

1 [Encroachment, Public Service Easements and Vacations, Infrastructure - 8 Washington  
Street]

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3 **Ordinance approving an Encroachment Permit for San Francisco Waterfront Partners II,**  
4 **LLC, its successors and assigns (collectively, “Developer”) related to the construction**  
5 **and use of various public improvements affecting existing and future public right-of-**  
6 **ways on, under or adjacent to property located at 8 Washington Street/Seawall Lot 351,**  
7 **Assessor’s Block No. 0168/Lot No. 058, Block No. 0171/Lot No. 069, and Block No.**  
8 **0201/Lot Nos. 012-013 (including Seawall Lot 351) (the “8 Washington Development**  
9 **Site”) and portions of Washington Street, Drumm Street and The Embarcadero;**  
10 **accepting offers of public improvements for park and open space purposes among**  
11 **other uses on portions of the 8 Washington Development Site; ordering the summary**  
12 **vacation of certain public service easements benefitting various City departments**  
13 **located in, on or under portions of the 8 Washington Development Site, subject to**  
14 **conditions; accepting Department of Public Works Order; accepting and approving a**  
15 **relocated SFPUC Jackson Street sewer easement, a relocated SFPUC Drumm Street**  
16 **sewer easement, a new sewer easement across a portion of Seawall Lot 351, and a new**  
17 **easement for the SFPUC’s underground vault structure located along The**  
18 **Embarcadero; approving an agreement with the Developer regarding coordination of**  
19 **the Project with SFPUC’s facilities and North Shore to Channel Force Main Project;**  
20 **making environmental findings and findings of consistency with the City’s General**  
21 **Plan and the eight priority policy findings of Planning Code Section 101.1; and**  
22 **authorizing official acts in connection with this Ordinance.**

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 Be it ordained by the People of the City and County of San Francisco:

2 Section 1. **Findings.**

3 A. Approval of 8 Washington Project.

4 (1) On May 29, 2012, the San Francisco Port Commission by Resolution No. 12-47,  
5 approved certain agreements between the City and County of San Francisco (“City”) acting by  
6 and through the San Francisco Port Commission (“Port”) with Developer for the development  
7 of a mixed-use project (the “Project”) located on the combined sites of Block No. 168-Lot  
8 No. 58, Block No. 171-Lot No. 69, and Block No. 201-Lot No. 12, a triangular area generally  
9 bounded by The Embarcadero on the east, Drumm Street on the west and Washington Street  
10 on the south (the “8 Washington Site”) and Seawall Lot 351 (collectively, the “8 Washington  
11 Development Site”), including (i) a Disposition and Development Agreement (“DDA”); (ii) a 66-  
12 year Lease for real property near The Embarcadero and former Pacific Street; (iii) a  
13 maintenance agreement (the “Port Maintenance Agreement”) for the maintenance of an open  
14 space parcel bounded by The Embarcadero, Washington Street and Drumm Street that  
15 includes portions of the former Jackson Street, Pacific Avenue and Drumm Street right-of-  
16 ways lying within the 8 Washington Development site (as more particularly described in the  
17 Port Maintenance Agreement, the “Open Space Parcel”); (iv) a Purchase and Sale Agreement  
18 for the sale by the San Francisco Port Commission of a portion of Seawall Lot 351 and the  
19 conveyance to the Port Commission of a portion of the 8 Washington Site (the “Purchase and  
20 Sale Agreement”); (v) a Trust Exchange Agreement with the California State Lands  
21 Commission that would remove the public trust from a portion of Seawall Lot 351 and impress  
22 the public trust on a portion of the Open Space Parcel currently owned by Developer but to be  
23 conveyed to the Port under the Purchase and Sale Agreement; and (vi) Schematic Drawings  
24 for the Project (the foregoing, collectively, the “Transaction Documents”).  
25

1           (2)     On June 12, 2012, the San Francisco Board of Supervisors, by Resolution  
2 No. 226-12, approved the Purchase and Sale Agreement, Trust Exchange Agreement, Port  
3 Maintenance Agreement and Lease, adopted environmental findings and findings of  
4 consistency with the General Plan and the eight Priority Policies of City Planning Code  
5 Section 101.1, and authorized the Port's Executive Director and the City's Director of Property  
6 to execute easement agreements and other property documents necessary to implement the  
7 transactions contemplated by the Transaction Documents, make certain modifications and  
8 take certain actions in furtherance of the Resolution. A copy of this Resolution is in Clerk of  
9 the Board of Supervisors File No. 120270 and incorporated herein by reference.

10           (3)     On June 12, 2012, the San Francisco Board of Supervisors approved (i) a  
11 General Plan Amendment to "Map 2 - Height and Bulk Plan" within the Northeastern  
12 Waterfront Area Plan of the General Plan (Ordinance No. 105-12, a copy of which is on file  
13 with the Clerk of the Board of Supervisors in File No. 120272 and incorporated herein by  
14 reference), and (ii) a Height Reclassification of Zoning Map HT01 (Ordinance No. 104-12, a  
15 copy of which is on file with the Clerk of the Board of Supervisors in File No. 120271), which  
16 actions reclassified two portions of the southwestern area of Block 201-Lot12 from the 84-E  
17 Height and Bulk District to the 92-E Height and Bulk District in one portion, and the 136-E  
18 Height and Bulk District in another portion (the "Height Reclassification").

