

File No. 120200

Committee Item No. 8

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance SUB-Committee

Date: March 7, 2012

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
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| <input type="checkbox"/> | <input type="checkbox"/> | Ethics Form 126 |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
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| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
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OTHER

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Completed by: Victor Young

Date: March 2, 2012

Completed by: Victor Young

Date: _____

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

1 [Lease for Real Property - China Basin Ballpark Company, LLC. - Seawall Lot 337]

2
3 **Resolution approving Port Commission Lease No. L-14980 with China Basin Ballpark**
4 **Company, LLC. (CBBC), for certain real property located at Seawall Lot 337 ("SWL**
5 **337"), including a license for certain areas of Pier 48 Shed A, Shed C, the Pier 48**
6 **Valley and access to SWL 337 from surrounding public rights of way in the City and**
7 **County of San Francisco for a term of five years.**

8
9 WHEREAS, California Statutes of 1968, Chapter 1333 (the "Burton Act") and the San
10 Francisco Charter Section 4.114 and B3.581 empower the San Francisco Port Commission
11 with the power and duty to use, conduct, operate, maintain, manage, regulate and control the
12 lands within Port Commission jurisdiction; and,

13 WHEREAS, Since September 9, 1997, China Basin Ballpark Company, LLC.
14 ("CBBC") has been a tenant of the Port of San Francisco at SWL 337 ("1997 Lease") with
15 premises comprised of undeveloped land on which Tenant developed and operates a surface
16 parking lot in connection with its operation of AT&T Park; and,

17 WHEREAS, the 1997 Lease authorized commuter parking and special events and
18 special event parking as a permissible use at SWL 337; and,

19 WHEREAS, Use of Port property for surface parking generates a significant revenue
20 stream to the Port; and,

21 WHEREAS, the 1997 Lease expired on November 15, 2009 and has been on a
22 month-to-month holdover status since; and,

23 WHEREAS, Port staff and CBBC have negotiated terms for a new, interim five-year
24 lease for SWL 337 including a license to use Pier 48 Sheds A, C and Valley for special
25 events and parking; and,

1 WHEREAS, CBBC is a Tenant in Good Standing pursuant to Port Commission policy;
2 and,

3 WHEREAS, On September 9, 1997, the Port Commission approved CEQA findings
4 supporting the use at SWL 337 which are relied upon for the pending new lease; and,

5 WHEREAS, On October 25, 2011, the Port Commission approved Resolution No. 11-
6 68, approving Lease No. L-14980 with CBBC for surface parking, special events and signage
7 for SWL 337, including a license for surrounding rights of way, and Pier 48 Shed A, Shed C
8 and the Pier 48 Valley for the same general purposes; and,

9 WHEREAS, Lease No. L-14980 includes high season base rent to the Port of \$355,000
10 per month from April 1st through September 30th and low season rent to the Port of \$45,000
11 per month from October through March, subject to annual fixed three percent increases; and,

12 WHEREAS, Lease No. L-14980 also includes payment of percentage rent for parking
13 operations equal to sixty six percent of CBBC's monthly gross parking revenues including
14 parking revenues from special event parking and after deduction of City parking taxes and
15 certain extraordinary expenses in connection with ballpark events; and,

16 WHEREAS, Lease No. L-14980 also includes fixed fees for special events of less than
17 fourteen days duration; fees for special events at SWL 337 of fourteen days or more are
18 subject to negotiation and approval by Executive Director of the Port not to be less than the
19 current market rate for the use of such space; and,

20 WHEREAS, CBBC shall also pay the Port fifty percent of all gross revenue attributable
21 to approved promotional signage on the Premises; and,

22 WHEREAS, A copy of the form of lease is on file with the Clerk of the Board of
23 Supervisors in File No. 120200 and is hereby declared to be part of this Resolution as is fully
24 set forth herein (the "Lease"); and,
25

1 WHEREAS, San Francisco Charter Section 9.118 requires Board of Supervisors
2 approval of leases having a term of ten (10) or more years or having anticipated revenue to
3 the City of One Million Dollars (\$1,000,000.00) or more; and,

4 WHEREAS, This Lease is likely to meet the One Million Dollar (\$1,000,000.00)
5 threshold; and,

6 WHEREAS, The lease term will be five years commencing upon Board of Supervisor
7 approval and upon full execution by the Port; and,

8 WHEREAS, The Port Commission found that the new lease should be directly
9 negotiated with CBBC as a competitive bid would be impractical or impossible due to
10 uncertainties presented by the development rights for the premises pursuant to the May 25,
11 2010, Port Commission approved Exclusive Negotiation Agreement ("ENA") with Seawall Lot
12 337 Associates, LLC., to negotiate terms for the development and lease of SWL 337 and Pier
13 48; now, therefore, be it

14 RESOLVED, That the Board of Supervisors approves the Lease; and, be it

15 FURTHER RESOLVED, That the Board of Supervisors hereby finds that competitive
16 bidding for the rights granted pursuant to Lease No. L-14980 is impractical; and, be it

17 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
18 Director of the Port (the "Executive Director") or her designee to execute the Lease in a form
19 approved by the City Attorney and in substantially the form of the lease on file; and, be it

20 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
21 Director to enter into any additions, amendments or other modifications to the Lease
22 (including, without limitation, preparation and attachment of, or changes to, any or all of the
23 exhibits and ancillary agreements) that the Executive Director, in consultation with
24 the City Attorney, determines is in the best interest of the Port, do not alter the rent or
25

