanding any other provision in this Agreement, Developer may Transfer all of its interests and rights in this Agreement without Port Approval, provided that following such Transfer (i) San Francisco Waterfront Partners II, LLC is, and continues to be, Developer or a direct or indirect member of Developer until issuance of a Certificate of Completion or later, and (ii) Pacific Waterfront Partners, LLC, a Delaware limited liability company, provides, and continue to provide, day-to-day operations management of Developer until issuance of a Certificate of Completion or later. The term "Certificate of Completion" shall have the meaning ascribed to it in the PSA.”

6. **Effect of the DDA and PSA on the Operation of the Agreement.** During any period in which the DDA is in effect, all of the terms and conditions of the Agreement, and the parties' rights and obligations thereunder, including but not limited to Developer's obligation to pay Transaction Costs and Outside Transaction Costs, shall be superseded by the terms and conditions of the DDA. If the DDA or PSA is invalidated or otherwise terminates due to an event of Litigation Force Majeure or CEQA Delay, then the terms and conditions of the Agreement shall control through the Third Extended Expiration Date. If the DDA or PSA terminates by its terms for any other reason, the Agreement shall terminate concurrently with the DDA or PSA, as applicable.

7. **Notices.** The notice address for Developer set forth in Section 12 of the Original Agreement is deleted and restated as follows:

“San Francisco Waterfront Partners II, LLC
Pier 1, Bay 3
San Francisco, CA 94111
Attn: Simon W.R. Snellgrove
Telephone: (415) 675-2101
Facsimile: (415) 675-2199”

8. **Governing Law.**

This First Amendment shall be governed by and construed in accordance with the laws of the State of California.

9. **Miscellaneous.**

Except as expressly modified herein, the terms, covenants and conditions of the Original Agreement, as amended by this First Amendment, shall remain in full force and effect. This First Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and conceals any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. This First Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which taken

together shall constitute one and the same instrument. Port and Developer hereby ratify and confirm all of the provisions of the Original Agreement as amended by this First Amendment.

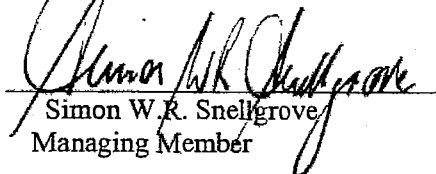
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IN WITNESS WHEREOF, the Port and the Developer have duly executed and delivered this First Amendment as of the last date written below.

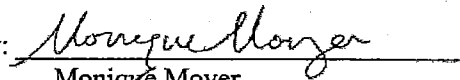
DEVELOPER: **SAN FRANCISCO WATERFRONT PARTNERS II, LLC, a Delaware limited liability company**

By: San Francisco Waterfront Partners II, LLC,
a Delaware limited liability company,
Its Sole Member

By: Pacific Waterfront Partners, LLC,
a Delaware limited liability company,
its Manager

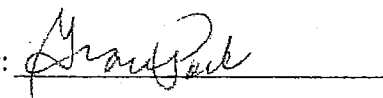
By: 
Simon W.R. Snellgrove
Its: Managing Member

PORT: **CITY AND COUNTY OF SAN FRANCISCO,**
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: 
Monique Moyer
Executive Director

Date: May 21, 2012

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: 
Deputy City Attorney

Authorized by Port Resolution No. 12-44 on May 8, 2012.



**CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR**

MAINTENANCE AGREEMENT FOR OPEN SPACE

BY AND BETWEEN

**THE CITY AND COUNTY OF SAN FRANCISCO,
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION**

AND

**SAN FRANCISCO WATERFRONT PARTNERS II, LLC, A
DELAWARE LIMITED LIABILITY COMPANY**

**MONIQUE MOYER
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**DOREEN WOO HO, PRESIDENT
KIMBERLY BRANDON, VICE-PRESIDENT
FRANCIS X. CROWLEY, COMMISSIONER
LESLIE KATZ, COMMISSIONER
ANN LAZARUS, COMMISSIONER**

RECEIVED
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SAN FRANCISCO
2012 MAR 25 PM 11:30
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** Complete copy of document is
located in

File No. 120270



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SAN FRANCISCO

2012 MAR 26 AM 11:30

BY RC

CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

LEASE NO. L-15110

BETWEEN THE

THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION

AS LANDLORD

AND

SAN FRANCISCO WATERFRONT PARTNERS II, LLC,
A DELAWARE LIMITED LIABILITY COMPANY

AS TENANT

DATED AS OF _____, 201[]

MONIQUE MOYER
EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

DOREEN WOO HO, PRESIDENT
KIMBERLY BRANDON, VICE-PRESIDENT
FRANCIS X. CROWLEY, COMMISSIONER
LESLIE KATZ, COMMISSIONER
ANN LAZARUS, COMMISSIONER

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File No. 120278



** Complete copy of document is located in

File No. 120270

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 *MMoyer*

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

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BOARD OF SUPERVISORS
SAN FRANCISCO

2012 MAR 26 AM 11:30

BY RP

MEMORANDUM

March 23, 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

** Complete copy of document is
located in

File No. 120270

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 Seawall Lot ("SWL") 351 by San Francisco Waterfront Partners II, LLC, a Delaware limited liability company ("Developer") (located on the Embarcadero at Washington Street). (Resolution No. 12-27)

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, (4) Trust Exchange Agreement, (5) Maintenance Agreement, all with San Francisco Waterfront Partners II, LLC, a Delaware limited liability company, and (6) Schematic Drawings; all in connection with the development of SWL 351 (located on the Embarcadero at Washington Street) (Resolution No. 12-28)

Request approval of the First Amendment to Exclusive Negotiation Agreement with San Francisco Waterfront Partners II, LLC, a Delaware limited liability company, in connection with the development of SWL 351 (located on the Embarcadero at Washington Street) (Resolution No. 12-29)

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 recommendation to approve the development of SWL 351 in conjunction with the adjacent 8 Washington property (the



**CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR**

**PURCHASE AND SALE AGREEMENT
BETWEEN THE
CITY AND COUNTY OF SAN FRANCISCO,
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION
AND**

**SAN FRANCISCO WATERFRONT PARTNERS II, LLC
A DELAWARE LIMITED LIABILITY COMPANY,**

**FOR THE CONVEYANCE OF A FEE ESTATE IN A PORTION OF SEAWALL LOT 351, LOCATED IN THE
CITY AND COUNTY OF SAN FRANCISCO, AND FOR THE DEVELOPMENT OF CONDOMINIUMS ON
SUCH PORTION.**

DATED [-----], 2012

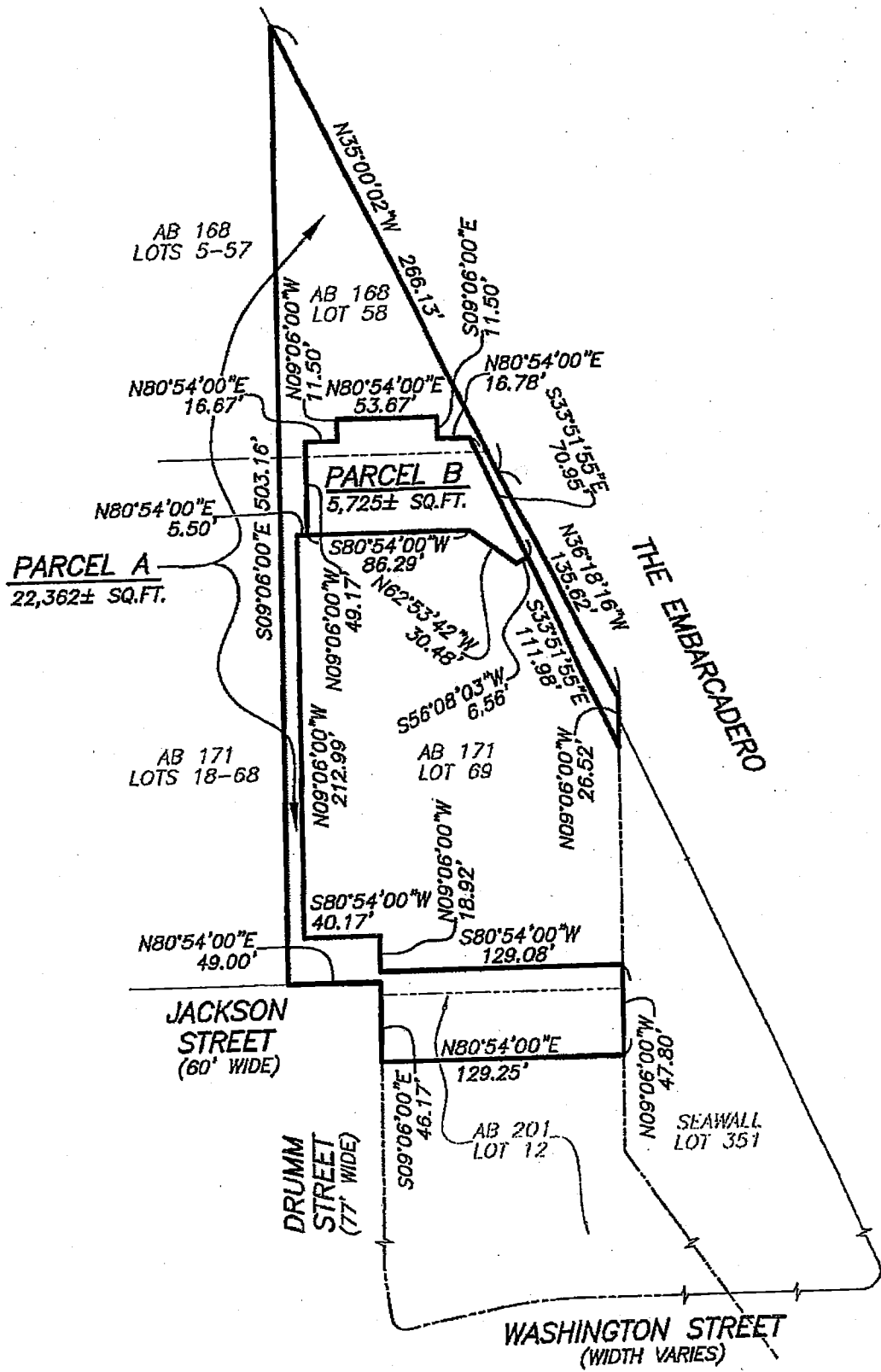
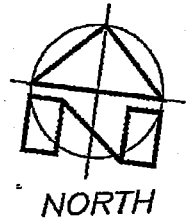
**MONIQUE MOYER
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**DOREEN WOO HO, PRESIDENT
KIMBERLY BRANDON, VICE-PRESIDENT
LESLIE KATZ, COMMISSIONER
ANN LAZARUS, COMMISSIONER**

**** Complete copy of document is
located in**

File No. 120270



SAN FRANCISCO,
CALIFORNIA

SUBJECT: **TRUST PARCEL**

BY JP CHKD. BR DATE 4-26-12 SCALE 1"=80' SHEET 1 OF 1 JOB NO. S-7935

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500

EXHIBIT E

SCOPE OF DEVELOPMENT

Private Improvements (Developer Parcels)

Two mixed-use buildings containing approximately 134 residential units would be developed on the Condominium Parcel. 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 (four to six stories, 48-70 feet tall) and the other would be built along Drumm Street (7-12 stories, 81-136 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, accessible to residents and visible to the public, 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.

The ground floor of the proposed residential buildings would contain a lobby and common areas, private residential amenities, retail spaces, and restaurants. 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 the 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.

A new approximately 16,350 square foot new indoor fitness and health club would be developed on the Recreation Club Parcel in a new one and two story 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. Approximately 21,500 square feet of outdoor recreation space including at least one large lap and recreation pool would be constructed. The balance of the outdoor space would be programmed with ample lounging area, a Jacuzzi, and barbeque area. An approximately 1,800 square foot café at The Embarcadero and Jackson Street would also be within the health club building on the Café Parcel (aka, Retail Parcel) and would be open to the public with outdoor seating within the Jackson Commons.

Parking for residents and the public would be provided on three levels below the proposed residential buildings. The proposed parking would include up to 400 spaces in the Parking Garage Parcels on an independently accessible or valet basis, including approximately 127 spaces for residents (as approved by the Planning Department) and no less than 175 and no more than 255 public spaces to serve the Ferry Building and Ferry Building Waterfront area businesses, onsite retail, restaurant, and health club uses. 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 buildings. Vehicle access to the parking garage would be through a two-

way ramp directly off of Washington Street west of the lobby entrance. All curb cuts along The Embarcadero would be eliminated. 134 bike parking spaces and 6 car share spaces would be provided along with showers and lockers for bicyclist's use. The parking rate structure shall encourage short-term parking, and may include a public benefit surcharge to be used for public realm improvements in the area.

Public Improvements (Port Parcels)

A new public open space totaling approximately 10,450 square feet would be developed on the Open Space Parcel to the north of the residential buildings along the Jackson Street alignment ("Jackson Commons"). Jackson Commons would provide pedestrian views and access to the waterfront and would connect Jackson Street to The Embarcadero. 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 public right-of-way for park and open space purposes, to be maintained by Developer and its successors and assigns under the separate Maintenance Agreement.

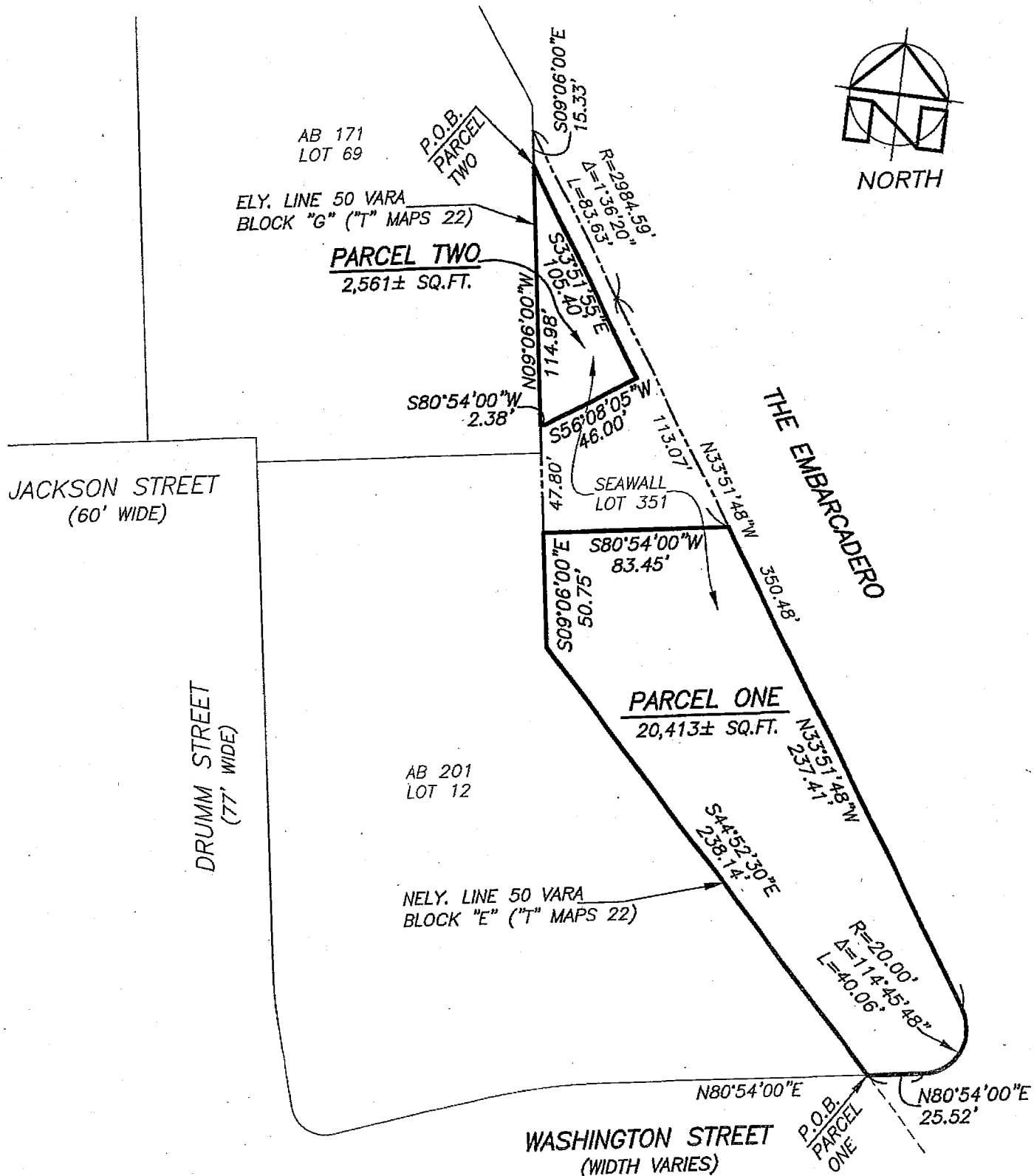
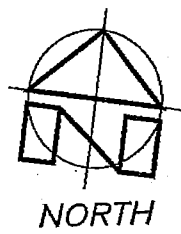
A new public open space totaling approximately 11,840 square foot would be developed on the Open Space Parcel at the northern end of the project site along and north of the Pacific Avenue alignment ("Pacific Park"). Pacific Park would contain an approximately 4,500 square foot children's interpretive sculptural garden. All or a portion of Pacific Park would be dedicated as public right-of-way for park and open space purposes, to be maintained by Developer and its successors and assigns under the separate Maintenance Agreement.

The existing Drumm Street garden walk would be widened and increased in size by approximately 2,890 square feet, and new landscaping would be added to improve the pedestrian experience. The widened Drumm Street garden walk would connect Jackson Commons and Pacific Park.

An approximately 4,000 square foot, one-story, 18-foot-tall retail building would be constructed on the Trust Retail Parcel adjacent to Pacific Park. The use would include an approximately 4,000 square rooftop deck. 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 of Pacific Park.

Approximately 4,835 square feet of improved sidewalk along the west side of The Embarcadero, immediately south of Pacific Park and fronting a portion of the east side of the Recreation Club as defined in the DDA would be developed.

The scope of the public right-of-way dedications, sidewalk widenings and necessary easement vacations and relocations are shown on the draft tentative map, attached as Exhibit E-1 hereto.



AB 171
LOT 69

ELY. LINE 50 VARA
BLOCK "G" ("T" MAPS 22)

PARCEL TWO
2,561± SQ.FT.

P.O.B.
PARCEL TWO

JACKSON STREET
(60' WIDE)

DRUMM STREET
(77' WIDE)

AB 201
LOT 12

NELY. LINE 50 VARA
BLOCK "E" ("T" MAPS 22)

PARCEL ONE
20,413± SQ.FT.

THE EMBARCADERO

WASHINGTON STREET
(WIDTH VARIES)

P.O.B.
PARCEL ONE

SUBJECT: **TRUST TERMINATION PARCEL**

SAN FRANCISCO,
CALIFORNIA

BY JP CHKD. BR DATE 4-26-12 SCALE 1"=60' SHEET 1 OF 1 JOB NO. S-7935

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS 735

859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500

LEGAL DESCRIPTION
"TRUST TERMINATION PARCEL"

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

A PORTION OF PARCEL "A" AS SAID PARCEL IS SHOWN ON THAT MAP ENTITLED "MAP OF LANDS TRANSFERRED IN TRUST TO THE CITY AND COUNTY OF SAN FRANCISCO," FILED IN BOOK "W" OF MAPS, PAGES 66 THROUGH 72, INCLUSIVE, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AND AS PARCEL "A" IS FURTHER DESCRIBED IN THAT DOCUMENT RECORDED MAY 14, 1976 IN BOOK C169, PAGE 573, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, DESCRIBED AS FOLLOWS:

PARCEL ONE

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF 50 VARA BLOCK "E", AS SAID BLOCK IS SHOWN ON THAT CERTAIN MAP ENTITLED "RECORD OF SURVEY MAP OF THE GOLDEN GATEWAY," RECORDED SEPTEMBER 29, 1961, IN BOOK "T" OF MAPS AT PAGES 22-24, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO WITH THE NORTHERLY LINE OF WASHINGTON STREET, AS WIDENED BY RESOLUTION NUMBER 859-77, DATED OCTOBER 31, 1977, SAID NORTHERLY LINE OF WASHINGTON STREET TAKEN TO BE $N85^{\circ}54'00''E$ FOR THE PURPOSE OF THIS DESCRIPTION; THENCE ALONG THE EASTERLY PROLONGATION OF SAID LINE OF WASHINGTON STREET $N80^{\circ}54'00''E$ 25.52 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 20 FEET; THENCE ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF $114^{\circ}45'48''$, AN ARC LENGTH OF 40.06 FEET; THENCE TANGENT TO THE PRECEDING CURVE $N33^{\circ}51'48''W$ 237.41 FEET; THENCE $S80^{\circ}54'00''W$ 83.45 FEET TO THE SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF 50 VARA BLOCK "G", AS SAID BLOCK IS SHOWN ON SAID MAP; THENCE ALONG SAID SOUTHERLY PROLONGATION $S09^{\circ}06'00''E$ 50.75 FEET TO SAID NORTHEASTERLY LINE OF 50 VARA BLOCK "E"; THENCE ALONG SAID NORTHEASTERLY LINE $S44^{\circ}52'30''E$ 238.14 FEET TO THE POINT OF BEGINNING.

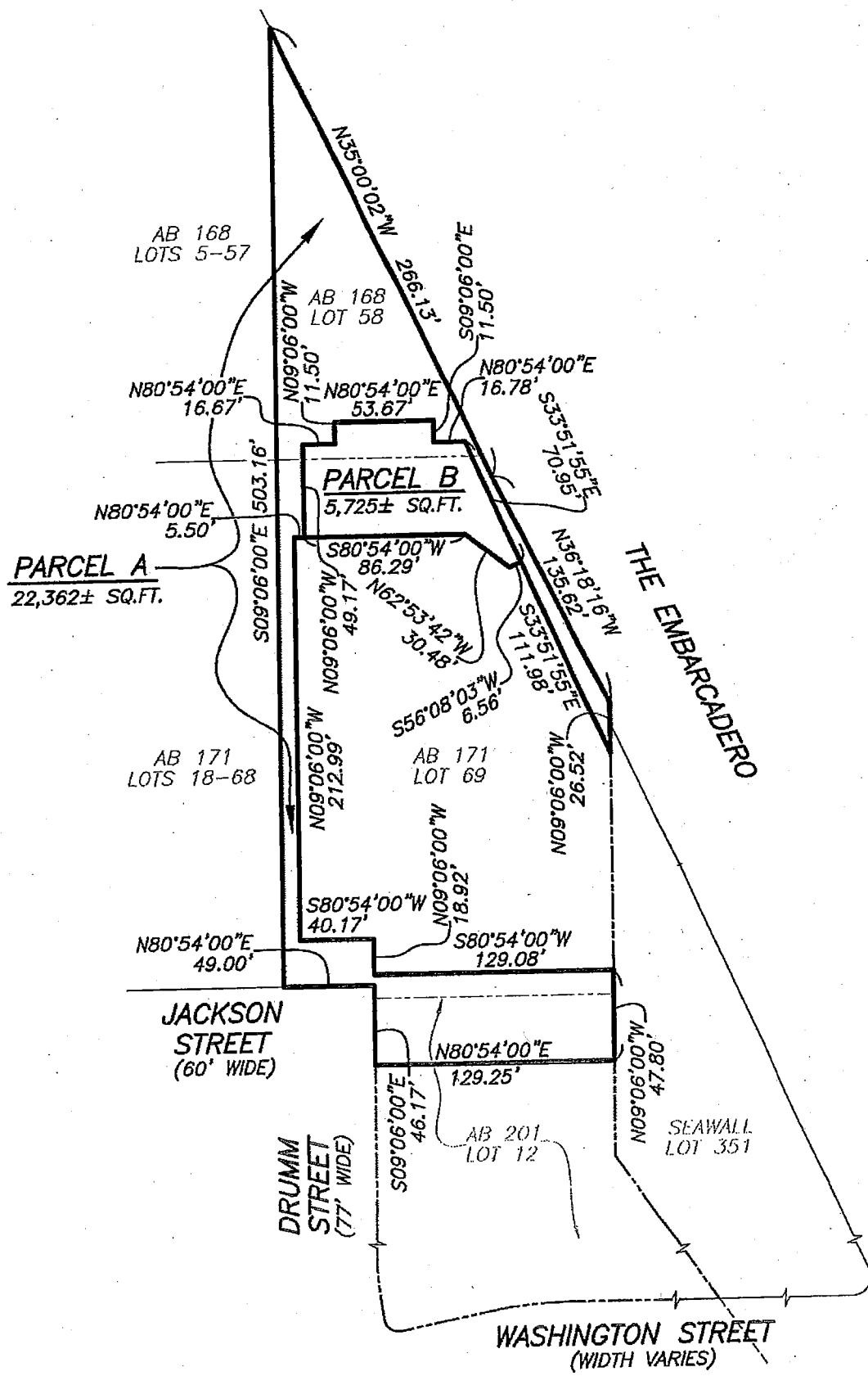
CONTAINING 20,413± SQUARE FEET.

LEGAL DESCRIPTION
"TRUST TERMINATION PARCEL"

PARCEL TWO

COMMENCING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF 50 VARA BLOCK "E", AS SAID BLOCK IS SHOWN ON THAT CERTAIN MAP ENTITLED "RECORD OF SURVEY MAP OF THE GOLDEN GATEWAY," RECORDED SEPTEMBER 29, 1961, IN BOOK "T" OF MAPS AT PAGES 22-24, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO WITH THE NORTHERLY LINE OF WASHINGTON STREET, AS WIDENED BY RESOLUTION NUMBER 859-77, DATED OCTOBER 31, 1977, SAID NORTHERLY LINE OF WASHINGTON STREET TAKEN TO BE N85°54'00"E FOR THE PURPOSE OF THIS DESCRIPTION; THENCE ALONG THE EASTERLY PROLONGATION OF SAID LINE OF WASHINGTON STREET N80°54'00"E 25.52 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 20 FEET; THENCE ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 114°45'48", AN ARC LENGTH OF 40.06 FEET; THENCE TANGENT TO THE PRECEDING CURVE N33°51'48"W 350.48 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 2,984.59 FEET; THENCE ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 1°36'20", AN ARC LENGTH OF 83.63 FEET TO THE EASTERLY LINE OF 50 VARA BLOCK "G", AS SAID BLOCK IS SHOWN ON SAID MAP; THENCE ALONG SAID EASTERLY LINE S09°06'00"E 15.33 FEET TO THE TRUE POINT OF BEGINNING; THENCE S33°51'55"E 105.40 FEET; THENCE S56°08'05"W 46.00 FEET; THENCE S80°54'00"W 2.38 FEET TO SAID EASTERLY LINE OF 50 VARA BLOCK "G"; THENCE ALONG SAID EASTERLY LINE N09°06'00"W 114.98 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 2,561± SQUARE FEET.



SUBJECT: **TRUST PARCEL**

SAN FRANCISCO, CALIFORNIA

BY JP CHKD. BR DATE 4-26-12 SCALE 1"=80' SHEET 1 OF 1 JOB NO. S-7935

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS 738

859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500

LEGAL DESCRIPTION

"TRUST PARCEL"

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCELS A AND B OF FINAL MAP _____, FILED _____, BOOK _____ OF MAPS, PAGES _____, SAN FRANCISCO COUNTY RECORDS.

CONTAINING 28,087± SQUARE FEET.

EXHIBIT M

FORM OF PUBLIC PARKING COVENANT

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Gibson, Dunn & Crutcher LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105
Attn: Neil H. Sekhri, Esq.

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

PUBLIC PARKING COVENANT

THIS DECLARATION (this "**Covenant**"), made as of this ___ day of _____, 20__ (the "**Effective Date**"), by and between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION ("**Port**"), and SAN FRANCISCO WATERFRONT PARTNERS II, LLC, a Delaware limited liability company ("**Declarant**").

RECITALS

A. Declarant is the owner of that certain real property located in the City and County of San Francisco, State of California, more particularly described in Exhibit A attached hereto and incorporated herein by this reference, commonly known as 8 Washington Street in San Francisco, California. (the "**Property**").

B. Declarant purchased a portion of the Property from Port pursuant to that certain Purchase and Sale Agreement dated [_____, 2012] (the "**Purchase Agreement**"). As set forth in the Purchase Agreement, Declarant and Port anticipate that the Property will be subdivided to include a below-surface air space parcel with one or more levels of below-grade public parking within a parking garage structure to be constructed by Declarant in accordance with the Purchase Agreement (the "**Parking Garage**"). Within the Parking Garage, a separate air space parcel will be created in accordance with the City's Subdivision Code and the Subdivision Map Act, which air space parcel will include one or more levels of public parking (the "**Public Parking Parcel**") that is intended to serve visitors to the Ferry Building Waterfront subarea described in the Port's Waterfront Land Use Plan (the "**Ferry Building Waterfront Area**"). All capitalized terms not defined in this Covenant shall be as defined in the Purchase Agreement.

C. The Purchase Agreement required Declarant, as a material part of the consideration for the conveyance by Port to Declarant, a portion of the Property, to record a covenant permanently dedicating the use of the Public Parking Parcel to public parking spaces to serve visitors to the Ferry Building Waterfront Area in accordance with the terms hereof.

NOW, THEREFORE, Declarant hereby declares that the Property is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following restrictions, conditions and covenants:

1. The use of the Public Parking Parcel and any improvements constructed thereon shall be required in perpetuity to include the following:

a. Prior to issuance of a temporary or final certificate of occupancy for the Parking Garage, no less than 90 independently accessible parking spaces, or 110 parking spaces on a valet basis within the Public Parking Parcel to serve visitors to the Ferry Building and the Ferry Building Waterfront Area.

b. Subject to the immediately following item (c), after issuance of a temporary or final certificate of occupancy for the Parking Garage, no less than 175 parking spaces which may be provided on an independently accessible or valet basis within the Port Air Space Parcel in the Parking Garage to serve the Ferry Building and the Ferry Building Waterfront subarea of the Waterfront Plan.

c. If another Person (including a Mortgagee) obtains title to the Parking Garage Parcel as a result of Declarant's default under a Mortgage and such Person subsequently obtains Regulatory Approval from the Planning Commission and the Board of Supervisors to construct no more than two (2) underground levels in the Parking Garage, then no less than 90 independently accessible parking spaces, or 110 parking spaces on a valet basis, located within the Port Air Space Parcel in the Parking Garage to serve the Ferry Building and the Ferry Building Waterfront subarea of the Waterfront Plan

d. All parking within the Public Parking Parcel shall be for short-term parking use only (as opposed to monthly or daily parking) and the rates charged for such spaces shall encourage short-term parking and may include a public benefit surcharge to be used for public realm improvements in the area.

e. Port shall at all times have the right to use ten (10) non-exclusive parking spaces on terms set forth in a separate agreement between the parties.

3. The rights, restrictions, covenants, conditions and equitable servitudes set forth in this Covenant shall (1) run with the land and burden the Public Parking Parcel only and shall be binding upon all persons having or acquiring any interest in the Public Parking Parcel, their heirs, successors and assigns; (2) inure to the benefit of every portion of the Public Parking Parcel and any interest therein; (3) be binding upon Declarant and its successors-in-interest; and (4) inure to the benefit of the Port.

4. This Covenant shall not affect any portion of the Property other than ground-level ingress and egress areas, ramps, loading, and associated driveways, aisles, and maneuvering areas to serve the Public Parking Parcel and the Public Parking Parcel.

5. This Covenant shall be enforceable by Port, and Port shall be entitled to any and all rights and remedies available at law or equity in order to enforce this Covenant.

5. This Covenant may not be terminated, amended, or modified without the written consent of the Port, which consent shall be given in the Port's sole discretion.

6. The provisions of this Covenant are for the exclusive benefit of Declarant, Port and their respective successors and assigns. This Covenant shall not be deemed to confer any rights upon any other person. Without limiting the generality of the foregoing, this Covenant is not intended to create any rights in the public.

[Remainder of this Page Intentionally Blank; Signatures Follow]

IN WITNESS WHEREOF the parties hereto have caused this Covenant to be executed by their duly appointed representatives as of the date first above written.

DEVELOPER:

San Francisco Waterfront Partners II, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

PORT:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by the SAN
FRANCISCO PORT COMMISSION

By: _____
Name: Monique Moyer
Title: Executive Director

Approved:

DENNIS HERRERA

City Attorney

By: _____
Name: _____
Title: _____

STATE OF CALIFORNIA)
COUNTY OF)

On _____ before me, _____, a
Notary Public, personally appeared _____, who proved to me on the basis of
satisfactory evidence to be the person whose name is subscribed to the within instrument and
acknowledged to me that he executed the same in his authorized capacity, and that by his
signature on the instrument the person, or the entity upon behalf of which the person acted,
executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

STATE OF CALIFORNIA)
COUNTY OF)

On _____ before me, _____, a
Notary Public, personally appeared _____, who proved to me on the basis of
satisfactory evidence to be the person whose name is subscribed to the within instrument and
acknowledged to me that he executed the same in his authorized capacity, and that by his
signature on the instrument the person, or the entity upon behalf of which the person acted,
executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT A

Legal Description of the Property

[To be attached]

[Note: if Public Parking Parcel has been created at time of recordation, revise Covenant to apply only to Public Parking Parcel]

101207517

Recorded at the Request of and
When Recorded Mail to:

Jennifer Lucchesi, Esq.
Chief Counsel
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, California 95825-8202

STATE OF CALIFORNIA
OFFICIAL BUSINESS:
Document entitled to free
Recordation Pursuant to
Government Code Section 27383
NO TAX DUE

[Space Above for Recorder's Use]

**SEAWALL LOT 351/8 WASHINGTON
EXCHANGE AGREEMENT**

This SEAWALL LOT 351/8 WASHINGTON EXCHANGE AGREEMENT

("Agreement") is entered into this ___ day of _____, 201_, by and between the STATE OF CALIFORNIA ("State"), acting by and through the STATE LANDS COMMISSION ("Commission"), and the CITY OF SAN FRANCISCO ("City"), acting by and through the SAN FRANCISCO PORT COMMISSION ("Port") (City and Port hereinafter are referred to collectively as "City"), pursuant to Section 5 of Chapter 310, Statutes of 1987 ("Chapter 310").

RECITALS

A. This Agreement concerns two parcels of real property located in the City and County of San Francisco in proximity to the Ferry Building. The properties subject to this Agreement are an approximately .53 acre parcel of real property ("Trust Termination Parcel") comprising a portion of the parcel commonly referred to as Seawall Lot 351, described in

Exhibit A (“Legal Description of Trust Termination Parcel”) and shown for reference purposes only in *Exhibit B* (“Plat to Illustrate Trust Termination Parcel”), and an approximately .65 acre parcel of real property (“Trust Parcel”), consisting of portions of Assessors Blocks 168, 171, and 201 within that property commonly referred to as the 8 Washington property. The Trust Parcel is described in *Exhibit C* (“Legal Description of Trust Parcel”) and shown for reference purposes only in *Exhibit D* (“Plat to Illustrate Trust Parcel”).

B. Upon its admission to the Union on September 9, 1850, the State of California, by virtue of its sovereignty, received in trust for purposes of commerce, navigation, and fisheries, all right, title, and interest in tide and submerged lands within its boundaries up to the mean high tide line.