19           (4)     On August 1, 2012, the Department of Elections certified a petition entitled  
20 "Referendum Against Ordinance 104-12, 8 Washington Street" (the "Referendum"). On  
21 September 4, 2012, the Board of Supervisors voted to not repeal Ordinance No. 104-12 and  
22 directed the Department of Elections to place the Referendum on the ballot for the next  
23 election, which is currently scheduled for November 5, 2013. The actions authorized by the  
24 Board of Supervisors under this Ordinance are unrelated to the Height Reclassification which  
25 is the sole subject of the Referendum. However, if close of escrow fails to occur under the

1 DDA and Purchase and Sale Agreement (the “Closing”) for any reason, which may include  
2 repeal of the Height Reclassification by Referendum, then the authorization for work under the  
3 Encroachment Permit described in Section 2 and the approvals described in Sections 3, 4,  
4 and 5 of this Ordinance will not become effective.

5 (5) Through the public review process initiated by the City and the Port for the  
6 Project, which included community meetings, workshops and public hearings, Developer has  
7 informed the community of the various public improvements that would be included as part of  
8 its Project.

9 (6) Changes to the width and related improvements to sidewalks on Washington,  
10 Drumm and The Embarcadero that are outside of the Open Space Parcel (collectively, the  
11 “DPW Sidewalks”) will be processed administratively by the Director of DPW pursuant to the  
12 procedures established by Ordinance No. 34-12, a copy of which is in Clerk of the Board of  
13 Supervisors File No. 111281 and incorporated herein by reference.

14 B. Summary Public Service Easements Vacation Findings.

15 (1) The public service easements proposed for summary vacation (the “Vacated  
16 Easements”) consist of the following:

17 (a) Vacation of an existing 32’-wide easement for sewer and public utility  
18 purposes recorded November 4, 1963 as Instrument No. M40721, Book A671, Page 892, in  
19 the Official Records of the City (the “SFPUC Jackson Street Easement”), which contains a  
20 portion of the sewer force main (a pressurized pipeline) that services the northeastern portion  
21 of San Francisco, known as the “North Shore Force Main,” along with certain subsurface  
22 sewer boxes, overflow structures, appurtenances and supporting piles, all owned and  
23 operated by the City acting by and through the San Francisco Public Utilities Commission  
24 (“SFPUC”) (collectively, the “SFPUC Facilities”), which subsurface SFPUC Facilities extend  
25

1 across the adjacent Seawall Lot 351 and into The Embarcadero sidewalk and roadway to the  
2 east and into Jackson and Drumm Streets to the west;

3 (b) Vacation of an existing 44.75' easement, 22.375' on each side of the  
4 center line of former Drumm Street for future sewers, fire alarms circuits and police  
5 communication lines, recorded November 6, 1963 as Instrument No. M41435, Book A672,  
6 Page 820, in the Official Records of the City (the "1963 Drumm Street Easement");

7 (c) Vacation of an existing easement located within a portion of former  
8 Drumm Street for light and air, surface drainage and emergency vehicles, recorded December  
9 4, 1979 as Instrument No. C053115, Book C907, Page 189, in the Official Records of the City;

10 (d) Vacation of an existing easement located within the former lines of Pacific  
11 Avenue and Drumm Street for light and air, surface drainage and emergency vehicles,  
12 recorded April 26, 1978, Book C557, Page 930, in the Official Records of the City; and

13 (e) Vacation of a portion of an existing 32'-wide easement reserved to the  
14 San Francisco Redevelopment Agency for the benefit of The Pacific Telephone and  
15 Telegraph Company for construction, operation maintenance and repair of underground  
16 telephone lines, recorded on October 16, 1964 as Instrument No. N32945, Book A830,  
17 Page 550, in the Official Records of the City (the "Redevelopment Agency Easement").

18 (2) In Department of Public Works ("DPW") Order No. \_\_\_\_\_, the Director  
19 of Public Works determined that a summary vacation of the Vacated Easements is  
20 appropriate in this instance and recommended such action to the Board of Supervisors. DPW  
21 Order No. \_\_\_\_\_ is on file with the Clerk of the Board of Supervisors in File  
22 No. \_\_\_\_\_ and is incorporated herein by reference.

23 (3) Section 8333 of the California Streets and Highways Code provides that the  
24 legislative body of a local agency may summarily vacate a public service easement under  
25 certain circumstances. In particular, Section 8333 provides that the legislative body of a local

1 agency may summarily vacate a public service easement when the easement has not been  
2 used for the purpose for which it was dedicated or acquired for five consecutive years  
3 immediately preceding the proposed vacation, or the easement has been superseded by  
4 relocation, or determined to be excess by the easement holder. Section 8334.5 of the  
5 California Streets and Highways Code allows for a summary vacation only if there are no in-  
6 place utility facilities that are in use and would be affected by the vacation. In addition,  
7 Section 892 of the California Streets and Highways Code provides that city or county right-of-  
8 ways established for other purposes by cities, counties, or local agencies shall not be  
9 abandoned unless the governing body determines that the right-of-ways or parts thereof are  
10 not useful as a nonmotorized transportation facility. In this instance, the requirements of  
11 Section 8333, 8334.5 and 892 will be met as applied to the Vacated Easements for the  
12 following reasons:

13 (a) Developer shall comply with the terms of the Encroachment Permit as set  
14 forth in this Ordinance which includes requirements for the Developer to make satisfactory  
15 arrangements and payments to the easement holder for the relocation, termination, or  
16 replacement of the Vacated Easements, which may include relocated easements or  
17 replacement MOUs between the applicable City agency easement holder, the Port and/or the  
18 Developer. Without limiting the foregoing, the Encroachment Permit also provides that prior to  
19 and as a condition to the effectiveness of the summary vacation of the SFPUC Jackson Street  
20 Easement, such easement shall have been superseded by the Replacement SFPUC Jackson  
21 Street Easement, as described in Section 1.B(3)(c)(iii) of this Ordinance, the Port shall have  
22 granted SFPUC the SFPUC Seawall Lot Easement, as described in Section 1.B(3)(c)(iv), and  
23 SFPUC and Developer shall have entered into and recorded the SFPUC Agreement, as  
24 described in Section 1.B(3)(c)(i).

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1 (b) Additional conditions to the effectiveness of the summary vacation are set  
2 forth in this Section and include the Developer's verification of the locations of any City or  
3 public service utility company facilities that may be affected by the vacation, assumption of all  
4 responsibility for any damage to such facilities due to its activities, and establishment of  
5 satisfactory arrangements and payments for any necessary temporary or permanent  
6 relocation of City or public service utility company facilities. These requirements are include in  
7 and made part of the Encroachment Permit as set forth in this Ordinance.

8 (c) Prior to and as condition to the effectiveness of the summary vacation of  
9 the SFPUC Jackson Street Easement and the 1963 Drumm Street Easement, the following  
10 additional conditions shall have occurred:

11 (i) SFPUC and Developer shall have entered into and recorded an  
12 agreement (the "SFPUC Agreement"), in form and content acceptable to SFPUC, that  
13 addresses the SFPUC's review and approval of Project plans, specifications and construction  
14 methods, and sets forth conditions on Developer designed to avoid adverse impacts on the  
15 SFPUC Facilities, the SFPUC's North Shore to Channel Force Main Project (the "SFPUC  
16 Project") and SFPUC's ability to operate, maintain, repair, modify, expand or replace the  
17 SFPUC Facilities, including the facilities installed as part of the SFPUC Project, protects  
18 SFPUC from any liability, claims, and damages arising from the design or construction of the  
19 Project or the proximity of the Project to the SFPUC Facilities, and preserves SFPUC's ability  
20 to operate, maintain, repair, alter, expand and replace the SFPUC Facilities without increased  
21 expense (which conditions will include, without limitation, the Developer's bearing the cost of  
22 SFPUC's plan review and inspections, and costs of relocating, rehabilitating and/or modifying  
23 certain SFPUC Facilities to accommodate the Project);

1 (ii) SFPUC shall have recommended approval of the tentative  
2 subdivision map for the Project to DPW or DPW shall have conditioned its approval of the  
3 issuance of a final map on SFPUC's approval, consistent with the SFPUC Agreement;

4 (iii) The SFPUC Jackson Street Easement shall have been  
5 superseded by a relocated easement in favor of the City, at least thirty-two feet (32') in width  
6 in a location acceptable to SFPUC, for the SFPUC Facilities as they may be modified,  
7 expanded, repaired and replaced from time to time, to restrict surface and subsurface uses,  
8 protect SFPUC Facilities from damage, and preserve SFPUC's ability to operate, maintain,  
9 repair, alter, expand and replace the SFPUC Facilities without significant increased expense,  
10 substantially in the form in the Clerk of the Board's file (the "Relocated SFPUC Jackson Street  
11 Easement"); and

12 (iv) Port shall have granted SFPUC the SFPUC Seawall Lot  
13 Easement, at least thirty-two feet (32") in width in a location acceptable to SFPUC extending  
14 from the Relocated SFPUC Jackson Street Easement across Seawall Lot 351 to The  
15 Embarcadero, for the SFPUC Facilities, substantially in the form in the Clerk of the Board's  
16 file, pursuant to authority granted by this Board to the Port Executive Director and the City's  
17 Director of Property by Resolution No. 226-12 adopted June 12, 2012 and approved by the  
18 Mayor on June 20, 2012.

19 (d) The SFPUC has approved the Relocated SFPUC Jackson Street  
20 Easement and the SFPUC Seawall Lot Easement, authorized the City's Director of Property  
21 to accept such easements on behalf of the City, subject to approval by this Board and the  
22 Mayor, and approved the vacation of the SFPUC Jackson Street Easement, conditioned  
23 upon, among other things (i) the City's acceptance and recording of the Relocated SFPUC  
24 Jackson Street Easement and SFPUC Seawall Lot Easement, pursuant to authority granted  
25 by this Board in Resolution No. 226-12, and (ii) SFPUC and Developer entering into and

1 recording the SFPUC Agreement in form and content satisfactory to the SFPUC that  
2 addresses the SFPUC's review of plans and specifications and set forth conditions on  
3 Developer designed to avoid adverse impacts on the SFPUC Facilities, the SFPUC's North  
4 Shore to Channel Force Main Project (the "SFPUC Project") and SFPUC's ability to operate,  
5 maintain, repair, modify, expand or replace the SFPUC Facilities, including the facilities  
6 installed as part of the SFPUC Project, protect SFPUC from any liability, claims, and damages  
7 arising from the design or construction of the Project, and preserve SFPUC's ability to  
8 operate, maintain, repair, alter, expand and replace the SFPUC Facilities without significant  
9 increased expense, subject to any required approval by this Board and the Mayor. The  
10 Relocated SFPUC Jackson Street Easement and the SFPUC Seawall Lot Easement  
11 approved by the SFPUC are on file with the Clerk of the Board of Supervisors in File No.  
12 \_\_\_\_\_ and incorporated herein by reference.