1 the Port's projected income from the Lease, do not materially increase the obligations or
2 liabilities of the Port or City or materially decrease the public benefits accruing to the Port, and
3 are necessary or advisable to complete the transactions contemplate and
4 effectuate the purpose and intent of this Resolution, such determination to be conclusively
5 evidenced by the execution and delivery by the Executive Director of any such documents.
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Item 8
File 12-0200

Department:
Port

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve a sole source (a) new five-year lease for Parcel A (Seawall Lot 337) and (b) five-year non-exclusive license for Pier 48 Shed A, Pier 48 Shed C, Pier 48 Valley, Parcel A expansion area, Parcel A-1, A-2, Parcel B and access to Seawall Lot 337 from surrounding public rights of way, between the City, on behalf of the Port, and the China Basin Ballpark Company, LLC (CBBC), from April 1, 2012 through March 31, 2017 for ballpark parking, commuter parking, special events and promotional signage.

Key Points

- On September 22, 1997, the Board of Supervisors approved a sole source (a) ten-year, four and one-half month ground lease between the Port, and CBBC, a subsidiary of the San Francisco Giants (Giants), from July 1, 1999 through November 15, 2009, for the development, construction and operation of a new ballpark parking lot at Seawall Lot 337, and (b) the CEQA findings supporting the use of this property as a parking lot.
- The lease has continued on a month-to-month basis, since expiring on November 15, 2009. On April 1, 2011, the Port increased the monthly base rent to CBBC from \$117,092 per month, or a total of \$1,405,101 annually, to a seasonally adjusted rate of \$355,000 per month for the six months between April 1 and September 30 and \$45,000 per month for the six months between October 1 and March 31, or a total of \$2,400,000 annually.
- On May 25, 2010, the Port Commission authorized Port staff to enter into an Exclusive Negotiation Agreement, with Seawall Lot 337 Associates, LLC, from September 15, 2010 through March 15, 2017, to negotiate the development of Seawall Lot 337 and Pier 48 for a mixed-used development.

Fiscal Impacts

- Under the proposed resolution, CBBC will pay the Port (a) base rent of \$2,400,000 in the first year, plus (b) 66 percent of gross receipts for parking, net of the (i) City's Parking Tax, (ii) base monthly rent, and (iii) rent credit of up to \$638,600 the first lease year for CBBC's substantiated extraordinary expenses for providing parking for AT&T Park. Each year, both the base rent and rent credits would be increased by three percent.
- Over the five-year term of the proposed lease and license, CBBC would pay the Port a total of \$12,743,948 in base parking revenues and CBBC estimates additional payments of \$720,000 in percentage parking revenues plus and estimated \$225,000 for special events to the Port, for a total of approximately \$3,345,000 in 2012.

Policy Considerations

- The Budget and Legislative Analyst questions (a) why a new lease was not submitted to the Board of Supervisors for approval until now, instead of going on a month-to-month basis for over 27 months, and (b) why it took the Port from November 15, 2009 until April 2011, a period of 16.5 months, to increase CBBC's rent on Seawall Lot 337 from a total of \$1,405,101 annually, to a total of \$2,400,000 annually.
- Although the Port typically conducts public bidding processes to select parking lot operators, the Port is recommending the award of the proposed lease and license on a non-competitive, sole source basis, because, (a) the Giants AT&T Park loan includes a security interest for parking, (b) the Giants again advised the Port of their need to control the main parking lots that serve AT&T Park to ensure uniform pricing, and a safe, consistent user experience for ballpark attendees, and (c) the uncertainties presented by the developer's rights through the Exclusive Negotiating Agreement with Seawall Lot 337 Associates for Seawall Lot 337 and the adjacent Pier 48.

Recommendation

- Approval of the proposed resolution is a policy decision for the Board of Supervisors.

MANDATE STATEMENT / BACKGROUND**Mandate Statement**

In accordance with Section 9.118(c) of the City's Charter, any lease of property that extends for a term of ten years or more or has anticipated revenue to the City of \$1,000,000 or more is subject to approval by the Board of Supervisors.

Background

On September 22, 1997, the Board of Supervisors approved (a) a ten-year, four and one-half month ground lease between the City and County of San Francisco, on behalf of the Port, and the China Basin Ballpark Company (CBBC), LLC¹, a subsidiary of the San Francisco Giants (Giants), which extended from July 1, 1999 through November 15, 2009; for the development, construction and operation of a new ballpark parking lot at Seawall Lot 337, and (b) the California Environmental Quality Act (CEQA) findings supporting the use of this property for a parking use (Resolution 880-97; File 262-97-7). Seawall Lot 337 covers 586,447 square feet of land for surface parking for approximately 2,000 vehicles, and is located just south of AT&T Park and China Basin Channel (McCovey Cove), bordered by Third Street to the west, Terry Francois Boulevard to the north and east and Mission Rock to the south, as shown in the attached map, identified as Parcel A, Seawall Lot (SWL) 337.

According to Mr. Phil Williamson, Project Manager at the Port, in the late 1990's, anticipating the construction of AT&T Park², the Giants advised the Port and the City as to the need to have one parking lot operator for the main parking lots located immediately south of AT&T Park to insure uniform pricing and a safe, consistent user-experience for baseball park attendees. In addition, Mr. Jack Bair, Senior Vice President for the Giants advises that the loan for the privately-financed AT&T Park which will be fully repaid in September of 2017 includes a security interest for parking, specifying that sufficient parking would be provided to correspond with the 16,000 premium seat licenses. As a result, the Board of Supervisors approved the ground lease between the Port, as the lessee, and CBBC, as the lessor, on a sole source basis, without a competitive bid. CBBC then entered into a separate agreement with Imperial Parking Company to construct and operate the parking lot.

