

1 [Port Ground Lease and Port/Mayor's Office of Housing and Community Development
2 Memorandum of Understanding - 88 Broadway Family, L.P. - 735 Davis Street - Seawall Lot
3 322-1 - \$20,000 Annual Base Rent]

4 **Resolution adopting the Mitigation Monitoring and Reporting Program under the**
5 **California Environmental Quality Act for an affordable housing project at Seawall Lot**
6 **322-1 (the "Port Property" or the "Development") along with an affordable housing**
7 **project on city-owned property at 735 Davis Street (collectively, the "Project");**
8 **affirming the Port Commission's Public Trust findings; adopting findings that the**
9 **Project is consistent with the General Plan, and the eight priority policies of Planning**
10 **Code, Section 101.1; and approving and authorizing the execution of a Ground Lease**
11 **for the Property with 88 Broadway Family, L.P. ("Lease") with annual base rent of**
12 **\$20,000 for a term of 57 years with a 18-year extension option for the development and**
13 **operation of 124 affordable rental housing units, one manager housing unit, and**
14 **ancillary ground level uses, and a Memorandum of Understanding between the Port**
15 **and the Mayor's Office of Housing and Community Development for payment of fair**
16 **market value for the Port Property and other interdepartmental coordination; and**
17 **authorizing and directing the Executive Director of Port of San Francisco and the**
18 **Director of the Mayor's Office of Housing and Community Development to execute**
19 **documents and take necessary actions to implement this Resolution.**

20
21 WHEREAS, California Statutes of 1968, Chapter 1333 ("Burton Act") and Charter,
22 Sections 4.114 and B3.581, empower the City and County of San Francisco, acting through
23 the San Francisco Port Commission ("Port"), with the power and duty to use, conduct,
24 operate, maintain, manage, regulate and control the lands within Port Commission jurisdiction

1 consistent with the public trust for commerce, navigation and fisheries and the Burton Act
2 (collectively, the “Public Trust”); and

3 WHEREAS, The Port owns Seawall Lot 322-1, also known by its street address as “88
4 Broadway” (the “Port Property”), a land parcel with approximately 37,810 square feet area
5 bounded by Broadway, Front, and Vallejo Streets and on its eastern boundary buildings and
6 an adjacent City-own parcel at 735 Davis Street, (the “City Property”); and

7 WHEREAS, The California Legislature has previously found that rectifying the
8 deteriorating conditions along the San Francisco waterfront, the preservation of the numerous
9 historic piers and other historic structures on Port land, and the construction of waterfront
10 plazas and open space, are matters of statewide importance that will further the purposes of
11 the Public Trust; and

12 WHEREAS, To provide funding for these improvements to Port property and to
13 address affordable housing needs, the California Legislature adopted SB 815 (Chapter 660 of
14 the Statutes of 2007) as amended by AB 2649 (Chapter 757 of the Statutes of 2012) and AB
15 2797 (Chapter 529 of the Statutes of 2016) (collectively, the “State Legislation”) to allow
16 temporary termination of the Public Trust use restrictions and authorize nontrust leases of
17 designated seawall lots, including Seawall Lot 322-1, on specific conditions, and subject to
18 certain findings by the Port Commission and the California State Lands Commission; and

19 WHEREAS, In November 2012, the Board of Supervisors adopted Ordinance No. 232-
20 12 which allows the Port and the Mayor’s Office of Housing and Community Development
21 (“MOHCD”) to enter into a Memorandum of Understanding (the “Pre-Development MOU”) for
22 development of the Property for affordable housing and providing for Port to receive Jobs
23 Housing Linkage Program (“JHLP”) credits equal to the difference in the value of a Port
24 below-market lease and the fair market value of the Property; and

1 WHEREAS, Port and MOHCD staff have since decided that the preferred payment
2 strategy for the Development is to utilize the anticipated affordable in lieu fees paid to
3 MOHCD from a future developer of Pier 70 Parcel K North (“PKN”), a site to be sold by the
4 Port in connection with funding the Pier 70 project, with the condition that if the sale of PKN
5 or the construction of the PKN project is delayed or never materializes, MOHCD will need to
6 pay the Port the Property’s fair market value from another source; and

