

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

RESOLUTION NO. 19-36

- 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, TZK Broadway, LLC, a California limited liability company (the "Developer" or "TZK") is proposing to develop a mixed-use development that includes a 192-room hotel, a dinner-theater venue for Teatro ZinZanni, and a public park (the "Development" or "Project") at a site with frontages along The Embarcadero, Broadway and Davis Street that includes Seawall Lot 323 ("SWL 323") and Seawall Lot 324 ("SWL 324") and portions of Vallejo and Davis Streets (the "Site"); and
- WHEREAS, On May 5, 2015, the Board of Supervisors adopted Resolution No. 170-15 and found that the Development is exempt from competitive bidding requirements of Administrative Code Section 2.6-1; and
- WHEREAS, On September 8, 2015, the Port Commission adopted Resolution No. 15-31 authorizing the Port to enter into an Exclusive Negotiation Agreement (as amended, the "ENA") with Developer for the Development at the Site, as such agreement was extended pursuant to Resolution No. 18-53; and
- WHEREAS, On April 26, 2016, the Port Commission adopted Resolution No. 16-18 and endorsed a non-binding term sheet describing the fundamental deal terms for the Project ("Term Sheet") and authorized and directed the Executive Director, or her designee, to forward the Term Sheet to the Board of Supervisors for its consideration; and on July 12, 2016, the Board of Supervisors adopted Resolution No. 277—16 and endorsed the Term Sheet; and
- WHEREAS, Obtaining consideration and approval of the Lease and other matters related to the Development is the only remaining key task TZK must complete under the ENA before it expires on November 4, 2019; and
- WHEREAS, Port staff and Developer wish to extend the ENA up to February 3, 2020 without payment of additional extension fees, solely in the event the Board of Supervisors' does not take action on the matter before November 4, 2019; and
- WHEREAS, In accordance with the ENA, the parties have negotiated a lease disposition and development agreement ("LDDA"), Lease No. L-16585 (the "Lease") and other related agreements and documents (collectively, the "Transaction Documents") for the Development; and

- WHEREAS, The schematic drawings for the Project are on file with the Port Commission Secretary and the representative Schematic Drawings of the building(s) within the Site are shown in the attachment to the Memorandum accompanying this Resolution; and
- WHEREAS, Port staff and TZK have collectively conducted extensive community outreach and presented updates on the proposed Development to community stakeholders and received express support for the proposed development; and
- WHEREAS, Pursuant to Section 23.33 of the Administrative Code, it is City policy that any and all leases awarded without following the City's competitive bid procedures shall be in an amount not less than the fair market value of the leased property;
- WHEREAS, The Director of the City's Real Estate Division, in consultation with Port staff, conducted an appraisal of the Site, and such appraisal, along with hotel consultant reports, shows that the financial terms of the Lease are not less than the fair market value of the Site; and
- WHEREAS, The Development provides numerous benefits to the Public Trust, including (a) new hotel, dinner-theater, and other visitor-serving uses that will enhance public use and enjoyment of the Waterfront, (b) creation of a new public open space, (c) elimination of barriers to the waterfront and uniting the landside with the waterfront, (d) enhanced pedestrian, bicycle and transit access along the Waterfront, and (e) increased rental revenues to the Harbor Fund that will exceed the current and projected revenues from existing parking operations on the Site, as further described in the Memorandum accompanying this Resolution; and
- WHEREAS, Port and TZK have negotiated the LDDA, with a 12-month term and four 3-month extension options, which LDDA includes among other things, additional Developer financial obligations including a LDDA fee, extension option fee, payment of any outstanding ENA fees, a LDDA termination fee, reimbursement of Port's transaction costs during the LDDA term, liquidated damages for delay of construction completion beyond the completion date, and setting the conditions the parties must satisfy or waive before the Lease is executed by the parties, all as described in the Memorandum accompanying this Resolution, and a copy of the LDDA and Lease are on file with the Commission Secretary; and
- WHEREAS, The Lease is for a term of 50 years with one 16-year extension option and includes, among other terms, the following financial terms: (1) an annual minimum base rent equal to no less than \$1 million, as increased over time, (2) percentage rent above the minimum rent equal to 3.5%-6.5% of annual gross revenues as further described in the Memorandum accompanying this Resolution, (3) participation rent on net cash flow, net transfer proceeds and net refinancing proceeds from the Project after the

tenant has earned a minimum return on tenant equity, as further described in the Memorandum accompanying this Resolution, (4) a cap of \$60 million on the initial tenant's equity that is eligible to earn a return, and (5) tenant obligation to maintain the public park and open space within the Site without any reimbursement or payment by Port or the City; and