The original lease provided that the parking lot could be used for bicycles and motor vehicles for baseball games and special events at AT&T Park, and any other permitted uses, with the Port's prior written consent, which could not be unreasonably withheld. Mr. Williamson notes that the original lease was subsequently revised in 2000, to allow the subject Seawall Lot 337 parking lot to not only be used for parking for AT&T Park events, but also for commuter parking and special events³. Mr. Williamson advises that this revision was not subject to Board of Supervisors approval because, as noted above, the original lease required only the Port's written consent.

¹ China Basin Ballpark Company, LLC is a subsidiary of San Francisco Baseball Associates (dba San Francisco Giants) that was specifically established to develop, construct and operate AT&T Park and the related parking lots.

² Construction of AT&T Park commenced in 1997 and concluded in 2000, prior to its opening in April of 2000.

³ Such special events include using the parking lot site for Cirque du Soleil, Cavallia (an equestrian event) and the County Fair, with all revenue from commuter parking and these special events included in the calculation of net parking revenue.

Under the terms of the existing lease, CBBC paid the Port (a) a monthly base rent, which adjusted after five years equal to the percentage change in the Consumer Price Index, plus (b) 50 percent of net parking revenue, after deducting (1) the City's Parking Tax⁴ and (2) capital improvement and operating expenses, which included the base rent paid to the Port. In addition, this lease required CBBC to investigate and remediate hazardous materials in connection with the construction of the parking lot, with allowable rent credits to CBBC of up to \$100,000 annually. Mr. Nate Cruz of the Port advises that the Port provided CBBC with \$97,437 of rent credits for such hazardous materials remediation in 2000, which is identified in Table 1 below.

Subsequent to the lease expiration date of November 15, 2009, Mr. Williamson states that the existing lease has continued on a month-to-month holdover basis. In accordance with the lease's holdover provisions⁵, on April 1, 2011, the Port increased the monthly base rent to CBBC for Seawall Lot 337 from \$117,092 per month, or a total of \$1,405,101 annually, to a seasonally adjusted rate of \$355,000 per month for the six months between April 1 and September 30 and \$45,000 per month for the six months between October 1 and March 31, or a total of \$2,400,000 annually. Table 1 below shows the actual rents less the credits received by the Port over the term of this lease.

Table 1: Base, Percentage and Other Rents and Credits Paid by CBBC to the Port from September 1999 Through March 2012

Lease Year	Base Rent	Percentage	Other**	Total Rent	Less Credits	Net
FY 1999-00*	\$790,126	-	-	\$790,126	-	\$790,126
FY 2000-01	1,218,648	-	-	1,218,648	(\$97,437)	1,121,211
FY 2001-02	1,218,648	-	-	1,218,648	-	1,218,648
FY 2002-03	1,218,648	365,903	-	1,584,551	-	1,584,551
FY 2003-04***	1,218,648	544,071	-	1,762,719	(431)	1,762,288
FY 2004-05	1,234,186	508,847	-	1,743,033	-	1,743,033
FY 2005-06	1,405,101	734,539	\$500	2,140,140	-	2,140,140
FY 2006-07	1,405,101	640,427	1,000	2,046,528	-	2,046,528
FY 2007-08	1,405,101	854,571	-	2,259,672	-	2,259,672
FY 2008-09	1,405,101	640,985	-	2,046,086	-	2,046,086
FY 2009-10	1,405,101	639,775	-	2,044,877	-	2,044,877
FY 2010-11****	1,053,826	591,795	-	1,645,621	-	1,645,621
FY 2011-12*****	2,280,000	1,051,974	-	3,331,974	(24,000)	3,355,974
Total	\$17,258,235	\$6,572,886	\$1,500	\$23,832,622	(\$121,868)	\$23,710,754

*FY 1999-00 includes ten months of data from September 1, 1999 through June 30, 2000. **Other reflects three charges of \$500 each for late payments by CBBC to the Port. *** \$431 credit is for partial reimbursement by Port to CBBC for billboard advertising revenues. ****FY 2010-11 includes nine months of data from July 1, 2010 through March 31, 2011. *****FY 2011-12 includes 12 months of data from April 1, 2011 through March 31, 2012, at base rent of \$331,000 per month instead of \$355,000 per month, a credit reduction of \$24,000 per month due to overpayments made by CBBC to the Port in February and March of 2011, such that CBBC paid base rent of \$2,280,000 instead of \$2,400,000 in FY 2011-12.

⁴ In accordance with Article 9 of the City's Business and Tax Regulations Code, the City's current Parking Tax rate is 25 percent of the base parking charge. For example, if the base parking charge is \$8, then the total parking charges would be \$10 for the patron, with \$2 for the Parking Tax being remitted by the parking operator to the City Tax Collector's Office.

⁵ Section 27 of the current lease provides that any holding over after the expiration of the term with the consent of the Port shall be deemed a month-to-month tenancy and shall be upon each and every one of the terms, conditions and covenants of this lease, except that, at Port's election, the rent shall be adjusted to the then current market rate as reasonably determined by the Port.

In 2003, the Port competitively bid and subsequently awarded a two-year ground lease to Imperial Parking Inc. for operation of a parking lot at Seawall Lot 330, located at the Embarcadero and Bryant Streets, approximately five blocks away from the subject Seawall Lot 337. The lease between the Port and Imperial Parking Inc. allowed for expansion rights to other Port parking facilities, at the discretion of the Port. In 2003, this lease expanded to include Piers 30-32 and in 2005, this lease expanded to include Pier 48, which is immediately adjacent to the subject Seawall Lot 337. Mr. Williamson advises that this original two-year lease, including the expansion areas, between the Port and Imperial Parking, which expired in 2005, has continued on a month-to-month basis.