7 WHEREAS, Between April 2014 and May 2018, the Port and MOHCD entered into the
8 Pre-Development MOU and completed most of the tasks enumerated, including (i) MOHCD’s
9 competitive solicitation and selection of the Developer led by BRIDGE Housing Corporation
10 (“BRIDGE”) and the John Stewart Company (“JSCo”) which formed 88 Broadway Family LP
11 (the “Developer”) to undertake the proposed development; (ii) the Port’s consent to MOHCD’s
12 selection; (iii) the Developer’s submission of its initial development proposal; (iv) the Port’s
13 determination to exclude a public parking garage from the development due to financial
14 infeasibility; (v) MOHCD provision of predevelopment funding for the Development; (vi) Port,
15 MOHCD, and the Developer negotiation and drafting required transaction documents ; and
16 (vii) the Developer’s completion of a number of entitlement tasks, including completion of
17 CEQA and receipt of other land use authorizations required for the Development; and

18 WHEREAS, Staff of the Port, MOHCD, and the Developer have collectively conducted
19 extensive community outreach and solicited comments and feedback from stakeholders to
20 form a general consensus on the goals/objectives of the Development, including its
21 architectural design, compatibility with the Historic District and its targeting of a wide spectrum
22 of households with limited incomes and MOHCD hired a joint venture team of Mark
23 Cavagnero Architects and Cary Bernstein Architects which conducted site design analysis
24 and held a community design workshop, where design criteria were discussed with the public
25 for the Property, and an adjacent City Parcel was added to provide housing for seniors, and

1 these outreach efforts took over 36 months and resulted in the overall Project consisting of
2 both buildings being supported by almost all stakeholders including members of the
3 Northeastern Waterfront Advisory Group; and

4 WHEREAS, The Developer’s initial proposed development had included up to 130
5 affordable, rental family housing units with ground level spaces for retail, commercial, other
6 ancillary uses, and open spaces on the Property (the “Family Project”) and, as mentioned
7 above, in response to the community’s desire for seniors to benefit from the development as
8 well, MOHCD sought and received City’s consent to add the adjacent City property located at
9 735 Davis Street (“City Parcel”) to the overall proposal to provide up to 50 to 55 senior
10 housing units (the “Senior Project”); and

11 WHEREAS, The Property and the City Parcel currently operated as surface parking
12 lots will be demolished and then improved with two, new six-story, mixed-use residential
13 buildings for family and senior housing, respectively, and the Family and Senior projects will
14 be connected by open mid-block passageways as shown on the Development Schematic
15 Design, a copy of which is in Board File No.180683 and

16 WHEREAS, The Family Project will include approximately 18 studio units, 37 one-
17 bedroom units, 45 two-bedroom units, 24 three-bedroom units, and a manager unit for a total
18 of 125 affordable units with approximately 137,100 gross square feet (gsf) of residential
19 dwelling space and approximately 8,700 gsf of nonresidential space with residents having
20 access to a common, community room on the ground floor, an open podium courtyard on the
21 second floor, two open decks on the fifth and sixth floors, a rooftop terrace and garden, and
22 ancillary ground-level uses which could include retail/commercial, a childcare center with an
23 outdoor play area, and a childcare arcade, subject to the passage of AB 1423
24 (Assemblymember Chiu; 2018) which includes technical amendments to the State Legislation;
25 and

1 WHEREAS, The Senior Project will include approximately 23 studio units, 29 one-
2 bedroom units and a manager unit for approximately 53 affordable units with approximately
3 44,136 gsf of residential dwelling space and approximately 1,260 gsf of non-residential space
4 and seniors in this project will have access to a community room, an open courtyard on the
5 first floor, a roof deck on the fifth floor, and ground-level uses which could include
6 retail/commercial and a community room; and

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

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

18 WHEREAS, On March 9, 2018, the Environmental Review Officer signed the FMND for
19 the Project and the Final MND was issued in compliance with CEQA, the CEQA Guidelines
20 and Chapter 31; and

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

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1 WHEREAS, The Historic Preservation Commission approved with conditions the
2 Certificate of Appropriateness Motion No. 0335) for the Project on April 4, 2018, on file with
3 the Clerk of the Board of Supervisors in File No. 180683, and incorporated herein by this
4 reference; and

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

8 WHEREAS, The FMND and the MMRP has been made available to the public, the Port
9 Commission and the Board of Supervisors for their review and action and which is on file with
10 the Clerk of the Board of Supervisors in File No. 180683, and incorporated herein by this
11 reference; and

12 WHEREAS, The Port Commission, by Resolution 18-42 found that the FMND is
13 adequate for its use as the decision-making body for the Development, that there is no
14 substantial evidence that the Development will have a significant effect on the environment
15 with the adoption of the measures contained in the MMRP to avoid potentially significant
16 environmental effects associated with the Development, and adopted the MMRP and found
17 that all required mitigation measures identified in the FMND and contained in the MMRP will
18 be included in the Port's Lease; and