13 (e) Prior to and as a condition to the effectiveness of the summary vacation  
14 of the 1963 Drumm Street Easement, the 1963 Drumm Street Easement shall have been  
15 superseded by a replacement easement, in form, substance, dimensions and in a location  
16 acceptable to SFPUC, for sewer infrastructure (the "Relocated Drumm Street Sewer  
17 Easement").

18 (f) The SFPUC has approved the Relocated Drumm Street Sewer Easement  
19 and authorized the City's Director of Property to accept such easement on behalf of the City,  
20 subject to authorization by this Board and the Mayor, and approved the vacation of the 1963  
21 Drumm Street Easement, conditioned upon the Director of Property's acceptance and  
22 recording of the Relocated Drumm Street Sewer Easement subject to authorization by this  
23 Board and the Mayor, which was granted in Resolution No. 226-12. The Relocated Drumm  
24 Street Sewer Easement approved by the SFPUC is on file with the Clerk of the Board of  
25 Supervisors in File No. \_\_\_\_\_ and incorporated herein by reference.

1 (g) Prior to and as condition to the effectiveness of the summary vacation of  
2 the Redevelopment Agency Easement, the Successor Agency to the San Francisco  
3 Redevelopment Agency, and if required, the Oversight Board, shall have approved the  
4 vacation of the Redevelopment Agency Easement.

5 (h) Pursuant to the Streets and Highways Code Section 892, the Board  
6 hereby finds and determines that the Vacated Easements consist of various non-contiguous  
7 and narrow strips of property limited to public service improvements and utilities and are  
8 therefore not useful for nonmotorized transportation facilities.

9 C. Encroachment Permit. As described in DPW Order No. \_\_\_\_\_, the  
10 Director of DPW, in accordance with Public Works Code Sections 786 et seq., has  
11 recommended approval of an Encroachment Permit (the “Master Encroachment Permit”) with  
12 the Developer on the terms described in the DPW Order and this Ordinance. The Master  
13 Encroachment Permit, including the DDA, Port Maintenance Agreement, and a Maintenance  
14 Agreement between Developer, SFPUC, and DPW for those portions of City property outside  
15 of Port jurisdiction (the “DPW Maintenance Agreement”), address the terms and conditions  
16 related to the construction, installation, dedication, use, and maintenance of public  
17 improvements, including street and utility improvements. The Developer shall construct these  
18 public improvements on and around the 8 Washington Development Site in general and the  
19 Open Space Parcel in particular (collectively, the “Public Improvements”) in substantial  
20 conformance with the Developer’s Public Improvement Plans attached to the DPW Order (the  
21 “Public Improvement Plans”) and the DDA. The SFPUC also has recommended that this  
22 Board approve the Master Encroachment Permit and the DPW Maintenance Agreement. The  
23 DPW Order and its attachments are on file with the Clerk of the Board of Supervisors in File  
24 No. \_\_\_\_\_ and are incorporated by reference herein. The Master Encroachment  
25

1 Permit addresses the following and contains the material terms described in Section 2 of this  
2 Ordinance:

3 (1) Terms under which the Public Improvements within the Open Space Parcel will be  
4 constructed and maintained, consistent with the Relocated SFPUC Jackson Street Easement  
5 and the SFPUC Seawall Lot Easement, and conditions to acceptance thereof by the Director  
6 of DPW, which includes approximately 25,180 square feet of publicly accessible open space;

7 (2) Terms and conditions under which Public Improvements within the DPW Sidewalks  
8 will be constructed and maintained and conditions to the acceptance thereof by the Director of  
9 DPW, including the terms of a DPW Maintenance Agreement applicable to Public  
10 Improvements on non-Port property within DPW jurisdiction.

11 D. Port Maintenance Agreement. The Port Maintenance Agreement, approved by  
12 the Port Commission in Resolution No. 12-47 and the Board of Supervisors in Resolution  
13 No. 226-12, requires the Developer, or the Homeowners Association that will be formed for  
14 the residential condominium, to assume maintenance and liability obligations over the Open  
15 Space Parcel for the duration of the Port Maintenance Agreement. If the Port Maintenance  
16 Agreement terminates, the DDA provides for the formation of a Community Facilities District  
17 assessed against property owners within the Project to fund the Port's maintenance of the  
18 Open Space Parcel. Pursuant to the Public Works Code, Developer or the Homeowners  
19 Association as adjacent property owners will be liable for maintaining the improved or  
20 widened sidewalks along The Embarcadero, Drumm and Washington Streets pursuant to the  
21 DPW Maintenance Agreement. A copy of the Port Maintenance Agreement is attached to  
22 DPW Order No. \_\_\_\_\_. As provided in the Master Encroachment Permit, Port  
23 retains responsibility for maintenance and repair of the Open Space Parcel in the event the  
24 Port Maintenance Agreement terminates.