C. In 1969, pursuant to the Burton Act (Chapter 1333, Statutes of 1968), the State granted in trust to the City approximately 725 acres of filled tide and submerged lands (according to Port calculations). Lands granted to the City under the Burton Act, which include Seawall Lot 351, are subject to the public trust for commerce, navigation, and fisheries (“Public Trust”), as well as a statutory trust comprised of the terms and conditions imposed on the grants by the Burton Act (“Burton Act Trust”; collectively “the Trust”).

D. The purpose of this Agreement is to remove the Trust from the Trust Termination Parcel, which is presently subject to the Trust, and to impress the Trust on the Trust Parcel, which is presently free of the Trust, through an exchange of lands pursuant to Section 5 of Chapter 310 (the “Exchange”).

E. Section 5 of Chapter 310 authorizes the City, subject to Commission approval, to exchange City property subject to the Trust with public or private entities for property not subject to the Trust if the City and the Commission determine that the land to be exchanged out

of the 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 Trust without causing any substantial interference with Trust uses and purposes. In addition, the land to be exchanged into the Trust must have an economic value equal to or greater than the economic value of land to be exchanged out of the Trust.

F. The Exchange is in support of the Port's ongoing efforts to revitalize the City's northeastern waterfront and expand Trust uses in the general area. In furtherance thereof, the Port adopted the Port of San Francisco Waterfront Land Use Plan (the "WLUP"). In the WLUP, the Port identified development opportunity areas that would allow the Port to promote Trust uses while maximizing revenues from property no longer useful for Trust purposes through other compatible development.

G. SWL 351 is part of the Ferry Building Mixed-Use Opportunity Area of the WLUP. The Ferry Building Mixed-Use Opportunity Area encourages Trust uses within the area, including the use and expansion of the Ferry Building ferry terminals, adaptive reuse of the historic Ferry Building, the Agricultural Building, and the maritime pier shed structures at Pier 1 and Piers 1 1/2, 3 and 5, establishment of Trust-consistent retail uses, including restaurants and visitor-serving retail, and provision of public access and open space throughout the area.

H. The policies and objectives for the Ferry Building Mixed-Use Opportunity Area set forth in the WLUP recognize the importance of developing the Port's Seawall lots, which are cut off from the water and are generally no longer useful for Trust purposes, but the development of which would better connect the City to its waterfront and allow the Port to maximize the economic potential of these Seawall Lots. Recognizing that Seawall Lot 351 may no longer be

useful for Trust purposes in its entirety, the WLUP identifies the following acceptable land uses for Seawall Lot 351: open space, residential, assembly and entertainment, general office, parking, retail (including restaurant), recreational enterprises, visitor services and community facilities.

I. The proposed Project furthers the Port's Trust goals, including those goals identified in the WLUP, through the following:

- i. The Project would create important new visual and pedestrian public access linking Jackson Street to the Embarcadero.
- ii. The Project would achieve long-term solution to parking needs of Ferry Building Subarea, as well as central parking location for visitors to the northeastern waterfront.
- iii. The Project would beautify the Ferry Building subarea by locating parking underground and creating high-quality design elements on the land side of the Embarcadero.
- iv. The Project would create new parks along the Embarcadero, enhancing the waterfront visitor experience.
- v. The Project would provide a café in a prominent location along Pacific Park, with waterfront views.

J. The proposed project would also meet the following Development Standards for the Ferry Building Mixed-Use Opportunity Area:

- i. "Explore the possibility of obtaining economic value from Seawall Lot 351 by combining it with the adjacent Golden Gateway residential site to

provide expanded opportunities for mixed residential and commercial development.”

- ii. “Maximize efficient use of new and existing parking to serve existing business, further promote public use of the Ferry and Agriculture Buildings, and stimulate reuse of Piers 1, 1-1/2, 3 and 5.”
- iii. “Any pier parking should be hidden from view, perhaps in or behind structures, and should not interfere with access to or enjoyment of the waterfront.”

K. The adjacent residential site referenced in the WLUP is the 8 Washington site. Although zoned residential, the site is operated as a privately-owned health and fitness club (“Recreation Club”), located on Assessor’s Blocks 168, 171 and 201.

L. San Francisco Waterfront Partners II, LLC (“Developer”) holds an option to purchase the 8 Washington site, and is entering into a Disposition and Development Agreement (“DDA”) and Purchase and Sale Agreement with the Port, pursuant to which the Developer would acquire from the Port the Trust Termination Parcel, convey to the Port the Trust Parcel, and develop and manage the Project (as defined below), subject to the approval and implementation of the Exchange contemplated by this Agreement. As contemplated in the DDA and Purchase and Sale Agreement, the Port and Developer propose a Trust reconfiguration of portions of SWL 351 and the 8 Washington site that would achieve the Port’s goals identified in the WLUP. Under the proposal, the Trust Termination Parcel would be freed from the Trust and combined with portions of the 8 Washington parcel, and the resulting non-Trust parcel, would be developed by Developer with approximately 134 condominiums, approximately 255 sub-surface public parking spaces, restaurants, retail, and a rebuilt and reconfigured health and swim

club. The Trust would be retained on the remainder of SWL 351 and impressed on the Trust Parcel. The combined parcels ("Combined Trust Area") would be developed by Developer with Trust improvements, including a 11,840 square foot public park, approximately 4,000 square feet of café/restaurant or other visitor-serving retail use adjacent to the public park, and approximately 7,725 square feet of public access improvements that will promote and significantly improve visual and physical access for visitors and residents to the Ferry Building waterfront area from the adjacent Golden Gateway development area. The foregoing non-Trust and Trust improvements are collectively referred to herein as the "Project."

M. Seawall Lot 351 is a somewhat triangular parcel of real property of approximately 0.64 acres located on the landward side of the 100-foot wide Embarcadero, at the intersection of Washington Street and the Embarcadero, across from Pier 1. Seawall Lot 351 was filled as part of a program undertaken by the State Board of Harbor Commissioners in the late nineteenth/early twentieth century of reclaiming lands between the new seawall and the previously existing waterfront. The property has no access to the waters of the Bay and is currently used for surface parking to support the Ferry Building, under the terms of a Parking Agreement between the Port and the Ferry Building owner. The Trust Termination Parcel, which is the portion of Seawall Lot 351 to be exchanged out of the Trust as part of the Exchange, consists of an approximately 23,020 square-foot portion of Seawall Lot 351, located primarily south of the former Jackson Street right-of-way. A map of Seawall Lot 351 illustrating the location of the Trust Termination Parcel is attached hereto as *Exhibit B*.

N. The Trust Termination Parcel is removed from the waterfront, with inland frontage on Washington Street and the Embarcadero. Immediately adjacent to the Trust Termination Parcel to the west is the Recreation Club, a private membership-only tennis and

swim club. The Recreation Club was a part of the high density apartment and condominium development constructed as part of the Golden Gateway Redevelopment Plan adopted in 1959. The Redevelopment Plan expired fully in January 2011.

O. The Trust Termination Parcel does not currently provide an opportunity for the development of a Trust-related use in a manner that would promote the overall Trust goals for the Ferry Building Waterfront Area as identified in the WLUP, and is not anticipated to do so in the future. Although Seawall Lot 351 is currently in use as a surface parking lot serving primarily the Ferry Building, it is relatively small in size and has an unusual shape that does not allow for the development of any of the uses that would further the overall Trust goals of the WLUP. As currently configured, Seawall Lot 351 would not allow for useable or desirable open space or park use, and the unusual size and shape of the existing footprint makes development of a 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 could be better continued as sub-surface parking, which would improve the appearance of the site and allow for development of better public-serving Trust uses. Pursuant to the terms of the Purchase and Sale Agreement and conditions of approval required to be recorded against the Project under the Conditional Use Authorization approved by the Planning Commission on March 22, 2012 (Planning Commission Motion No. _____), public parking serving the Ferry Building will be required to continue to occur on the non-Trust portion of the 8 Washington site.

P. Development of SWL 351 in combination with the adjacent 8 Washington site following reconfiguration of the Trust in accordance with this agreement would create a development site of sufficient size and shape to allow for the development of significant Trust

improvements on the Trust portions of the site as well as allow for significant economic development of the remainder of the site in a manner that would benefit the Trust overall.

Q. Under the Purchase and Sale Agreement, the Port proposes to convey the Trust Termination Parcel in fee to the Developer for the following consideration: (1) a purchase price of no less than Three Million Dollars (\$3,000,000); (2) the imposition of a transfer fee in perpetuity equal to 1.0% of the sale or transfer proceeds received (estimated at approximately \$70 million in Port revenues over the first 66-years) on all sales (or leases with a term of thirty-five (35) years or longer) of each of the residential and commercial condominiums (excluding the new health and fitness center) developed on the 8 Washington site after but not including the first sale thereof; (3) the transfer to the Port in fee of the Trust Parcel for no additional consideration; and (4) an agreement to include the 8 Washington site within a new Infrastructure Financing District, allowing the Port to access up to an estimated \$30 Million in public financing for Port infrastructure projects consistent with Government Code sections 53395.8 et seq. The appraised value of the Trust Parcel is equal to or greater than the appraised value of the Trust Termination Parcel.

R. The Project components on the Combined Trust Area will include the following:

- i. A public open space land parcel that will be known as Jackson Commons on the former Jackson Street Right of Way subarea;
- ii. A public open space land parcel with about 11,840 square feet of public open space that will be known as Pacific Park on the Pacific Avenue subarea;
- iii. A land parcel improved with an approximately 4,000 square foot space for restaurant or retail adjacent to Pacific Park;

- iv. Approximately 4,835 square feet of improved sidewalk along the west side of the Embarcadero, immediately south of Pacific Park; and
- v. A widened portion of the existing Drumm Street garden walk, adding approximately 2,890 square feet of new pedestrian and landscaping improvements, connecting Jackson Commons and Pacific Park.

S. The Trust Termination Parcel and Trust Parcel (collectively "Exchange Parcels") were each appraised at their fair market values by Carneghi & Associates in December, 2011 (collectively, "Appraisal"). The Commission has reviewed the Appraisal and has reached an independent conclusion regarding the values of the Trust Termination Parcel and Trust Parcel. The monetary value of the Trust Parcel is greater than the monetary value of the Trust Termination Parcel.

T. Based on the foregoing, the City and the Commission have found that the Exchange will maximize the overall benefits to the Trust and will not interfere with Trust uses or purposes. The Trust Termination Parcel has been filled and reclaimed, is cut off from access to the waters of San Francisco Bay, constitutes a relatively small portion of the filled tide and submerged lands granted to the City, and is no longer needed or required for the promotion of the Trust. Removing the Trust from the Trust Termination Parcel will not result in substantial interference with Trust uses and purposes. The Trust Parcel has greater value to the Trust than the Trust Termination Parcel, with respect to both its fair market value and its usefulness for Trust purposes. The Trust Parcel will provide a statewide public benefit as an open space area providing visual access to the Bay and by providing a physical connection between the Ferry Building Waterfront Area and the City. The completion of the Exchange will also promote Trust purposes by generating significant funds that may be used by the Port for its capital needs,

including uses permitted under the Port's IFD Legislation, such as the Cruise Terminal at Piers 27-29, and waterfront public access improvements.

U. The purposes of this Agreement will be accomplished through the following recorded conveyances, which will follow the conveyance of the Trust Parcel from the Developer to the City pursuant to the terms and conditions of the Purchase and Sale Agreement:

- i. The City will convey to the Commission by quitclaim deed the Trust Termination Parcel;
- ii. The City will convey to the Commission by quitclaim deed the Trust Parcel;
- iii. After accepting conveyance of the Trust Termination Parcel from the City, the Commission will convey to the City by patent the Trust Termination Parcel, free of the Trust; and
- iv. After accepting conveyance of the Trust Parcel from the City, the Commission will convey to the City, as trustee, by patent, the Trust Parcel, subject to the Trust.

V. After accepting conveyance of the Trust Termination Parcel from the Commission free of the Trust, the City will convey the Trust Termination Parcel to Developer pursuant to the terms and conditions of the Purchase and Sale Agreement.

W. The City approved this Agreement through Resolution No. _____ adopted by the Port Commission on _____, and Resolution No. _____ adopted by the Board of Supervisors on _____, 2012, and the Commission approved this Agreement at its meeting of _____, 2012.

AGREEMENT

In consideration of the foregoing recitals and the following conveyances and terms, the parties hereby agree as follows:

1. City Conveyance to Commission of Trust Termination Parcel. The City, as trustee, shall convey by quitclaim deed to the Commission all of the City's right, title and interest in that property described as the Trust Termination Parcel in *Exhibit A* according to the terms and conditions of this Agreement and any supplemental escrow instructions required to implement it. The conveyance shall be in the form of *Exhibit E*.

2. City Conveyance to Commission of Trust Parcel. The City shall convey by quitclaim deed to the Commission all of the City's right, title and interest in that property described as the Trust Parcel in *Exhibit C* according to the terms and conditions of this Agreement and any supplemental escrow instructions required to implement it. The conveyance shall be in the form of *Exhibit F*.

3. Commission Acceptance of Conveyance from City of Trust Termination Parcel. The Commission shall accept the conveyance from the City of the Trust Termination Parcel upon the terms and conditions set forth in its Certificate of Acceptance. The acceptance shall be in the form of *Exhibit G*.

4. Commission Acceptance of Conveyance from City of Trust Parcel. The Commission shall accept the conveyance from the City of the Trust Parcel upon the terms and conditions set forth in its Certificate of Acceptance. The acceptance shall be in the form of *Exhibit H*.

5. Commission Conveyance to City of Trust Termination Parcel Free of the Trust. The Commission shall convey to the City by patent all the right, title and interest it acquires from the City in the Trust Termination Parcel, as described in *Exhibit A*, free of the Public Trust and

the Burton Act Trust and according to the terms and conditions of this Agreement. The conveyance shall be in the form of *Exhibit I*.

6. Commission Conveyance to City of Trust Parcel Subject to the Trust. The Commission shall convey to the City, as trustee, by patent all the right, title and interest it acquires from the City in the Trust Parcel as described in *Exhibit C*, subject to the Public Trust and the Burton Act Trust and according to the terms of this Agreement. The conveyance shall be in the form of *Exhibit J*.

7. City Acceptance of Conveyance of the Trust Parcel. The City shall accept the conveyance from the Commission of the Trust Parcel upon the terms and conditions set forth in its Certificate of Acceptance. The acceptance shall be in the form of *Exhibit K*.

8. City Acceptance of Conveyance of the Trust Termination Parcel. The City shall accept the conveyance from the Commission of the Trust Termination Parcel upon the terms and conditions set forth in its Certificate of Acceptance. The acceptance shall be in the form of *Exhibit L*.

9. State Minerals Reservation. Acting pursuant to Section 6401 of the Public Resources Code, the Commission excepts from the conveyance of the Trust Parcel made pursuant to Section 6 of this Agreement and reserves unto the State of California, its successors and assigns, forever, all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to the State of California or to its successors and assignees, except that the reservations shall not include the right of the State or its successors or assignees in connection with any mineral reservation, removal, or disposal activity, to do either

of the following: (1) enter upon, use or damage the surface of the lands or interfere with the use of the surface by the City or by the City's successors, assigns or lessees; or (2) conduct any mining activities of any nature whatsoever above a plane located five hundred feet below the surface of the lands without written permission of the City or by the City's successors or assigns.

10. State Lands Commission and City Findings. The Commission and the City have made the following findings, effective upon recordation of this Agreement, based on the Recitals set forth above and as required by Section 5 of Chapter 310 and by case law to comply with Article X, Section 3 of the California Constitution:

- a. The Trust Termination Parcel (i) has been filled and reclaimed, (ii) is cut off from access to the waters of San Francisco Bay, (iii) constitutes a relatively small portion of the lands granted to the City and County of San Francisco, and (iv) is no longer needed or required for the promotion of the Trust.
- b. No substantial interference with public rights of navigation and fishing or other Trust uses and purposes will ensue by virtue of the Exchange.
- c. The Trust Parcel has a monetary value equal to or greater than that of the Trust Termination Parcel.
- d. The Trust Parcel is useful for the particular trust purposes authorized by the Burton Act and the Public Trust, and will provide a significant benefit to the Public Trust.
- e. The Trust Termination Parcel was reclaimed as the result of a highly beneficial program of harbor development.

- f. The Trust Parcel is of such configuration and location that it can be used more effectively by the City in furtherance of Trust purposes than the Trust Termination Parcel.

11. Acceptance of Conveyances and Consent to Recording. By their execution of this Agreement, the parties each agree to accept the conveyances of rights, titles, and interests in land referred to in this Agreement and consent to the recording of this Agreement and other documents executed pursuant to this Agreement.

12. Effect of a Judicial Finding of Invalidity. Should a court of competent jurisdiction enter a judgment that becomes final, finding and declaring that this Agreement or any of the conveyances pursuant to it is invalid, and should that determination be upheld on final appeal (if one is filed), the parties hereto agree that the Agreement shall no longer be effective for any purpose, and that the parties shall re-convey to their respective grantors under this Agreement so as to return the parties to the positions they were in prior to the execution of this Agreement.

13. Further Assurances. So long as authorized by applicable laws to do so, the parties will perform such other acts, and execute, acknowledge, and deliver all further conveyances and other instruments that may be necessary to assure fully to the other parties all of the respective properties, rights, titles, interests, remedies, powers and privileges to be conveyed or provided for by this Agreement.

14. Execution Before a Notary Public. All signatures of the parties to this Agreement and all deeds, certificates of acceptance, and other instruments of conveyance executed pursuant to this Agreement shall be acknowledged before a Notary Public, and a certificate of acknowledgment shall be attached to the executed Agreement and instruments of conveyance to

allow them to be recorded in the Office of the Recorder of the City and County of San Francisco, California.

15. No Admission or Effect if Agreement Not Made Effective. In the event this Agreement does not become effective, nothing in it shall constitute, or be construed as, an admission by any party or evidence concerning the boundaries, physical character, or character of title or interest in either of the Exchange Parcels.

16. No Effect on Other Lands. The provisions of this Agreement do not constitute, nor are they to be construed as, an admission by any party or evidence concerning the boundaries, physical character, or character of title to or interest in any lands other than the Exchange Parcels.

17. Agreement Binding on Successors. All the terms, provisions, and conditions of this Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, administrators, executors, successors, and assigns.

18. Modification. No modification, amendment, or alteration of this Agreement shall be valid unless in writing and signed by the parties to this Agreement.

19. No Effect on Other Government Jurisdiction. This Agreement has no effect whatsoever on the regulatory, environmental, or other jurisdiction of any federal, state, local, or other government entity not a party to this Agreement.

20. Headings. The title headings of the sections of this Agreement are inserted for convenience only and shall not be considered in construing this Agreement.

21. Escrow.

- a. The parties have agreed to open an escrow with Chicago Title Insurance Company ("Escrow Agent"). Escrow Agent is directed to accept a fully

executed copy of this Agreement as instructions of the parties. The parties may submit additional mutually agreeable escrow instructions. Escrow Agent shall execute this Agreement for the limited purpose of accepting the rights, duties and responsibilities of the Escrow Agent set forth in this Agreement.

- b. Commission shall deposit the following documents into escrow:
- i. A certified copy of the Minute Item for Calendar Item No. _____ of the State Lands Commission public hearing on _____, 2012, showing the Commission's approval of this Agreement and the Commission's authorization that this Agreement and the patents and certificates of acceptance be executed and delivered to the Escrow Agent on the Commission's behalf;
 - ii. This Agreement duly and properly executed by the Commission;
 - iii. A written approval by the Commission of the condition of title to the Trust Parcel to be conveyed to the Commission at the closing as shown in pro forma title commitments in coverage amounts acceptable to the Commission;
 - iv. A certificate of acceptance in the form attached hereto as *Exhibit G* accepting conveyance from the City of the Trust Termination Parcel;
 - v. A certificate of acceptance in the form attached hereto as *Exhibit H* accepting conveyance from the City of the Trust Parcel;

- vi. A patent in the form attached hereto as *Exhibit I* transferring to the City, free of the Trust, all of the State's right title and interest in the Trust Termination Parcel, duly and properly executed by the Commission; and
 - vii. A patent in the form attached hereto as *Exhibit J* transferring to the City, subject to the Trust, all of the State's right, title and interest in the Trust Parcel, duly and properly executed by the Commission.
- c. City shall deposit the following documents into escrow:
- i. A certified copy of Resolution No. _____ adopted by the Board of Supervisors _____, 2011, and Resolution No. _____ adopted by the Port Commission on _____, 2011 approving this Agreement and authorizing that it be executed on the City's behalf;
 - ii. This Agreement duly and properly executed by the City;
 - iii. A written approval by the City of the condition of title to the Trust Parcel transferred to the City at the closing, as shown in pro forma title commitments in coverage amounts acceptable to the City;
 - iv. A quitclaim deed in the form attached hereto as *Exhibit E* transferring to the Commission all of the City's right, title and interest in the Trust Termination Parcel, duly and properly executed by the City;

- v. A quitclaim deed in the form attached hereto as *Exhibit F* transferring to the Commission all of the City's right, title and interest in the Trust Parcel, duly and properly executed by the City;
- vi. A certificate of acceptance in the form attached hereto as *Exhibit K* accepting conveyance from the Commission of the Trust Parcel; and
- vii. A certificate of acceptance in the form attached hereto as *Exhibit L* accepting conveyance from the Commission of the Trust Termination Parcel.

22. Close of Escrow and Recordation. Close of Escrow under this Agreement shall occur on the same date as Close of Escrow under the Purchase and Sale Agreement. At least five (5) days before the date anticipated for Close of Escrow, Port shall deliver to Escrow Agent supplemental escrow instructions executed by Port and Developer. Such supplemental escrow instructions shall specify that when Escrow Agent has received all documents listed in Section 21 above, Escrow Agent shall close escrow under the Exchange immediately after close of escrow under the Purchase and Sale Agreement on the conveyance by Developer to City of the Trust Parcel, but prior to close of escrow under the Purchase and Sale Agreement on any other conveyance contemplated thereunder. The Escrow Agent shall record the following documents in the order set forth herein in the Office of the Recorder of the City and County of San Francisco, California, and notify the parties of such recordation: (1) this Agreement; (2) the City quitclaim deed to the Commission for the Trust Termination Parcel, with the Commission certificate of acceptance of the City's conveyance of the Trust Termination Parcel attached; (3) the City quitclaim deed to the Commission for the Trust Parcel, with the Commission certificate

of acceptance of the City's conveyance to the Commission of the Trust Parcel attached; (4) the Commission patent to the City of the Trust Termination Parcel, with the City's certificate of acceptance of the Commission's conveyance to the City for the Trust Termination Parcel attached; and (5) the Commission patent to the City of the Trust Parcel, with the City's certificate of acceptance of the Commission's conveyance to the City of the Trust Parcel attached.

23. Condition Precedent to Closing. It is a condition precedent to a party's obligation to close escrow under this Agreement that the City shall have acquired fee title to the Trust Parcel.

24. Hazardous Materials Indemnification. The City shall indemnify, defend and hold harmless the State, its officers, agencies, commissions (including the Commission), and employees from and against any and all claims, liability, losses, costs and expenses (collectively "Claims"), including third party Claims and Claims by any governmental agency, relating to any hazardous materials that, as of the date of close of escrow, are located at, on, over, under, or flowing through the Trust Parcel, provided, however, the City's obligation to indemnify under this Section shall not apply to the extent that (a) the hazardous materials were present on the Trust Parcel during any period (prior to the closing) in which the State owned the fee in the Trust Parcel, or (b) the State or its agents released, generated, treated, stored, used, disposed of, deposited, abandoned or exacerbated the hazardous materials affecting the Trust Parcel. The City and the Commission agree that if the State or the Commission is a named insured in a pollution liability insurance policy obtained by the City, the City's obligation to indemnify the State or the Commission under this Section shall not become effective unless and until any proceeds from the policy are exhausted. The City's obligation to indemnify under this Section

shall terminate on January 1, 2040; provided, however, that the obligation shall not terminate as to Claims asserted in an action filed prior to the termination date.

25. Judicial Confirmation of Validity of Agreement. The City may choose to submit this Agreement to a court of competent jurisdiction to confirm its validity by court judgment pursuant to Code of Civil Procedure Sections 760.010 through 764.080, inclusive, as permitted by Section 13 of the Statutes of 2001 ("Chapter 489"). If the City chooses to file an action for this purpose, it shall file its complaint no later than 180 days after the Effective Date as defined in Section 27. The Commission shall cooperate with the City in obtaining such a confirmatory judgment. Upon entry of a judgment confirming the validity of the Agreement, each party shall be deemed to have waived any right to appeal from such judgment.

26. Allocation of Costs and Expenses. The City shall pay the expenses and fees of the Escrow Agent, including those costs associated with document preparation and recordation of this Agreement, its deeds and patents, and any associated documents. The City shall also pay the expenses and fees that are associated with any title insurance policy for the Exchange Parcels. All other fees, costs and expenses of any attorney, engineer or other person employed or retained by a party in connection with the transactions underlying this Agreement shall be borne by the party incurring the fee or expense.

27. Agreement Entry and Effective Date. For the purpose of bringing an action to confirm the validity of this Agreement pursuant to Code of Civil Procedure Sections 760.010 through 764.080 and Section 13 of Chapter 489, this Agreement shall be deemed to be entered into on the date of its execution by the Executive Officer of the Commission, who shall be the last of the parties to sign, prior to the signature of the Governor of the State of California. The effective date of this Agreement ("Effective Date") shall be the date on which it is executed by

the Governor of the State of California pursuant to Section 6107 of the California Public Resources Code.

28. Exhibits. Exhibits A through L, inclusive, are attached to this Agreement and are hereby incorporated by reference.

To witness this Agreement, a duly authorized officer of each Party has executed it below on the date opposite each signature.

STATE OF CALIFORNIA
STATE LANDS COMMISSION

DATED:

By: _____
Curtis L. Fossum
Executive Officer

Approved as to form:
Kamala D. Harris
Attorney General of the
State of California

DATED:

By: _____
Alan Hager
Deputy Attorney General

CITY AND COUNTY OF SAN
FRANCISCO, ACTING BY AND
THROUGH THE SAN FRANCISCO PORT
COMMISSION

DATED:

By: _____
Name:
Its: Executive Director

Approved as to form:
DENNIS J. HERRERA,
City Attorney
DATED: By:

Name:
Deputy City Attorney

IN APPROVAL WHEREOF,
I, Edmund G. Brown, Jr., Governor of the State of
California, have set my hand and caused the
Seal of the State of California to be hereunto
affixed pursuant to section 6107 of the
Public Resources Code of the State of
California. Given under my hand at the City
of Sacramento this _____, 2012

Edmund G. Brown Jr.
Governor, State of California

Attest:

SECRETARY OF STATE

By: _____

Debra Bowen
Secretary of State

LIST OF EXHIBITS

| <u>Exhibit</u> | <u>Name/Description</u> |
|-----------------------|---|
| A | Legal Description of Trust Termination Parcel |
| B | Illustrative Plat of Trust Termination Parcel |
| C | Legal Description of Trust Parcel |
| D | Illustrative Plat of Trust Parcel |
| E | Form of City Quitclaim Deed (Trust Termination Parcel) |
| F | Form of City Quitclaim Deed (Trust Parcel) |
| G | Form of Commission Certificate of Acceptance for Trust Termination Parcel |
| H | Form of Commission Certificate of Acceptance for Trust Parcel |
| I | Form of Patent of Trust Termination Parcel |
| J | Form of Patent of Trust Parcel |
| K | Form of City Certificate of Acceptance for Trust Parcel |
| L | Form of City Certificate of Acceptance for Trust Termination Parcel |

320148.1

Recorded at the Request of and
When Recorded Mail to:

Jennifer Lucchesi, Esq.
Chief Counsel
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, California 95825-8202

STATE OF CALIFORNIA
OFFICIAL BUSINESS:
Document entitled to free
Recordation Pursuant to
Government Code Section 27383
NO TAX DUE

[Space Above for Recorder's Use]

**SEAWALL LOT 351/8 WASHINGTON
EXCHANGE AGREEMENT**

This SEAWALL LOT 351/8 WASHINGTON EXCHANGE AGREEMENT

("Agreement") is entered into this ___ day of _____, 201_, by and between the STATE OF CALIFORNIA ("State"), acting by and through the STATE LANDS COMMISSION ("Commission"), and the CITY OF SAN FRANCISCO ("City"), acting by and through the SAN FRANCISCO PORT COMMISSION ("Port") (City and Port hereinafter are referred to collectively as "City"), pursuant to Section 5 of Chapter 310, Statutes of 1987 ("Chapter 310").

RECITALS

A. This Agreement concerns two parcels of real property located in the City and County of San Francisco in proximity to the Ferry Building. The properties subject to this Agreement are an approximately .53 acre parcel of real property ("Trust Termination Parcel") comprising a portion of the parcel commonly referred to as Seawall Lot 351, described in

Exhibit A (“Legal Description of Trust Termination Parcel”) and shown for reference purposes only in *Exhibit B* (“Plat to Illustrate Trust Termination Parcel”), and an approximately .65 acre parcel of real property (“Trust Parcel”), consisting of portions of Assessors Blocks 168, 171, and 201 within that property commonly referred to as the 8 Washington property. The Trust Parcel is described in *Exhibit C* (“Legal Description of Trust Parcel”) and shown for reference purposes only in *Exhibit D* (“Plat to Illustrate Trust Parcel”).

B. Upon its admission to the Union on September 9, 1850, the State of California, by virtue of its sovereignty, received in trust for purposes of commerce, navigation, and fisheries, all right, title, and interest in tide and submerged lands within its boundaries up to the mean high tide line.

C. In 1969, pursuant to the Burton Act (Chapter 1333, Statutes of 1968), the State granted in trust to the City approximately 725 acres of filled tide and submerged lands (according to Port calculations). Lands granted to the City under the Burton Act, which include Seawall Lot 351, are subject to the public trust for commerce, navigation, and fisheries (“Public Trust”), as well as a statutory trust comprised of the terms and conditions imposed on the grants by the Burton Act (“Burton Act Trust”; collectively “the Trust”).

D. The purpose of this Agreement is to remove the Trust from the Trust Termination Parcel, which is presently subject to the Trust, and to impress the Trust on the Trust Parcel, which is presently free of the Trust, through an exchange of lands pursuant to Section 5 of Chapter 310 (the “Exchange”).

E. Section 5 of Chapter 310 authorizes the City, subject to Commission approval, to exchange City property subject to the Trust with public or private entities for property not subject to the Trust if the City and the Commission determine that the land to be exchanged out

of the 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 Trust without causing any substantial interference with Trust uses and purposes. In addition, the land to be exchanged into the Trust must have an economic value equal to or greater than the economic value of land to be exchanged out of the Trust.

F. The Exchange is in support of the Port's ongoing efforts to revitalize the City's northeastern waterfront and expand Trust uses in the general area. In furtherance thereof, the Port adopted the Port of San Francisco Waterfront Land Use Plan (the "WLUP"). In the WLUP, the Port identified development opportunity areas that would allow the Port to promote Trust uses while maximizing revenues from property no longer useful for Trust purposes through other compatible development.

G. SWL 351 is part of the Ferry Building Mixed-Use Opportunity Area of the WLUP. The Ferry Building Mixed-Use Opportunity Area encourages Trust uses within the area, including the use and expansion of the Ferry Building ferry terminals, adaptive reuse of the historic Ferry Building, the Agricultural Building, and the maritime pier shed structures at Pier 1 and Piers 1 1/2, 3 and 5, establishment of Trust-consistent retail uses, including restaurants and visitor-serving retail, and provision of public access and open space throughout the area.

H. The policies and objectives for the Ferry Building Mixed-Use Opportunity Area set forth in the WLUP recognize the importance of developing the Port's Seawall lots, which are cut off from the water and are generally no longer useful for Trust purposes, but the development of which would better connect the City to its waterfront and allow the Port to maximize the economic potential of these Seawall Lots. Recognizing that Seawall Lot 351 may no longer be

useful for Trust purposes in its entirety, the WLUP identifies the following acceptable land uses for Seawall Lot 351: open space, residential, assembly and entertainment, general office, parking, retail (including restaurant), recreational enterprises, visitor services and community facilities.

I. The proposed Project furthers the Port's Trust goals, including those goals identified in the WLUP, through the following:

- i. The Project would create important new visual and pedestrian public access linking Jackson Street to the Embarcadero.
- ii. The Project would achieve long-term solution to parking needs of Ferry Building Subarea, as well as central parking location for visitors to the northeastern waterfront.
- iii. The Project would beautify the Ferry Building subarea by locating parking underground and creating high-quality design elements on the land side of the Embarcadero.
- iv. The Project would create new parks along the Embarcadero, enhancing the waterfront visitor experience.
- v. The Project would provide a café in a prominent location along Pacific Park, with waterfront views.

J. The proposed project would also meet the following Development Standards for the Ferry Building Mixed-Use Opportunity Area:

- i. "Explore the possibility of obtaining economic value from Seawall Lot 351 by combining it with the adjacent Golden Gateway residential site to

provide expanded opportunities for mixed residential and commercial development.”

- ii. “Maximize efficient use of new and existing parking to serve existing business, further promote public use of the Ferry and Agriculture Buildings, and stimulate reuse of Piers 1, 1-1/2, 3 and 5.”
- iii. “Any pier parking should be hidden from view, perhaps in or behind structures, and should not interfere with access to or enjoyment of the waterfront.”

K. The adjacent residential site referenced in the WLUP is the 8 Washington site. Although zoned residential, the site is operated as a privately-owned health and fitness club (“Recreation Club”), located on Assessor’s Blocks 168, 171 and 201.

L. San Francisco Waterfront Partners II, LLC (“Developer”) holds an option to purchase the 8 Washington site, and is entering into a Disposition and Development Agreement (“DDA”) and Purchase and Sale Agreement with the Port, pursuant to which the Developer would acquire from the Port the Trust Termination Parcel, convey to the Port the Trust Parcel, and develop and manage the Project (as defined below), subject to the approval and implementation of the Exchange contemplated by this Agreement. As contemplated in the DDA and Purchase and Sale Agreement, the Port and Developer propose a Trust reconfiguration of portions of SWL 351 and the 8 Washington site that would achieve the Port’s goals identified in the WLUP. Under the proposal, the Trust Termination Parcel would be freed from the Trust and combined with portions of the 8 Washington parcel, and the resulting non-Trust parcel, would be developed by Developer with approximately 134 condominiums, approximately 255 sub-surface public parking spaces, restaurants, retail, and a rebuilt and reconfigured health and swim

club. The Trust would be retained on the remainder of SWL 351 and impressed on the Trust Parcel. The combined parcels ("Combined Trust Area") would be developed by Developer with Trust improvements, including a 11,840 square foot public park, approximately 4,000 square feet of café/restaurant or other visitor-serving retail use adjacent to the public park, and approximately 7,725 square feet of public access improvements that will promote and significantly improve visual and physical access for visitors and residents to the Ferry Building waterfront area from the adjacent Golden Gateway development area. The foregoing non-Trust and Trust improvements are collectively referred to herein as the "Project."