19 WHEREAS, Port and Developer have negotiated and the Port Commission has
20 approved by Resolution 18-42 an Option to Lease Agreement which includes the form of
21 ground lease (the "Option Agreement") a copy of which is included in Board File No. 180683)
22 to provide the Developer with evidence of site control to support its application for an
23 allocation of low-income housing tax credits from the California Tax Credit Allocation
24 Committee, and Developer must exercise its option by June 30, 2020 subject to extension;
25 and

1 WHEREAS, The Port and MOHCD have negotiated a new Memorandum of
2 Understanding for interdepartmental coordination to be effective during the Lease term (the
3 “Port-MOHCD MOU”) including, among other things, the amount and manner in which
4 MOHCD will pay the Port the Property’s fair market value, MOHCD’s consent to the Lease,
5 and coordination between the departments in administering and enforcing the Lease; and

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

9 WHEREAS, A copy of the form of Lease and the Port MOHCD MOU as approved by
10 the Port Commission in Port Commission Resolution 18-42 are in Board File No. 180683 and
11 are incorporated in this resolution by reference; and

12 WHEREAS, The Developer has been formed by BRIDGE and JSCo to lease the Port
13 Property and develop the Family Project and the Senior Project and BRIDGE and JSCo each
14 has the requisite qualifications and the wherewithal to perform as co-developers and project
15 managers and have developed several projects in San Francisco with similar complexity
16 profiles; and

17 WHEREAS, MOHCD is providing the Developer with financial assistance for the
18 development of Family and Senior Projects and to leverage equity from an allocation of low-
19 income housing tax credits and other funding sources to construct and operate the
20 Development; and

21 WHEREAS, The Developer is required to execute the Lease substantially in the form of
22 the Lease attached to the Option Agreement and included in Board File No. 180683; and

23 WHEREAS, The material terms of the Lease include: (i) a term of 57 years with an
24 extension option for 18 additional years; (ii) tenant responsibility for all property taxes and
25 assessments levied against the Property; (iii) use only for affordable housing with residential

1 tenant rent and income levels set at between 30% to 120% of the area median income (“AMI”)
2 and other ancillary purposes permitted by the State Legislation and AB 1423 if enacted into
3 law; (iv) annual base rent for the residential portion of \$20,000 with escalation every five years
4 in line with changes to the AMI; (v) except as provided in (vii), all net sales or refinancing
5 proceeds to be used for the benefit of the Development, including required maintenance,
6 needed capital improvements, and operational subsidy; (vi) at Lease termination, the Port
7 Property with or without the building, at Port’s sole discretion, shall revert to the Port; (vii) 15%
8 of net proceeds from any refinancing or sales of the retail/restaurant space paid to Port as
9 additional rent; (viii) 30% of the net revenues from retail subleases or 15% of the gross
10 revenue from all other nonresidential subleases are paid to Port as additional rent; (ix) tenant
11 responsibility for construction, operation and maintenance of the Property; (x) Port ownership
12 fee title to the land and tenant ownership of fee title to all improvements; (xi) Port notice of
13 defaults to the tenant and MOHCD, and the tenant’s limited partners and lenders and allow
14 any such parties the right to cure such default; and (xii) encumbrance of the leasehold interest
15 to secure loans, subject to approval by the Port and MOHCD; and

16 WHEREAS, The Director of Property, in consultation with the Port (and the California
17 State Lands Commission through the Port), conducted an appraisal of the Property dated
18 June 29, 2018 with an indicated value of \$14,900,000; and

19 WHEREAS, The Port MOHCD MOU provides for the reappraisal of the Property within
20 90 days of the closing of the Lease and the Port Commission, by Resolution 18-42, a copy of
21 which is in Board File No. 180683 and incorporated in this Resolution by reference, provides
22 the Port Executive Director the delegated authority to execute the Lease, provided that the
23 appraised value is no less than \$11,300,000 which is the net present value of the income
24 stream from the Property with its existing surface parking lot use (subject to approval of the
25 California State Lands Commission as to the appraised value); and

1 WHEREAS, On July 10, 2018, by Resolution 18-42, the Port Commission found,
2 among other things that: 1) Seawall Lot 322-1 is no longer needed for Public Trust purposes,
3 2) the combined consideration under the Port MOHCD MOU and Lease is equal to fair market
4 value, and 3) the Lease includes terms that are consistent with prudent land management
5 practices as defined in the State Legislation (collectively, the “Public Trust Findings”); and

6 WHEREAS, By letter dated June 15, 2018, the Department of City Planning adopted
7 and issued a General Plan Consistency Finding, a copy of which is on file with the Clerk of the
8 Board in Board File No. 180683 and incorporated in this resolution by reference, wherein the
9 Department of City Planning found that the Project is consistent with the General Plan, and
10 with the eight priority policies under Planning Code, Section 101.1; and