1 E. Acceptance of Dedications and Easements. The Director of DPW also has  
2 recommended in DPW Order No. \_\_\_\_\_ that the Board accept Developer's Offers of  
3 Public Improvements and real property as described therein, and delegate to the Director of  
4 DPW and other City agencies the authority to accept the Public Improvements on behalf of  
5 the City upon satisfactory completion thereof.

6 F. General Plan Consistency and Planning Code Section 101.1 Priority Policy  
7 Findings.

8 The Planning Commission on March 22, 2012, by Motion No. 18565 declared that the  
9 actions by the Developer to subdivide the Project Site to create separate land and air space  
10 parcels for the various uses within the Project, including the areas of publicly accessible open  
11 space and circulation, such as Pacific Park, the widened Drumm Street walkway, the  
12 dedication of Jackson Commons as public right-of-way for park and open space purposes,  
13 and the widened Embarcadero sidewalk are, on balance, consistent with the City's General  
14 Plan and with the eight priority policies of Planning Code Section 101.1. The Board adopts as  
15 its own, the findings in Motion No. 18565. Said Motion is on file with the Clerk of the Board of  
16 Supervisors in File No. 120272 and is incorporated herein by reference.

17 G. Environmental Findings.

18 (1) On March 22, 2012, the Planning Commission reviewed and considered the  
19 Final Environmental Impact Report ("Final EIR") in Planning Department File No. 2007.0030E,  
20 consisting of the Draft Environmental Impact Report and the Comments and Responses  
21 document, and found that the contents of said report and the procedures through which the  
22 Final EIR was prepared, publicized and reviewed complied with the provisions of the  
23 California Environmental Quality Act ("CEQA"), the CEQA Guidelines and Chapter 31 of the  
24 San Francisco Administrative Code and found further that the Final EIR reflects the  
25 independent judgment and analysis of the City and County of San Francisco, is adequate,

1 accurate and objective, and that the Comments and Responses document contains no  
2 significant revisions to the Draft EIR, and certified the completion of said Final EIR in  
3 compliance with CEQA and the CEQA Guidelines in its Motion No. 18560. The Board  
4 affirmed the certification of the Final EIR by Motion No. 12-061 on May 15, 2012. Copies of  
5 the Planning Commission's and Board's Motions are on file with the Clerk of the Board of  
6 Supervisors in File No. 120267 and are incorporated herein by reference.

7 (2) On March 22, 2012, the Planning Commission adopted findings as required by  
8 CEQA ("CEQA Findings"), which findings included a Statement of Overriding Considerations  
9 and adoption of a Mitigation Monitoring and Reporting Plan ("MMRP") by its  
10 Motion No. 18561, which material was made available to the public and the Board for the  
11 Board's review, consideration and action. In connection with its approval of a Public Trust  
12 Exchange Agreement, Purchase and Sale Agreement, Lease, and Maintenance Agreement  
13 related to the Project, the Board, by Resolution No. 226-12 reviewed and considered the  
14 information contained in the Final EIR and the CEQA Findings, and adopted the CEQA  
15 Findings, including the Statement of Overriding Considerations and MMRP, adopted by the  
16 Planning Commission by its Motion No. 18561, Final EIR, CEQA Findings, and associated  
17 materials are on file with the Clerk of the Board of Supervisors in File Nos. 120267 and  
18 120271 and are incorporated herein by reference.

19 (3) Based on that certain Memorandum to the Board of Supervisors prepared by the  
20 Planning Department, dated \_\_\_\_\_, 2012, a copy of which is on file with the Clerk of the Board  
21 in File No. \_\_\_\_\_, the Board of Supervisors finds that since the Planning  
22 Commission certified the Final EIR, there have been no substantial project changes and no  
23 substantial changes in project circumstances that would require major revisions to the Final  
24 EIR due to the involvement of the new significant environmental effects or an increase in the  
25 severity of previously identified significant impacts, there is no new information of substantial

1 importance that would change the conclusions set forth in the Final Port Commission EIR, and  
2 the Board has not identified any feasible alternative or additional feasible mitigation measures  
3 within its powers that would substantially lessen or avoid any significant effect the Project  
4 would have on the environment and hereby relies on the environmental findings it previously  
5 adopted as part of Resolution No. 226-12 for the actions contemplated herein.

6 **Section 2. Approval of Master Encroachment Permit.**

7 A. Pursuant to Public Works Code Sections 786 et seq., and consistent with DPW  
8 Order No. \_\_\_\_\_, the Board hereby grants revocable permission to Developer to  
9 occupy a portion of the public right-of-ways consisting of the Open Space Parcel and portions  
10 of Drumm, Washington and The Embarcadero, as more specifically described in the DPW  
11 Order, to construct, install, use, and maintain the Public Improvements, consistent with the  
12 Relocated SFPUC Jackson Street Easement, the SFPUC Seawall Lot Easement, the  
13 Relocated SFPUC Drumm Street Easement, and the Vault Easement described in  
14 Section 5.A hereof (collectively, the "SFPUC Easements") and the DDA, and subject to the  
15 conditions set forth herein and the Encroachment Permit and related documents. The Master  
16 Encroachment Permit specifically allows for the construction and future maintenance of the  
17 Public Improvements in accordance with the DDA and the Port Maintenance Agreement for  
18 the Open Space Parcel, the DPW Maintenance Agreement for the DPW Sidewalks, and in  
19 accordance with the SFPUC Easements, SFPUC Agreement, and Transaction Documents.