M. Seawall Lot 351 is a somewhat triangular parcel of real property of approximately 0.64 acres located on the landward side of the 100-foot wide Embarcadero, at the intersection of Washington Street and the Embarcadero, across from Pier 1. Seawall Lot 351 was filled as part of a program undertaken by the State Board of Harbor Commissioners in the late nineteenth/early twentieth century of reclaiming lands between the new seawall and the previously existing waterfront. The property has no access to the waters of the Bay and is currently used for surface parking to support the Ferry Building, under the terms of a Parking Agreement between the Port and the Ferry Building owner. The Trust Termination Parcel, which is the portion of Seawall Lot 351 to be exchanged out of the Trust as part of the Exchange, consists of an approximately 23,020 square-foot portion of Seawall Lot 351, located primarily south of the former Jackson Street right-of-way. A map of Seawall Lot 351 illustrating the location of the Trust Termination Parcel is attached hereto as *Exhibit B*.

N. The Trust Termination Parcel is removed from the waterfront, with inland frontage on Washington Street and the Embarcadero. Immediately adjacent to the Trust Termination Parcel to the west is the Recreation Club, a private membership-only tennis and

swim club. The Recreation Club was a part of the high density apartment and condominium development constructed as part of the Golden Gateway Redevelopment Plan adopted in 1959. The Redevelopment Plan expired fully in January 2011.

O. The Trust Termination Parcel does not currently provide an opportunity for the development of a Trust-related use in a manner that would promote the overall Trust goals for the Ferry Building Waterfront Area as identified in the WLUP, and is not anticipated to do so in the future. Although Seawall Lot 351 is currently in use as a surface parking lot serving primarily the Ferry Building, it is relatively small in size and has an unusual shape that does not allow for the development of any of the uses that would further the overall Trust goals of the WLUP. As currently configured, Seawall Lot 351 would not allow for useable or desirable open space or park use, and the unusual size and shape of the existing footprint makes development of a 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 could be better continued as sub-surface parking, which would improve the appearance of the site and allow for development of better public-serving Trust uses. Pursuant to the terms of the Purchase and Sale Agreement and conditions of approval required to be recorded against the Project under the Conditional Use Authorization approved by the Planning Commission on March 22, 2012 (Planning Commission Motion No. _____), public parking serving the Ferry Building will be required to continue to occur on the non-Trust portion of the 8 Washington site.

P. Development of SWL 351 in combination with the adjacent 8 Washington site following reconfiguration of the Trust in accordance with this agreement would create a development site of sufficient size and shape to allow for the development of significant Trust

improvements on the Trust portions of the site as well as allow for significant economic development of the remainder of the site in a manner that would benefit the Trust overall.

Q. Under the Purchase and Sale Agreement, the Port proposes to convey the Trust Termination Parcel in fee to the Developer for the following consideration: (1) a purchase price of no less than Three Million Dollars (\$3,000,000); (2) the imposition of a transfer fee in perpetuity equal to 1.0% of the sale or transfer proceeds received (estimated at approximately \$70 million in Port revenues over the first 66-years) on all sales (or leases with a term of thirty-five (35) years or longer) of each of the residential and commercial condominiums (excluding the new health and fitness center) developed on the 8 Washington site after but not including the first sale thereof; (3) the transfer to the Port in fee of the Trust Parcel for no additional consideration; and (4) an agreement to include the 8 Washington site within a new Infrastructure Financing District, allowing the Port to access up to an estimated \$30 Million in public financing for Port infrastructure projects consistent with Government Code sections 53395.8 et seq. The appraised value of the Trust Parcel is equal to or greater than the appraised value of the Trust Termination Parcel.

- R. The Project components on the Combined Trust Area will include the following:
- i. A public open space land parcel that will be known as Jackson Commons on the former Jackson Street Right of Way subarea;
 - ii. A public open space land parcel with about 11,840 square feet of public open space that will be known as Pacific Park on the Pacific Avenue subarea;
 - iii. A land parcel improved with an approximately 4,000 square foot space for restaurant or retail adjacent to Pacific Park;

- iv. Approximately 4,835 square feet of improved sidewalk along the west side of the Embarcadero, immediately south of Pacific Park; and
- v. A widened portion of the existing Drumm Street garden walk, adding approximately 2,890 square feet of new pedestrian and landscaping improvements, connecting Jackson Commons and Pacific Park.

S. The Trust Termination Parcel and Trust Parcel (collectively "Exchange Parcels") were each appraised at their fair market values by Carneghi & Associates in December, 2011 (collectively, "Appraisal"). The Commission has reviewed the Appraisal and has reached an independent conclusion regarding the values of the Trust Termination Parcel and Trust Parcel. The monetary value of the Trust Parcel is greater than the monetary value of the Trust Termination Parcel.

T. Based on the foregoing, the City and the Commission have found that the Exchange will maximize the overall benefits to the Trust and will not interfere with Trust uses or purposes. The Trust Termination Parcel has been filled and reclaimed, is cut off from access to the waters of San Francisco Bay, constitutes a relatively small portion of the filled tide and submerged lands granted to the City, and is no longer needed or required for the promotion of the Trust. Removing the Trust from the Trust Termination Parcel will not result in substantial interference with Trust uses and purposes. The Trust Parcel has greater value to the Trust than the Trust Termination Parcel, with respect to both its fair market value and its usefulness for Trust purposes. The Trust Parcel will provide a statewide public benefit as an open space area providing visual access to the Bay and by providing a physical connection between the Ferry Building Waterfront Area and the City. The completion of the Exchange will also promote Trust purposes by generating significant funds that may be used by the Port for its capital needs,

including uses permitted under the Port's IFD Legislation, such as the Cruise Terminal at Piers 27-29, and waterfront public access improvements.

U. The purposes of this Agreement will be accomplished through the following recorded conveyances, which will follow the conveyance of the Trust Parcel from the Developer to the City pursuant to the terms and conditions of the Purchase and Sale Agreement:

- i. The City will convey to the Commission by quitclaim deed the Trust Termination Parcel;
- ii. The City will convey to the Commission by quitclaim deed the Trust Parcel;
- iii. After accepting conveyance of the Trust Termination Parcel from the City, the Commission will convey to the City by patent the Trust Termination Parcel, free of the Trust; and
- iv. After accepting conveyance of the Trust Parcel from the City, the Commission will convey to the City, as trustee, by patent, the Trust Parcel, subject to the Trust.

V. After accepting conveyance of the Trust Termination Parcel from the Commission free of the Trust, the City will convey the Trust Termination Parcel to Developer pursuant to the terms and conditions of the Purchase and Sale Agreement.

W. The City approved this Agreement through Resolution No. _____ adopted by the Port Commission on _____, and Resolution No. _____ adopted by the Board of Supervisors on _____, 2012, and the Commission approved this Agreement at its meeting of _____, 2012.

AGREEMENT

In consideration of the foregoing recitals and the following conveyances and terms, the parties hereby agree as follows:

1. City Conveyance to Commission of Trust Termination Parcel. The City, as trustee, shall convey by quitclaim deed to the Commission all of the City's right, title and interest in that property described as the Trust Termination Parcel in *Exhibit A* according to the terms and conditions of this Agreement and any supplemental escrow instructions required to implement it. The conveyance shall be in the form of *Exhibit E*.

2. City Conveyance to Commission of Trust Parcel. The City shall convey by quitclaim deed to the Commission all of the City's right, title and interest in that property described as the Trust Parcel in *Exhibit C* according to the terms and conditions of this Agreement and any supplemental escrow instructions required to implement it. The conveyance shall be in the form of *Exhibit F*.

3. Commission Acceptance of Conveyance from City of Trust Termination Parcel. The Commission shall accept the conveyance from the City of the Trust Termination Parcel upon the terms and conditions set forth in its Certificate of Acceptance. The acceptance shall be in the form of *Exhibit G*.

4. Commission Acceptance of Conveyance from City of Trust Parcel. The Commission shall accept the conveyance from the City of the Trust Parcel upon the terms and conditions set forth in its Certificate of Acceptance. The acceptance shall be in the form of *Exhibit H*.

5. Commission Conveyance to City of Trust Termination Parcel Free of the Trust. The Commission shall convey to the City by patent all the right, title and interest it acquires from the City in the Trust Termination Parcel, as described in *Exhibit A*, free of the Public Trust and

the Burton Act Trust and according to the terms and conditions of this Agreement. The conveyance shall be in the form of *Exhibit I*.

6. Commission Conveyance to City of Trust Parcel Subject to the Trust. The Commission shall convey to the City, as trustee, by patent all the right, title and interest it acquires from the City in the Trust Parcel as described in *Exhibit C*, subject to the Public Trust and the Burton Act Trust and according to the terms of this Agreement. The conveyance shall be in the form of *Exhibit J*.

7. City Acceptance of Conveyance of the Trust Parcel. The City shall accept the conveyance from the Commission of the Trust Parcel upon the terms and conditions set forth in its Certificate of Acceptance. The acceptance shall be in the form of *Exhibit K*.

8. City Acceptance of Conveyance of the Trust Termination Parcel. The City shall accept the conveyance from the Commission of the Trust Termination Parcel upon the terms and conditions set forth in its Certificate of Acceptance. The acceptance shall be in the form of *Exhibit L*.

9. State Minerals Reservation. Acting pursuant to Section 6401 of the Public Resources Code, the Commission excepts from the conveyance of the Trust Parcel made pursuant to Section 6 of this Agreement and reserves unto the State of California, its successors and assigns, forever, all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to the State of California or to its successors and assignees, except that the reservations shall not include the right of the State or its successors or assignees in connection with any mineral reservation, removal, or disposal activity, to do either

of the following: (1) enter upon, use or damage the surface of the lands or interfere with the use of the surface by the City or by the City's successors, assigns or lessees; or (2) conduct any mining activities of any nature whatsoever above a plane located five hundred feet below the surface of the lands without written permission of the City or by the City's successors or assigns.

10. State Lands Commission and City Findings. The Commission and the City have made the following findings, effective upon recordation of this Agreement, based on the Recitals set forth above and as required by Section 5 of Chapter 310 and by case law to comply with Article X, Section 3 of the California Constitution:

- a. The Trust Termination Parcel (i) has been filled and reclaimed, (ii) is cut off from access to the waters of San Francisco Bay, (iii) constitutes a relatively small portion of the lands granted to the City and County of San Francisco, and (iv) is no longer needed or required for the promotion of the Trust.
- b. No substantial interference with public rights of navigation and fishing or other Trust uses and purposes will ensue by virtue of the Exchange.
- c. The Trust Parcel has a monetary value equal to or greater than that of the Trust Termination Parcel.
- d. The Trust Parcel is useful for the particular trust purposes authorized by the Burton Act and the Public Trust, and will provide a significant benefit to the Public Trust.
- e. The Trust Termination Parcel was reclaimed as the result of a highly beneficial program of harbor development.

f. The Trust Parcel is of such configuration and location that it can be used more effectively by the City in furtherance of Trust purposes than the Trust Termination Parcel.

11. Acceptance of Conveyances and Consent to Recording. By their execution of this Agreement, the parties each agree to accept the conveyances of rights, titles, and interests in land referred to in this Agreement and consent to the recording of this Agreement and other documents executed pursuant to this Agreement.

12. Effect of a Judicial Finding of Invalidity. Should a court of competent jurisdiction enter a judgment that becomes final, finding and declaring that this Agreement or any of the conveyances pursuant to it is invalid, and should that determination be upheld on final appeal (if one is filed), the parties hereto agree that the Agreement shall no longer be effective for any purpose, and that the parties shall re-convey to their respective grantors under this Agreement so as to return the parties to the positions they were in prior to the execution of this Agreement.

13. Further Assurances. So long as authorized by applicable laws to do so, the parties will perform such other acts, and execute, acknowledge, and deliver all further conveyances and other instruments that may be necessary to assure fully to the other parties all of the respective properties, rights, titles, interests, remedies, powers and privileges to be conveyed or provided for by this Agreement.

14. Execution Before a Notary Public. All signatures of the parties to this Agreement and all deeds, certificates of acceptance, and other instruments of conveyance executed pursuant to this Agreement shall be acknowledged before a Notary Public, and a certificate of acknowledgment shall be attached to the executed Agreement and instruments of conveyance to

allow them to be recorded in the Office of the Recorder of the City and County of San Francisco, California.

15. No Admission or Effect if Agreement Not Made Effective. In the event this Agreement does not become effective, nothing in it shall constitute, or be construed as, an admission by any party or evidence concerning the boundaries, physical character, or character of title or interest in either of the Exchange Parcels.

16. No Effect on Other Lands. The provisions of this Agreement do not constitute, nor are they to be construed as, an admission by any party or evidence concerning the boundaries, physical character, or character of title to or interest in any lands other than the Exchange Parcels.

17. Agreement Binding on Successors. All the terms, provisions, and conditions of this Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, administrators, executors, successors, and assigns.

18. Modification. No modification, amendment, or alteration of this Agreement shall be valid unless in writing and signed by the parties to this Agreement.

19. No Effect on Other Government Jurisdiction. This Agreement has no effect whatsoever on the regulatory, environmental, or other jurisdiction of any federal, state, local, or other government entity not a party to this Agreement.

20. Headings. The title headings of the sections of this Agreement are inserted for convenience only and shall not be considered in construing this Agreement.

21. Escrow.

- a. The parties have agreed to open an escrow with Chicago Title Insurance Company ("Escrow Agent"). Escrow Agent is directed to accept a fully

executed copy of this Agreement as instructions of the parties. The parties may submit additional mutually agreeable escrow instructions. Escrow Agent shall execute this Agreement for the limited purpose of accepting the rights, duties and responsibilities of the Escrow Agent set forth in this Agreement.

- b. Commission shall deposit the following documents into escrow:
- i. A certified copy of the Minute Item for Calendar Item No. ____ of the State Lands Commission public hearing on _____, 2012, showing the Commission's approval of this Agreement and the Commission's authorization that this Agreement and the patents and certificates of acceptance be executed and delivered to the Escrow Agent on the Commission's behalf;
 - ii. This Agreement duly and properly executed by the Commission;
 - iii. A written approval by the Commission of the condition of title to the Trust Parcel to be conveyed to the Commission at the closing as shown in pro forma title commitments in coverage amounts acceptable to the Commission;
 - iv. A certificate of acceptance in the form attached hereto as *Exhibit G* accepting conveyance from the City of the Trust Termination Parcel;
 - v. A certificate of acceptance in the form attached hereto as *Exhibit H* accepting conveyance from the City of the Trust Parcel;

- vi. A patent in the form attached hereto as *Exhibit I* transferring to the City, free of the Trust, all of the State's right title and interest in the Trust Termination Parcel, duly and properly executed by the Commission; and
 - vii. A patent in the form attached hereto as *Exhibit J* transferring to the City, subject to the Trust, all of the State's right, title and interest in the Trust Parcel, duly and properly executed by the Commission.
- c. City shall deposit the following documents into escrow:
- i. A certified copy of Resolution No. _____ adopted by the Board of Supervisors _____, 2011, and Resolution No. _____ adopted by the Port Commission on _____, 2011 approving this Agreement and authorizing that it be executed on the City's behalf;
 - ii. This Agreement duly and properly executed by the City;
 - iii. A written approval by the City of the condition of title to the Trust Parcel transferred to the City at the closing, as shown in pro forma title commitments in coverage amounts acceptable to the City;
 - iv. A quitclaim deed in the form attached hereto as *Exhibit E* transferring to the Commission all of the City's right, title and interest in the Trust Termination Parcel, duly and properly executed by the City;

- v. A quitclaim deed in the form attached hereto as *Exhibit F* transferring to the Commission all of the City's right, title and interest in the Trust Parcel, duly and properly executed by the City;
- vi. A certificate of acceptance in the form attached hereto as *Exhibit K* accepting conveyance from the Commission of the Trust Parcel; and
- vii. A certificate of acceptance in the form attached hereto as *Exhibit L* accepting conveyance from the Commission of the Trust Termination Parcel.

22. Close of Escrow and Recordation. Close of Escrow under this Agreement shall occur on the same date as Close of Escrow under the Purchase and Sale Agreement. At least five (5) days before the date anticipated for Close of Escrow, Port shall deliver to Escrow Agent supplemental escrow instructions executed by Port and Developer. Such supplemental escrow instructions shall specify that when Escrow Agent has received all documents listed in Section 21 above, Escrow Agent shall close escrow under the Exchange immediately after close of escrow under the Purchase and Sale Agreement on the conveyance by Developer to City of the Trust Parcel, but prior to close of escrow under the Purchase and Sale Agreement on any other conveyance contemplated thereunder. The Escrow Agent shall record the following documents in the order set forth herein in the Office of the Recorder of the City and County of San Francisco, California, and notify the parties of such recordation: (1) this Agreement; (2) the City quitclaim deed to the Commission for the Trust Termination Parcel, with the Commission certificate of acceptance of the City's conveyance of the Trust Termination Parcel attached; (3) the City quitclaim deed to the Commission for the Trust Parcel, with the Commission certificate

of acceptance of the City's conveyance to the Commission of the Trust Parcel attached; (4) the Commission patent to the City of the Trust Termination Parcel, with the City's certificate of acceptance of the Commission's conveyance to the City for the Trust Termination Parcel attached; and (5) the Commission patent to the City of the Trust Parcel, with the City's certificate of acceptance of the Commission's conveyance to the City of the Trust Parcel attached.

23. Condition Precedent to Closing. It is a condition precedent to a party's obligation to close escrow under this Agreement that the City shall have acquired fee title to the Trust Parcel.

24. Hazardous Materials Indemnification. The City shall indemnify, defend and hold harmless the State, its officers, agencies, commissions (including the Commission), and employees from and against any and all claims, liability, losses, costs and expenses (collectively "Claims"), including third party Claims and Claims by any governmental agency, relating to any hazardous materials that, as of the date of close of escrow, are located at, on, over, under, or flowing through the Trust Parcel, provided, however, the City's obligation to indemnify under this Section shall not apply to the extent that (a) the hazardous materials were present on the Trust Parcel during any period (prior to the closing) in which the State owned the fee in the Trust Parcel, or (b) the State or its agents released, generated, treated, stored, used, disposed of, deposited, abandoned or exacerbated the hazardous materials affecting the Trust Parcel. The City and the Commission agree that if the State or the Commission is a named insured in a pollution liability insurance policy obtained by the City, the City's obligation to indemnify the State or the Commission under this Section shall not become effective unless and until any proceeds from the policy are exhausted. The City's obligation to indemnify under this Section

shall terminate on January 1, 2040; provided, however, that the obligation shall not terminate as to Claims asserted in an action filed prior to the termination date.

25. Judicial Confirmation of Validity of Agreement. The City may choose to submit this Agreement to a court of competent jurisdiction to confirm its validity by court judgment pursuant to Code of Civil Procedure Sections 760.010 through 764.080, inclusive, as permitted by Section 13 of the Statutes of 2001 ("Chapter 489"). If the City chooses to file an action for this purpose, it shall file its complaint no later than 180 days after the Effective Date as defined in Section 27. The Commission shall cooperate with the City in obtaining such a confirmatory judgment. Upon entry of a judgment confirming the validity of the Agreement, each party shall be deemed to have waived any right to appeal from such judgment.

26. Allocation of Costs and Expenses. The City shall pay the expenses and fees of the Escrow Agent, including those costs associated with document preparation and recordation of this Agreement, its deeds and patents, and any associated documents. The City shall also pay the expenses and fees that are associated with any title insurance policy for the Exchange Parcels. All other fees, costs and expenses of any attorney, engineer or other person employed or retained by a party in connection with the transactions underlying this Agreement shall be borne by the party incurring the fee or expense.

27. Agreement Entry and Effective Date. For the purpose of bringing an action to confirm the validity of this Agreement pursuant to Code of Civil Procedure Sections 760.010 through 764.080 and Section 13 of Chapter 489, this Agreement shall be deemed to be entered into on the date of its execution by the Executive Officer of the Commission, who shall be the last of the parties to sign, prior to the signature of the Governor of the State of California. The effective date of this Agreement ("Effective Date") shall be the date on which it is executed by

the Governor of the State of California pursuant to Section 6107 of the California Public Resources Code.

28. Exhibits. Exhibits A through L, inclusive, are attached to this Agreement and are hereby incorporated by reference.

To witness this Agreement, a duly authorized officer of each Party has executed it below on the date opposite each signature.

STATE OF CALIFORNIA
STATE LANDS COMMISSION

DATED:

By: _____
Curtis L. Fossum
Executive Officer

Approved as to form:
Kamala D. Harris
Attorney General of the
State of California

DATED:

By: _____
Alan Hager
Deputy Attorney General

CITY AND COUNTY OF SAN
FRANCISCO, ACTING BY AND
THROUGH THE SAN FRANCISCO PORT
COMMISSION

DATED:

By: _____
Name:
Its: Executive Director

Approved as to form:
DENNIS J. HERRERA,
City Attorney
DATED: By:

Name:
Deputy City Attorney

IN APPROVAL WHEREOF,

I, Edmund G. Brown, Jr., Governor of the State of California, have set my hand and caused the Seal of the State of California to be hereunto affixed pursuant to section 6107 of the Public Resources Code of the State of California. Given under my hand at the City of Sacramento this _____, 2012

Edmund G. Brown Jr.
Governor, State of California

Attest:

SECRETARY OF STATE

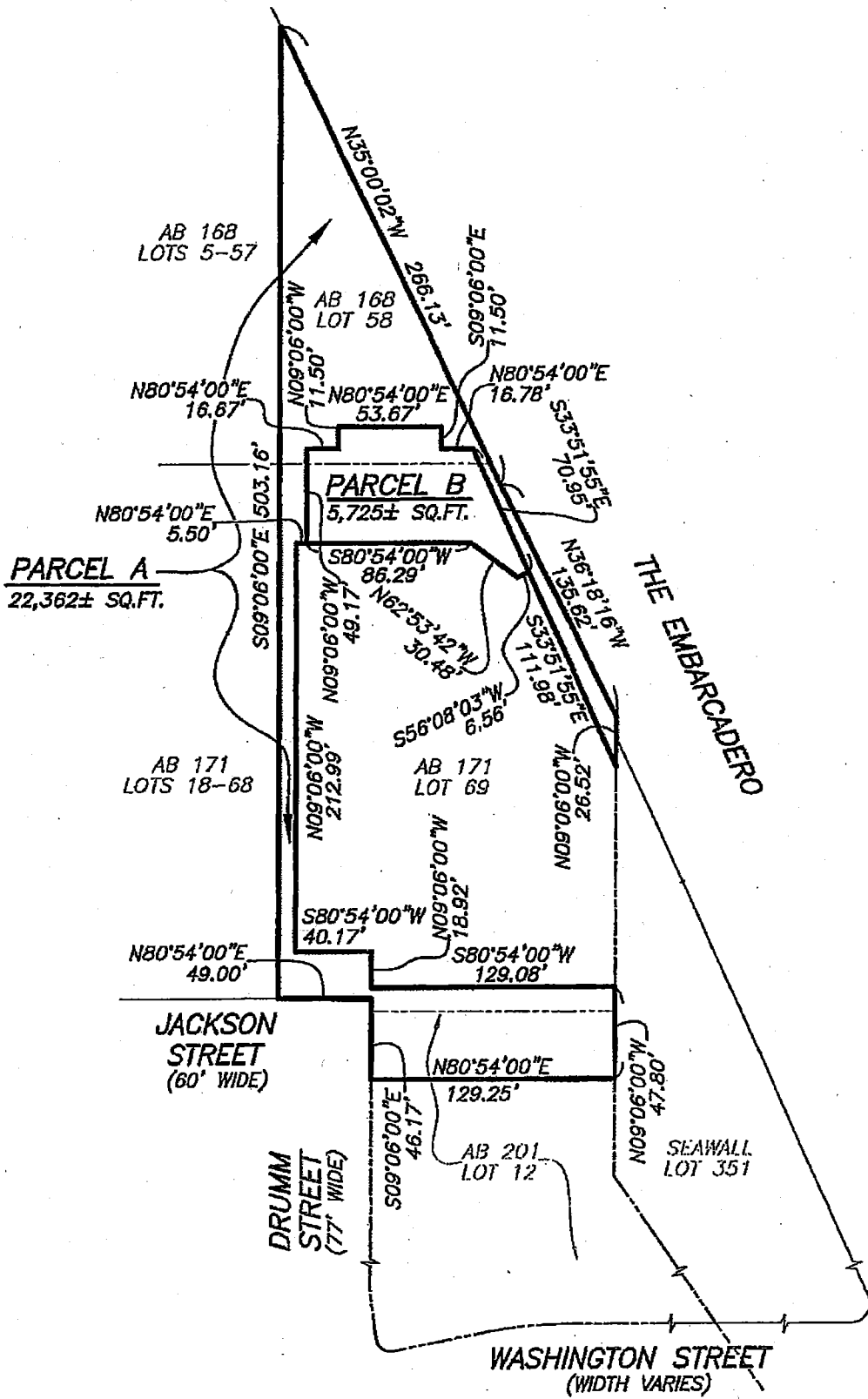
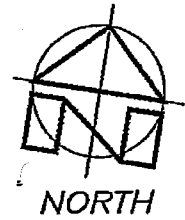
By: _____

Debra Bowen
Secretary of State

LIST OF EXHIBITS

| Exhibit | Name/Description |
|----------------|---|
| A | Legal Description of Trust Termination Parcel |
| B | Illustrative Plat of Trust Termination Parcel |
| C | Legal Description of Trust Parcel |
| D | Illustrative Plat of Trust Parcel |
| E | Form of City Quitclaim Deed (Trust Termination Parcel) |
| F | Form of City Quitclaim Deed (Trust Parcel) |
| G | Form of Commission Certificate of Acceptance for Trust Termination Parcel |
| H | Form of Commission Certificate of Acceptance for Trust Parcel |
| I | Form of Patent of Trust Termination Parcel |
| J | Form of Patent of Trust Parcel |
| K | Form of City Certificate of Acceptance for Trust Parcel |
| L | Form of City Certificate of Acceptance for Trust Termination Parcel |

320148.1



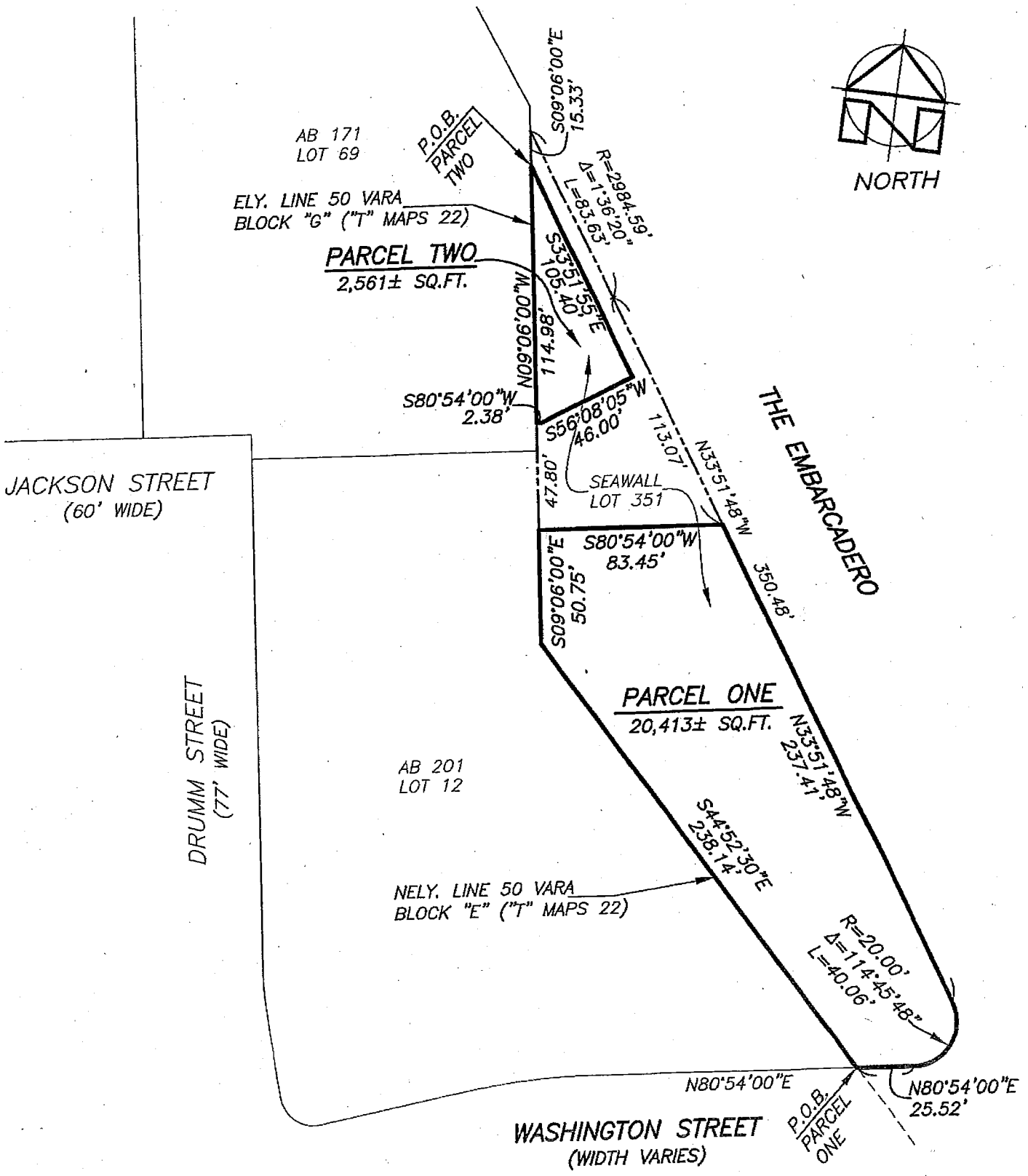
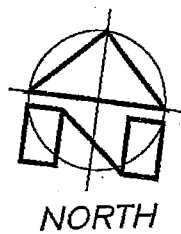
SUBJECT: **TRUST PARCEL**

SAN FRANCISCO,
CALIFORNIA

BY JP CHKD. BR DATE 4-26-12 SCALE 1"=80' SHEET 1 OF 1 JOB NO. S-7935

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500



SUBJECT: **TRUST TERMINATION PARCEL** SAN FRANCISCO, CALIFORNIA

BY JP CHKD. BR DATE 4-26-12 SCALE 1"=60' SHEET 1 OF 1 JOB NO. S-7935

MARTIN M. RON ASSOCIATES, INC. LAND SURVEYORS 796

859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500

LEGAL DESCRIPTION
"TRUST TERMINATION PARCEL"

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

A PORTION OF PARCEL "A" AS SAID PARCEL IS SHOWN ON THAT MAP ENTITLED "MAP OF LANDS TRANSFERRED IN TRUST TO THE CITY AND COUNTY OF SAN FRANCISCO," FILED IN BOOK "W" OF MAPS, PAGES 66 THROUGH 72, INCLUSIVE, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AND AS PARCEL "A" IS FURTHER DESCRIBED IN THAT DOCUMENT RECORDED MAY 14, 1976 IN BOOK C169, PAGE 573, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, DESCRIBED AS FOLLOWS:

PARCEL ONE

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF 50 VARA BLOCK "E", AS SAID BLOCK IS SHOWN ON THAT CERTAIN MAP ENTITLED "RECORD OF SURVEY MAP OF THE GOLDEN GATEWAY," RECORDED SEPTEMBER 29, 1961, IN BOOK "T" OF MAPS AT PAGES 22-24, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO WITH THE NORTHERLY LINE OF WASHINGTON STREET, AS WIDENED BY RESOLUTION NUMBER 859-77, DATED OCTOBER 31, 1977, SAID NORTHERLY LINE OF WASHINGTON STREET TAKEN TO BE $N85^{\circ}54'00''E$ FOR THE PURPOSE OF THIS DESCRIPTION; THENCE ALONG THE EASTERLY PROLONGATION OF SAID LINE OF WASHINGTON STREET $N80^{\circ}54'00''E$ 25.52 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 20 FEET; THENCE ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF $114^{\circ}45'48''$, AN ARC LENGTH OF 40.06 FEET; THENCE TANGENT TO THE PRECEDING CURVE $N33^{\circ}51'48''W$ 237.41 FEET; THENCE $S80^{\circ}54'00''W$ 83.45 FEET TO THE SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF 50 VARA BLOCK "G", AS SAID BLOCK IS SHOWN ON SAID MAP; THENCE ALONG SAID SOUTHERLY PROLONGATION $S09^{\circ}06'00''E$ 50.75 FEET TO SAID NORTHEASTERLY LINE OF 50 VARA BLOCK "E"; THENCE ALONG SAID NORTHEASTERLY LINE $S44^{\circ}52'30''E$ 238.14 FEET TO THE POINT OF BEGINNING.

CONTAINING 20,413± SQUARE FEET.

LEGAL DESCRIPTION
"TRUST TERMINATION PARCEL"

PARCEL TWO

COMMENCING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF 50 VARA BLOCK "E", AS SAID BLOCK IS SHOWN ON THAT CERTAIN MAP ENTITLED "RECORD OF SURVEY MAP OF THE GOLDEN GATEWAY," RECORDED SEPTEMBER 29, 1961, IN BOOK "T" OF MAPS AT PAGES 22-24, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO WITH THE NORTHERLY LINE OF WASHINGTON STREET, AS WIDENED BY RESOLUTION NUMBER 859-77, DATED OCTOBER 31, 1977, SAID NORTHERLY LINE OF WASHINGTON STREET TAKEN TO BE N85°54'00"E FOR THE PURPOSE OF THIS DESCRIPTION; THENCE ALONG THE EASTERLY PROLONGATION OF SAID LINE OF WASHINGTON STREET N80°54'00"E 25.52 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 20 FEET; THENCE ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 114°45'48", AN ARC LENGTH OF 40.06 FEET; THENCE TANGENT TO THE PRECEDING CURVE N33°51'48"W 350.48 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 2,984.59 FEET; THENCE ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 1°36'20", AN ARC LENGTH OF 83.63 FEET TO THE EASTERLY LINE OF 50 VARA BLOCK "G", AS SAID BLOCK IS SHOWN ON SAID MAP; THENCE ALONG SAID EASTERLY LINE S09°06'00"E 15.33 FEET TO THE TRUE POINT OF BEGINNING; THENCE S33°51'55"E 105.40 FEET; THENCE S56°08'05"W 46.00 FEET; THENCE S80°54'00"W 2.38 FEET TO SAID EASTERLY LINE OF 50 VARA BLOCK "G"; THENCE ALONG SAID EASTERLY LINE N09°06'00"W 114.98 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 2,561± SQUARE FEET.



MEMORANDUM

September 23, 2010

TO: MEMBERS, PORT COMMISSION
Hon. Rodney Fong, President
Hon. Kimberly Brandon, Vice President
Hon. Ann Lazarus

FROM: Monique Moyer
Executive Director

SUBJECT: Request approval of term sheet for Seawall Lot 351 (at Embarcadero and Washington Street) with San Francisco Waterfront Partners II, LLC as part of the 8 Washington Project

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

SUMMARY

This staff report presents the Term Sheet Port Staff has negotiated for disposition of Seawall Lot 351 (SWL 351), currently a surface parking lot, located on The Embarcadero at Washington Street, in conjunction with the Golden Gateway Tennis and Swim Club site located at 8 Washington Street (GGTSC Site) the adjacent property to the east and north (shown in Exhibit A). San Francisco Waterfront Partners II, LLC (SFWP) was awarded the SWL 351 development opportunity on February 24, 2009 (Resolution 09-12) following a request for proposal process. The Term Sheet presents a conceptual agreement by the parties of the terms of a transaction, based on policy direction by the Port Commission and responding to the Northeast Embarcadero Study (NES) published by the San Francisco Planning Department in May 2010.