In October, 2007, the Port issued a Request for Qualifications (RFQ) for a mixed-use development on Seawall Lot 337 and the adjacent Pier 48. Two of the four respondents to the RFQ were invited to respond to the Port's Request for Proposal (RFP) issued in May, 2008. The two respondents merged and formed one entity and in May 2009, the Port Commission selected this remaining team, Seawall Lot 337 Associates, LLC⁶, as the preferred developer for these sites. On May 25, 2010, the Port Commission authorized Port staff to enter into an Exclusive Negotiation Agreement, with Seawall Lot 337 Associates, LLC, that extends from September 15, 2010 through March 15, 2017, to negotiate terms and secure entitlements for the development and lease of Seawall Lot 337 and Pier 48 for a mixed-used development, including a parking structure, offices, retail and housing. Mr. Williamson advises that, due to the recent economic and financial market slowdown, the development of these sites has been delayed, such that a revised proposal for the entire site is now to be submitted by Seawall Lot 337 Associates, LLC to the Port by March 15, 2012. According to Mr. Williamson, once a revised proposal is received, the Port will work with Seawall Lot 337 Associates, LLC to negotiate a term sheet, which would result in a Disposition and Development Agreement, and environmental documents, in accordance with CEQA, which would be subject to future Board of Supervisors approval.

DETAILS OF PROPOSED LEGISLATION

As was the case when the existing lease was previously approved by the Board of Supervisors in 1997, the proposed resolution would likewise approve, on a sole source basis, a (a) new five-year lease for Parcel A (Seawall Lot 337), and (b) five-year non-exclusive⁷ license for Pier 48 Shed A, Pier 48 Shed C, Pier 48 Valley⁸, Parcel A expansion area, Parcel A-1, A-2, Parcel B and access to Seawall Lot 337 from surrounding public rights of way, between the City and County of San Francisco, on behalf of the Port, and the China Basin Ballpark Company, LLC (CBBC) (Giants), from April 1, 2012 through March 31, 2017, for ballpark parking, commuter parking, special events and promotional signage. As discussed above, CBBC currently has a month-to-month lease for Parcel A, Seawall Lot 337.

Table 2 below shows the square footage for the proposed lease and license agreements and the attached map identifies both the location and square footage of each parcel. As shown in Table

⁶ Seawall Lot 337 Associates, LLC is a partnership between the SF Giants and The Cordish Companies, a Baltimore, Maryland based retail developer.

⁷ The proposed non-exclusive license limits the licensee's right of use, allowing others to use the same space, and allows the Port to terminate the license, without cause, with written notice.

⁸ Pier 48 Valley is the open space between Pier 48 Shed A and Pier 48 Shed B.

2 below, the square footage of the lease with CBBC is 586,447 square feet, such that the addition of the license areas would result in a total of 801,590 square feet, an increase of 215,143 square feet, or 36.7 percent. As noted in Table 2 below, the square footage of Parcel A Expansion Site, Parcel A-1 and A-2 have not yet been determined, because the square footage will be subject to the realignment of Mission Rock Street, such that the actual increase of square footage will be greater.

Table 2: Sites and Square Footage of Proposed Lease and License

Sites	Square Footage
Lease	
Parcel A (Seawall Lot 337)	586,447
License	
Parcel C (Pier 48 Access Areas)	42,323
Pier 48 Shed A	84,630
Pier 48, Shed C	9,555
Pier 48, Valley	33,285
Parcel B	45,350
Parcel A Expansion Site, A-1 and A-2	To Be Determined (TBD)
Subtotal License (Square Feet)	215,143
Total Lease and License (Square Feet)	801,590

As discussed above, Pier 48 is currently under a separate expansion month-to-month lease between the Port and Imperial Parking, Inc. Under that lease, Imperial Parking pays the Port 66 percent of gross revenues, after deducting City Parking Taxes. Table 3 below shows the annual rent paid by Imperial Parking to the Port for each of the last five years.

Table 3: Parking Revenues Paid by Imperial Parking to the Port for Pier 48

Fiscal Years (May thru April)	Annual Rent
FY 2006-07	\$338,208
FY 2007-08	656,201
FY 2008-09	503,048
FY 2009-10	578,876
FY 2010-11	537,843
Total	\$2,614,176

The proposed resolution would also approve a license between the Port, as lessee, and CBBC, as lessor, which provides that the Port, at its sole discretion, may offer CBBC potential expansion to include Pier 48 Shed B⁹, with 30 days written notice, specifying the additional area, and additional base rent to be paid by CBBC to the Port, to be determined at that time. If the proposed resolution is approved by the Board of Supervisors, such expansion option would not be subject to further Board of Supervisors approval. If CBBC agrees to the expansion option, Shed B would be added to the subject license agreement.

The proposed lease and license also allow CBBC to use its marketing expertise to promote events at Seawall Lot 337 and Pier 48. As part of these marketing efforts, the proposed lease and license allow CBBC to sell promotional space on directional signs within Seawall Lot 337 parking lot. All revenue from such sales of promotional space, net of CBBC's costs of creating the promotional materials, would be shared equally between the Port and CBBC.

Under the proposed lease and license, special events that extend longer than (a) five days would require approval from the Port's Executive Director, (b) 14 days, but do not exceed 60 days would also require approval for the amount of rent from the Port's Executive Director, (c) 60 days would require approval from the City's Zoning Administrator, and (d) 90 days would require approval from the Port Commission.