20 B. The Board hereby authorizes the Director of DPW, in consultation with and with  
21 written consent from the Port Executive Director and SFPUC General Manager as applicable,  
22 as part of the Master Encroachment Permit to subsequently approve, consistent with the  
23 Transaction Documents and the SFPUC Easements, and subject to any reasonable  
24 conditions that the Director deems appropriate, such uses and physical improvements that are  
25 substantially consistent with those uses and improvements described in the Transaction

1 Documents, DPW Maintenance Agreement and the Public Improvement Plans. This  
2 authorization shall specifically allow for, among others, below and above-ground public and  
3 private utility connections and facilities, fixed and moveable outdoor café tables and chairs,  
4 specialty paving, tree wells in locations approved by the SFPUC General Manager, new  
5 lighting and drainage features, and other public improvements, subject to obtaining applicable  
6 City, Port, and SFPUC approvals and permits.

7 C. The Board further authorizes the Director of DPW, in consultation with and with  
8 written consent from the Port Executive Director and SFPUC General Manager as applicable,  
9 to make modifications to the Master Encroachment Permit, including all attachments and  
10 exhibits thereto, as necessary to address future changes and to approve future  
11 encroachments associated with the Public Improvements within the Director's jurisdiction,  
12 including, without limitation, future utility boxes or vaults located within the sidewalk area,  
13 additional utilities and connections, and ancillary structures below and above ground to be  
14 located within the dedicated street area, subject to DPW and SFPUC review and approval of  
15 plans for such additional encroachments.

16 D. Annual Public Right-of-Way Occupancy Assessment Fee.

17 (1) Due to the substantial expense undertaken by Developer in improving the  
18 streetscape for public improvements within the Open Space Parcel and DPW Sidewalks, the  
19 Board of Supervisors hereby waives all annual assessment fees pursuant to San Francisco  
20 Public Works Code Section 786.7(b) for occupancy of the Open Space Parcel and DPW  
21 Sidewalks other than such fees applicable to use and occupancy of the DPW Sidewalk for  
22 tables and chairs related to adjacent retail or restaurant uses or use of any portion of the  
23 Open Space Parcel and DPW Sidewalks for private utilities.

24 (2) Notwithstanding the above or the terms of Public Works Code Section 786.7(b), the  
25 Developer shall pay the annual occupancy assessment fee for any private encroachments,

1 including utility connections and facilities, placed in the public right-of-way; provided, however,  
2 that the Developer may elect to pay a one time fee that is equivalent to the net present value  
3 of the annual assessment fee for the useful life of the private encroachments.

4 (3) This Section does not authorize the waiver of any other permit fee, assessment,  
5 or charge associated with future encroachments that the Developer proposes for installation in  
6 the public right-of-way that are outside the scope of those uses and improvements  
7 substantially consistent with the Master Encroachment Permit approved herein.

8 E. In addition to the other conditions set forth herein, Developer, at its sole expense  
9 and as is necessary as a result of the Master Encroachment Permit, shall make the following  
10 arrangements:

11 (1) To provide for the support and protection of facilities belonging to the City and  
12 public utility companies;

13 (2) To provide future access from the Open Space Parcel and adjoining City right-  
14 of-ways subject to the Master Encroachment Permit to facilities belonging to the City and  
15 public utility companies to allow said entities to construct, reconstruct, maintain, operate or  
16 repair such facilities at said entities' sole expense and

17 (3) To remove or relocate such facilities if installation of the Public Improvements  
18 requires said removal or relocation and to make all necessary arrangements with the owners  
19 of such facilities, including the payment for all their costs, should said removal or relocation be  
20 required solely as a result of the installation of the Public Improvements.

21 F. The Master Encroachment Permit also is subject to the following conditions:

22 (1) No structures shall be erected or constructed within said street right-of-ways  
23 except as specifically permitted herein, by the Director of DPW or by the Port in accordance  
24 with the DDA, Port Maintenance Agreement and DPW Maintenance Agreement and subject to  
25

1 the consent of the SFPUC General Manager where such structures would affect any of the  
2 SFPUC Facilities or SFPUC Easements;

3 (2) Developer shall become a member of, participate in and share costs associated  
4 with, Underground Service Alert (U.S.A.) Northern California Region;

5 (3) As set forth in the Port Maintenance Agreement, all costs for the maintenance  
6 and repair of the Public Improvements within the Open Space Parcel shall be assumed by  
7 Developer or the Homeowners Association formed upon completion of the residential  
8 condominium, or in the event of the termination of the Port Maintenance Agreement, by the  
9 Community Facilities District formed for such purpose under the DDA (the "Open Space  
10 Parcel CFD"), and no cost or obligation related to the encroachments shall accrue to DPW or  
11 any other City entity or agency by reason of this permission granted, provided, however, that if  
12 the Port Maintenance Agreement is terminated, all costs for the maintenance and repair of the  
13 Public Improvements within the Open Space Parcel shall be assumed by Port subject to  
14 reimbursement from the Open Space Parcel CFD;

15 (4) Developer's maintenance and repair obligations for the Public Improvements  
16 within the Open Space Parcel under the Master Encroachment Permit are coterminous with  
17 the Port Maintenance Agreement and addressed in the DPW Maintenance Agreement;

18 (5) Developer's maintenance and repair obligations for the Public Improvements  
19 within the DPW Sidewalks under the Master Encroachment Permit are addressed in the DPW  
20 Maintenance Agreement; and

21 (6) The conditions of the Master Encroachment Permit shall bind the future  
22 assignees and transferees of such Master Encroachment Permit.