SFWP has revised the project it proposed in December 2008 to respond to the NES. The revisions adjust the height and massing of buildings but, generally, result in a project of similar scale.

Staff asks for authority to move forward to negotiate a development agreement with SFWP to include SWL 351 with the adjacent GGTSC Site as part of a single project on the 3.2 acre combined site area (as proposed, the Project). The transaction would result in a land transfer, guaranteed payments of no less than \$5 million dollars to the Port of San Francisco, and a land lease with annual payments of \$120,000 per year. In addition, the transaction includes provision for future payments to the Port triggered by

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resale of condominiums created by the Project. SFWP agrees to include the entire site in a to-be-established Infrastructure Financing District (IFD) that will allow a portion of growth in property taxes to be reinvested in public facilities. The IFD funding from the project is estimated starting at \$2.5 million annually. No more than \$5 million of these funds will be used for project-related public realm improvements recommended in the NES. Port staff has estimated that the tax increment from this project could generate more than \$24 million in bonding capacity for other Port projects such as the Pier 27 cruise terminal. Port staff will bring a proposed plan for IFD funding for waterfront improvements to the Port Commission upon consideration of the IFD district expected later this year.

BACKGROUND

On February 24, 2009, by Resolution 09-12, the Port Commission authorized Staff to negotiate and enter into an Exclusive Negotiating Agreement (ENA) with SFWP for development rights for SWL 351 following a competitive request for proposals process. In addition to the standard terms of a Port development project, the Port Commission direction included the following milestones for project review:

1. Engage in a **planning process** [for the combined site] to respond to continuing community concerns about height and massing.
2. Development of a **term sheet** for review and approval by the Port Commission. That term sheet will include at a minimum the following terms:
 - Guaranteed minimum rent (\$500,000 per year), annual increases, percentage rent and Port participation in sale and financing proceeds must be set at fair market value and must comply with the terms indicated in the RFP.
 - The developer will be responsible for all development and operating costs of the project and any land exchange or lease agreement will include provisions to ensure the Port has no ongoing costs from this project in perpetuity.
 - Port interest in the land will not be subordinated to any debt or claim.
 - The transaction documents should include specific requirements for creating and retaining public parks, open space, active recreation and public parking as permanent conditions of the project.

The City's Planning Department led the NES planning process that included the 3.2 acre site under consideration as well as other Port properties and the public realm on the land side of The Embarcadero from Washington Street to North Point. The NES was a year-long process which concluded with presentations to the Planning Commission on July 1, 2010 and the Port Commission on July 13, 2010. By resolution on July 8, 2010, the Planning Commission "urge[d] the Port of San Francisco to consider the principles and recommendations proposed in the Northeast Embarcadero Study when considering proposals for new development in the study area and when considering public infrastructure improvements in the study area."

A coalition of neighborhood organizations filed a lawsuit challenging the Planning Commission's July 8, 2010 action on the grounds that it occurred prior to a comprehensive analysis of the NES under the California Environmental Quality Act.

DEVELOPMENT CONCEPT FOR THE PROJECT

The Project is a mixed use project with 165 residential condominiums, a visitor-serving, below grade, parking garage, a re-built private, tennis and swim club, restaurants and retail uses, and new public parks and open spaces.

A new public park is proposed for the portion of the site north of Pacific Avenue, and the 48 foot-wide portion of the site along the Jackson Street right-of-way (Jackson Commons) will become public open space. In exchange for the lands becoming public passageways or parks, portions of SWL 351 would be transferred to SFWP for development of the mixed use project.

Exhibit B includes the revised design. The 3.2 acre site will be bisected by reopening Jackson Street and Pacific Avenue as public passageways, effectively creating three blocks bounded by these new public, pedestrian walkways and the existing Embarcadero, Washington, and Drumm Streets. The uses proposed on these three new blocks are described below:

Washington/Drumm/Jackson/ Embarcadero: This block will include two condominium buildings containing approximately 165 condominiums, ground floor retail and restaurant use and a 3-level underground parking garage. The eastern building, along the Embarcadero, will be between 48 and 70 feet high and will contain approximately 54 residential condominiums, with ground floor retail and restaurant uses. The western building will be between 84 and 136 feet high and will contain approximately 111 residential condominiums, with ground floor retail and restaurant uses.

A three level underground parking garage will be built below this block. The garage will contain up to 255, but no less than 90, public parking spaces available for waterfront visitors and 165 residential condominium parking spaces, for a total of up to 420 parking spaces.

Jackson/Drumm/Pacific/ Embarcadero: The rebuilt Golden Gateway Tennis and Swim Club containing four outdoor ground level tennis courts, a 12,800 square foot fitness center and two outdoor rooftop swimming pools will occupy this block.

Pacific Avenue/Embarcadero/Drumm: The third block, Pacific Avenue Park, will contain approximately 11,000 square feet of public open space and a 4,000 square foot restaurant.

SWL 351 TERM SHEET

The Term Sheet (Exhibit C) sets forth the basic elements of SFWP's proposed development concept and uses for the Project, and the economic parameters and other fundamental terms that will serve as the basis for negotiating a detailed disposition and

development agreement, a purchase and sale agreement, a ground lease, and related transaction documents between the Port and Tenant (the "Transaction Documents"), with the understanding that the Project will continue to evolve throughout the public review process. It is subject to completion of environmental review of the Project, including a full range of appropriate alternatives and mitigation measures for the Project in its entirety under the California Environmental Quality Act ("CEQA"). The Term Sheet may be subject to further changes in the course of public review of the Project during the extensive approval processes that will follow CEQA review and in response to other City, Port, and public concerns that may arise, and is limited to the uses currently proposed by SFWP, and does not cover all potential uses for Seawall Lot 351, which the Port may consider in the course of the approval processes. The Term Sheet may be amended, along with the ENA, to reflect any subsequent proposal to change the uses, the mix of uses, the intensity of development, or other fundamental terms, subject to Port Commission review and additional CEQA review, if the changes have not already been analyzed. Along with any underlying documents such as pro forma, the Term Sheet is not intended to be, and will not become, contractually binding until the parties execute and deliver the Transaction Documents.

Transaction Structure

In the RFP the Port contemplated a long term lease of SWL 351 with minimum annual lease payments of \$500,000. SFWP in its December 2008 submittal proposed a structure that included an internal swap within the combined SWL 351/GGTSC Site and sale of portions of SWL 351. Under the proposed Term Sheet the Port, SFWP and the State Lands Commission would enter into an exchange agreement for portions of SWL 351 and portions of the GGTSC Site. The exchange agreement would result in the removal of the public trust designation on the majority of SWL 351 in exchange for imposing the public trust designation on a portion of the GGTSC Site (as shown in Exhibit B). The trust swap effectuated by the exchange agreement would allow for the sale of portions of SWL 351 for residential development, in exchange for development of public trust open space and restaurant uses on portions of the GGTSC Site that are not currently encumbered by the public trust.

Upon implementation of this trust exchange, SFWP would purchase the majority of SWL 351 from the Port and lease Jackson Commons and Pacific Avenue Park parcel from the Port for 66 years. A 4,000 square foot restaurant sublease parcel would be identified within the Pacific Avenue Park lease.

The residential condominiums would be sold. The developer would lease the retail and restaurant portions of the project to private operators. The developer or future transferee would own the private recreation club. The developer would operate the visitor serving parking garage and be responsible for all operating costs of the site, including the parks and public areas.

Financial Terms

For the sale of the majority of SWL 351 the Port will receive a \$3 million guaranteed payment upon stabilization (defined as one year following receipt of a temporary

certificate of occupancy) of the Project. Additionally SFWP must record covenants committing all owners to transfer payments to the Port of ½ percent of sale value for all sales of the residential condominiums and all sales of commercial condominiums except the first sale. The Golden Gate Tennis and Swim Club as a recreational amenity is excluded from the transfer payment structure. SFWP will guarantee a minimum of \$2 million from the initial transfer payments from the residential condominiums created by the Project.

SFWP will lease the remainder of SWL 351 (a portion of the Jackson Commons) and the exchange parcels (Pacific Avenue Park) for use as publicly accessible open space. SFWP will complete public improvements and then lease these parcels for 66 years, paying \$120,000 per year upon completion. Rent will be adjusted every 5 years by the CPI with a minimum increase of 2% and a maximum of 4% per annum. The Project will be responsible for all operations and maintenance of this open space in perpetuity. SFWP proposes restaurant, café and other concession uses in the park parcels. The Port will receive 15% of gross rent from any restaurant or other concession use income generated within these areas.

During the construction period SFWP will pay the Port \$60,000 per year.

Public Finance

SFWP will be required to include the GGTC Site in an Infrastructure Financing District (IFD) as a requirement of acquiring SWL 351. Following Board approval of the IFD (that includes GGTC Site) formation, up to \$5 million of certain project related off-site public improvement costs (to be defined) will be funded with IFD tax increment funds. These improvements on publicly-owned or dedicated property will implement the public realm improvements (including sidewalk widening, street furnishings, etc.) recommended in the Northeast Embarcadero Study.

The Port agrees to use best efforts to cooperate with SFWP to include SWL 351 in a Mello-Roos Community Facilities District (CFD). CFD assessments would be applied to property within the Project site, and CFD funds will only be used for capital and maintenance costs for public components of the Project. If engineering and cost analyses deem additional funding is needed to finance agreed upon public improvements, the Port agrees to designate some or all of the \$120,000 per year park rent to augment CFD financing of these public improvements.

Analysis of Financial Terms

As outlined above the Port will receive multiple payment streams in consideration for entering into this transaction with SFWP. The Port will receive \$5 million in land payments (including guaranteed transfer payments from the first sales of the residential condominium units) at or near stabilization of the Project. After the initial sales during the stabilization period, all subsequent commercial and residential condominium sales are subject to transfer payments to the Port. These are conservatively projected to total \$25.3 million over 66 years with an estimated net present value (NPV) of \$3.1 million.

The Port would also receive lease revenue from short term construction rent and the long term park lease. Expected construction lease revenue is \$180,000, and park lease revenue is projected at \$22,781,676 over the 66 year life of the park lease. These lease revenues are projected to have an NPV of approximately \$2.4 million. Additionally the Port could receive percentage rents from any commercial uses in the parks area, projected at \$4.8 million over the life of the lease with an estimated NPV of \$400,000.

Project Port Revenue

| Source | Total | Net Present Value |
|--------------------------|---------------------|--------------------------|
| Land Payments | \$3,000,000 | \$2,448,894 |
| Transfer Payments | | |
| First Transfer | \$2,000,000 | \$1,632,596 |
| Subsequent Transfers | \$25,307,464 | \$3,160,912 |
| Construction Period Rent | \$180,000 | \$157,459 |
| Long-term Park Lease | \$22,781,676 | \$2,277,641 |
| Restaurant Lease | \$4,780,586 | \$412,732 |
| Total | \$58,049,726 | \$10,090,234 |

In total it is expected that the NPV of the Port's compensation would be approximately \$10.1 million. This compares favorably to the \$9.6 million NPV of \$500,000 annual rent proposed in SFWP's RFP submittal and represents fair market compensation for the sale of Seawall Lot 351. Given the development constraints of SWL 351 this value exceeds the value of stand alone development on SWL 351. Over half of this value is in the form of short term guaranteed payments providing the Port Commission monies to contemplate investing in other needed waterfront improvements. Additionally, long term transfer payments from sales and resales of condominiums represents a new revenue source for the Port.

The Project is expected to generate approximately \$400 million on new assessed value on the combined Project site. By agreeing to include both SWL 351 and the GGTSC site in a new Port IFD (subject to the approval of the Board of Supervisors) the Port can expect over \$2.5 million of tax increment to flow to the Port annually. This revenue will flow to the Port for up to 40 years and will likely increase over time. Port staff has estimated that the tax increment from this project could generate more than \$24 million in bonding capacity for other Port projects such as the Pier 27 cruise terminal.

This transaction guarantees short term payments, enhances long term lease revenue and provides the Port with a new mechanism 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 allows the Port to unlock the value of the site by accepting payments at stabilization and receiving long term participation in the financial upside of the Project.

PUBLIC COMMENT/CONCERNS

As evidenced by the extensive comments on the NES study throughout its duration and when presented at both Port and Planning Commissions, there is substantial public sentiment both in support of and in opposition to this Project. The Port Commission has

held 7 public hearings on this project concept since May 2006 and 2 on the NES. Additionally, the NES effort included 5 community meetings and 2 Planning Commission presentations.

It is worth noting that the proposed Project includes a re-built tennis and swim club and the Port expects that the final Project approvals will include agreements by SFWP granting rights to current tennis and swim club members for future use. Similarly, the proposed Project replaces, and expands, the amount of public parking for waterfront visitors. The final transaction documents will address provision of parking during the construction period.

NEXT STEPS

If the Port Commission endorses it, the Term Sheet will be submitted to the Board of Supervisors ("Board") for endorsement. The Board action will include public hearings and opportunities for public comment. The Board review of the Term Sheet is consistent with the recommendations of the 2004 Management Audit of the Port by the Board of Supervisor's Budget Analyst as a means of providing the Board with an "early read" on Port development projects. It should be noted that, under the financial structure proposed in the Term Sheet, the Port will not seek the Board's determination of financial feasibility under Administrative Code Chapter 29 because tax increment funds and Mello-Roos special taxes are not public funds for the purpose of the ordinance.

If the Port Commission and the Board endorse the Term Sheet, Port staff will move forward with environmental review, project design review, public trust analysis, and negotiation of transaction documents for the Project. Throughout this process, there will be numerous opportunities for public comment and review of the proposed Project. A draft environmental Impact report is expected to be published in late 2010 or early 2011. Further Port Commission consideration will occur after that report is certified by the Planning Commission.

RECOMMENDATION

Port staff recommends that the Port Commission approve the attached resolution endorsing the Term Sheet shown in Exhibit C.

Prepared by: Kathleen Diohep, Project Manager
Jonathan Stern, Assistant Deputy Director
Waterfront Development

For: Byron Rhett, Deputy Director
Planning & Development

Exhibits

- A. Site Map
- B. Project Proposal
- C. Term Sheet

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

RESOLUTION NO. 10-66

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate, and control the lands within Port jurisdiction; and
- WHEREAS, The Port owns Seawall Lot 351 ("SWL 351"), located at Washington and The Embarcadero as shown on the map attached as Exhibit A; and
- WHEREAS, By Resolution 09-12, the Port Commission awarded to San Francisco Waterfront Partners II, LLC ("SFWP") an exclusive right to negotiate with the Port to develop SWL 351 in combination with 8 Washington Street; and
- WHEREAS, SFWP entered into an Exclusive Negotiating Agreement, effective August 26, 2009 (the "ENA"), setting forth the process, terms, and conditions upon which the Port and SFWP agreed to negotiate certain transaction documents for the disposition and development of SWL 351 and requiring the Port and SFWP 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 defining the proposed project for the purpose of undertaking environmental review under the California Environmental Quality Act and negotiating transaction documents; and
- WHEREAS, Resolution 09-12 also directed SFWP and Port staff to participate in the Northeast Embarcadero Study, (the "NES") a community planning process 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 Planning Department presented the NES recommendations on July 8, 2010 to the Planning Commission and on July 13, 2010 to the Port Commission; and
- WHEREAS, SFWP has submitted an updated building proposal for the Site in combination with 8 Washington Street (the "Project"), responding to the recommendations of the NES, attached as Exhibit B, describing the proposed Project; and
- WHEREAS, SFWP and Port staff have negotiated the Term Sheet attached as Exhibit C, which sets forth the essential terms upon which the Port and Developer will negotiate in good faith to reach agreement on the final transaction documents; and

WHEREAS The parties acknowledge that the Term Sheet is not itself a binding agreement that commits the Port or Developer to proceed with the approval or implementation of the Project and that the Project will first undergo environmental review under CEQA and will be subject to public review in accordance with the processes of the Port Commission, other City departments and offices, and other government agencies with approval over the proposed Project before any entitlements and other regulatory approvals required for the Project will be considered; and

WHEREAS Consistent with the terms of the RFP, the Term Sheet specifies that, if the proposed Project is approved and developed, the Port would receive land payments representing fair market value for the portions of SWL 351 proposed to be conveyed to SFWP; now, therefore, be it

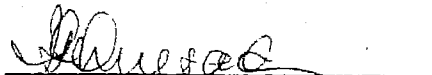
RESOLVED, That the Port Commission hereby endorses the Term Sheet and authorizes and directs the Executive Director of the Port, or her designee, to execute the Term Sheet and work with the Developer to undertake environmental review and to initiate any regulatory actions needed for the Project, with the understanding that the final terms and conditions of any development agreement, lease, and related documents negotiated between Port staff and SFWP during the exclusive negotiation period will be subject to the approval of the Port Commission; and, be it further

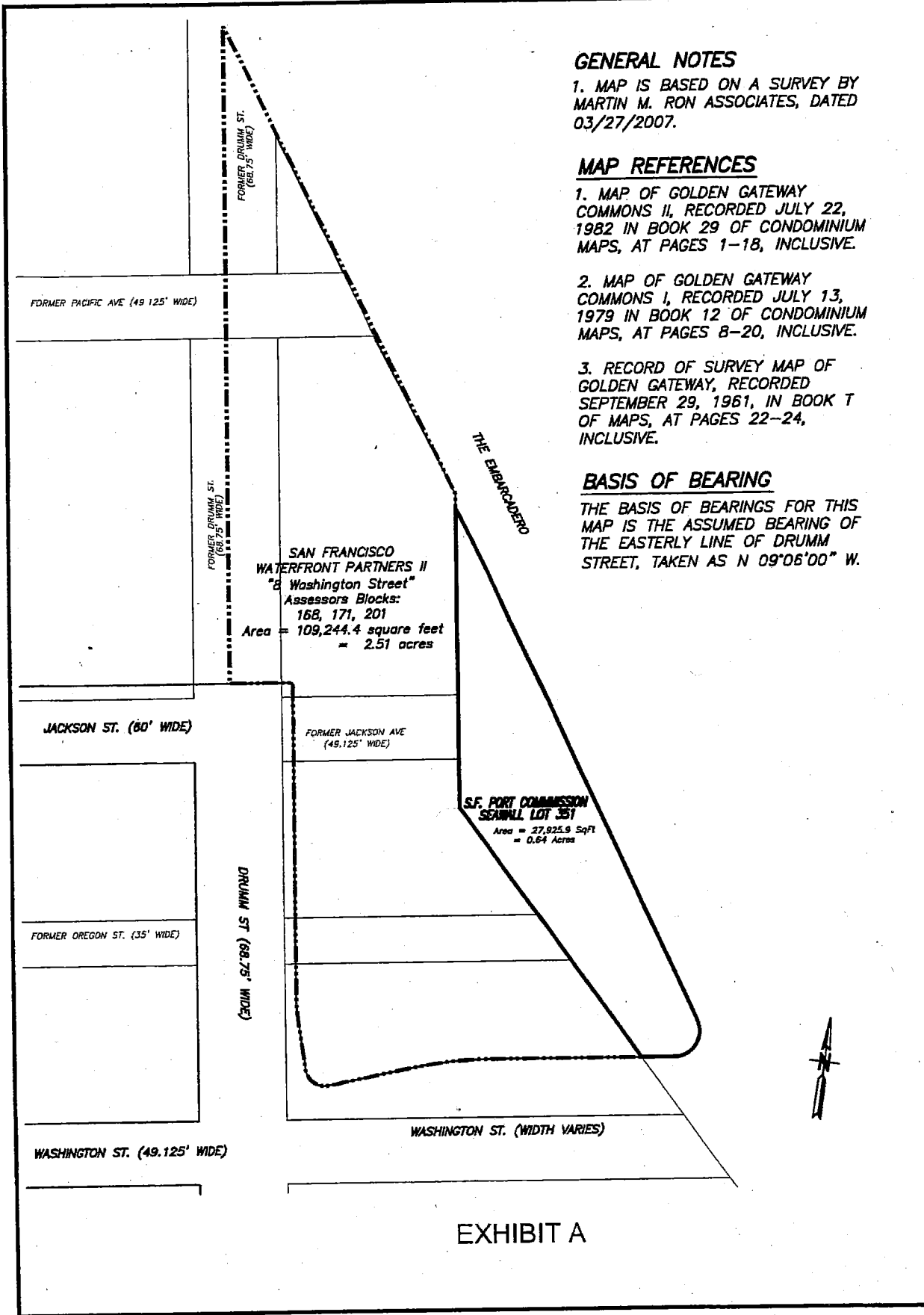
RESOLVED, That the Port Commission authorizes and directs the Executive Director of the Port, or her designee, to present the Term Sheet to the Board of Supervisors for its review and endorsement, and if the Board of Supervisors fails to endorse the Term Sheet, to either terminate the ENA or negotiate for a revised Term Sheet for the Port Commission's consideration in accordance with Section 3.3(b) of the ENA; and be it further

RESOLVED, That approval of the Term Sheet and direction to Port staff do not commit the Port Commission to approval of final Transaction Documents or implementation of the Project or grant any entitlements to Developer, nor does the Term Sheet foreclose the possibility of considering alternatives to the proposal, mitigation measures or deciding not to grant entitlement or approve or implement the Project, after conducting appropriate environmental review under CEQA, and while the Term Sheet identifies certain essential terms of a proposed transaction with the Port, it does not necessarily set forth all of the material terms and conditions of any final transaction documents; and, be it further

RESOLVED, That the Port Commission will not take any discretionary actions committing the Port to implement the Project, and the provisions of the Term Sheet are not intended and will not become contractually binding on the Port unless and until the Port Commission has reviewed and considered environmental documentation prepared in compliance with the California Environmental Quality Act ("CEQA") for the Project and negotiated and approved final agreements for the Project.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of September 28, 2010.


Secretary



GENERAL NOTES

1. MAP IS BASED ON A SURVEY BY MARTIN M. RON ASSOCIATES, DATED 03/27/2007.

MAP REFERENCES

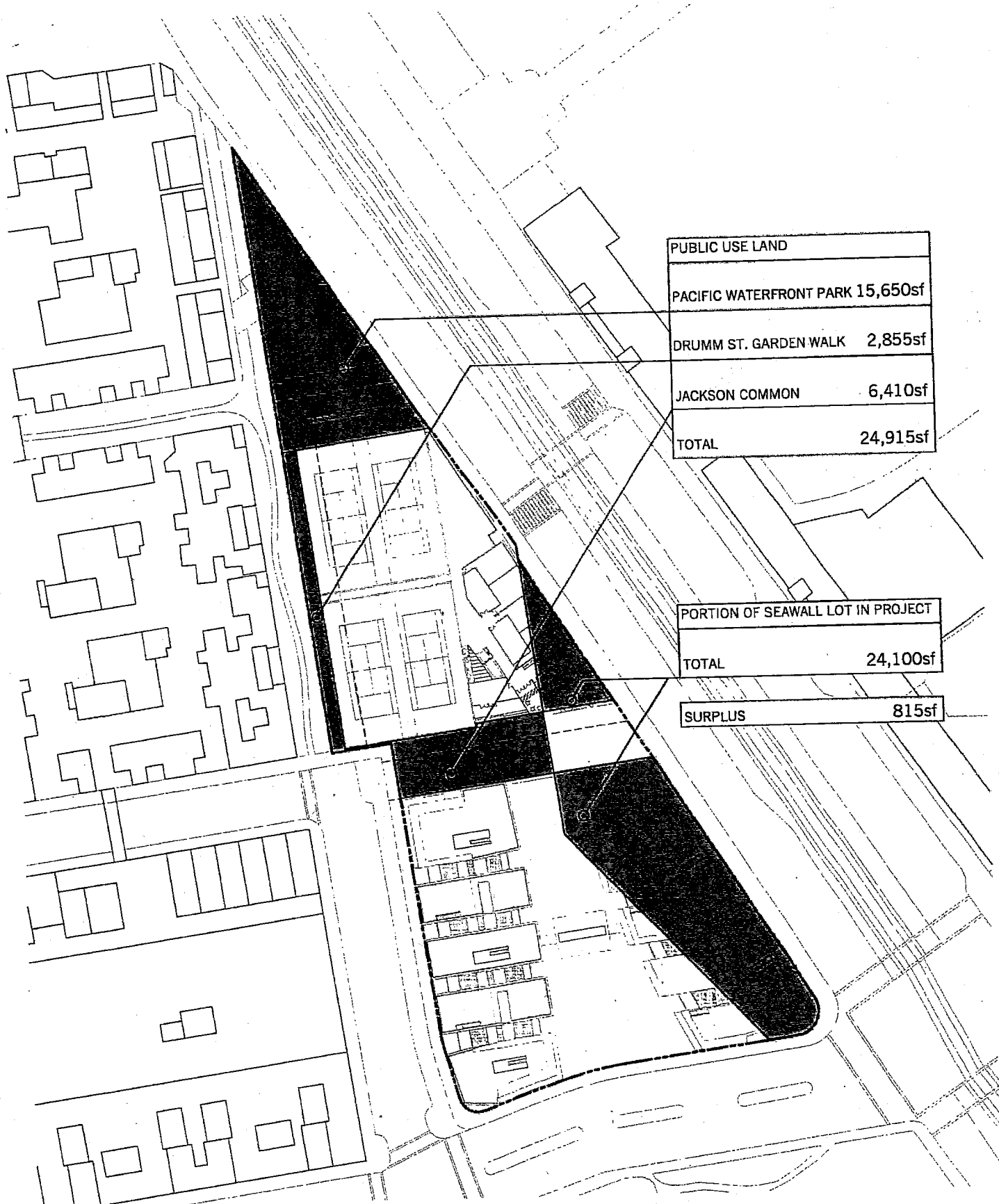
1. MAP OF GOLDEN GATEWAY COMMONS II, RECORDED JULY 22, 1982 IN BOOK 29 OF CONDOMINIUM MAPS, AT PAGES 1-18, INCLUSIVE.
2. MAP OF GOLDEN GATEWAY COMMONS I, RECORDED JULY 13, 1979 IN BOOK 12 OF CONDOMINIUM MAPS, AT PAGES 8-20, INCLUSIVE.
3. RECORD OF SURVEY MAP OF GOLDEN GATEWAY, RECORDED SEPTEMBER 29, 1961, IN BOOK T OF MAPS, AT PAGES 22-24, INCLUSIVE.

BASIS OF BEARING

THE BASIS OF BEARINGS FOR THIS MAP IS THE ASSUMED BEARING OF THE EASTERLY LINE OF DRUMM STREET, TAKEN AS N 09°06'00" W.

| | | | | |
|-----------|--|--|---|---|
| LEASE NO. | SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING | TENANT EXCLUSIVE RIGHT TO NEGOTIATE S.F. WATERFRONT PARTNERS II, LLC | DRAWN BY: AJM CHECKED BY: K. DORHEP PDATE: 08/08/08 | DATE: 31 JUL 2008 SCALE: 1" = 100' SHEET NO. 1 OF 1 SHEETS |
| | | | PROJECT NUMBER: 3510-00 | |

EXHIBIT A



| | |
|-------------------------|-----------------|
| PUBLIC USE LAND | |
| PACIFIC WATERFRONT PARK | 15,650sf |
| DRUMM ST. GARDEN WALK | 2,855sf |
| JACKSON COMMON | 6,410sf |
| TOTAL | 24,915sf |

| | |
|-----------------------------------|-----------------|
| PORTION OF SEAWALL LOT IN PROJECT | |
| TOTAL | 24,100sf |

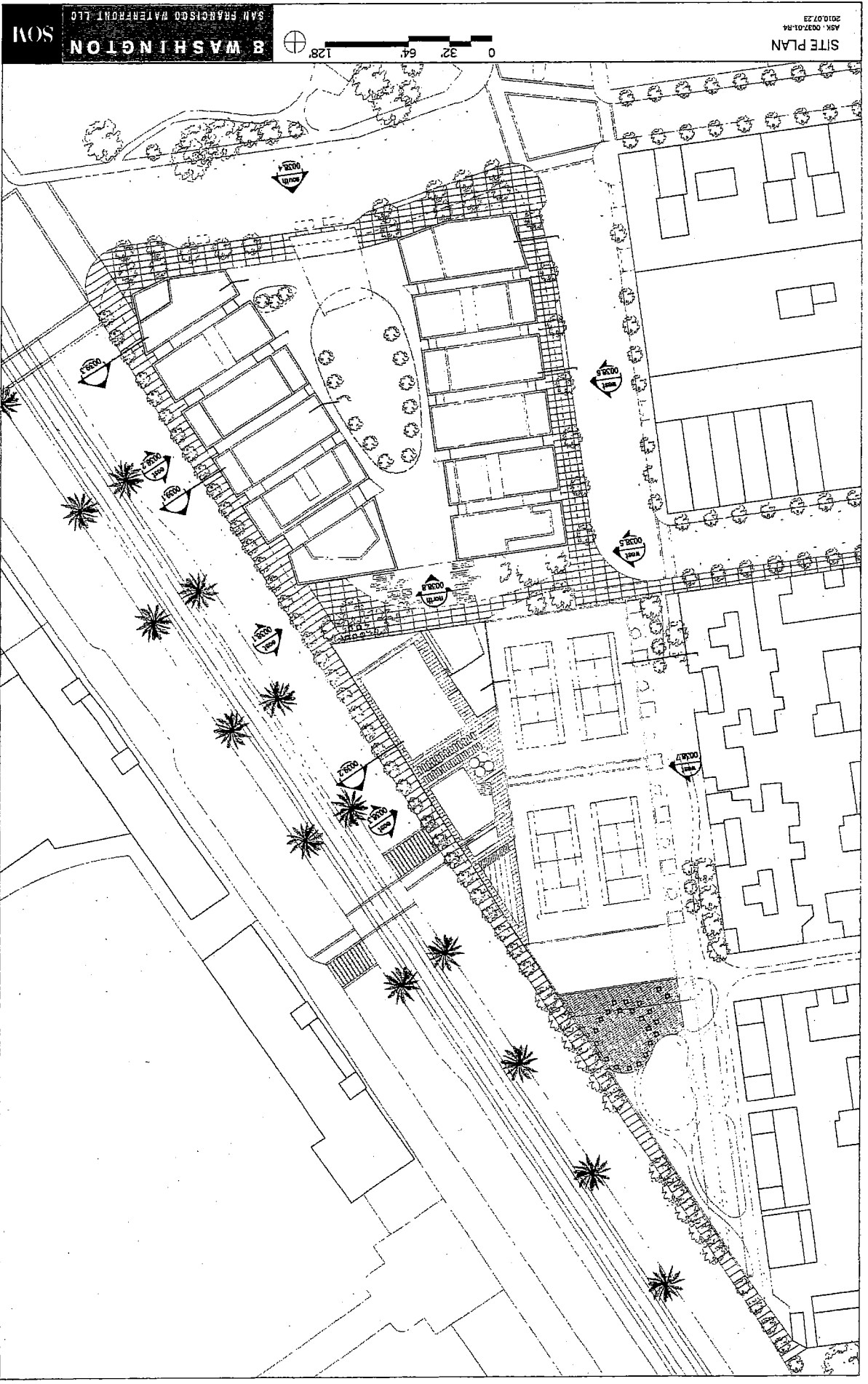
| | |
|----------------|--------------|
| SURPLUS | 815sf |
|----------------|--------------|

| Category | Comment | Response/Approach | Responsible | Status |
|--------------------------------|---|--|--------------------------------|--------|
| INTRODUCTION | | | | |
| | Summary description of project in Introduction needs more detail about what is being demolished (R. Miguel) | Provide as text change. | TC | |
| I PROJECT DESCRIPTION | | | | |
| a | Ferry Building property manager (Jane Connors) asserts that proposed project does not satisfy Port's obligation to provide parking for Ferry Building under the current Parking Agreement | Need Sponsor Attorney and/or Port to provide response to issue about the Port's obligation to provide parking for Ferry Building and how the proposed project satisfies this obligation. (Sponsor Attorney, Port) | Sponsor Attorney, Port | |
| b | Infrastructure Financing District (Brad Paul): discussion of Port receiving rather than General Fund | Does comment regarding Infrastructure Financing District call for a detailed response? If so, it requires Sponsor/Attorney input. | Sponsor Attorney | |
| c | Commentor (Veronica Sanchez) states that proposed project parking is "incomplete" for Ferry Building expansion. | Need clarification about "incomplete" comment (from Sponsor or Port). | Sponsor/Port | |
| d | Other commentors assert that project parking is excessive. | Response to concern about excessive parking will reiterate discussion of this issue in Plans and Policies, and note that decisionmakers will weigh the benefits of the project in their decision to approve, modify or deny the project. | | |
| e | Assertion that use of the project site is intended for recreational use. | Reiterate Project Description regarding the removal of the requirement to maintain community facility in exchange for Siney Walton Park. (EIR p. 11.3). | | |
| f | DEIR does not cite 2010 census data | | | |
| II PLANS & POLICIES | | | | |
| a | Proposed heights violate the Waterfront Land Use Plan & Design and Access Element and NES | Should City Attorney or Sponsor Attorney draft a response about the status of the NES litigation and its implications with respect to the EIR and proposed project? | City Attorney/Sponsor Attorney | |
| b | NES should not be cited as was not accepted by community and an EIR was not done | | | |
| III LAND USE | | | | |
| a | Neighborhood character | Response to reiterate EIR Land Use section, criteria and approach. | | |

| IV AESTHETICS | | | | |
|---|---|--|-----------------|--|
| a | Impact on views of Colt Tower from the Embarcadero | Additional photographs? (EP); Response will describe how the issue of views to and from Colt Tower are covered in the EIR | EP | |
| b | Impact on views to Ferry Building From Telegraph Hill | Additional photographs? | EP | |
| c | Request for video representation of existing and project, as viewed moving along the Embarcadero (Commissioner Sugeva)? | Should C & R provide such a video representation?; Consider Sponsor-provided video in its presentation | EP/Sponsor | |
| d | Additional views suggested: Pioneer Park, Alta Street (Alice Bash) | Additional photographs? | EP | |
| e | Takes issue with conclusion that the project would not "substantially alter" visual character. | Clarify that under significance criteria a project would have a slight impact if it were to degrade visual quality. | | |
| f | Geering Letter recommends changes to the height and bulk. | This is not the project. Reiterate EIR discussion about private views. To extent this can be construed as a recommended alternative, cross reference alternatives. | | |
| V TRANSPORTATION: PEDESTRIAN CONFLICT WITH VEHICLES AT GARAGE ENTRANCE | | | | |
| a | Conflict between pedestrians and parking garage users Comments suggest "Mitigation" | Provide additional description and analysis of vehicle and pedestrian volumes to support EIR Garage entry improvement measures? | Advant | |
| b | Traffic delays as a result of pedestrians in front of garage entrance | | | |
| d | Study pedestrian volume as a result of new development on Waterfront | | | |
| VI TRANSPORTATION: TRAFFIC CONGESTION, CUMULATIVE/AMERICAS CUP | | | | |
| a | Timing of project construction and operation with respect to Americas Cup. | Prepare responses; Timing of America's Cup construction and operation | Advant | |
| b | Trip Generation assumptions for proposed Athletic Club (Commissioner Borden) | Prepare responses | Advant | |
| c | TDMs (Commissioner Borden) | Additional specificity about timing and occupation of the project | Project Sponsor | |
| d | Trips generated by employees and contractors of the residents (cleaners, nannies, etc) are not studied | | | |
| e | Impacts of TR1, 3, 5 and 6 should be significant and the numbers supporting the analysis are 4 years old | | | |
| f | Cumulative Impact of known future projects (Ron Miguel Letter) | Refer to EIR, Supplement? | Advant | |
| VII TRANSPORTATION: PARKING | | | | |
| a | Parking data used to study supply and demand is out of date | Update or explain why not necessary | Advant | |
| b | Need better discussion of replacement parking spaces | Port to address | Port | |
| c | Study impact of loss of parking at 351 during construction | Discuss relocation | Port | |
| d | Study impact of the loss of Pier 1/2 parking and the demand generated by the new development on Piers 1 1/2 - 5 | Already included in parking study? | Advant | |