FISCAL IMPACTS

As discussed above, in accordance with the lease's holdover provisions, on April 1, 2011, the Port increased the monthly base rent to CBBC for Seawall Lot 337 from \$117,092 per month, or a total of \$1,405,101 annually, to a seasonally adjusted rate of \$355,000 per month for the six months between April 1 and September 30 and \$45,000 per month for the six months between October 1 and March 31, or a total of \$2,400,000 annually.

⁹ Pier 48 Shed B is currently being used pursuant to a Memorandum of Understanding (MOU) between the Port and the Department of Elections for storage. This MOU extends from January 2012 through December 2015.

Under the proposed new five-year lease and license CBBC will continue to pay the Port (a) base rent of \$355,000 per month for the six month period from April 1st through September 30th and \$45,000 per month for the six month period from October 1st through March 31st¹⁰, or a total of \$2,400,000 annually. In addition, CBBC will pay the Port 66 percent of all gross receipts for parking, net of (a) the City's Parking Tax, (b) the base monthly rent, and (c) a rent credit of up to \$638,600 in the first lease year for CBBC's substantiated extraordinary expenses.¹¹ for providing parking for AT&T Park. Each year, both the base rent and available rent credits would be increased by three percent.

As shown in Table 4 below, over the five-year term of the proposed lease and license, CBBC would pay the Port a total of \$12,743,948 in base parking revenues.

Table 4: Projected Monthly Base Parking Revenues over Five Year Term of Proposed Lease and License

Lease Year	Months	Monthly Base Rates	Total Monthly Revenue	Total Annual Revenue
Year 1	April 1 - Sept 30	\$355,000	\$2,130,000	\$2,400,000
	Oct 1- March 31	\$45,000	\$270,000	
Year 2	April 1 - Sept 30	\$365,650	\$2,193,900	\$2,474,000
	Oct 1- March 31	\$46,350	\$278,100	
Year 3	April 1 - Sept 30	\$376,620	\$2,259,720	\$2,546,166
	Oct 1- March 31	\$47,741	\$286,446	
Year 4	April 1 - Sept 30	\$387,919	\$2,327,514	\$2,622,552
	Oct 1- March 31	\$49,173	\$295,038	
Year 5	April 1 - Sept 30	\$399,557	\$2,397,342	\$2,701,230
	Oct 1- March 31	\$50,648	\$303,888	
Total				\$12,743,948

In addition, as discussed above, CBBC would also pay the Port (a) 66 percent of all gross receipts for parking, net of the City's Parking Tax, the base monthly rent, less a rent credit of up to \$638,600 the first year, to be increased by three percent per year, for CBBC's substantiated extraordinary expenses, (b) special event fees, and (c) 50 percent rent for promotional signage. Currently, the cost to park in Seawall lot 337 is \$30.00 for automobiles and \$50.00 for oversized vehicles (i.e. RVs and Buses). CBBC has the exclusive right to set the parking rates to be charged under this proposed lease and license.

¹⁰ This differentiation in monthly parking rents is due to the seasonality of baseball games at AT&T Park that occur primarily during the spring and summer months.

¹¹ Eligible extraordinary expenses include costs not required at other Port surface parking lots, such as 100 percent of security, operation of accessible shuttle buses, temporary bathroom facilities and post-game premises cleaning plus 33 percent of parking attendant labor costs. Mr. Williamson notes that the actual CBBC expenses are significantly higher than the negotiated maximum amount of \$638,600 in the first year of the lease.

For each special event under 14 days, CBBC would pay the Port the specified fees outlined in the proposed lease and license, plus 66 percent of parking revenues if 66 percent of the parking revenues exceed the base monthly rent. If the special event exceeds 14 days, the new lease and license require the Port and CBBC to negotiate a market-based agreement that is not less than the Port Commission's previously approved rental rates, subject to approval by the Executive Director of the Port. If a special event displaces percentage rent from parking revenues, CBBC and the Port must then negotiate a payment that makes the Port whole.

According to Mr. Bair, CBBC anticipates installing directional signage in the parking lot to assist customers in locating their vehicles, and CBBC's anticipates approaching sponsors to include banners on these signs in exchange for promotional fees. Mr. Bair estimates that such fees would generate less than \$100,000 total revenues annually, and that such fees would primarily be used to fund the costs of the signage and banners. All revenue from such sales of promotional space, net of CBBC's cost to create the promotional materials, would be shared equally between the Port and CBBC.

As shown above in Table 4, with respect to base rent only, CBBC will pay the Port total base rent of \$12,743,948 over the proposed five-year term of the proposed lease and license. Mr. Bair advises that, in addition to the \$2,400,000 base revenues, CBBC estimates paying an additional \$720,000 of percentage parking revenues plus and estimated \$225,000 for special events to the Port, for a total approximately \$3,345,000 in 2012.

POLICY CONSIDERATIONS

As discussed above, the existing ground lease for Parcel A, Seawall Lot 337 expired on November 15, 2009, such that the lease has continued on a month-to-month holdover basis for over 27 months. In addition, as discussed above, on April 1, 2011, the Port increased the monthly base rent for Seawall Lot 337 from \$117,092 per month, or a total of \$1,405,101 annually, to a seasonally adjusted rate of \$355,000 per month for the six months between April 1 and September 30 and \$45,000 per month for the six months between October 1 and March 31, or a total of \$2,400,000 annually.