- WHEREAS, The Lease also limits the type of post-construction tenant equity eligible for return as follows: (1) a reduced return (11% IRR) on tenant equity for capital improvements only, (2) a reduced return equal to the lesser of the interest rate on the then outstanding senior loan on the Project or 10%, both at simple interest, on tenant equity (capped at \$20 million over the Lease term, subject to increases set forth in the Lease) used to offset operational shortfalls due a downturn lasting at least 12 consecutive months in the San Francisco hotel market, as further described in the Memorandum accompanying this Resolution; and
- WHEREAS, The Transaction Documents conform to all local laws and regulations and are not prohibited by the City's Charter; and
- WHEREAS, City and Port staff and consultants have conducted substantial economic analysis of the Project impacts and benefits on the Port and City; and
- WHEREAS, The San Francisco Planning Department ("Planning Department") prepared an Initial Study/Preliminary Mitigated Negative Declaration ("IS/PMND") for the Project and published it for public review on October 17, 2018. No appeal of the IS/PMND was filed and the Mitigated Negative Declaration became final on December 21, 2018; and
- WHEREAS, On December 21, 2018, the Planning Department approved the issuance of the Final Mitigated Negative Declaration ("FMND") as prepared by the Planning Department in compliance with the California Environmental Quality Act ("CEQA", CEQA Guidelines (Title 14 California Code of Regulations Sections 15000 et seq.), and San Francisco Administrative Code Chapter 31 ("Chapter 31"); and
- WHEREAS, On March 6, 2019, the Historic Preservation Commission adopted Motion No. 0370 finding that the proposed Development is consistent with Article 10 of the Planning Code and the Secretary of the Interior's Standards for Rehabilitation in conformance with the architectural plans filed with the Planning Department subject to the conditions and findings listed in its Motion No. 0370; and
- WHEREAS, On May 2, 2019, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Authorization Application and General Plan Referral Nos. 2015-016326 CUA and 2016- 011011GPR. At that hearing, pursuant to Resolution No. 20443, the Planning Commission made Findings of Consistency with the General Plan and with the Priority Policies of Planning Code Section 101.1

for the street vacations for the Project, pursuant to Section 4.105 of the City Charter and Section 2A.53 of the Administrative Code. In addition, pursuant to Motion No. 20444, the Planning Commission granted a Conditional Use Authorization for the Development pursuant to Planning Code Sections 210.1, 240.3 and 303 to allow a hotel use within the C-2 Zoning District, the Waterfront Special Use District No. 3, and a 40-X Height and Bulk District, subject to the conditions and findings listed in the Motion No. 20444; and

WHEREAS, In Resolution No. 20443, the Planning Commission, having reviewed the FMND, concurred with the Planning Department's determination that, pursuant to the FMND, including its mitigation measures, the Project could not have a significant impact on the environment; and

WHEREAS, In Motion No. 20444, the Planning Commission made the same findings as in Resolution No. 20443, and more specifically found that, based on review and consideration of the FMND and the record as a whole, there is no substantial evidence that the Project will have a significant effect on the environment with the adoption of the mitigation measures contained in the Mitigation Monitoring and Reporting Program ("MMRP"). A copy of the MMRP is attached to the Memorandum accompanying this Resolution. The Planning Commission adopted the FMND and the MMRP and included all required mitigation measures identified in the FMND and contained in the MMRP as conditions of approval; and

WHEREAS, The Planning Department Commission Secretary is the custodian of record for the file for File Nos. 2015-016326ENV, 2015-016326 CUA and 2016- 011011GPR at 1650 Mission Street, Suite 400, San Francisco, California; and

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

WHEREAS, (1) The actions proposed for approval in this Resolution were contemplated as part of the FMND and present no substantial changes to the Project that will require major revisions of the FMND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (2) the actions proposed for approval in this Resolution present no substantial changes with respect to the circumstances under which the Project was approved that will require major revisions of the FMND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (3) no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the FMND was adopted, has become available which indicates that: (A) the Project will have significant effects not discussed in the