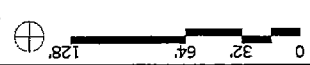
| | | | | |
|---|--|--------|---------|--|
| e | Incorrectly notes that 40 parking meters are bagged and reserved for PB Farmer's Market on Tuesdays and Saturdays from 6am - 4pm - Information out of date. Only used by the Market on Saturdays | Update | Adavant | |
|---|--|--------|---------|--|

| VIII RECREATION | | | | | |
|--------------------|--|---|--|--|--|
| a | Opposition to proposed reduction in tennis facilities. | | | | |
| b | Commentors request information about the project sponsor's (or successor's) obligations to provide the proposed recreational facilities to non-project-residents. | Need Sponsor/Attorney input regarding project's commitment to providing the recreation club to the paying public | Sponsor / Attorney | | |
| c | Commissioner Sugaya requests additional information about where GRTSC members live. | Need Sponsor to obtain requested info about club membership | Sponsor | | |
| d | DEIR should note that the reduction in recreation facilities will occur in the district with the lease recreation facilities | | | | |
| e | Recreation impacts need to be analyzed in light of the fact that other recreational facilities are being closed (eg Joe DiMaggio Park) and other facilities are reducing their hours | | | | |
| f | DEIR only cites the number of public tennis courts but doesn't discuss quality - some are in poor condition and not suitable for play | | | | |
| g | Temporary recreational impacts during project construction not adequately analyzed | | | | |
| h | Note that Ferry Park has been considered a location for 4 tennis courts or 3 tennis courts and a basketball court | | | | |
| IX SEA LEVEL RISE | | | | | |
| a | Concerns for flooding of neighboring properties resulting from ground water displacement | Technical Memo to explain why not considered a significant impact | Sponsor | | |
| b | Building size is required to keep garage from popping out of ground. | Technical Memo to explain why not considered a significant impact | Sponsor | | |
| c | No EIR has previously studied the impacts of a below grade parking lot along the Embarcadero | Confirm | EP | | |
| d | The project is on fill and does not provide adequate drainage | Technical Memo to explain why not considered a significant impact | Sponsor | | |
| X NOISE | | | | | |
| a | Pile driving noise | Location of piles Number of piles Depth of piles Decibels with and without muffling | Sponsor Sponsor Sponsor Sponsor | | |
| b | Impact on residents at Davis Building (60 feet away) | Decibels with and without muffling | Sponsor | | |
| XI SOCIAL/ECONOMIC | | | | | |
| Not a CEQA issue | | | | | |
| a | Project housing is too expensive and does not provide affordable housing | Response to reiterate City requirements for affordable housing applicable to the project. Response to note that social effects are not treated as environmental issues per CEQA Guidelines 15131. The decisionmakers will weigh the benefits of the project in their decision to approve, modify or deny the project. | EP | | |
| b | Affordable housing fees are too low (Miguel) | | | | |

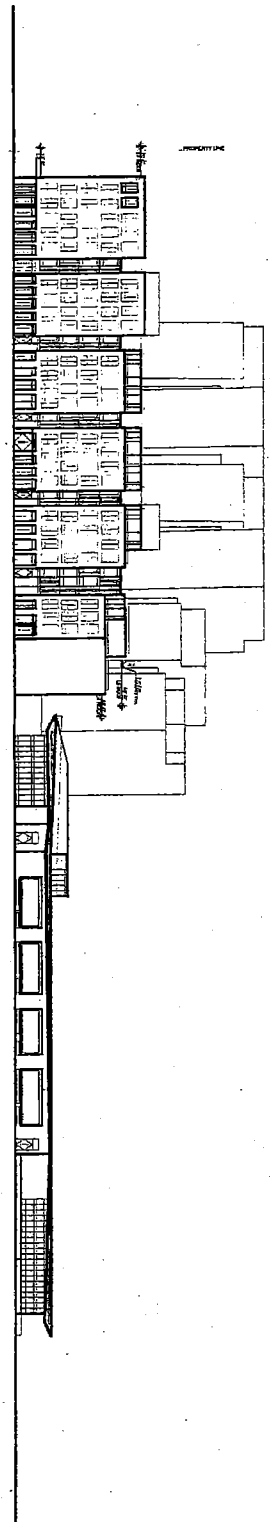
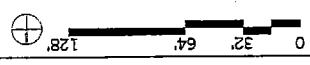


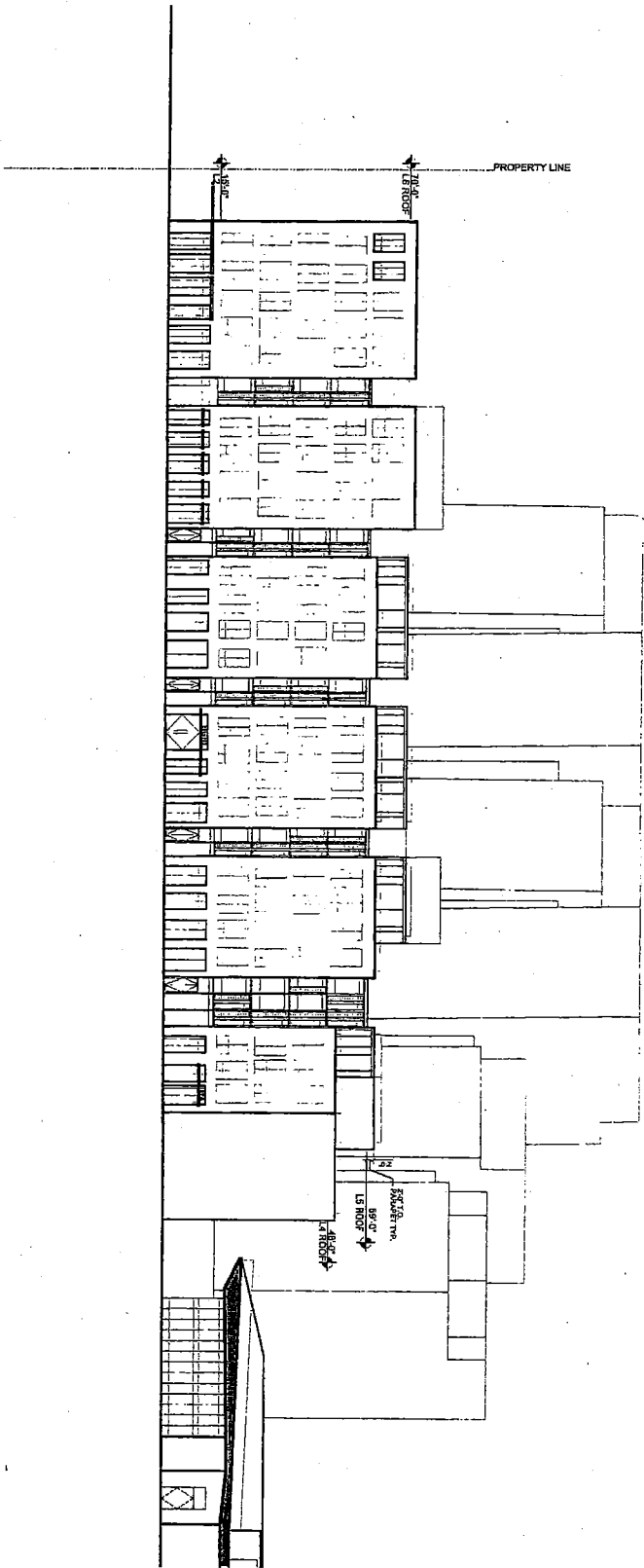
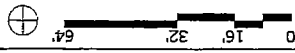
SOS

8 WASHINGTON



2010.07.23
 ASK: 0027.01.84
 SITE PLAN





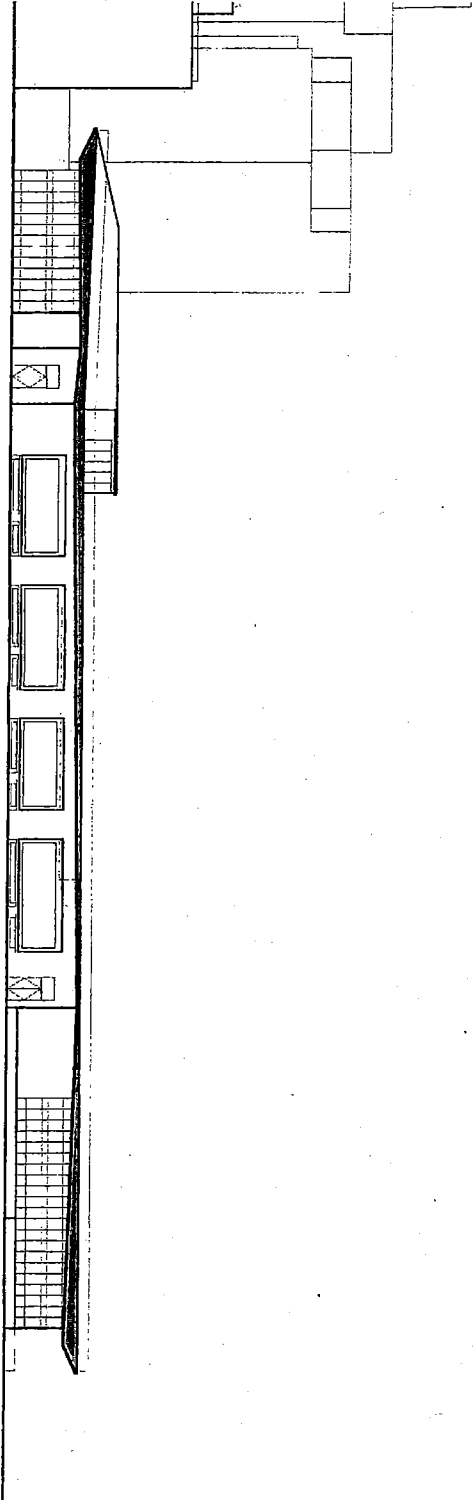
KOS

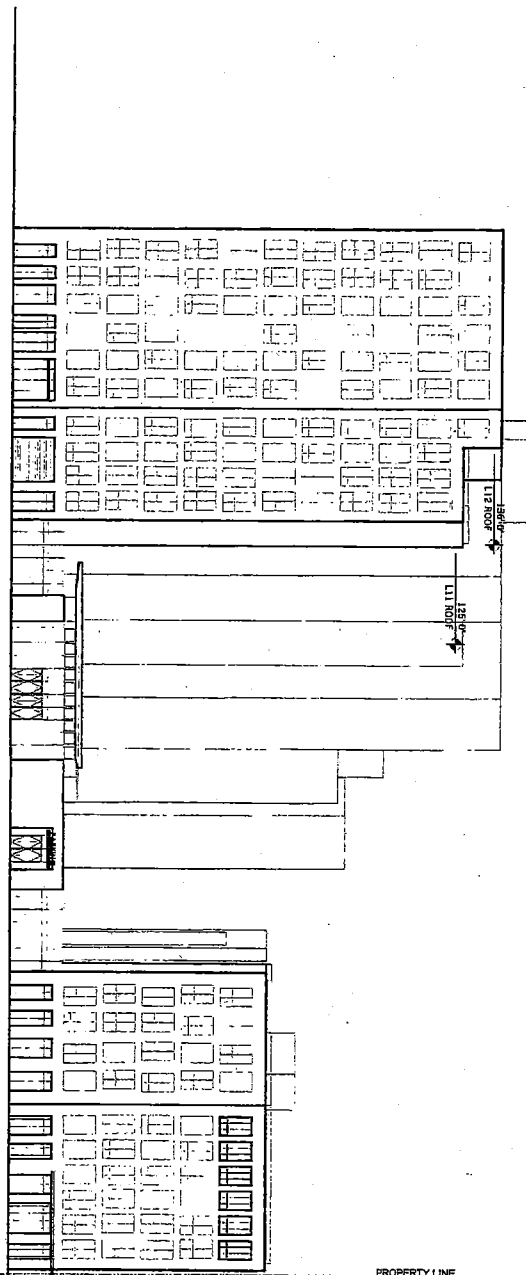
SAN FRANCISCO WATERBURY LLC
8 WASHINGTON



0 16' 32' 64'

ASK - 0030 0302
2010.07.23
EAST ELEVATION NORTH OF JACKSON





SOM

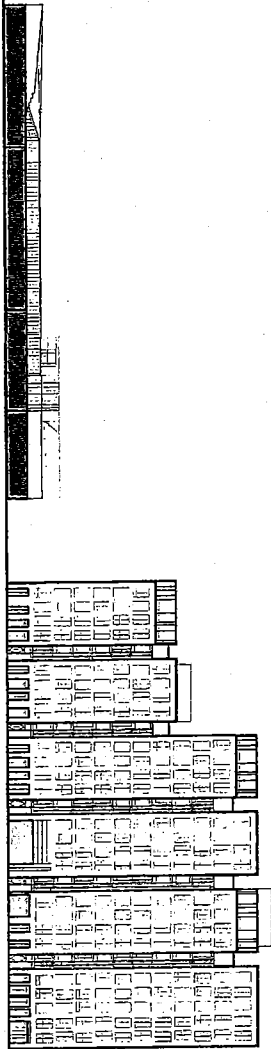
8 WASHINGTON
SAN FRANCISCO WATERFRONT LLC



0 32' 64' 128'

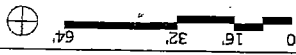
WEST ELEVATION (DRUMM ST)

2010.07.23
AGL - 0038.05.R4

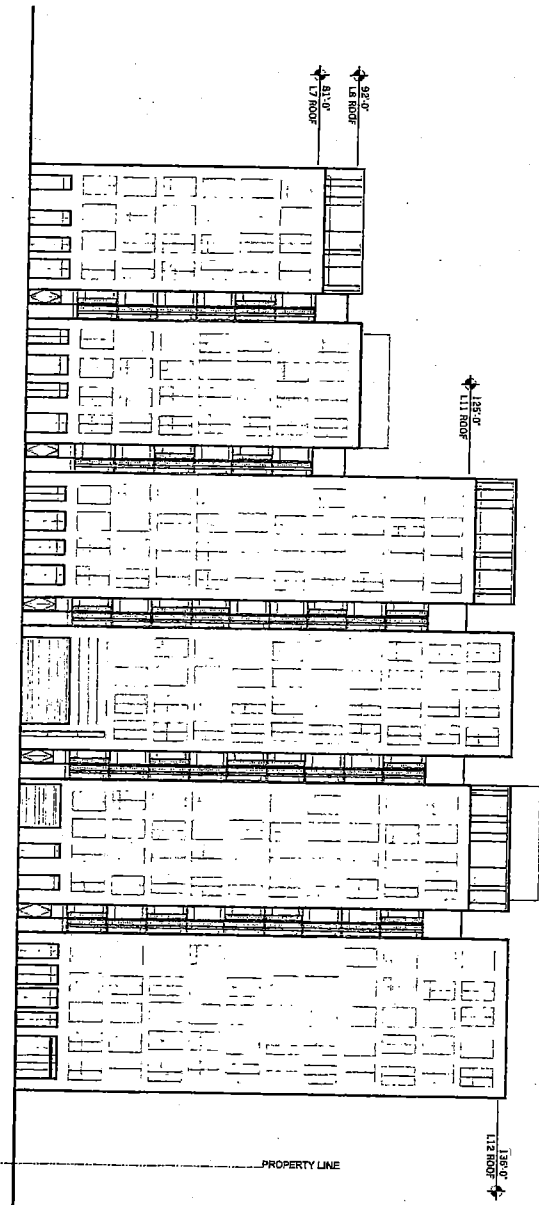


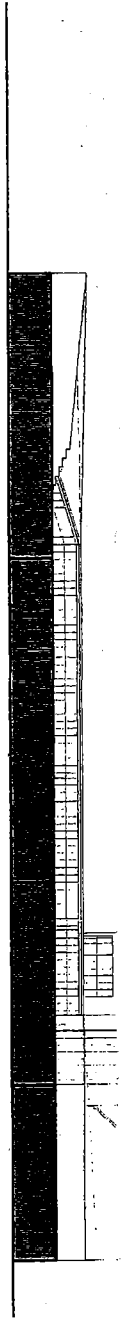
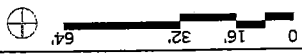
SOM

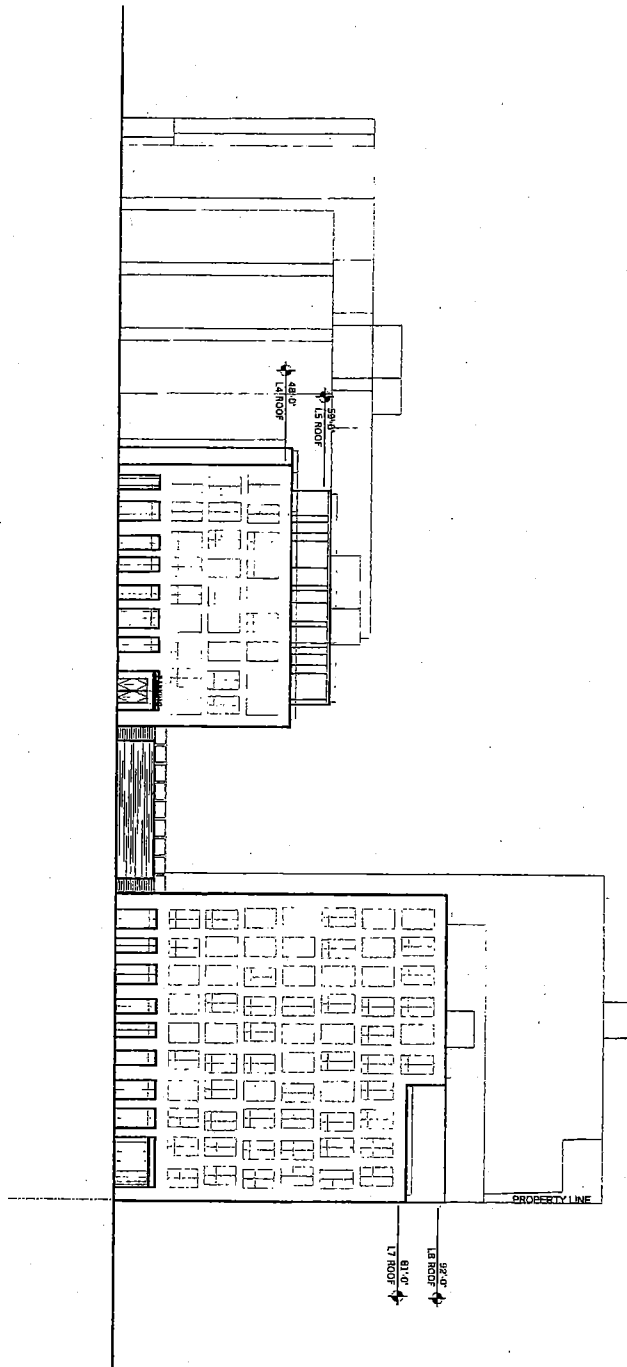
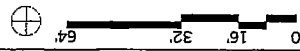
SAF. FRANCISCO WATERFRONT LLC
8 WASHINGTON

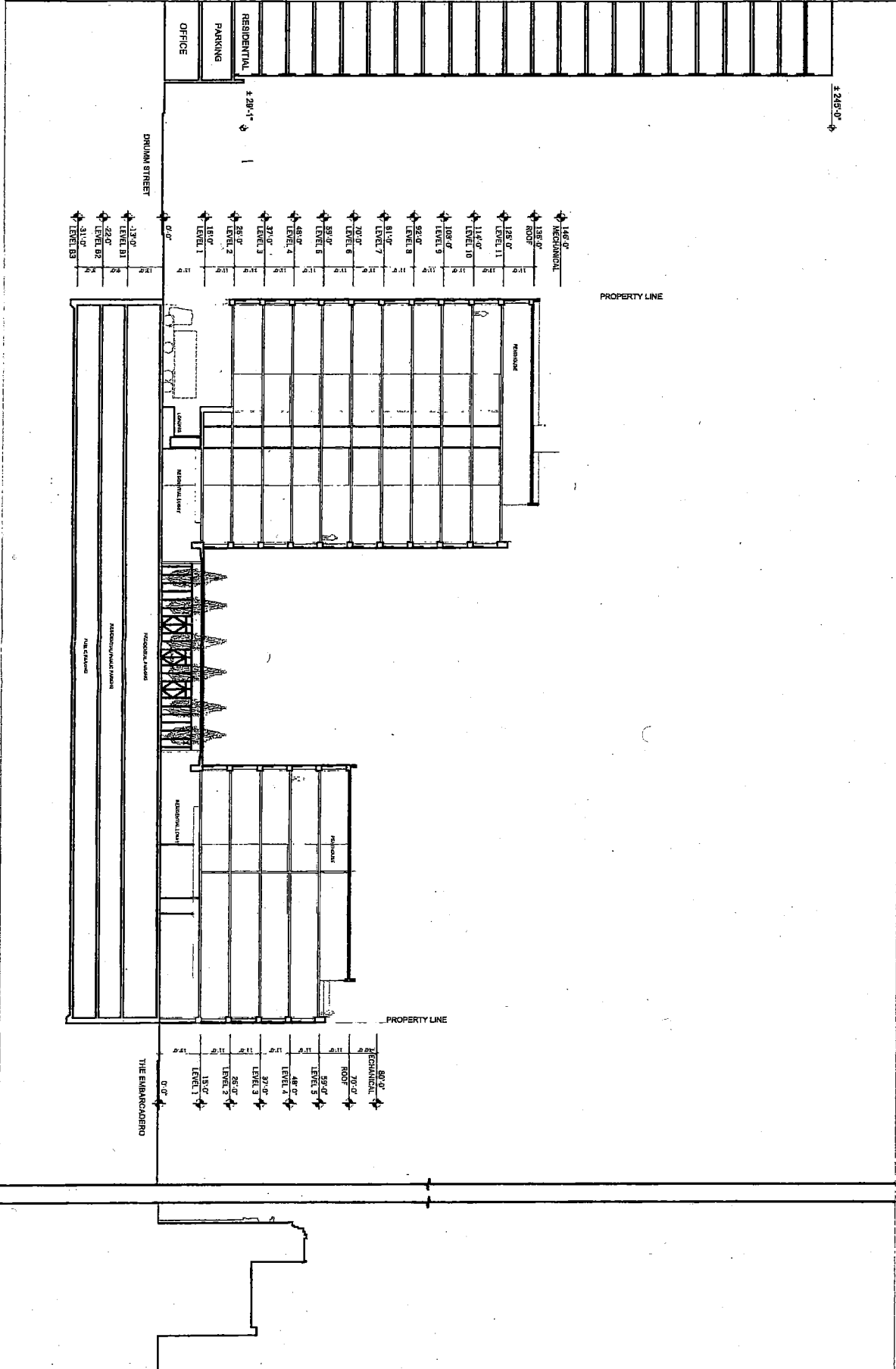


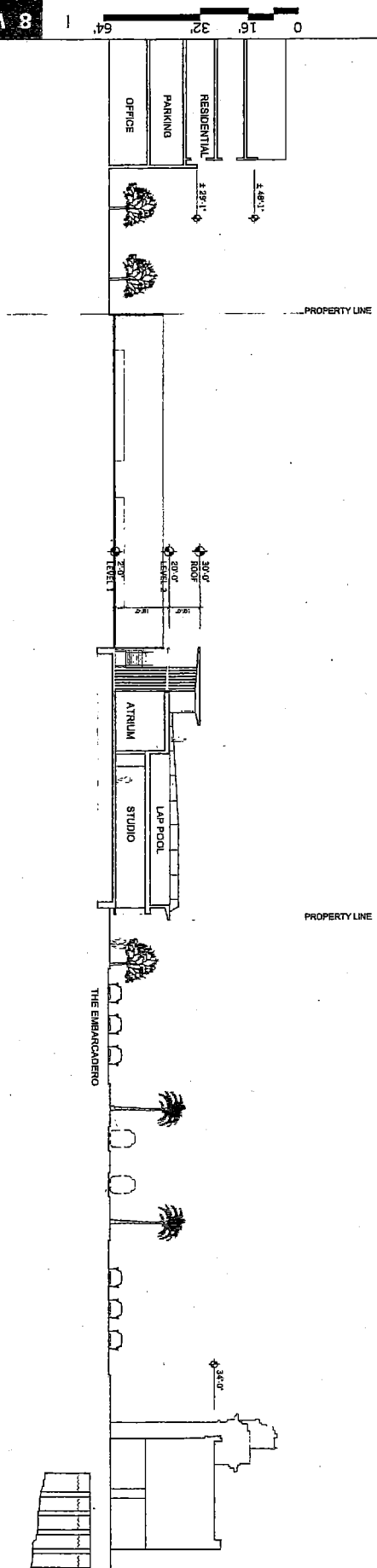
WEST ELEVATION SOUTH OF JACKSON
ASR - 0038 06 R4
2010.07.23

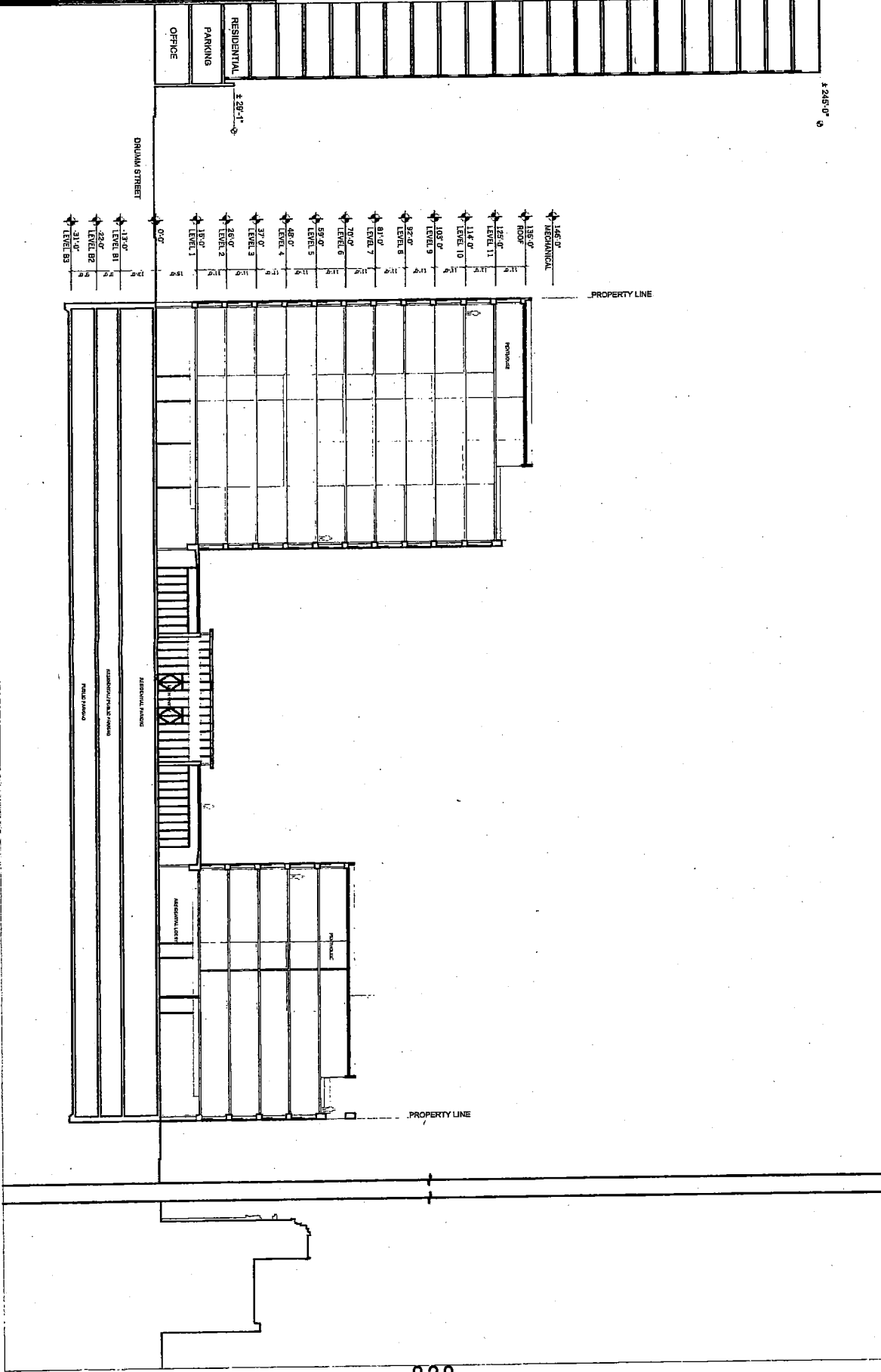
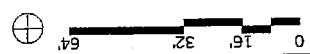












| XII ALTERNATIVES | | | |
|---------------------|---|---|----|
| a | Commentor notes that FOGG has provided its own alternatives. | Response will explain why range of alternatives presented in the EIR is adequate, citing CEQA guidelines | EP |
| b | Need an alternative that omits garage. | | |
| c | Commissioner Miguel comments that he doesn't think Alternative C (Public Trust) was analyzed sufficiently. He does not specify why. | His letter does not provide any more specificity. Analysis for some topics is shorter for this Alternative because its outward building envelope is basically the same as the proposed project (with hotel use in the east building). Therefore, under some topics, it says that impacts would be substantially the same as the proposed project. | |
| d | Alternatives B, E - aesthetic impacts of not having a project that steps down to the waterfront should be discussed | Implement suggested text change in A. Bash letter. | |
| e | The No Project Alternative should include a description of the existing site with clear fences instead of green fences | The No Project alternative assumes continuance of existing conditions. | |

EXHIBIT C – TERM SHEET

**Proposed Term Sheet for SWL 351 / 8 Washington Project between
Port of San Francisco and San Francisco Waterfront Partners II, LLC**

This Term Sheet, dated as of September 28, 2010, for reference purposes only:

- Is attached as Exhibit C to and a part of the Exclusive Negotiation Agreement (the "ENA") between the Port of San Francisco (the "Port") and San Francisco Waterfront Partners II, LLC ("SFWP" or "Tenant");
- Sets forth the basic elements of SFWP's proposed development concept and uses (as proposed, the "Project"), and the economic parameters and other fundamental terms that will serve as the basis for negotiating a detailed disposition and development agreement, a purchase and sale agreement, a ground lease, and related transaction documents between the Port and Tenant (the "Transaction Documents"), with the understanding that the Project will continue to evolve throughout the public review process;
- Is subject to completion of environmental review of the Project, including a full range of appropriate alternatives and mitigation measures for the Project in its entirety under the California Environmental Quality Act ("CEQA");
- Is subject to further changes in the course of public review of the Project during the extensive approval processes that will follow CEQA review and in response to other City, Port, and public concerns that may arise;
- Is limited to the uses currently proposed by SFWP, and does not cover all potential uses for Seawall Lot 351, which the Port may consider in the course of the approval processes;
- May be amended, along with the ENA, to reflect any subsequent proposal to change the uses, the mix of uses, the intensity of development, or other fundamental terms, subject to Port Commission review and additional CEQA review, if the changes have not already been analyzed; and
- Along with any underlying documents such as proformas, is not intended to be, and will not become, contractually binding until the parties execute and deliver the Transaction Documents.

Under the San Francisco Charter, no officer or employee of the City and County of San Francisco (the "City"), including the Port, has authority to commit the City to the Project until the San Francisco Port Commission has approved the transaction following completion of CEQA review and the San Francisco Board of Supervisors has approved the lease.