11 WHEREAS, Port Commission Resolution 18-42 also approved the Option
12 Agreement, the form of the Lease and the Port-MOHCD MOU; recommended Board of
13 Supervisors’ approval of the Lease and the Port-MOHCD MOU and, subject to
14 approval by the Board of Supervisors and the California State Lands Commission,
15 approved the Lease; now, therefore, be it

16 RESOLVED, That the Board of Supervisors has reviewed and considered the FMND
17 and the record as a whole, finds that the FMND is adequate for its use as the decision-making
18 body for the Project, that there is no substantial evidence that the Project will have a
19 significant effect on the environment with the adoption of the measures contained in the
20 MMRP to avoid potentially significant environmental effects associated with the Project; and,
21 be it

22 FURTHER RESOLVED, That the Board of Supervisors hereby adopts the MMRP
23 incorporated herein as part of this Resolution by this reference thereto and finds that all
24 required mitigation measures identified in the FMND and contained in the MMRP will be
25 included in the Port Lease; and, be it

1 FURTHER RESOLVED, That the Board of Supervisors hereby finds that the Project is
2 consistent with the General Plan, and with the eight priority policies of Planning Code, Section
3 101.1 for the same reasons as set forth in the letter of the Department of City Planning, dated
4 June 15, 2018, and hereby incorporates such findings by reference as though fully set forth in
5 this Resolution; and, be it

6 FURTHER RESOLVED, That the Board of Supervisors hereby adopts the Port
7 Commission's Public Trust Findings as its own and finds that this resolution is consistent with
8 the common law public trust doctrine and the Burton Act, as modified by the State Legislation;
9 and, be it

10 FURTHER RESOLVED, That the Board of Supervisors approves the form and
11 substance of the Lease, and, if the Developer properly exercises the Option, authorizes the
12 Executive Director of the Port (or her designee) to execute the Lease and the Director of
13 MOHCD (or her designee) to consent to the Lease and any such other documents that are
14 necessary or advisable to complete the lease transaction contemplated by this Resolution;
15 and, be it

16 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
17 Director of the Port (or her designee) to enter into any additions, amendments or other
18 modifications to the form of lease or Lease (including, without limitation, preparation and
19 attachment or, or changes to, any of all of the exhibits and ancillary agreements), and any
20 other documents or instruments necessary in connection therewith, that the Executive
21 Director of the Port in consultation with the City Attorney, determines when taken as whole,
22 are in the best interests of the Port, do not materially decrease the benefits to the Port or the
23 City with respect to the Port Property, do not materially increase the obligations or liabilities of
24 the Port and the City, or materially decrease the public benefits accruing to the Port or City,
25 and are necessary or advisable to complete the transaction contemplated and effectuate the

1 purpose and intent of this Resolution, such determination to be conclusively evidenced by the
2 execution and delivery by the Executive Director of the Port (or her designee) of any such
3 additions, amendments, or other modifications and authorizes the Director of MOHCD (or her
4 designee) to consent to such changes; and, be it

5 FURTHER RESOLVED, That the Board of Supervisors approves the Port MOHCD
6 MOU under Charter, Section B7.320 and authorizes the Executive Director of the Port (or her
7 designee) and the Director of MOHCD (or her designee) to execute and implement the Port
8 MOHCD MOU; and, be it

9 FURTHER RESOLVED, The Board of Supervisors authorizes and delegates to the
10 Executive Director of the Port and the Director of MOHCD, or their designees, the authority to
11 make changes to the Port MOHCD MOU and take any and all steps, including but not limited
12 to, the attachment of exhibits and the making of corrections, which they, in consultation with
13 the City Attorney, determine when taken as whole, are necessary or appropriate to
14 consummate the Port MOHCD MOU in accordance with this Resolution, including entering
15 into subsequent interagency memoranda of understanding regarding the Project; provided,
16 however, that such changes and steps do not materially decrease the benefits to or materially
17 increase the obligations or liabilities of the City or the Port, and are in compliance with all
18 applicable laws; and, be it

19 FURTHER RESOLVED, That all actions authorized and directed by this Resolution
20 and heretofore taken are hereby ratified, approved and confirmed by this Board of
21 Supervisors; and, be it

22 FURTHER RESOLVED, That within thirty (30) days of the execution of the Port
23 MOHCD MOU and Option Agreement being fully executed by all parties, the Port shall
24 provide copies of the agreements to the Clerk of the Board for inclusion into the official file.
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