FMND, (B) significant environmental effects will be substantially more severe than shown in the FMND, (C) mitigation measures or alternatives found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the Project, or (D) mitigation measures or alternatives which are considerably different from those in the FMND would substantially reduce one or more significant effects on the environment; NOW, THEREFORE, BE IT

RESOLVED, That the Port Commission has reviewed and considered the FMND and the record as a whole, and finds that the FMND is adequate, that there is no substantial evidence that the Project will have a significant effect on the environment with the adoption of the mitigation measures contained in the MMRP, and hereby adopts the FMND; and be it further

RESOLVED, That the Port Commission hereby adopts the FMND and the MMRP as part of this Resolution and directs Port staff to include in the applicable Transaction Documents, an obligation by the Developer to comply with all required mitigation measures identified in the FMND and contained in the MMRP; and be it further

RESOLVED, That the Port Commission finds that the rent due Port under the Lease is at fair market and the Lease includes terms that are consistent with prudent land management practices; and, be it further

RESOLVED, That the Port Commission finds that the Development provides numerous benefits to the Public Trust, including (a) new hotel, dinner-theater, and other visitor-serving uses that will enhance public use and enjoyment of the Waterfront, (b) creation of a new public open space, (c) elimination of barriers to the waterfront and uniting the landside with the waterfront, (d) enhanced pedestrian, bicycle and transit access along the Waterfront, and (e) increased rental revenues to the Harbor Fund that will exceed the current and projected revenues from existing parking operations on the Site; and, be it further

RESOLVED, That the Port Commission approves the form and the substance of the Transaction Documents, including all attachments and exhibits thereto, and the transactions which such Transaction Documents contemplate, incorporating the material business terms set forth in the Memorandum accompanying this Resolution; and be it further

RESOLVED, That the Port Commission hereby approves the Schematic Drawings of the Project on file with the Port Commission Secretary and the representative Schematic Drawings of the building(s) within the Site, as shown in the attachment to the Memorandum accompanying this Resolution, and authorizes the Executive Director to approve non-material changes in the Schematic Drawings; and be it further

RESOLVED, That the Port Commission authorizes and directs the Executive Director of the Port ("Executive Director") to forward Lease No. L-16585 to the Board of Supervisors for approval pursuant to its authority under Charter Section 9.118, and upon the effectiveness of such approval, to execute the LDDA, and subject to the terms of the LDDA, as applicable, execute the Lease in substantially the form of such agreements on file with the Port Commission Secretary, and in such final form as is approved by the Executive Director in consultation with the City Attorney; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director to extend the ENA up to February 3, 2020 without payment of additional extension fees, solely in the event the Board of Supervisors' does not take action on the matter before November 4, 2019; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director to enter into other agreements, encroachment permits, easement agreements, and other related covenants and property documents necessary to implement the transactions contemplated by the Transaction Documents, and to enter into any additions, amendments or other modifications to the Transaction Documents including preparation and attachment of, or changes to, any or all of the attachments and exhibits that the Executive Director, in consultation with the City Attorney, determines are in the best interests of the City, do not materially decrease the benefits or otherwise materially increase the obligations or liabilities of the City or Port, and are necessary or advisable to complete the transactions that the Transaction Documents contemplate and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of such other agreements, easement agreements and other related covenants and property documents, and/or additions, amendments or other modifications to the Transaction Documents; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director and any other appropriate officers, agents or employees of the City to take any and all steps (including if necessary, obtaining Board of Supervisors approval and the execution and delivery of any and all applications, recordings, maps, certificates, agreements, notices, consents, and other instruments or documents) as they or any of them deems necessary or appropriate, in consultation with the City Attorney, in order to consummate (i) the vacation of a portion of Davis and Vallejo Streets, (ii) any sidewalk widening legislation specific to the Project, or (iii) other real property matters necessary to effectuate the purpose and intent of this Resolution; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director and any other appropriate officers, agents or employees of the City to take any and all steps (including the execution and delivery of any and all certificates, agreements, notices, consents, escrow instructions, closing documents

and other instruments or documents) as they or any of them deems necessary or appropriate, in consultation with the City Attorney, in order to consummate the transactions contemplated under the Transaction Documents, in accordance with this Resolution, or to otherwise effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by any such person or persons of any such documents; and be it further

RESOLVED, That the Port Commission approves, confirms and ratifies all prior actions taken by the officials, employees and agents of the Port Commission or the City with respect to the Transaction Documents.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of September 10, 2019.



Secretary