Accepted by Port: _____

Accepted by SFWP: _____



Page 1

| Sec. | Provision | Terms |
|------|------------------|--|
| 1. | Parties | <p><u>Landlord:</u> Port</p> <p><u>Tenant:</u> San Francisco Waterfront Partners II, LLC, a limited liability company of which Pacific Waterfront Partners, LLC and the California State Teachers Retirement System are members</p> |
| 2. | Premises | Jackson Commons and Pacific Avenue Park |
| 3. | Lease Term | 66 years |
| 4. | Site | SWL 351, ± 27,937 sf at Washington Street and The Embarcadero, and Blocks 201,168 and 171 commonly known as 8 Washington Street, for a total of ± 138,681 sf bounded by Washington Street, The Embarcadero, and Drumm Street. |
| 5. | Proposed Project | <p>The Port and SFWP will seek a realignment of the public trust at the Site. If approved by the State Lands Commission, the land will be cleared and subdivided, and the Port will sell the portion of SWL 351 from which trust use restrictions have been lifted (the "Port Transfer Parcel") to SFWP. Development will proceed on parcels or subareas for the uses described below:</p> <p><u>Washington/Drumm/Jackson/ Embarcadero:</u> Two condominium buildings with ± 165 condominiums, ground floor retail and restaurant use, and a 3-level underground parking garage. The eastern condominium building will be between 48 and 70 feet high and will contain ± 54 residential condominiums. The western condominium building will be between 84 and 136 feet high and will contain ± 111 residential condominiums.</p> <p><u>Former Jackson Street Right of Way:</u> Public open space ("Jackson Commons").</p> <p><u>Jackson/Drumm/Pacific/ Embarcadero:</u> The existing Golden Gateway Tennis and Swim Club ("GGTSC") will be rebuilt with 4 outdoor ground level tennis courts, a 12,800 sf fitness center, and 2 outdoor rooftop swimming pools.</p> <p><u>Pacific Avenue:</u> Public open space ("Pacific Avenue Park") that will contain ± 11,000 sf of public open space and a 4,000 sf restaurant.</p> <p><u>Underground Parking:</u> A 3-level underground parking garage will be built below the block bounded by Washington Street, Drumm Street, Jackson Street and The Embarcadero, containing up to 255 public parking spaces available for waterfront visitors (the "Public Parking Garage") and 165</p> |

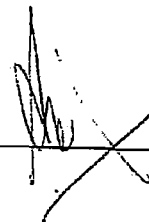
Accepted by Port : _____

Accepted by SFWP: _____

| Sec. | Provision | Terms |
|------|-----------------|---|
| | | residential condominium parking spaces, for a total of up to 420 parking spaces. |
| 6. | Financial Terms | <p><u>Purchase Price for Port Transfer Parcel:</u></p> <ul style="list-style-type: none"> • <u>Land Payment:</u> \$3,000,000 due upon stabilization, defined as one year following receipt of Temporary Certificate of Occupancy (TCO) for the Project. • <u>Transfer Payments:</u> 0.5% of sale value of: (i) all residential condominium unit sales in perpetuity; (ii) all commercial condominium unit sales (excluding the GGTSC parcel) after (but not including) the first sale in perpetuity, enforceable through recorded covenants on each unit. • <u>Land Payment Guaranty:</u> SFWP must guarantee payment of the Land Payment no later than 1 year following receipt of a TCO for the Project. • <u>Transfer Payment Guaranty:</u> SFWP must guarantee a minimum of \$2,000,000 from the Transfer Payments, payable not later than the close of escrow of the sale of the last residential condominium unit in the Project. <p><u>Ground Rent for Jackson Commons/Pacific Avenue Park:</u></p> <ul style="list-style-type: none"> • <u>Base Rent:</u> \$120,000 annually commencing on the completion of the improvements, adjusted every 5 years by the CPI with a minimum increase of 2% and a maximum of 4% per annum. • <u>Percentage Rent:</u> 15% of gross rents received by Tenant from any restaurant or other concession use income generated within Pacific Avenue Park. <p><u>Construction Period Rent for SWL 351:</u> \$60,000 per year.</p> |

Accepted by Port : _____

Accepted by SFWP: _____



| Sec. | Provision | Terms |
|------|-----------------------|--|
| 7. | Management Plan | <p><u>Residential condominiums (including common open space):</u> SFWP will sell the units and common areas, subject to covenants in a master homeowners association ("HOA") agreement.</p> <p><u>Jackson Commons/Pacific Avenue Park (excluding the commercial spaces):</u> SFWP will lease the public open spaces to the HOA, which will manage the public and residential condominium common open space areas and provide security at its expense.</p> <p><u>Commercial spaces in Pacific Avenue Park:</u> SFWP will lease and select the operators.</p> <p><u>GGTSC:</u> SFWP or the Golden Gateway Center will own and select the operator. The Port has no role in GGTSC development or operations.</p> |
| 8. | Public Parking Garage | <p>Will include up to 255 but in no event fewer than 90 parking spaces for visitors to the Ferry Building Area.</p> <p>SFWP will build and finance the Public Parking Garage. No public funds generated by development on SWL 351, other than Mello-Roos bond proceeds supported by special assessments on private development to the extent permitted by law, will be used for garage development, operations, or maintenance costs. SFWP is expected to own and receive all revenue from the Public Parking Garage, subject to any applicable limitations if Mello-Roos bond proceeds are used to finance the Public Parking Garage.</p> <p>Parking during construction and entitlement period will be addressed in the Transaction Documents.</p> <p>If the Public Parking Garage is publicly-owned or financed, a separate financial agreement will be negotiated to address costs and revenues.</p> |
| 9. | Transactions | <p><u>Public Trust Exchange Agreement:</u> The Port and SFWP will negotiate with the State Lands Commission for an exchange agreement under which trust use restrictions will be lifted from the Port Transfer Parcel and trust use restrictions will be imposed on portions of Blocks 168 and 171 at 8 Washington Street. The exchange agreement will allow the sale of the Port Transfer Parcel for residential development, in exchange for development of public trust open space and restaurant uses on portions of Blocks 168 and 171 that are not currently encumbered by the public trust.</p> |

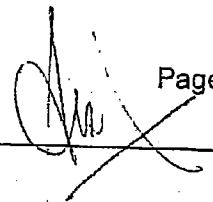
Accepted by Port: _____

Accepted by SFWP: _____

| Sec. | Provision | Terms |
|------|-----------------------------------|--|
| | | <p><u>Purchase and Sale Agreement:</u> Upon implementation of the trust exchange, SFWP will purchase the Port Transfer Parcel in fee from the Port for the Purchase Price.</p> <p><u>Public Open Space Lease:</u> SFWP will lease Jackson Commons and Pacific Avenue Park from the Port for 66 years. Pacific Avenue Park will include a 4,000 sf restaurant sublease parcel.</p> |
| 10. | Hotel Use | The EIR for the Project will include an alternative that includes a hotel as part of the overall project. |
| 11. | Open Spaces, Parks and Recreation | <p>Jackson Commons and Pacific Avenue Park will be permanently restricted to public open space, with the exception of the restaurant sublease parcel. SFWP or the HOA will be permanently responsible for all costs of maintaining the public open spaces.</p> <p>The rebuilt GGTSC will be permanently restricted to recreation uses through a deed restriction or other mechanism.</p> |
| 12. | IFD | SFWP will include Blocks 201, 168, and 171 in an Infrastructure Financing District (IFD) as a requirement of acquiring SWL 351. Upon approval of the IFD (with Blocks 201, 168, and 171), up to \$5 million of certain Project-related costs for public improvements (to be defined) on publicly-owned or dedicated property will be funded with IFD funds. These improvements will implement the public realm improvements (including sidewalk widening, street furnishings, etc.) on publicly-owned or dedicated property as recommended in the Northeast Embarcadero Study. |
| 13. | CFD | The Port will use best efforts to cooperate with SFWP to include the Site in a Mello-Roos Community Facilities District (CFD). CFD assessments would be applied to the Project only and CFD funds will only be used for capital and maintenance costs for public components of the Project. If engineering and cost analyses conclude that additional funding is needed to finance agreed-upon public improvements, the Port will designate some or all of the public open space ground rent to augment CFD financing of these public improvements. |
| 14. | CEQA Review | The Project in its entirety and a full range of appropriate alternatives and mitigation measures must be analyzed under CEQA, and appropriate mitigation measures must be considered and, if needed, adopted and implemented for the Project. |

Accepted by Port : _____

Accepted by SFWP: _____

Page 5




MEMORANDUM

July 2, 2008

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Rodney Fong Vice President
Hon. Ann Lazarus
Hon. Michael Hardeman
Hon. Stephanie Shakofsky

FROM: Monique A. Moyer *M. Moyer*
Executive Director

SUBJECT: Authorization to Issue a Request for Proposals (RFP) for SWL 351 (The Embarcadero at Washington Street)

DIRECTOR'S RECOMMENDATION: Authorize RFP issuance for SWL 351.

Seawall Lot 351 ("SWL 351")¹ is one of the development opportunities in San Francisco created by removal of the Embarcadero Freeway after the 1989 earthquake. The parcel is a nearly triangular site with a 358-foot frontage along The Embarcadero Roadway with a mere 26-foot frontage on Washington Street. (See Exhibit A, Site Map.) On May 27, 2008, Staff made an informational presentation to the Port Commission regarding the potential opportunity of a mixed-use project at this site, including presentation of draft development criteria.

At the May 27, 2008 meeting, policy options presented to the Commission included:

1. **Development Solicitation (RFP)** to choose a private sector partner to develop the site to achieve the Port's objectives.
2. **Direct negotiation/sole source** agreement with San Francisco Waterfront Partners', a real estate developer that has an option to purchase the adjacent Golden Gateway Swim and Tennis Club site from the Golden Gateway Center, a California limited partnership.
3. **No Action**
4. **Port Project** to continue to support the Ferry Building with at least 90 parking spaces, the Port could proceed with its own development project for the site directly rather than

¹ A portion of SWL 351 is Assessors Block 0201, Lot 013. The remainder is part of Assessors Block 9900.

This Item Covers Calendar Item No. 9A

soliciting for a private sector partner.

5. **Open Space or Park Use** undertaken by the City's Recreation and Park Department or other entity. The Port could transfer ownership in exchange for the land value.

Following the Staff presentation and substantial public comment on options for SWL 351, on May 27, 2008, the Port Commission directed Staff to present this action item. Staff is seeking authorization to issue an RFP on the terms included in this staff report based on the policy rationale presented in its May 22, 2008 staff report and May 27, 2008 presentation, incorporated herein by reference.

COMMUNITY OUTREACH

Through May 2008, most of the community input received regarding the possible SWL 351 development opportunity focused on the question of whether to issue an RFP. Given direction to proceed toward an RFP, Staff sought more input on the draft objectives for the RFP. On June 4, 2008, Port Staff updated the Northeast Waterfront Advisory Group (NEWAG), whose jurisdiction includes the Ferry Building area, on the direction from the May 27, 2008 Port Commission meeting. Some members of NEWAG and the community reiterated the concerns about issuing an RFP summarized in the May 27, 2008 staff report; others support the RFP and focused the conversation on the nature of the RFP itself and the evaluation process.

Concerns were raised about the development objectives, in particular the allowed building heights, view corridors, and nature of the development. Following the June 4, 2008 meeting, staff worked with NEWAG members to refine the development objectives. Exhibit B shows proposed changes to the RFP objectives based on these discussions and other feedback received. NEWAG was also concerned about opportunities for public review of project design during the developer selection process and after a developer is selected.

Additionally, an email notice was sent on June 6, 2008 to the parties interested in SWL 351 asking them to provide comment on the development objectives by June 16, 2008. The San Francisco Housing Coalition, Barbary Coast Neighborhood Association, Telegraph Hill Dwellers, and Friends of Golden Gateway have provided comment letters on the proposed development objectives. Exhibit C includes the communications received by the Port regarding the possible development opportunity at SWL 351 since the last staff report.

DESIGN AND DEVELOPMENT OBJECTIVES

The design and development criteria for SWL 351, initially published on May 16, 2008, were modified as shown in the revised version in Exhibit B. The modifications made were refinements and clarifications of the objectives to address concerns raised and to incorporate minimum business terms.

Summary of Objectives

The proposed design and development objectives for SWL 351 draw from the Waterfront Land Use Plan, the Waterfront Design and Access Element, market and land use context, and community outreach undertaken. They also reflect the Port's Parking Agreement with the Ferry Building lessee. Rather than the Port specifying a use program prior to issuing an RFP, these

criteria provide developers with broad flexibility to craft use programs based on market conditions and anticipate the Port will entertain proposals for a variety of uses that could meet the Port's objectives for the site.

The Waterfront Land Use Plan identifies the following acceptable uses for SWL 351: residential, assembly and entertainment, general office, parking, retail (including restaurants), recreational enterprises, visitor services, community facilities, and open space. Although open space is one of the allowed uses, SWL 351 was not identified as part of the Waterfront Open Space network. Rather, SWL 351 is called out as a development opportunity site – open space could be one aspect of the project. Any project would need to meet or exceed Planning Code requirements for publicly accessible open space. In addition to uses called for in the Waterfront Plan, Staff recommends that hotel use and private recreation use be considered in response to market support and community interest in these uses. The site is currently zoned for public uses so a rezoning would likely be part of the project approvals.

Key points of the Design and Development Objectives for SWL 351 include:

- Land Use – Uses required include restaurant/retail and 90 parking spaces to meet the Port's contractual obligations. Encouraged uses are hotel, office, residential, and recreation.
- Public Trust Consistency – Office, residential and private recreation uses are encouraged as land uses, with the recognition that a developer proposing these uses would need to propose a means to address the Public Trust restrictions.
- Height – The design objectives are intended to express the community's strong concerns about view corridors and neighborhood context without requiring a specific height to avoid overly constraining proposals.
- Reconnecting the City with the Waterfront – The objectives provide direction on pedestrian connections, ground floor character, and the relationship to The Embarcadero, adjacent land-side open spaces, the Ferry Building, and pier bulkhead buildings.
- Minimum Rent – \$500,000 per year at project stabilization.
- "As-Is" Lease – all capital and operating costs to be borne by the developer.

Response to Community Concerns

Building height and massing is the most common concern in neighborhood comments. The site is currently zoned with a height limit of 84 feet (84-E Height and Bulk District). Rather than specifying a specific height in the RFP, the objectives call for a building to fit the site context. The objectives call for no permanent building along the sewer easement in the former Jackson Street corridor; in addition to allowing for sewer system repairs and upgrades, it also maintains the view corridor down Jackson Street to the waterfront.

Staff does not recommend a fixed height limit be included in the RFP, but that the project fit within the context formed by the buildings that neighbor the site. Discussions with the neighborhood representatives and comments received on the objectives called attention to the variety of heights in proximate buildings. For example, both the bulkhead buildings and the Golden Gateway Commons condominiums have multiple roof heights. The objectives now identify the specific buildings that provide the context for project height:

- the Piers 1 to 5 Bulkhead buildings (heights range from 40 to 55-feet),

- the William Heath Davis Building of the Golden Gateway Center located at 440 Davis Court (220-feet), and
- the Golden Gateway condominiums at 550 Davis and 640 Davis Street (55 to 65-feet).

In addition, the perceived potential height of any new building on the site, including mechanical systems, and the appearance of the roof tops is of great concern to the neighbors. Rather than directing how these design issues should be solved, the RFP will require respondents to state the height of all roof top equipment and to provide a conceptual drawing of the roof top view as seen from neighboring elevations.

In addition to revised height context and addressing roof top equipment, the RFP objectives were also modified from the May 2008 draft on these community concerns:

- Relationship to the neighboring land-side open spaces
- Views from the Ferry Building and Pier 1 to Coit Tower
- Allowing activity that does not require a permanent structure in the Jackson Street right-of-way
- Calling for parking to be operated in a manner to minimize impact on the neighborhood and clarifying that subsurface parking is not required.

SELECTION PROCESS

Port staff recommends a selection process consisting of the following steps:

1. Request for Proposals – Staff will prepare an RFP requiring submittal of qualifications, development proposal, and a financial proposal. Respondents would be required to tender an earnest money deposit of \$50,000 that would be refundable to all respondents except the one with whom the Port enters into exclusive negotiations.
2. Evaluation of Proposals – Proposals will be screened for responsiveness to the RFP. Responsive proposals from qualified developers will undergo technical evaluation. Respondents may be required to make a presentation either at a Port Commission meeting, community meeting, or both. Public comment on the proposals will be solicited.

Following the technical and public review, Staff would recommend a developer to the Port Commission. The Port Commission would select a developer and direct Staff to enter into negotiations.

3. Exclusive Right to Negotiate – Staff will negotiate an Exclusive Negotiation Agreement (ENA) to be utilized while the development agreement and lease are being negotiated, due diligence investigations and preliminary design work are being done, and environmental review of the project is being conducted.
4. Approval of Transaction - Upon completion of any required environmental review and finalization of negotiations by Port Staff, the Port Commission would consider the development agreement, lease and related documents. The lease will also be subject to approval by the San Francisco Board of Supervisors.

SELECTION CRITERIA

The proposed development criteria for SWL 351 are intended to encourage creative proposals from the development community that balance the constraints of the site, the concerns of the community, and the opportunity of a waterfront development. Proposals could range in use, scale, and revenue to the Port. By seeking market-based submittals, the Port Commission will be choosing, in the best scenario, from options presented by capable, well-funded developers with the resources to realize both economic and community value on the site.

The Port intends to select a developer to enter into exclusive negotiations for the potential development project based on the information contained in the responses to the RFP, an investigation of the developer team's financial capability, past projects and performance, interviews with the developer team, if the Port elects to hold such interviews, public input and comment, and other pertinent factors.

Evaluation of the proposals received will require both technical real estate and planning analysis and public policy analysis on trade-offs between building scale, visitor parking, and revenue. In particular, the following criteria are identified for proposal evaluation.

Developer Team Experience, Qualifications, and Financial Capability (30 Points)

- Experience in developing projects of comparable size, land use, visibility and expense, especially for projects located in the San Francisco Bay Area.
- Experience in securing entitlements for projects of comparable size, land use and visibility, including experience in organizing successful community participation and support, especially for projects located in the San Francisco Bay Area.
- Experience of respondent's team members and key personnel.
- The respondent's ability to finance the proposed project.
- The respondent's overall financial track record.

Proposed Development Design and Program (35 Points)

- Consistency of proposed design and use program with the design and development objectives shown in Exhibit B.
- The design and architectural quality and constructability of the proposed design concept for this site.
- The reasonableness and feasibility of the respondent's proposed development concept in achieving the Port's objectives.
- The probability of obtaining approvals for the proposed design, given the physical and legal constraints on development.

Proposed Financial Terms (35 Points)

- The proposed annual rent for the site, which shall not be lower than the specified minimum rent.
- Additional revenues from all participation structures proposed.

PROJECT REVIEW AND APPROVAL PROCESS

The selected developer would be responsible for securing all regulatory approvals for the project. While the Port would support the environmental review and entitlements process, the responsibility and cost of obtaining these approvals would be borne by the developer. Upon completion of necessary environmental review, the Port Commission could approve a development agreement, a long-term ground lease and related documents, which would be subject to the approval of the Board of Supervisors. The City Planning Commission would have to approve any zoning change or conditional use authorization. If a revision to the Public Trust restrictions on the site is proposed, the developer would need to secure concurrence from the State Lands Commission.

Issuance of the RFP does not commit the Port Commission to approve any project. The Port cannot enter into a development agreement or ground lease until the environmental review process is completed in compliance with the California Environmental Quality Act (CEQA).

PROJECTED RFP SCHEDULE

To properly advertise the RFP opportunity and to allow interested parties sufficient time to perform reasonable due diligence and prepare detailed proposals, Staff proposes the following RFP schedule:

| | |
|---|-------------------------------|
| Port Commission authorization to issue RFP | July 8, 2008 |
| Issue RFP | July 2008 |
| Submittal deadline | Estimated as October 15, 2008 |
| Evaluation of proposals | Fall 2008 |
| Presentation(s) by qualified respondents | Fall 2008 |
| Port Commission approval of selected respondent | Fall/Winter 2008 |
| Execution of ENA and lease negotiations | 2009 |
| Port Commission approval | 2009 |
| Board of Supervisors' approval | 2009 |

This schedule is an estimate and may vary on factors beyond Port's Staff's control. Staff will update the Port Commission on the response to the RFP and schedule for evaluation at its October 14, 2008 Port Commission meeting.

RECOMMENDATION

Port Staff recommends that the Port Commission authorize and direct staff to issue an RFP for the lease of the Seawall Lot 351 and the development of a Mixed Use Development Project on the site, which incorporates the terms indicated above.

Prepared by: Kathleen Diohep, Project Manager

For: Byron Rhett, Deputy Director, Planning & Development

Through: Jonathan Stern, Assistant Deputy Director, Waterfront Development

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

RESOLUTION NO. 08-45

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port jurisdiction; and
- WHEREAS, The Port owns an approximately 27,937 square foot parcel at Seawall Lot 351 (SWL 351), located at Washington and The Embarcadero, which currently provides short-term parking towards the Port's obligation under a Parking Agreement related to the Ferry Building lease; and
- WHEREAS, The Waterfront Land Use Plan identifies SWL 351 as part of the Ferry Building Area Mixed Use opportunity site in the Ferry Building Waterfront Subarea and provides development standards to guide development in the subarea; and
- WHEREAS, The Waterfront Land Use Plan for SWL 351 allows a number of uses, including uses that would require modification of the public trust and Burton Act trust restrictions on land use; and
- WHEREAS, If SWL 351 is developed as a mixed use project, the Parking Agreement requires replacement of Ferry Building visitor parking lost due to the development; and
- WHEREAS, City policy encourages competitive bidding for leasing opportunities unless impractical or infeasible; and
- WHEREAS, Staff has determined that publicly soliciting development proposals through a request for proposals ("RFP") process allowing for a variety of uses will garner the best market response and provide the Port with the best opportunity to meet its overall goals for the Ferry Building subarea while meeting its obligations under the Parking Agreement; and
- WHEREAS, The Port Commission held informational hearings on December 11, 2007, February 12, 2008, and May 27, 2008 on this opportunity, Staff conducted a public outreach workshop on April 14, 2008, and the Northeast Waterfront Advisory Group has discussed policy options for this project on April 2, 2008 and provided input to the design and development objectives on June 4, 2008; and
- WHEREAS, Issuance of an RFP does not commit the Port to proceeding with any development project, and the Port cannot approve a ground lease or development agreement for the project until after environmental review has been completed in compliance with the California Environmental Quality Act (CEQA); now, therefore, be it

Resolution No. 08-45
Page 2

RESOLVED, The Port Commission has reviewed the design and development objectives for SWL 351 and the selection criteria and authorizes staff to prepare and issue the RFP and manage the developer solicitation process consistent with the design and development objectives for SWL 351 and the proposed selection criteria.

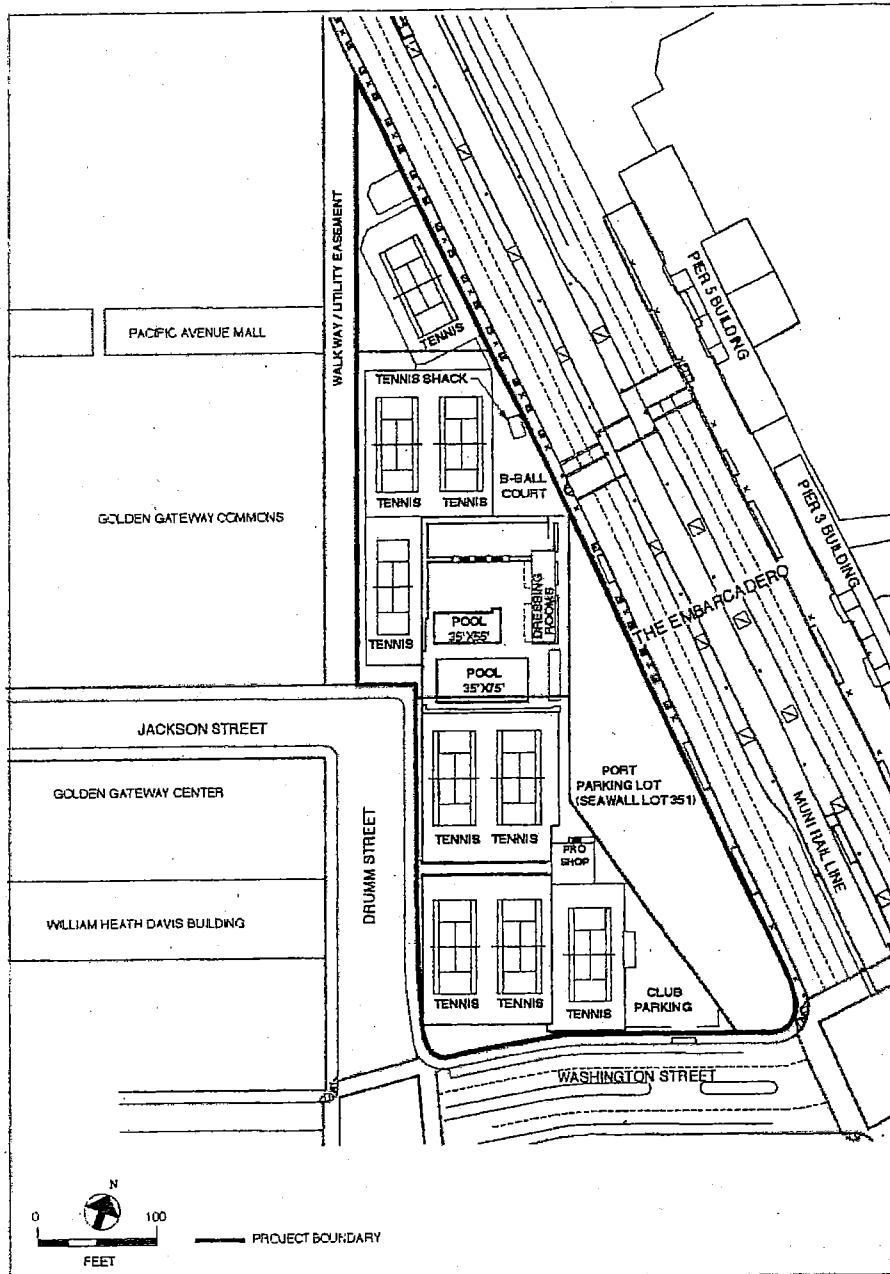
I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of July 8, 2008.



Secretary

Exhibit A

Site Map



SOURCE: Transstone Consulting

Exhibit B

SEAWALL LOT 351 DESIGN & DEVELOPMENT OBJECTIVES

Changes since the draft published on May 16, 2008 and presented to the Port Commission on May 27, 2008 are indicated with ~~strikethrough~~ (deletions) and underlining (additions).

Below are four categories of ~~proposed~~ design and development criteria for SWL 351: Design, Development Program, Land Use, and Financial. The design and development criteria are structured to invite innovative development and design ideas and proposals to best use this extraordinarily well located, though odd shaped site. The criteria seek multiple public benefits that may compete economically and/or for space on SWL 351. In San Francisco, successful development projects possess a character and design that attract and build community support, and for which the balance between revenue and development feasibility and public benefits is well crafted to the specific site, neighborhood and market opportunity.

The Waterfront Land Use Plan (WLUP) and Waterfront Design and Access Element (WDAE) provide direction for development of SWL 351. Some of these objectives draw directly from those documents as indicated below. A few of the WLUP and WDAE objectives are refined in these RFP objectives with more specific language. Any project approved will need to comply with the WLUP and WDAE at the time of approval.

Design Objectives

The Port is seeking a project of first class design and architectural quality for this site. The following design objectives are intended to spur creativity from responding developers. Following receipt of proposals, additional design review through public hearings and a range of regulatory review bodies will be required.

Overall Character

- The design of new development should respect the character of the Ferry Building, The Embarcadero Roadway, the mid-Embarcadero open space improvements (Harry Bridges Plaza and Sue Bierman Park), and the Golden Gateway project. (WLUP)
- Construct new development which complements the rich architectural character of the Embarcadero National Register Historic District and is complementary to the architectural features of the pier bulkhead buildings.
- Reinforce the large scale (grand boulevard) of The Embarcadero by using bold forms, deep recessed building openings, and strong detailing on building facades facing The Embarcadero. (WDAE)
- Consider emphasis on the corner of Washington and The Embarcadero in a manner that strengthens or enhances the Mid-Embarcadero open spaces and pedestrian experience.

Height and Massing

- To define the north edge of adjacent open space, new development should acknowledge the massing and street enclosure relationship with the bulkhead buildings across The Embarcadero (e.g., bold forms of similar height, constructed to The Embarcadero edge). (WDAE)
- Maintain and enhance the view corridors along the Embarcadero and down Washington Street. Recognize the visual connection from the Ferry Building and Pier 1 to Coit Tower in a manner that preserves the iconic vista and acknowledges the landmark status of these sites.
- Reopen Preserve open views and pedestrian access ~~across SWL 351~~ through landscaped improvements or waterfront serving activity that does not require a permanent structure (e.g., outdoor café, flower market, bike shop) along the sewer easement within the SWL 351 portion of the closed Jackson Street right-of-way.
- Propose a building height and massing that fits within the neighborhood context formed by the William Heath Davis Building of the Golden Gateway Center Apartments (220 feet), the Golden Gateway Commons condominiums and the heights of the historic Piers 1 through Pier 5 bulkhead buildings (55 feet at the top of the arches and 38 to 40 feet to the cornice of the bulkhead buildings). The perceived height of the building (including roof top fixtures) will be evaluated in considering neighborhood context.
- Proposed design should consider the appearance of all rooftop equipment as seen from the street and the elevation of neighboring buildings and hills. Consider active roofs, with careful placement of elevator towers that provide access to the roof.

Reconnect the City with the Waterfront

- Primary uses and pedestrian entrances should face The Embarcadero, and incorporate lighting and other amenities to create enlivened street activity. (WDAE)
- Avoid blank ground floor walls along The Embarcadero and Washington Street by providing views into the ground floor of buildings. (WDAE)
- Avoid service and parking access from The Embarcadero. (WDAE)
- Design and locate parking facilities to minimize their aesthetic presence and impact on the surrounding area. Subsurface parking is not required.

Meet Standards

- Utilize best efforts to meet or exceed the City's Green Building Standards and best sustainability practices.
- Comply with Regional Water Quality Control Board performance criteria and Port's Storm Water Management Plan for the reduction of stormwater pollution impacts associated with newly constructed facilities.
- Reflecting the Port's commitment to encouraging diversity in design and construction contracting, the selected developer would be expected to work with the Port to establish local and small business utilization goals for subcontractor participation in design and construction of the project.

Development Program Objectives

- Promote public enjoyment of and access to the waterfront by providing a destination that welcomes diverse users, including workers, San Francisco residents, and visitors to the waterfront and the adjacent public open spaces including Sue Bierman Park and Justin Herman Plaza.
- Encourage pedestrian flow from the Ferry Building, Pier 1, Sue Bierman Park to the site and to the greater waterfront through project design, onsite public open spaces, location of parking, and appropriate uses.
- Activate and revitalize the waterfront edge during the evenings and weekends to complement the weekday office uses in the adjacent downtown buildings.
- Create an enlivened pedestrian experience along The Embarcadero and Washington Street by considering multiple uses and storefronts on the ground floor and well located public open space on the site.
- Reconnect the downtown and land side neighborhoods with the waterfront and make the area inviting to workers and local residents as well as visitors.
- Provide a development program which includes no fewer than 90 parking spaces for visitors to the Ferry Building waterfront area. Operate parking in a manner to optimize utilization and minimize impact on traffic and the neighborhood.
- Realize Port revenue to support the Port's public trust responsibilities, which include maintaining maritime industries, creating public-oriented activities and open space waterfront improvements, preserving historic maritime resources, and maintaining Port facilities.

Land Uses Objectives

Development at SWL 351 could take form under a variety of mixed use concepts. Based on policies in the Waterfront Land Use Plan, comments received in public meetings, and assessing current land use needs of the Ferry Building area, the Port has developed the following land use categories to guide development proposals for an RFP. Not all uses are currently allowed under the Waterfront Land Use Plan, and thus would require an amendment to the Plan. Some uses would require legislative or other actions to respond to the Port's public trust restrictions.

Required Uses:

- Ground level retail and/or restaurants fronting along The Embarcadero
- Visitor parking of at least 90 spaces

Encouraged Uses that are Public Trust Consistent:

- Restaurants/eating and drinking establishments
- Maritime office & support Services
- Hotel
- Ancillary Open Space

Encouraged Uses which require a Modification to the Public Trust Restrictions

- General office
- Residential uses including congregate housing for seniors
- Non-water dependent recreation

Permitted Uses:

| | |
|--------------------------|--------------------------|
| Upper level retail | Museums |
| Upper level restaurants | Academic institutions |
| Community facilities | Artists/designers |
| Assembly & entertainment | Recreational enterprises |

Financial Objectives

- Consistent with the project objectives, maximize the Port's revenue from the site over the lease term to help the Port meet its public trust objectives of supporting maritime industries, providing public-oriented activities, environmental and open space improvements on the waterfront, and maintaining Port facilities. The developer must:
 - (a) Guarantee an annual minimum rent of \$500,000 per year after project stabilization a fair market monthly base rent, taking into consideration the public benefits being provided as part of the project.
 - (b) Pay percentage rent (or other type of participation rent) to the Port calculated on the gross receipts of the project.
 - (c) Pay rent to the Port during the project's construction and bond the completion of the project.
 - (d) Provide provisions for periodic increases to base rent including cost of living increases and adjustments to fair market value.
 - (e) Pay the Port a share of the net proceeds that the developer receives from the sale, refinancing or transfer of the leasehold.

All rent must be net to the Port, with the developer being responsible for all operating expenses for the project and the site, including the public access areas.

- By entering into an unsubordinated ground lease on an "as-is" basis, the developer will be required to make substantial capital investment in the project, including meeting all regulatory, building codes, and hazardous materials abatement requirements. The Port will not contribute to the costs of public parking in the project or extraordinary site conditions through rent credits or any other mechanism.
- The developer will be required to assume all the financial risks of the development, entitlement, construction, maintenance/repairs, and operation of the project.
- The developer must have extensive experience in the financing, development and operation of the proposed uses and demonstrate the capability to construct, operate, and maintain the necessary building improvements.