23 G. Unless specified otherwise in this Ordinance, revocation of the Master  
24 Encroachment Permit, in whole or in part, would require a final and effective Board of  
25 Supervisors Resolution.

1 H. For purposes of this Section, the Board hereby authorizes the Port Executive  
2 Director with respect to the Open Space Parcel, and the Director of the Division of Real Estate  
3 with respect to the DPW Sidewalks, to approve future encroachments associated with the  
4 Public Improvements, including, without limitation, future utility boxes or vaults located within  
5 the sidewalk area, additional utilities and connections, and ancillary structures below and  
6 above ground to be located within the City's and Port's proprietary street area, subject to  
7 review and approval of plans for such additional encroachments and further subject to the  
8 consent of the Director of DPW and SFPUC General Manager to the extent such approvals  
9 would affect any of the SFPUC Facilities or SFPUC Easements. Any proposed use or  
10 occupancy of the public right-of-ways determined by the Director of DPW to be outside the  
11 scope of those uses and improvements substantially consistent with the Master  
12 Encroachment Permit approved herein shall be subject to all applicable provisions of the  
13 Public Works Code and local law.

14 Section 3. **Approval of Summary Vacation.** The Board hereby adopts the DPW  
15 Director's recommendation and approves the summary vacation of the Vacated Easements,  
16 which summary vacation shall take effect immediately upon the occurrence of the following:  
17 (i) Closing under the Purchase and Sale Agreement has occurred, (ii) a written determination  
18 by the SFPUC General Manager that conditions to the summary vacation of the SFPUC  
19 Jackson Street Easement and the 1963 Drumm Street Easement have been satisfied,  
20 including without limitation, execution and acceptance of the SFPUC Easements as described  
21 in Section 1.B(3)(c) hereof, and (iii) a determination by the Director of DPW in writing that all  
22 conditions to the summary vacation required under California Streets and Highways Code  
23 Section 8333 and 8334.5 have been satisfied, including, without limitation, satisfaction of the  
24 conditions related to the SFPUC Jackson Street Easement and the 1963 Drumm Street  
25 Easement as described in Section 1.B(3)(c) hereof, execution of MOUs with other City

1 departments as required, and evidence from applicable public utilities that their facilities have  
2 been satisfactorily relocated, replaced or will otherwise not be affected by the summary  
3 vacation. The Board hereby delegates to the Director of DPW, in consultation with the Port  
4 Executive Director, SFPUC General Manager, and Successor Agency Director, as applicable,  
5 the authority to make the determinations under the preceding clauses (i), (ii) and (iii).

6 Section 4. **Acceptance of Offers of Dedication and Real Property Conveyances.**

7 A. Offers of Dedication. Developer has submitted Offers of Dedication to the City of  
8 the Public Improvements (collectively, the “Offers of Dedication. Copies of the Offers of  
9 Dedication and accompanying real estate conveyancing documents are on file with the Clerk  
10 of the Board of Supervisors in File No. \_\_\_\_\_ and are incorporated herein by  
11 reference. The Board adopts the DPW Director’s recommendation and conditionally accepts  
12 the Offers of Dedication based on the following: (i) such Offers shall be effective only upon  
13 Closing, (ii) acceptance of fee title and easement conveyances described therein for real  
14 property where improvements are not yet constructed is delegated to the Director of the  
15 Division of Real Estate along with the authority to prepare final legal descriptions and record  
16 the accompanying real estate conveyancing documents, and (iii) acceptance of Public  
17 Improvements for public use where the improvements are not yet constructed is delegated to  
18 the DPW Director, in consultation with the Port’s Executive Director, to accept said  
19 improvements when the DPW Director’s determines that the improvements are complete and  
20 ready for their intended use.

21 B. Establishment of Public Right-of-Way, Street Grades, and Street Name.

22 (1) In accordance with San Francisco Administrative Code Sections 1.51 et seq.  
23 and the DPW Director’s recommendation, this Board hereby accepts and approves the A-17  
24 Map entitled “\_\_\_\_\_”, dedicates those portions of the Open Space Parcel  
25 shown hatched on the A-17 Map as an open public right-of-way for public use and designates

1 this area for open space, park, and public access purposes only; provided, however, that such  
2 area is not accepted for City maintenance or liability purposes.

3 (2) Notwithstanding California Streets and Highways Code Sections 8000 et seq.,  
4 the Board of Supervisors, in accordance with San Francisco Administrative Code Sections  
5 1.51 et seq., chooses to follow its own procedures for the establishment of street grades. The  
6 Board of Supervisors hereby accepts and designates the street grades for the Open Space  
7 Parcel as set forth in DPW Order No. \_\_\_\_\_ and DPW drawing Q \_\_\_\_\_.

8 (3) The Board acknowledges that the San Francisco Port Commission has the  
9 power to designate the street names for the Open Space Parcel after consultation with the  
10 DPW, Fire Department, and Police Department. The Board hereby directs the Director of  
11 DPW to revise the Official City Street Right-of-Way Maps in accordance with this Ordinance  
12 upon the Port Commission's naming of the Open Space Parcel.