The Budget and Legislative Analyst questions (a) why a new lease was not submitted to the Board of Supervisors for approval until now, instead of going on a month-to-month basis for over 27 months, and (b) why it took the Port from November 15, 2009 until April 2011, a period of 16.5 months, to increase CBBC's rent on Seawall Lot 337 from \$117,092 per month, or a total of \$1,405,101 annually, to a seasonally adjusted rate of \$355,000 per month for the six months between April 1 and September 30 and \$45,000 per month for the six months between October 1 and March 31, or a total of \$2,400,000 annually, which was determined to be the market rate.¹² As noted above, under Section 27 of the existing lease, if the lease goes into a month-to-month holdover period, the Port can adjust the rent to the then current market rate. In response, Mr.

¹² Mr. Williamson advises that the market rate was based on the Port's total estimated revenues from both Seawall Lot 337 and Pier 48 of \$3,000,000. To determine the base rent, Mr. Williamson advises that the Port assumed 80 percent of this total \$3,000,000, or \$2,400,000 and then divided the calculated amount into high and low season due to the seasonality of baseball and use of AT&T Park.

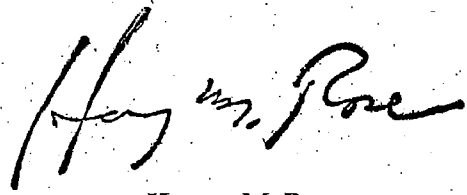
Williamson advises that it took the Port considerable time to negotiate these new rates with CBBC.

Mr. Williamson advises that the Port typically conducts public bidding processes to select parking lot operators. However, according to Mr. Williamson, the Port did not competitively bid the proposed parking lease and license, and instead has recommended the award of the proposed lease and license on a non-competitive, sole source basis, because, similar to the initial lease entered into in 1999, the Giants again advised the Port of their need to control the main parking lots that serve AT&T Park to ensure uniform pricing, and a safe, consistent user experience for ballpark attendees. In addition, the Giants advised that the loan for the privately-financed AT&T Park, which will be fully repaid in September of 2017, includes a security interest for parking. Furthermore, Mr. Williamson advises that it would be impractical to conduct a public competitive bid process because of the uncertainties presented by the developer's rights through the Exclusive Negotiating Agreement with Seawall Lot 337 Associates for Seawall Lot 337 and the adjacent Pier 48. For example, Mr. Williamson advises that the developer, Seawall Lot 337 Associates, has the right to conduct due diligence which could be invasive and disruptive to parking lot operations, such as soil sampling and core drillings in the parking lots. Because the Giants are members of the developer, Seawall Lot 337 Associates, and the parking lot lessee, CBBC, any invasive or disruptive activities will be fully coordinated to minimize the impacts on both parking and development activities.

Mr. Williamson advises that both the proposed lease and license agreements state that if the Exclusive Negotiating Agreement with Seawall Lot 337 Associates is terminated or expires, the Port has the right to terminate the subject lease and license agreements by November 15 of that year, by providing at least 30 days written notice to CBBC. In fact, according to Mr. Williamson, the Port's right to terminate was considered a material term of the proposed lease and license agreements. Therefore, if the Board of Supervisors approves the proposed lease and license agreements, and the Exclusive Negotiating Agreement with Seawall Lot 337 Associates is terminated, such as for performance or project infeasibility, Mr. Williamson advises that the Port would pursue its typical public competitive bidding process for any future lease of Seawall Lot 337 and the adjacent Pier 48.