Exhibit C

Public Comment on Seawall Lot 351 Development Opportunity

Letters on Development Objectives

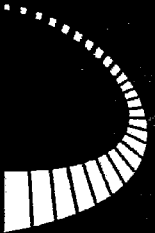
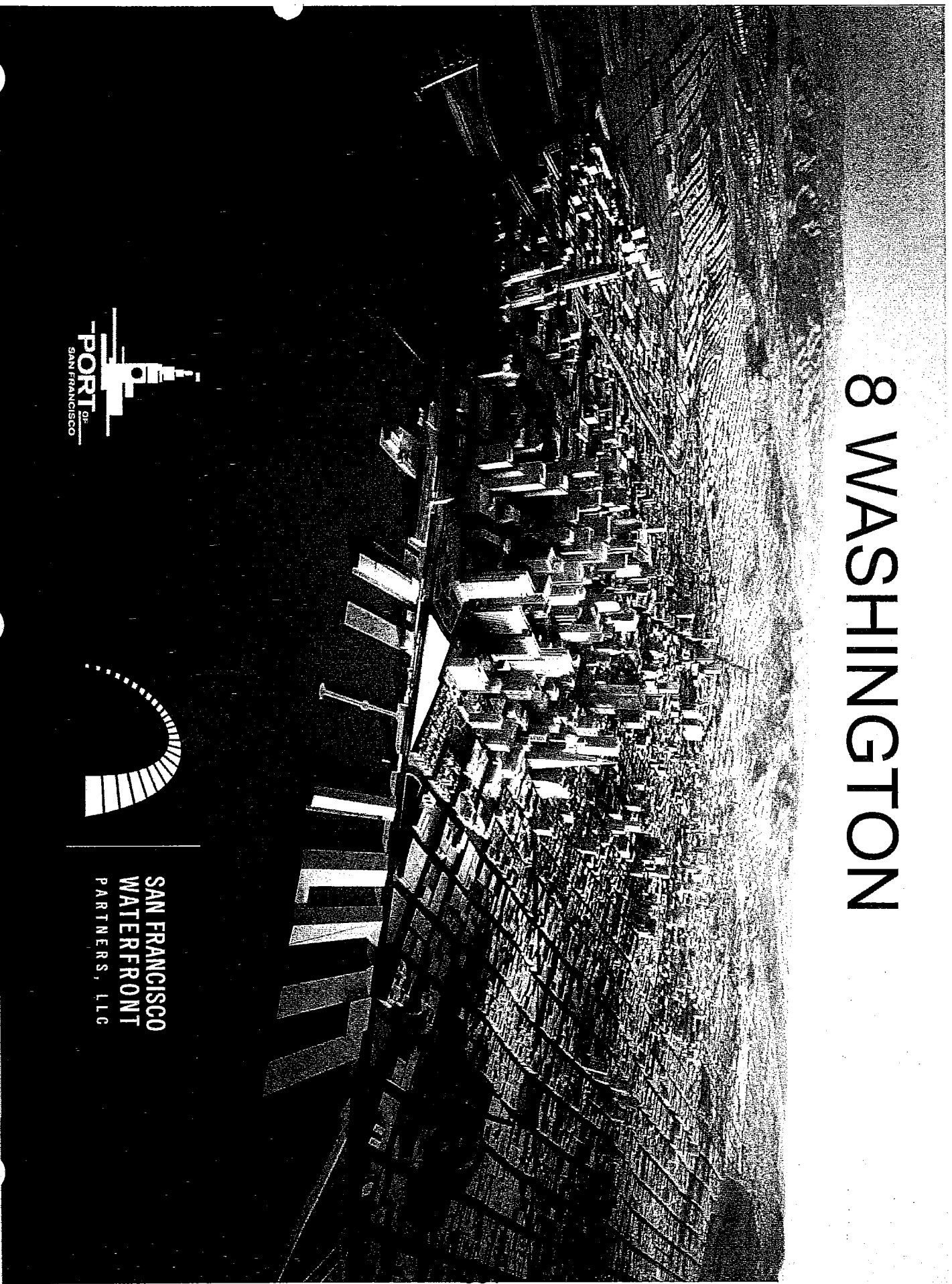
- From William H. Saoro, June 7, 2008
- From Tim Colen, SF Housing Action Coalition, June 11, 2008
- From Bill Sauro, Barbary Coast Neighborhood Association, June 24, 2008
- From Lee Radner, Friends of Golden Gateway, June 24, 2008
- Vedica Puri, Telegraph Hill Dwellers, June 25, 2008

Other Correspondence

- From Frank Rollo, Treadwell & Rollo, regarding Block 351
- From Jim Wunderman, Bay Area Council, regarding SWL 351

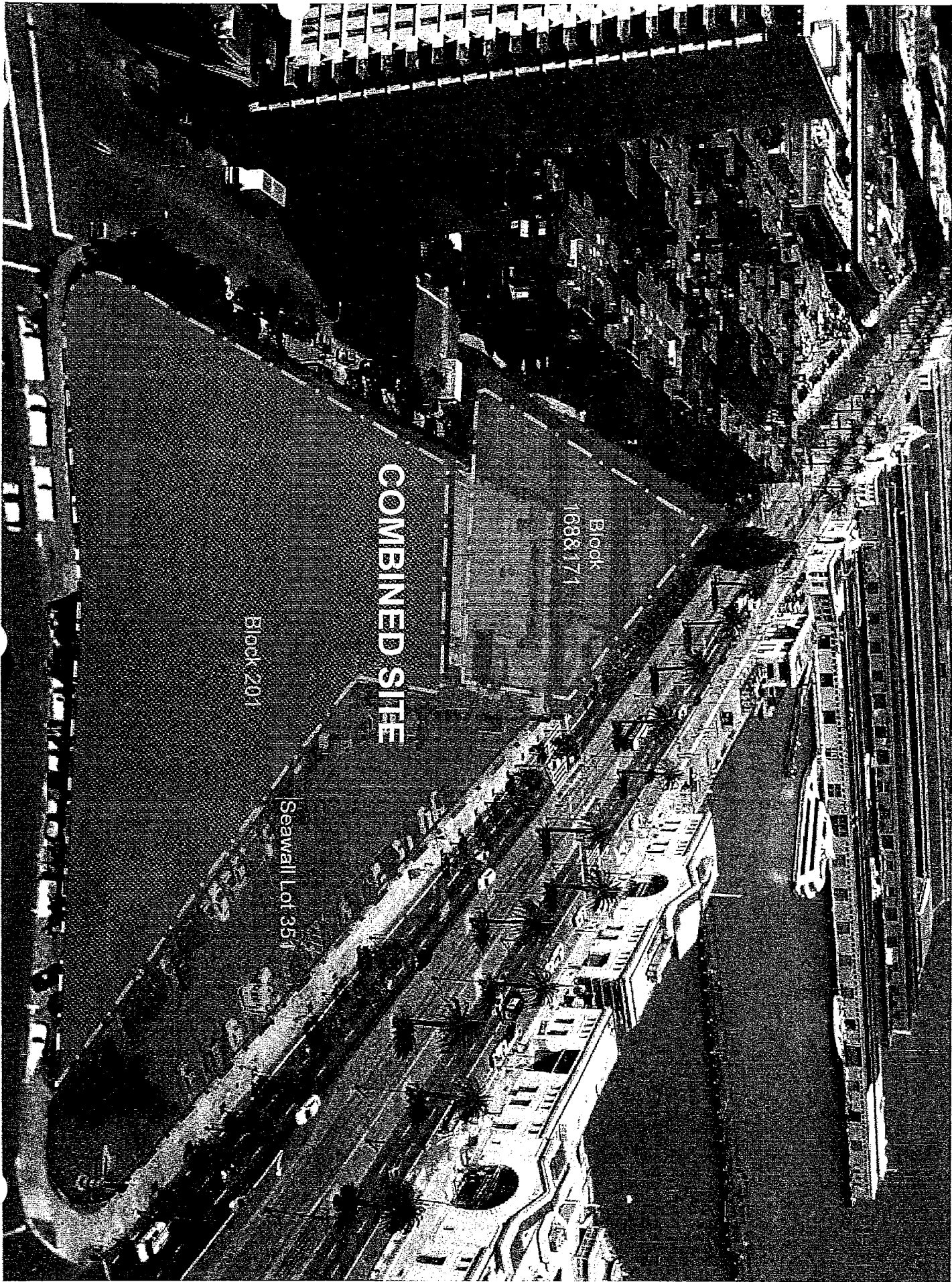
Public Comment from Website from May 28 to June __, 2008

8 WASHINGTON



SAN FRANCISCO
WATERFRONT
PARTNERS, LLC





COMBINED SITE

Block 201

Seawall Lot 351

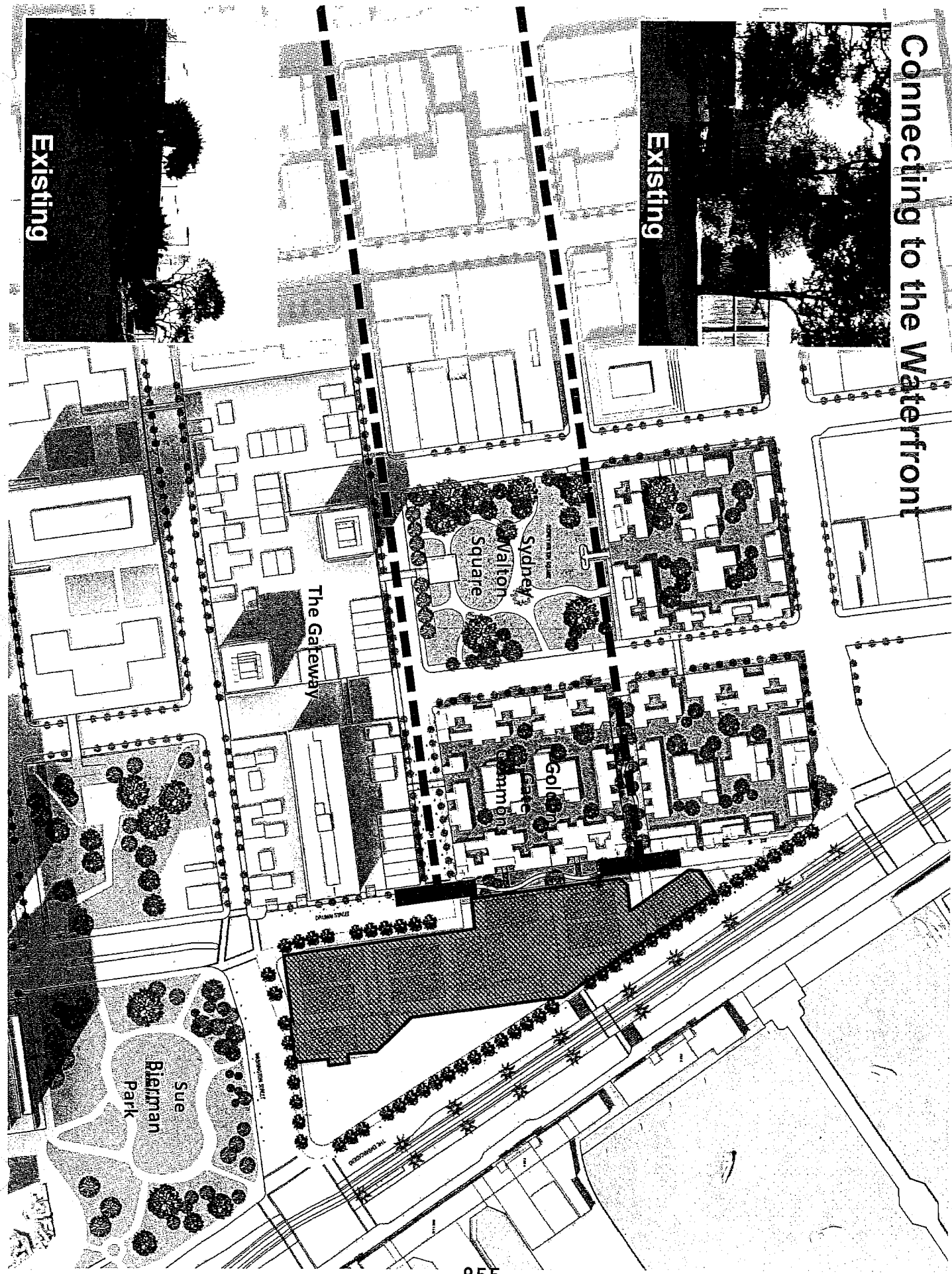
Block
168&171

**CONNECTING THE WATERFRONT
AND SURROUNDING NEIGHBORHOODS**

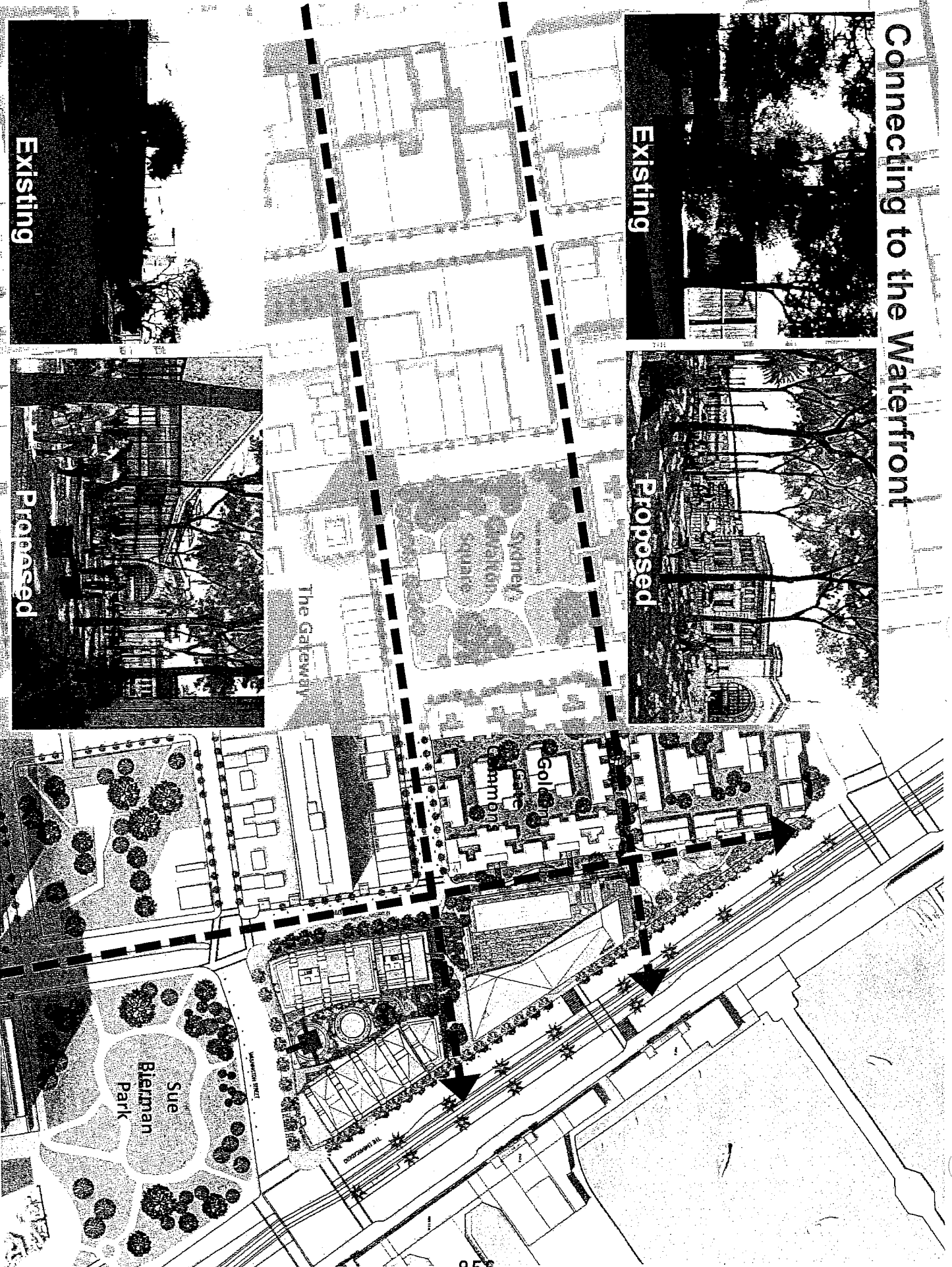
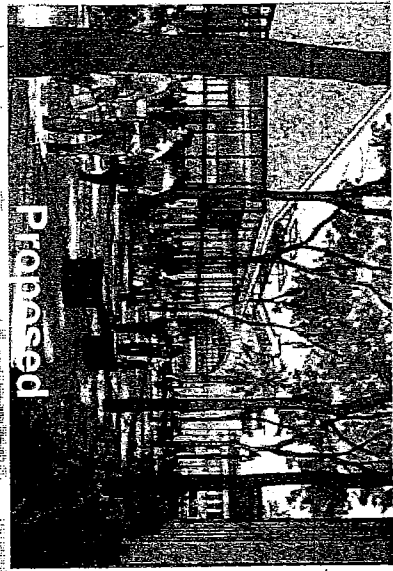
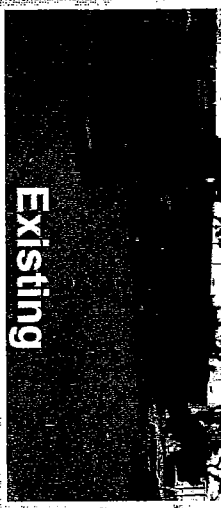
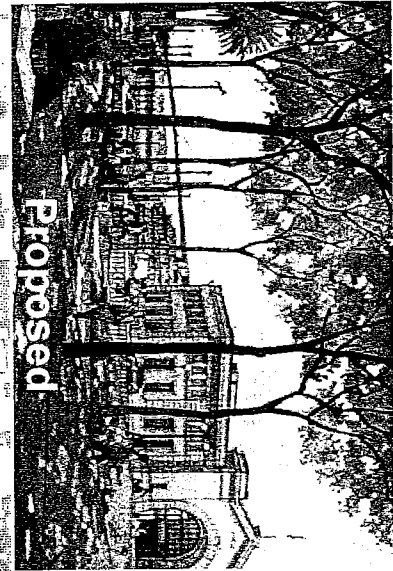
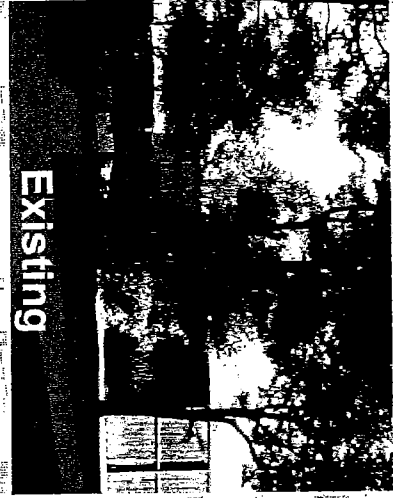
Connecting to the Waterfront

Existing

Existing



Connecting to the Waterfront

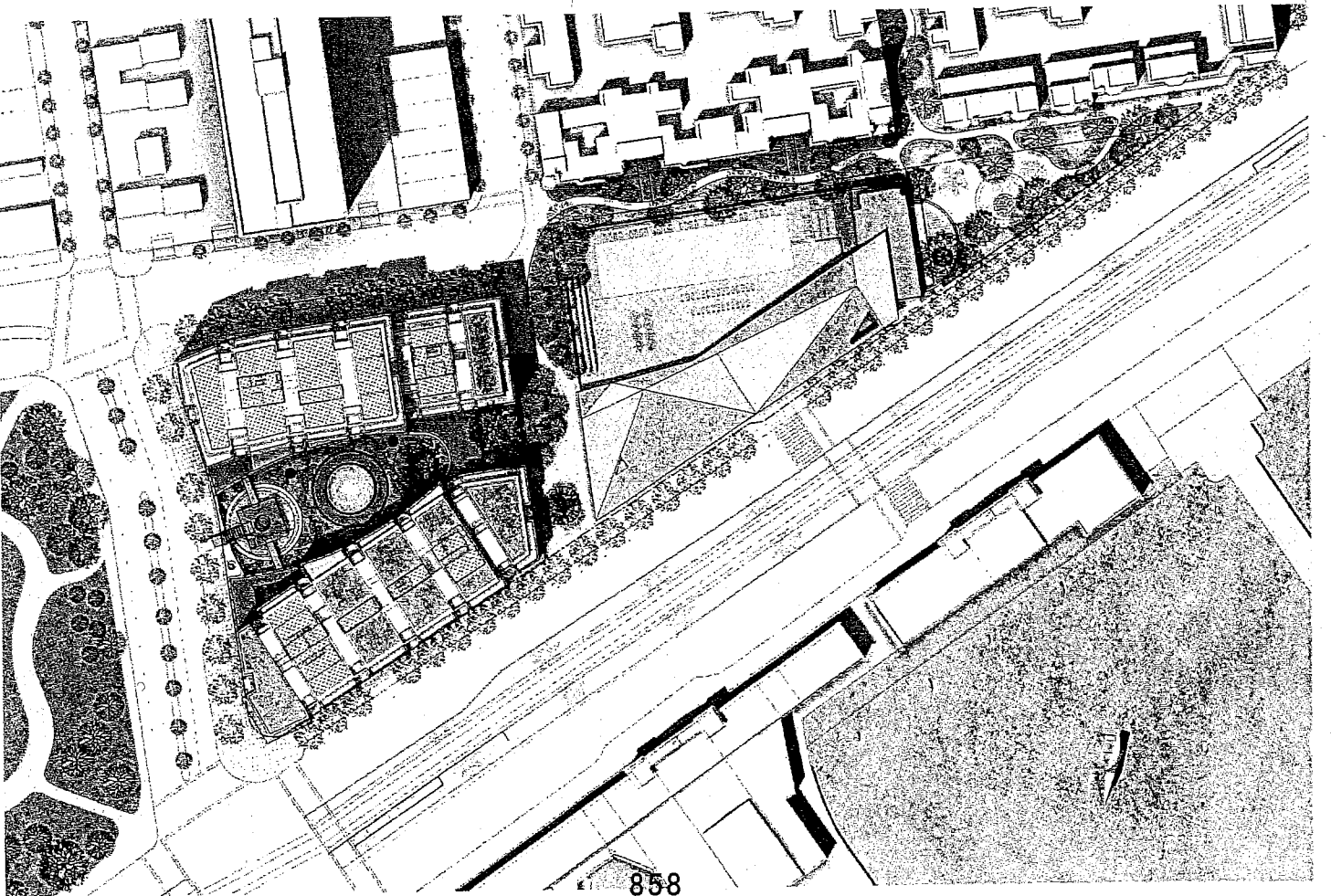


New Public Open Spaces



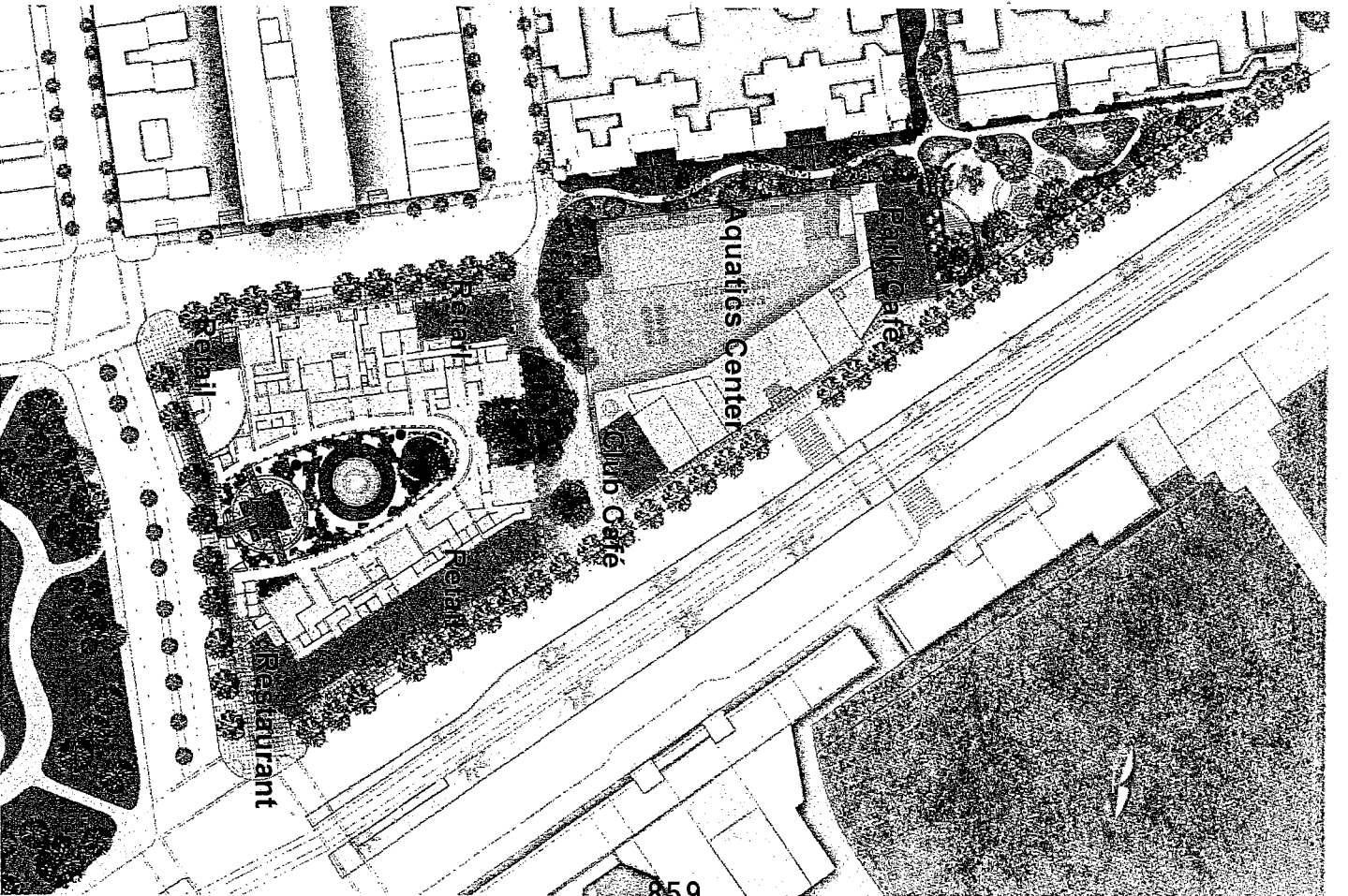
8 Washington Summary of Uses

| | |
|---|------------|
| Housing | 134 units |
| Residential Parking | 127 spaces |
| Residential Bicycle Facilities | 134 spaces |
| Public Realm, Parks, & Open Space | 30,000 sf |
| Restaurants, Cafes & Retail | 20,000 sf |
| Aquatics Center | 38,000 sf |
| Public Parking | 255 spaces |
| Car Share Parking | 6 spaces |
| Commuter Bicycle Facilities Lockers, Showers & Changing Rooms | 27 spaces |



8 Washington Summary of Uses

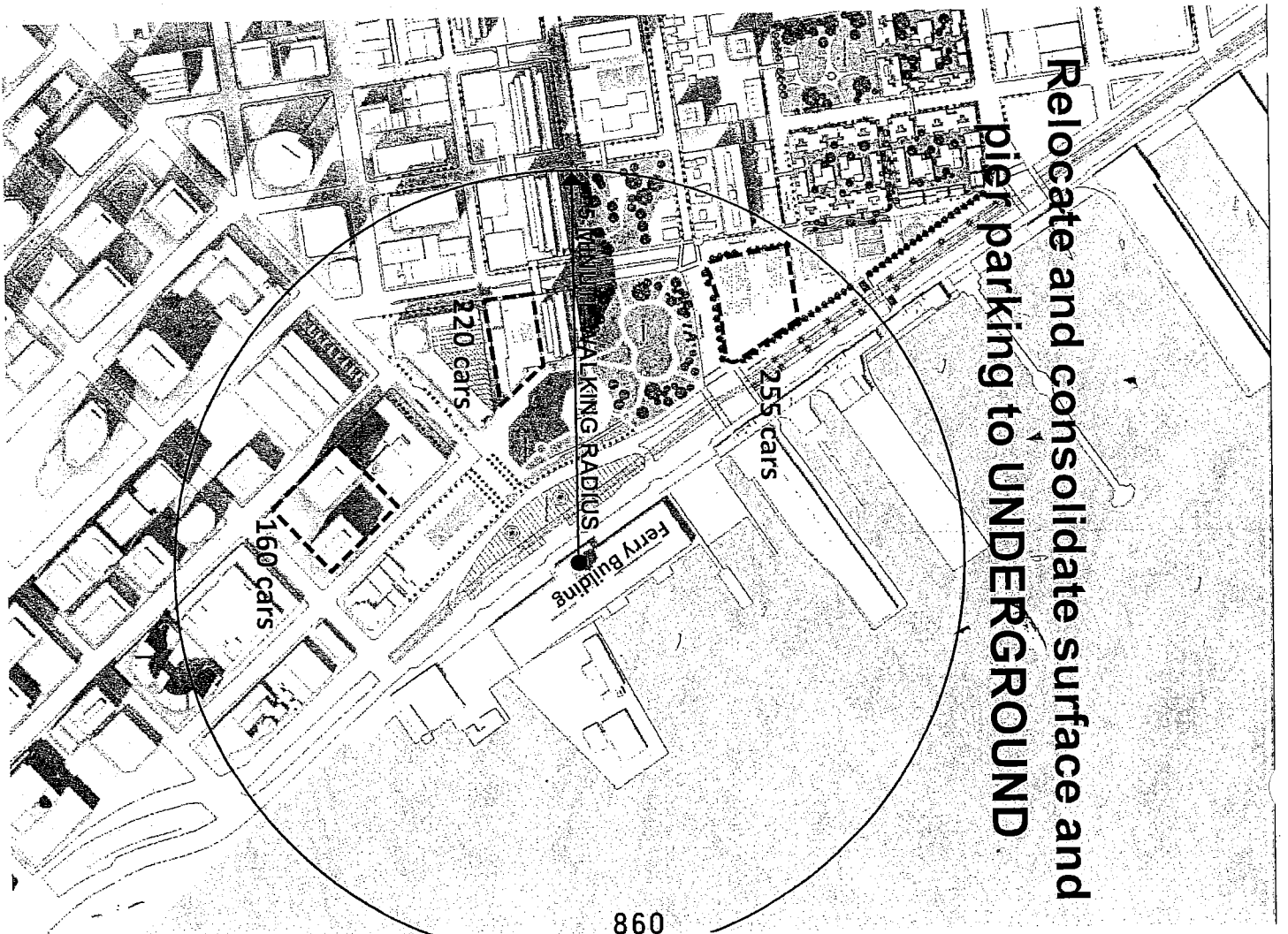
| | |
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| Aquatics Center | 38,000 sf |
| Public Parking | 255 spaces |
| Car Share Parking | 6 spaces |
| Commuter Bicycle Facilities Lockers, Showers & Changing Rooms | 27 spaces |



8 Washington Summary of Uses

| | |
|-----------------------|-------------|
| Parking In 2009: | 1321 spaces |
| Spaces To Be Removed: | 821 spaces |
| 8 Washington | |
| Public Parking: | 255 spaces |
| Total Remaining: | 755 spaces |

Approximately 1/2 of existing public parking spaces to be permanently removed



SUMMARY OF PUBLIC BENEFITS

| | Total | NPV |
|----------------------------------|-----------------------|----------------------|
| Inclusionary Housing Fees | \$ 11,100,000 | \$ 11,100,000 |
| Other City Fees and Taxes | \$ 9,000,000 | \$ 9,000,000 |
| IFD Tax Increment | \$204,100,000 | \$ 54,100,000 |
| Payments to Port | \$101,200,000 | \$ 14,300,000 |
| Value of Port Owned Park Lands | \$ 12,000,000 | \$ 12,000,000 |
| Improvements to Port Owned Parks | \$ 12,700,000 | \$ 12,700,000 |
| Ongoing Park Maintenance | \$ 36,600,000 | \$ 3,600,000 |
| Public Garage Subsidy | \$ 16,000,000 | \$ 16,000,000 |
| New Recreation Club | \$ 12,000,000 | \$ 12,000,000 |
| TOTAL PUBLIC BENEFITS | \$ 414,700,000 | \$144,800,000 |

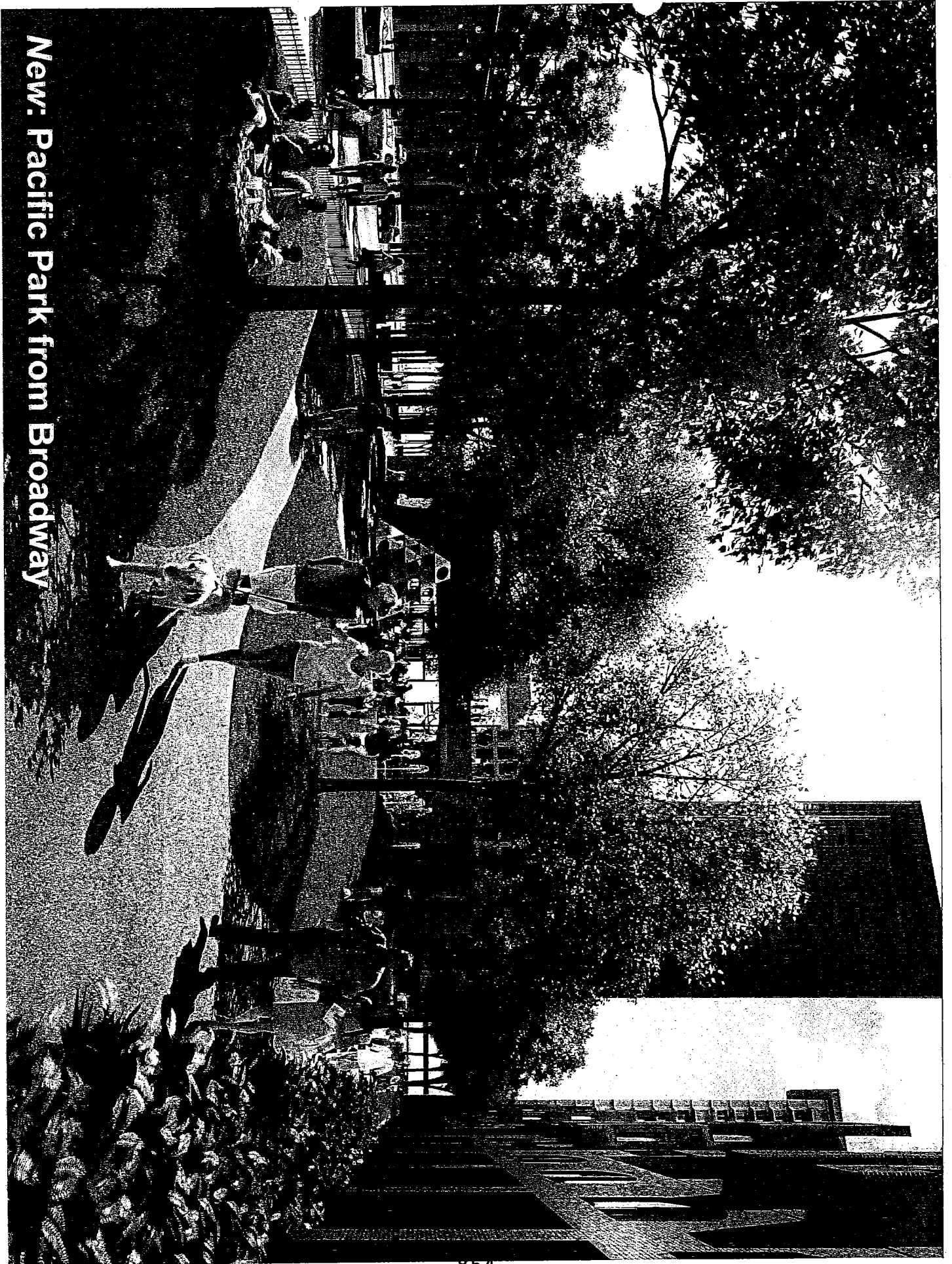
SUMMARY OF PAYMENTS TO PORT

| | Total | NPV |
|-------------------------------|-----------------------|----------------------|
| Appraised Value of SWL 351 | \$ 9,300,000 | \$ 9,300,000 |
| Land Payment | \$ 3,000,000 | \$ 2,400,000 |
| Commercial Transfer Fee | \$ 9,000,000 | \$ 1,400,000 |
| Condo Transfer Fees | \$ 61,000,000 | \$ 7,600,000 |
| On Going Land Payments | \$ 23,000,000 | \$ 2,300,000 |
| Park Café Lease | \$ 5,000,000 | \$ 400,000 |
| Construction Period Rent | \$ 200,000 | \$ 200,000 |
| TOTAL PAYMENTS TO PORT | \$ 101,200,000 | \$ 14,300,000 |

PUBLIC OPEN SPACE

| Park Value | Total | NPV |
|---------------------------------------|----------------------|----------------------|
| Value of Lands Conveyed to Port | \$ 12,000,000 | \$12,000,000 |
| Open Space Improvements | \$ 12,700,000 | \$12,700,000 |
| Ongoing Park Maintenance | \$ 36,600,000 | \$ 3,600,000 |
| TOTAL PARK VALUE | \$ 61,300,000 | \$28,300,000 |
| IFD Reimbursement | <u>(\$5,000,000)</u> | <u>(\$4,100,000)</u> |
| Developer Cost Of Public Improvements | \$56,300,000 | \$24,200,000 |

- **Developers up front contribution = 100%**
- **Port's reimbursement of public improvement costs = 15%**
- **Developer's share of public improvement costs = 85%**
- **Developer's share of ongoing maintenance = 100%**



New: Pacific Park from Broadway

IFD SUMMARY

| Proposed IFD | Total | NPV |
|--|----------------------|---------------------|
| IFD to General Fund | \$148,900,000 | \$32,200,000 |
| Potential IFD Funds for Port Needs | \$50,300,000 | \$17,800,000 |
| Public Park Reimbursement | \$5,000,000 | \$4,100,000 |
| Total IFD Tax Increment Generated | \$204,100,000 | \$54,100,000 |