13 (4) The Board's approvals as set forth in this Section are conditioned upon Closing  
14 and upon certification of the DPW Director, in consultation with the Port's Executive Director,  
15 that the improvements within the Open Space Parcel have been inspected and certified as  
16 complete in accordance with the Project plans and specifications and all City codes,  
17 regulations, standards governing the Project and that such improvements are ready for their  
18 intended use.

19 Section 5. **Approval of New and Relocated SFPUC Easements.**

20 A. New SFPUC Vault Easement. The SFPUC has approved a new easement from  
21 Developer to the SFPUC for the SFPUC's underground vault structure located along The  
22 Embarcadero in substantially the form in the Clerk of the Board's files (the "Vault Easement").  
23 The Board of Supervisors hereby accepts and approves the Vault Easement. Said easement  
24 is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and  
25 incorporated herein by reference.

1 B. New Seawall Lot Easement. Pursuant to the authority granted by this Board to  
2 the Port Executive Director and the City's Director of Property by Resolution No. 226-12, the  
3 Board of Supervisors hereby accepts and approves the SFPUC Seawall Lot Easement

4 C. Relocated SFPUC Jackson Street Easement. The Board of Supervisors hereby  
5 accepts and approves the Relocated SFPUC Jackson Street Easement.

6 D. Relocated SFPUC Drumm Street Sewer Easement. The Board of Supervisors  
7 hereby accepts and approves the Relocated SFPUC Drumm Street Sewer Easement.

8 E. The Board's approval of the aforementioned easements is subject to the  
9 following:

10 (1) The easements shall be effective upon Closing and

11 (2) The final easements shall be in substantially the form in the Clerk of the Board's  
12 files. The Board delegates to the City's Director of Property in consultation with and with  
13 written consent from the SFPUC General Manager the authority to finalize the legal  
14 descriptions for the aforementioned easements and sign and record the easements.

15 F. SFPUC Agreement. The Board of Supervisors authorizes the SFPUC General  
16 Manager or the City's Director of Property on the written recommendation of the SFPUC  
17 General Manager to sign the SFPUC Agreement on behalf of the City and record the  
18 agreement in the City's real property records to be effective upon Closing as equitable  
19 servitudes and perpetual covenants running with the Developer's parcel generally described  
20 as the Condominium Parcel in the Purchase and Sale Agreement, for the benefit of the  
21 SFPUC Easements, without obtaining this Board's approval of the final form of the SFPUC  
22 Agreement notwithstanding any contrary provision of Charter Section 9.118, provided that the  
23 agreement is consistent with Section 1.B(3)(c)(i) and the purposes and intent of this  
24 Ordinance.

1           G.     For purposes of this Section, the Board hereby authorizes the SFPUC General  
2 Manager or the City’s Director of Property on the recommendation of the SFPUC General  
3 Manager to enter into any additions, amendments, or other modifications to the  
4 aforementioned easements and SFPUC Agreement, including preparation and attachment of,  
5 or changes to, any or all of the attachments and exhibits that the General Manager, in  
6 consultation with the City Attorney, determines are in the best interest of the City, do not  
7 materially diminish the benefits or materially increase the obligations or liabilities of the City or  
8 the SFPUC and are necessary or advisable to complete the transactions contemplated by the  
9 Transaction Documents and effectuate the purpose and intent of this Ordinance, such  
10 determination to be conclusively evidenced by the execution and delivery by the SFPUC  
11 General Manager or the Director of Property of such easements and SFPUC Agreement.

12           Section 6.     **Conditions to Effectiveness; Authorization to Effectuate the**  
13 **Ordinance.**

14           A.     All actions heretofore taken by the officers of the City with respect to this  
15 Ordinance are hereby approved, confirmed and ratified, and the Mayor, Clerk of the Board,  
16 DPW Director, SFPUC General Manager, Port Executive Director, and Director of the Division  
17 of Real Estate are hereby authorized and directed to take any and all actions that they or the  
18 City Attorney may deem necessary or advisable in order to effectuate the purposes and intent  
19 of this Ordinance, including without limitation, signing and recording real estate conveyance  
20 documents and easements, accepting public improvements where the Board has delegated  
21 this authority, and filing documents in the official records of DPW.

22           B.     To the extent that this Ordinance delegates authority to the DPW Director, the  
23 Port Executive Director, or the Director of the Division of Real Estate to implement the  
24 purpose and intent of this Ordinance, the DPW Director, the Port Executive Director, and/or  
25 the Director of the Division of Real Estate in exercising such authority shall first consult with

1 and obtain written consent from the SFPUC General Manager with respect to any matters  
2 affecting the SFPUC Facilities or the SFPUC Easements. Notwithstanding the foregoing, no  
3 work shall be commenced under the Master Encroachment Permit described in Section 2 of  
4 this Ordinance, and the approvals described in Sections 3, 4, and 5 of this Ordinance shall not  
5 take effect, until the Closing has occurred. If Closing fails to occur for any reason, including  
6 by reason of passage of the Referendum, then the authorization for work under the Master  
7 Encroachment Permit described in Section 2 of this Ordinance, and the approvals described  
8 in Sections 3, 4, and 5 of this Ordinance will not become effective.

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APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

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By: \_\_\_\_\_  
John D. Malamut  
Deputy City Attorney

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