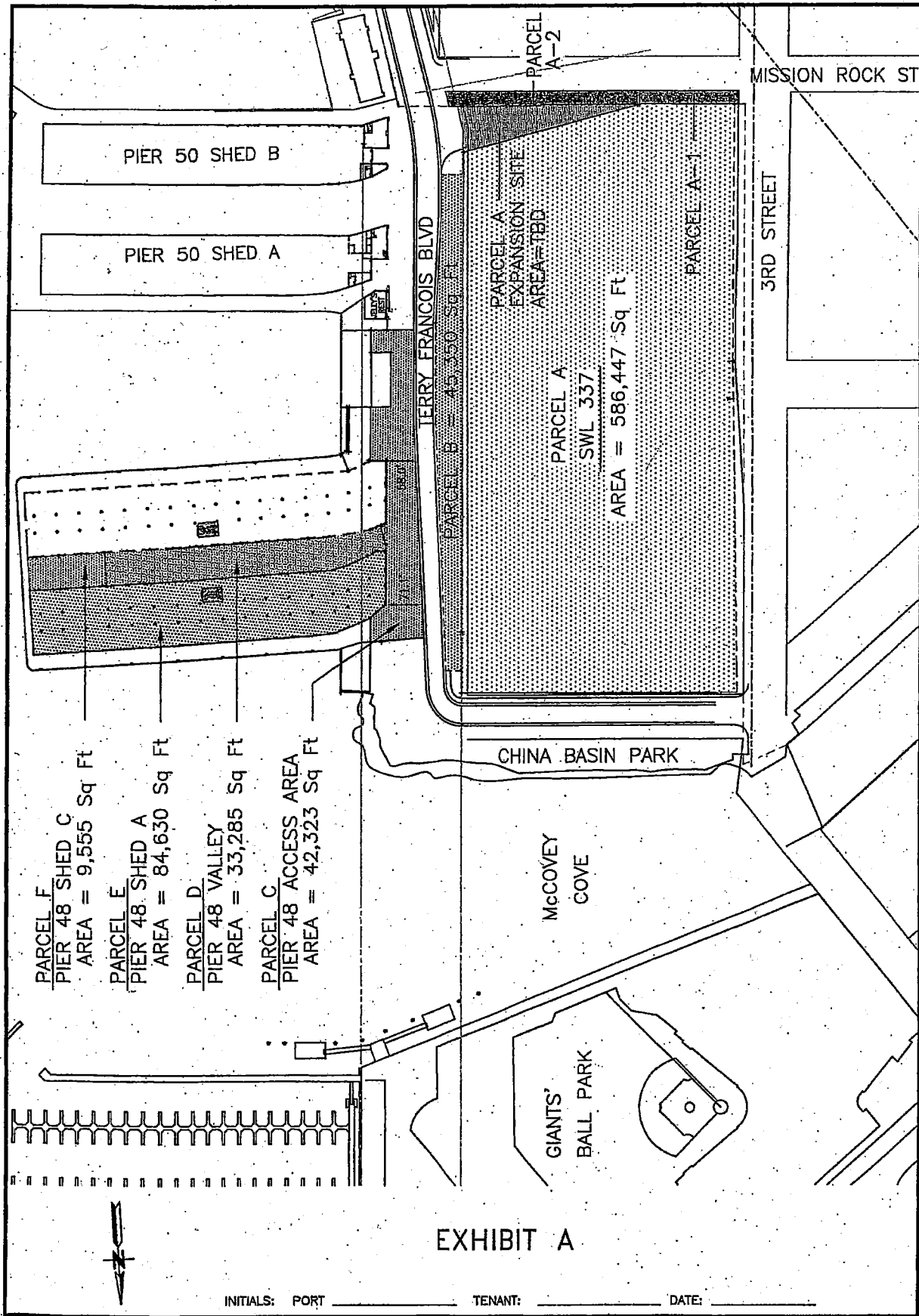
RECOMMENDATION

Approval of the proposed resolution is a policy decision for the Board of Supervisors.



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
Controller
Kate Howard



LEASE NO. L-14980	SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	TENANT CHINA BASIN BALLPARK CO., LLC.	DRAWN BY: ECC CHECKED BY: P. WILLIAMSON PLACE CODE NO.	DATE: FEB 27, 2012 SCALE: 1" = 200' SHEET NO.
			3370-LAND1	

EXHIBIT A

INITIALS: PORT _____ TENANT: _____ DATE: _____



February 28, 2012

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

Subject: China Basin Ballpark Company, LLC, Lease Agreement

Dear Ms. Calvillo:

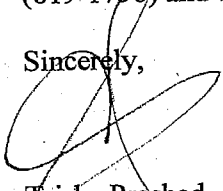
Attached please find an original and four copies of a proposed resolution for Board of Supervisors approval, authorizing and directing the Port Executive Director to execute Lease No L-14980 between China Basin Ballpark Company, LLC and the City and County of San Francisco operating by and through the San Francisco Port Commission ("Agreement") for a new five-year lease for Seawall Lot 337, Pier 48 Shed A, Shed C, the Pier 48 Valley and access from Terry Francois Blvd. and Mission Rock Street.

Attached you will also find the following supporting documents:

1. Four copies of the Port Commission Staff Report and companion Resolution 11-68 (approving the Lease Agreement subject to Board of Supervisors approval);
2. Four copies of the China Basin Ballpark Company, LLC, Lease No L-14980 subject to Board of Supervisors approval.

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.sfport.com

San Francisco, CA 94111



MEMORANDUM

October 20, 2011

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Ann Lazarus, Vice President
Hon. Francis X. Crowley
Hon. Doreen Woo Ho
Hon. Leslie Katz

FROM: Monique Moyer 
Executive Director

SUBJECT: Request authorization to award, subject to the Board of Supervisors approval, a five-year lease for surface parking, special events and signage between the Port of San Francisco and China Basin Ballpark Company, LLC, Lease No. L-14980 for Seawall Lot 337, Pier 48 Shed A, Shed C, the Pier 48 Valley and access from Terry Francois Blvd and Mission Rock Street

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

BACKGROUND

On September 9, 1997, the Port Commission approved Resolution No. 97-78, authorizing Port staff to execute a ten-year lease with the China Basin Ballpark Co., LLC ("CBBC") for the development and construction of a new parking lot at Seawall Lot ("SWL") 337 and approving CEQA findings supporting this use. Both the lease and CEQA findings were subsequently approved by the San Francisco Board of Supervisors and, on November 15, 1999, Lease No. L-12515 commenced (the "Current Lease").

On November 15, 2009, the Current Lease term expired and has since been on a month-to-month holdover status. Effective April 1, 2011, pursuant to the Holding Over provisions of the Current Lease, Port staff increased the rent to market. Informed by the new market rate adjustment, Port staff and CBBC have negotiated terms for a new, interim 5-year lease (the "New Lease"). CBBC is a tenant in good standing pursuant to the Port's policy. These terms are presented below for your review and approval.

THIS PRINT COVERS CALENDAR ITEM NO. 10B

ANALYSIS

The Current Lease requires a rent payment of 50% of net parking revenue to the Port after deducting for City parking tax and operating expenses. Through the Current Lease termination date of November 2009, as allowed by the Current Lease, CBBC was permitted a rent credit to reimburse costs related to the initial development of the parking lot (demolition of pre-existing structures, site grading, drainage, lighting, fencing, striping). Under the proposed New Lease, the Port is guaranteed the greater amount of either Base Rent or 66% of all gross receipts for parking net of the City parking tax. Recognizing that 85% of the gross revenues for this parking lot derive from patrons of events at AT&T Park (primarily baseball games), the New Lease provides a deduction of up to \$620,000 per year for extraordinary expenses attributable to the provision of event style parking serving events at the ballpark. These terms have been applicable since April 1, 2011 when the Port exercised the holdover provisions of the Current Lease.