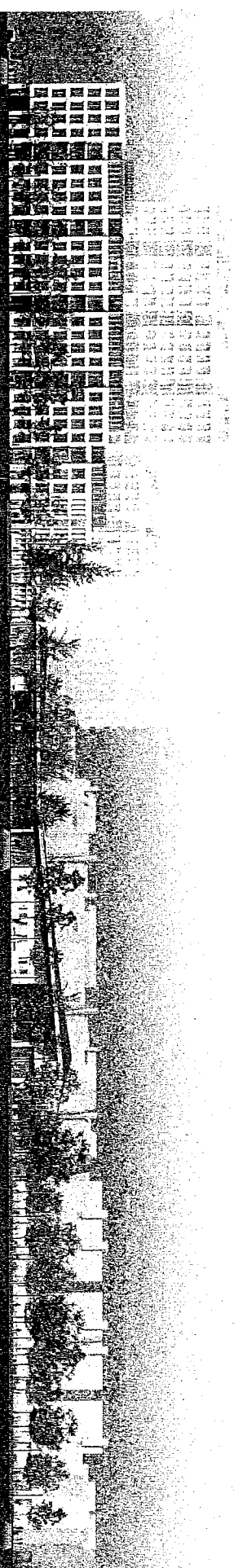
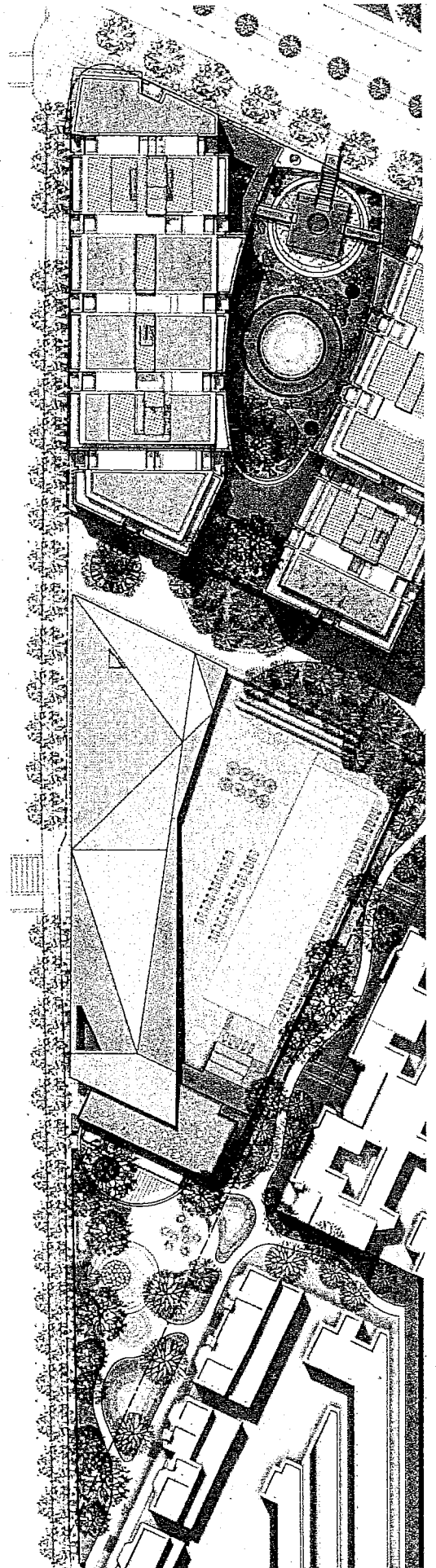
Potential Port Needs Funded by IFD:

- Cruise Terminal Phase 2
- Port Under Pier Utilities
- Port Pier Substructure

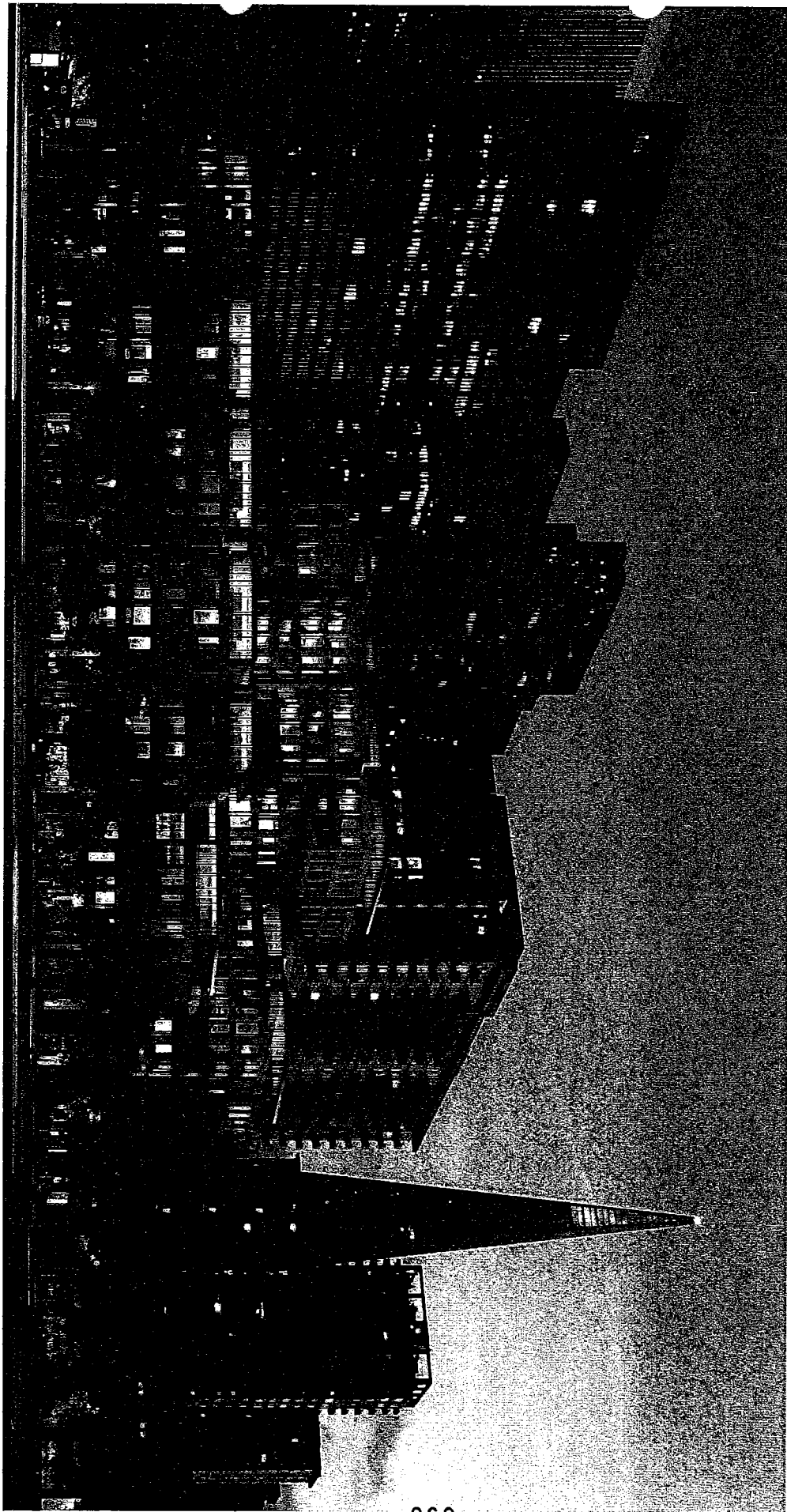
BENEFITS TO CITY, COMMUNITY & PORT

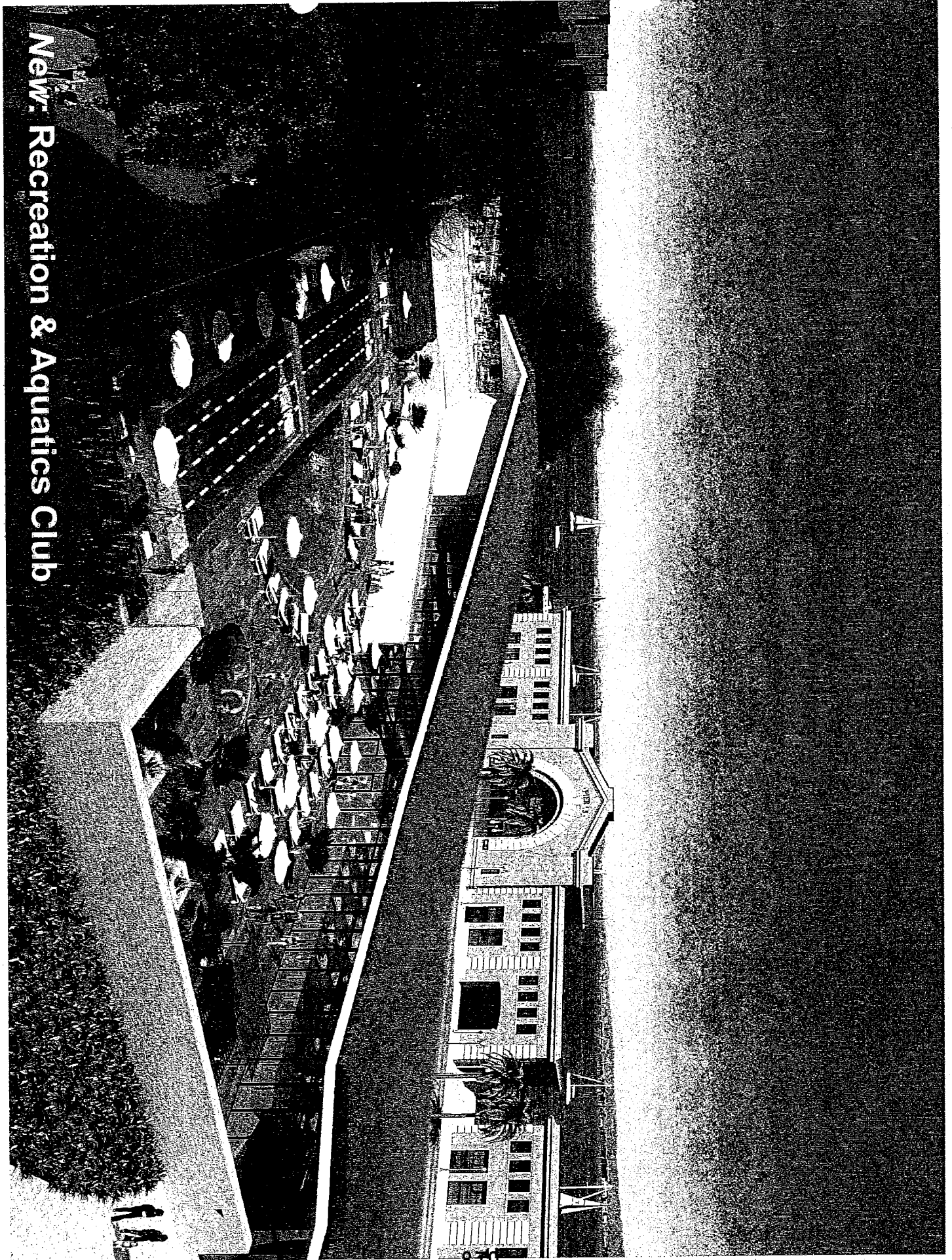
- **250 construction jobs; 140 permanent jobs**
- **134 TOD housing units**
- **Streetscape improvements** and enlivening to the Embarcadero and Washington
- **Removal of Embarcadero curb cuts and surface parking** relocated **underground**
- **30,000sf of new public parks, children's play areas and public open space**
- **Pedestrian connections and view corridors at Drumm and Jackson and Pacific Avenue**
- **New 38,000sf private community recreation & leisure center**

**OVERALL DESIGN &
PUBLIC REALM IMPROVEMENTS**

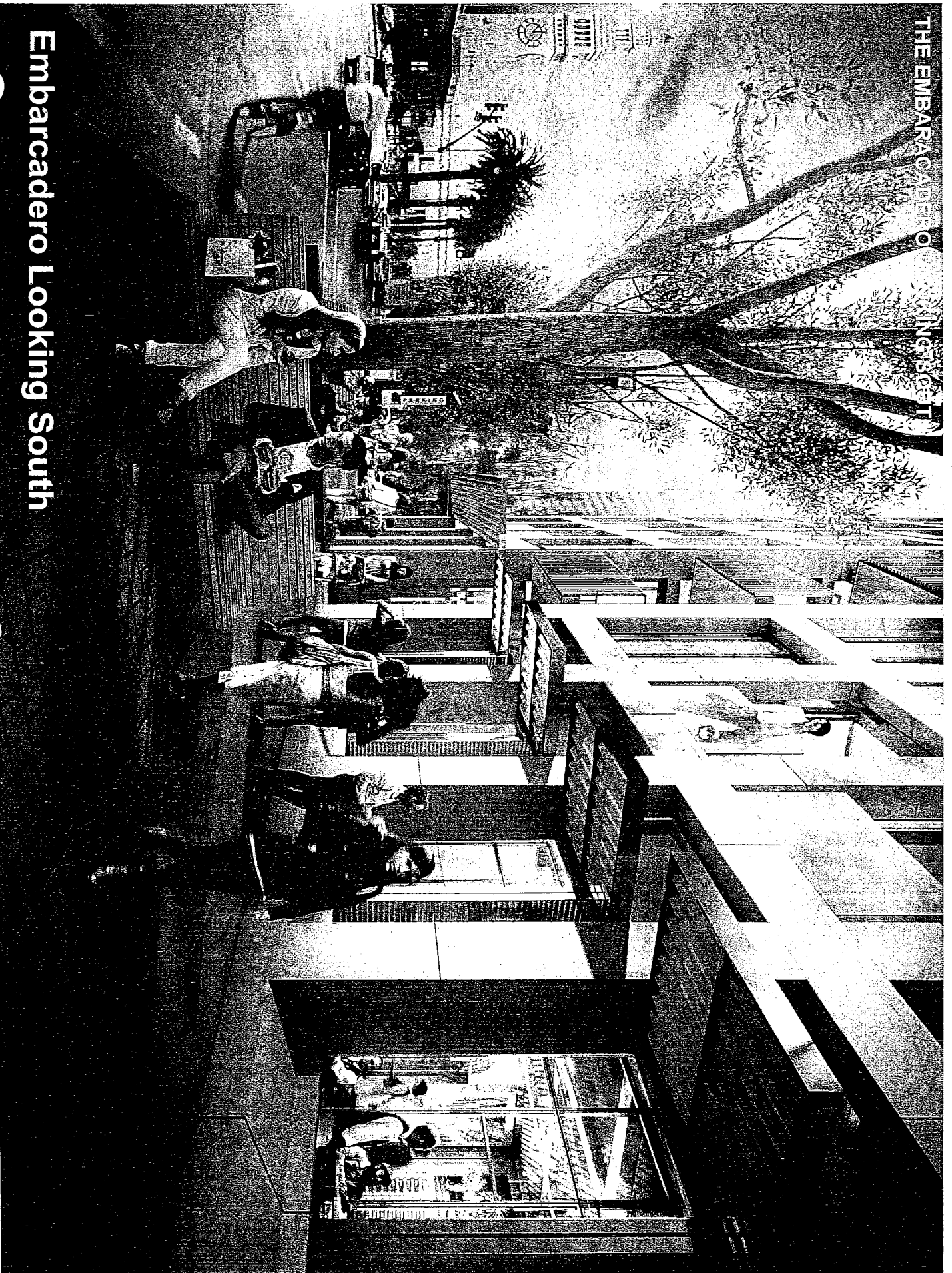


The Embarcadero Elevation

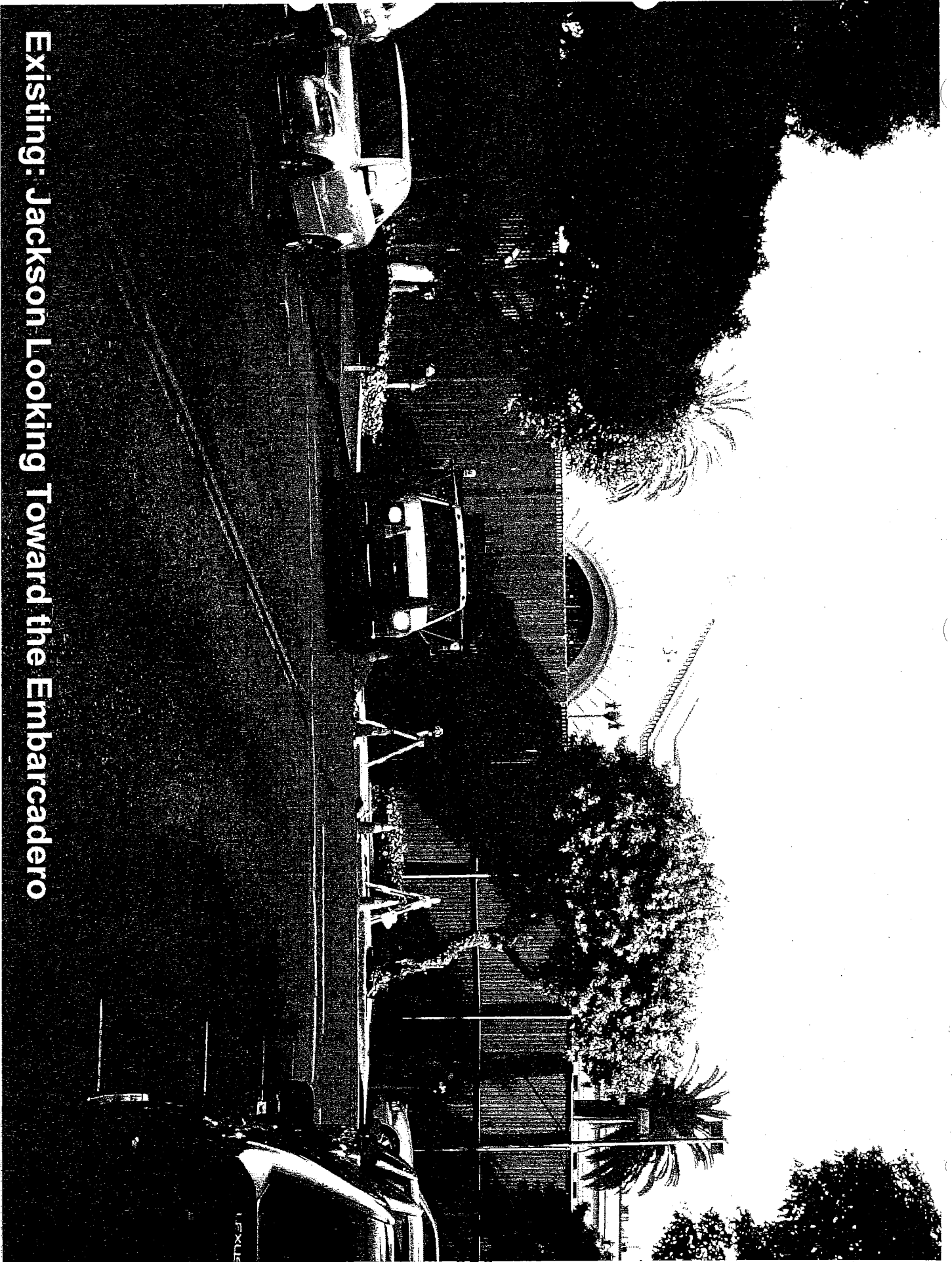




New: Recreation & Aquatics Club

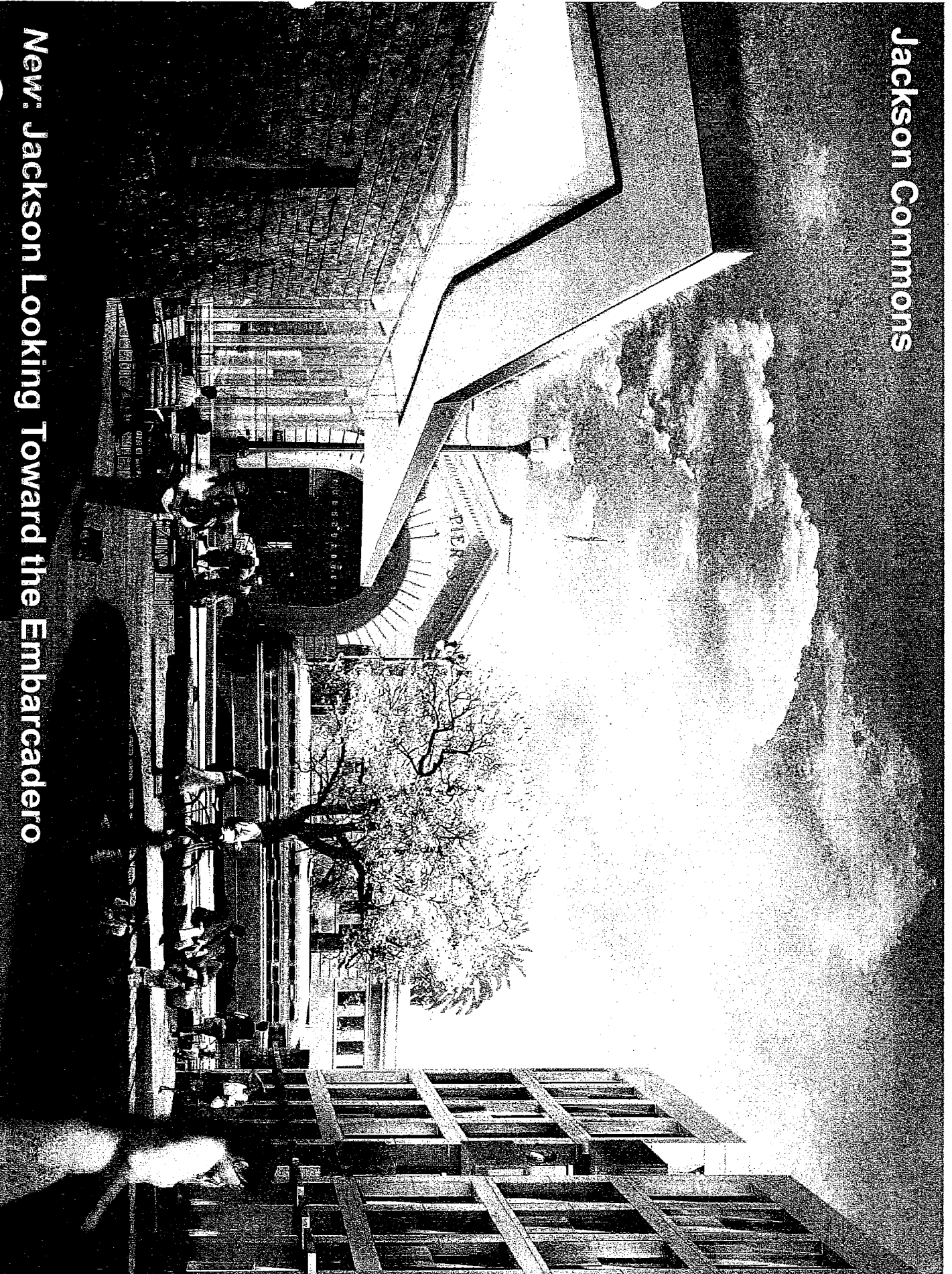


Embarcadero Looking South

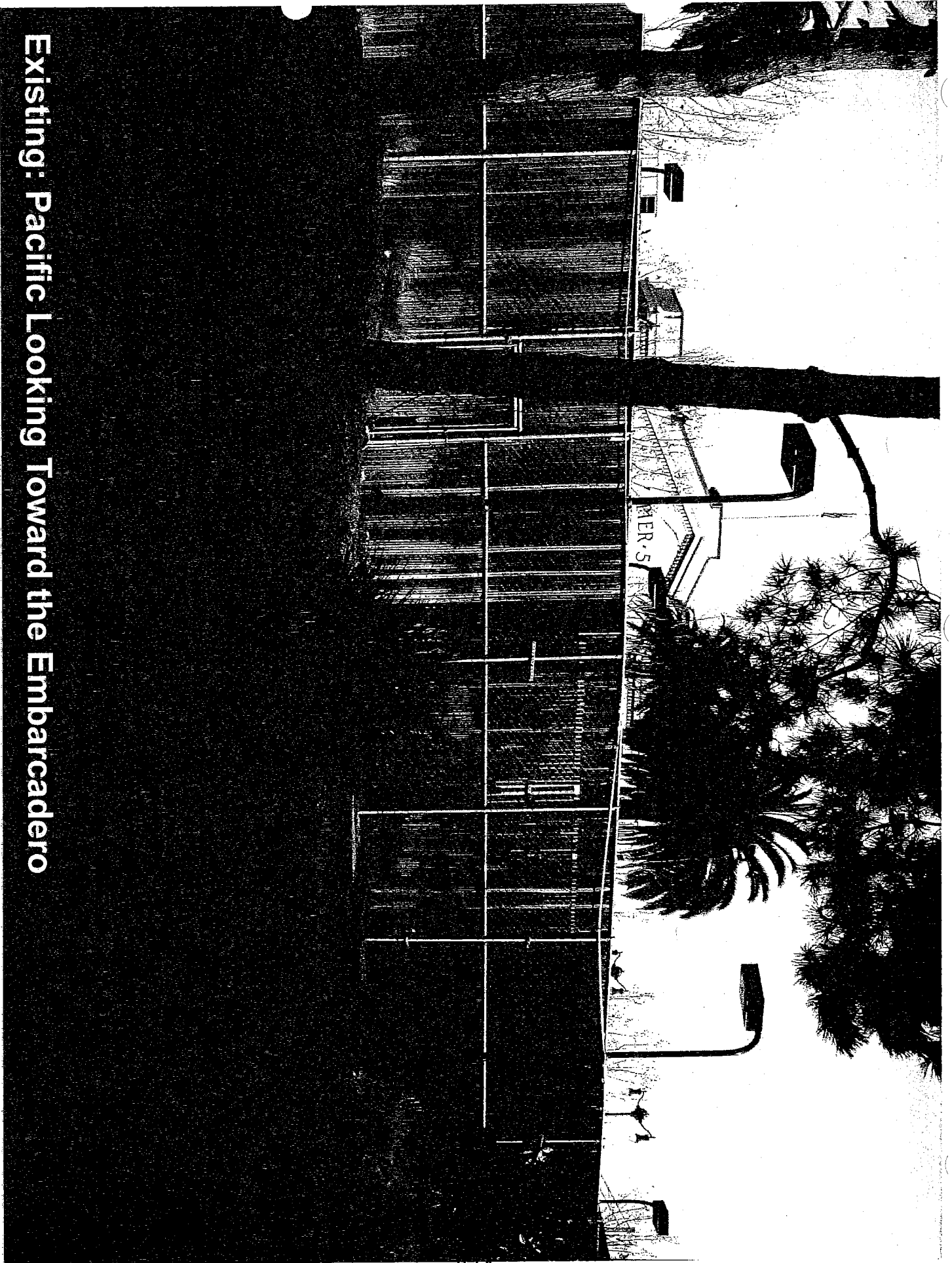


Existing: Jackson Looking Toward the Embarcadero

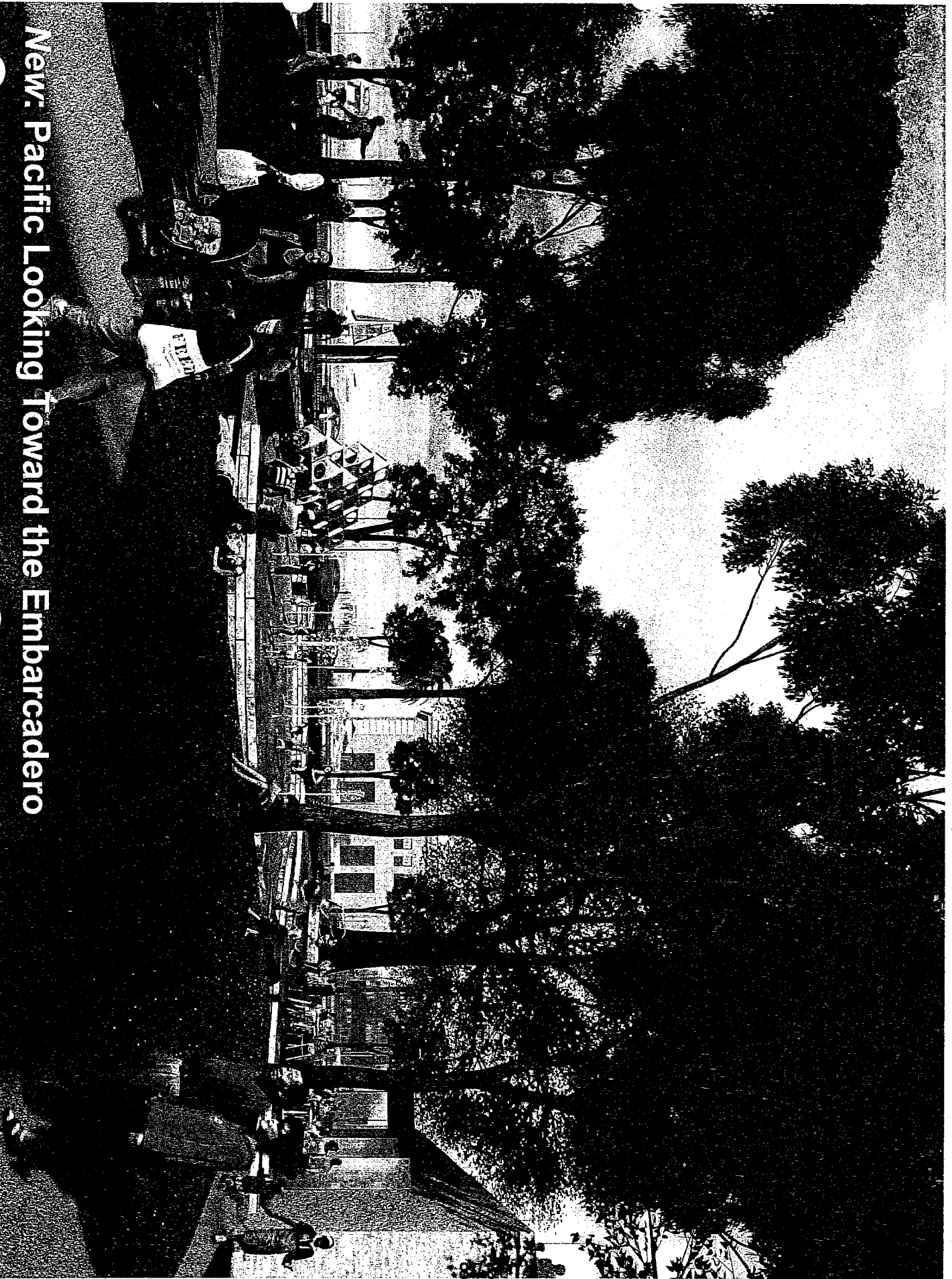
Jackson Commons



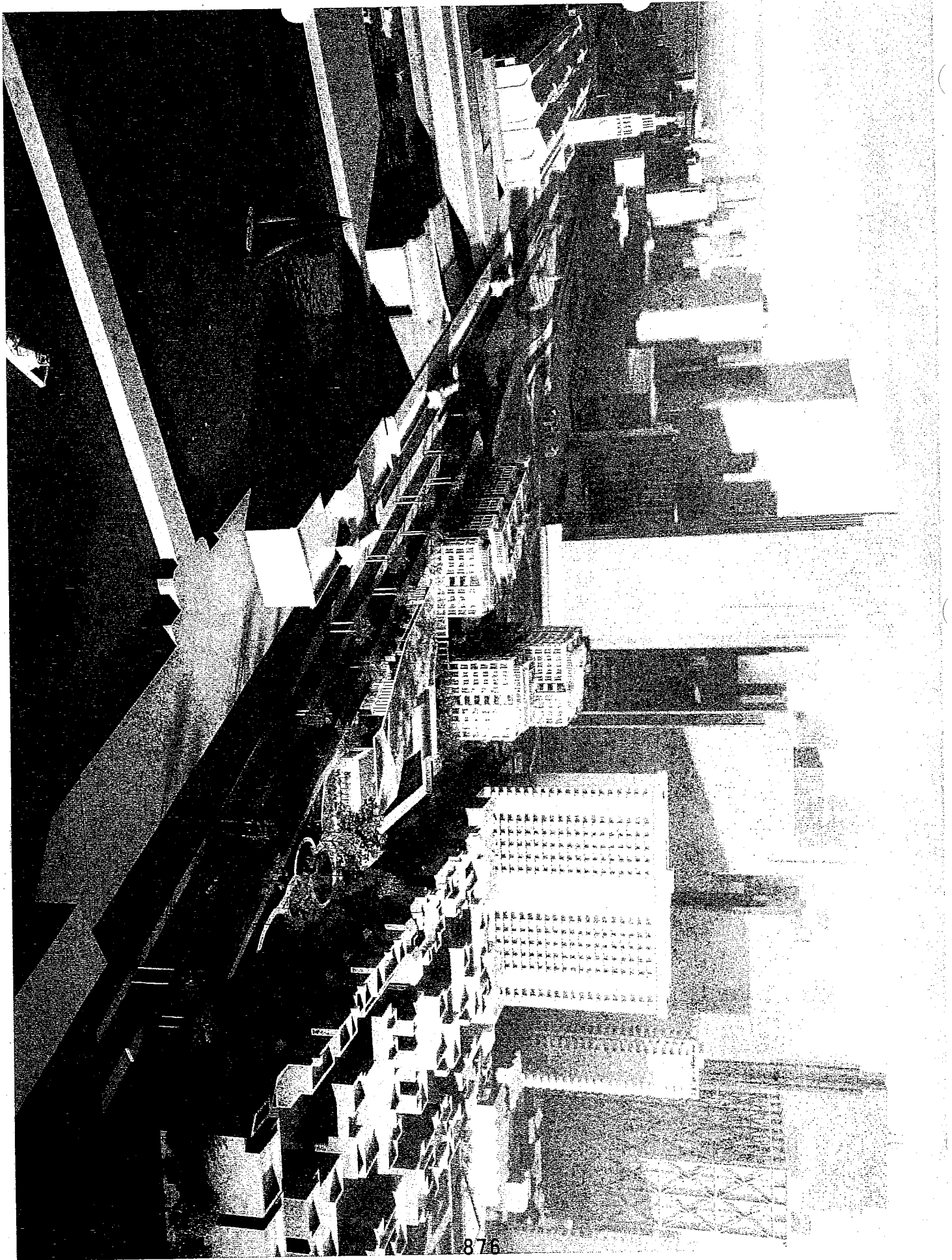
New: Jackson Looking Toward the Embarcadero



Existing: Pacific Looking Toward the Embarcadero



New: Pacific Looking Toward the Embarcadero



FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
 (S.F. Campaign and Governmental Conduct Code § 1.126)

| | |
|--|--|
| City Elective Officer Information <i>(Please print clearly.)</i> | |
| Name of City elective officer(s): Members, Board of Supervisors | City elective office(s) held: Members, Board of Supervisors |
| Contractor Information <i>(Please print clearly.)</i> | |
| Name of contractor: San Francisco Waterfront Partners II, LLC ("SFWP") | |
| <i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i> | |
| 1. California State Teacher's Retirement System (CalSTRS) and Pacific Waterfront Partners, LLC 2. Simon Snellgrove/Darren Bradley/Alicia Allbin 3. CalSTRS 4. N/A 5. None | |
| Contractor address: Pier 1, Bay 2, San Francisco, CA 94111 | |
| Date that contract was approved: TBD <i>(By the SF Board of Supervisors)</i> | Amount of contract: Possible reimbursement of up to \$5 million in open space development costs. |
| Describe the nature of the contract that was approved: Transaction documents for the Seawall Lot / 8 Washington development project between the Port of San Francisco and SFWP. | |
| Comments: | |

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
 Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

| | |
|---|---|
| Filer Information <i>(Please print clearly.)</i> | |
| Name of filer: Angela Calvillo, Clerk of the Board | Contact telephone number: (415) 554-5184 |
| Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102 | E-mail: Board.of.Supervisors@sfgov.org |

 Signature of City Elective Officer (if submitted by City elective officer)

 Date Signed

 Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

 Date Signed