SPECIAL EVENTS

The Current Lease authorized special events as a permissible use at SWL 337. The New Lease permits CBBC to also use Pier 48 Shed A, C and Valley for special events. CBBC's use of Pier 48 shall be in the form of a non-exclusive license, allowing the Port and CBBC to coordinate space needs, ensuring maximum utilization and revenue generation from this facility.

CBBC will use its marketing expertise to promote events at Pier 48 and SWL 337 and pay rent consistent with Port Commission approved special event rental parameters. For special events greater than 14-days duration, the New Lease requires Port and CBBC to negotiate a market-based agreement approved by the Executive Director. In all such cases, the minimum payment to Port shall be no less than the Port Commission approved rental rate for paved land. If a special event displaces percentage rent from parking revenues, the parties must negotiate a payment making the Port whole to be approved by the Executive Director. Should the Port Commission approve the Resolution attached to this staff report, approval for the majority of special events will be at the discretion of the Port's Executive Director or her designee with special events exceeding 60-days duration requiring approval from the Port Commission.

The New Lease allows CBBC to use its marketing expertise to sell promotional space on directional signage within Parcel A. Such signage must conform to Port's sign guidelines with all revenues (net of costs of creating the promotional material) shared equally between Port and CBBC.

SOLE SOURCE

On May 25, 2010, the Port Commission approved Resolution No. 10-32, authorizing staff to enter into an Exclusive Negotiation Agreement ("ENA") with Seawall Lot 337 Associates, LLC to negotiate terms for the development and lease of SWL 337 and Pier

48. This ENA commenced September 15, 2010 and, with options to extend, continues into 2016. The ENA recognizes both the existing, month-to-month lease with CBBC, a San Francisco Giant's affiliate, and the effort to negotiate terms for a new interim lease.

At Port parking facilities not encumbered by an ENA, the Port conducts a public bidding process to determine a suitable parking lot operator. At SWL 337, staff recommends the Port Commission find that conducting a public bid is impractical because of the uncertainties presented by the developer's rights through the ENA. Should the Port Commission approve the New Lease, staff will proceed to the Board of Supervisors to seek sole source approval for direct negotiations and simultaneous approval of the New Lease. If, subsequent to the New Lease being approved by the Port Commission and the Board of Supervisors, the ENA were to terminate, the Port would pursue its typical public bidding process for a subsequent lease or leases at this site.

LEASE TERMS

Tenant	China Basin Ballpark Company, LLC
Lease No.	L-14980
Premises	SWL 337, Pier 48 Sheds A, C & Valley; Expansion to Pier 48 Shed B at Port's option.
Lease Commencement	Following Board of Supervisors approval, anticipated January 1, 2012.
Lease Expiration Date	60 months following the commencement date.
Monthly Base Rent ("Minimum Rent")	\$355,000, April – October \$45,000, November – March
Security Deposit	Stand By Letter of Credit in lieu of or in addition to cash at Port's sole discretion.
Rent Adjustment Percentage Rent	Annual 3%. The greater amount of the Base Rent or 66% of gross Revenue (after deduction for parking tax and up to \$620,000 in substantiated annual extraordinary costs directly associated with ballpark event parking) in excess of Monthly Base Rent. Eligible extraordinary costs include 100% of security, accessibility shuttle, temporary bathroom facilities and post-game Premises cleaning and one third of labor costs.
Port's Right to Terminate	Only upon termination of ENA.
Maintenance and Utilities	Port has no obligations.

Use Operation of parking lot for ballpark event parking, commuter parking, special events and in-site signage.

Operation Plan Tenant is required to submit and comply with Operational and Customer Service Plan to be approved by Port.

Insurance, Hazardous Materials and Holdover Provisions These provisions will conform to Port's standard form lease.

Other Approvals CEQA: Tenant shall comply with the applicable provisions and mitigation measures in the Final Environmental Impact Report for the Giants Ballpark certified June 26, 1997 (Case No. 96.176E) and the Addendum #3 to the Final Environmental Impact Report for the Giants Ballpark dated June 16, 1999. City Planning: The uses contemplated in this staff report have been authorized by the San Francisco Planning Department pursuant to Planning Code Section 205 (Temporary Use Authorization).

RECOMMENDATION

Port staff recommends that the Port Commission approve the five-year lease for parking, special events and on-site signage between the Port of San Francisco and China Basin Ballpark Company, LLC, Lease No. L-14980, for SWL 337, Pier 48 Shed A, Shed C and Pier 48 Valley and authorize the Executive Director to forward said Lease to the Board of Supervisors for award and approval pursuant to Board's authorization under Charter Section 9.118, and upon the effectiveness of such approval, execute said lease.

Prepared by: Phil Williamson, Project Manager
Jonathan Stern, Assistant Deputy Director

For: Byron Rhett, Deputy Director
Planning and Development

Susan Reynolds, Deputy Director
Real Estate

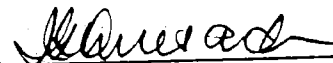
**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 11-68

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and
- WHEREAS, Use of Port property for surface parking generates a significant revenue stream to the Port, and the Port desires to operate its parking lots in an efficient manner while maximizing revenues; and
- WHEREAS, On September 9, 1997, the Port Commission approved CEQA findings supporting this use at Seawall Lot ("SWL") 337; and
- WHEREAS, The Port Commission approved ten-year lease with the China Basin Ballpark Company, LLC ("CBBC") for the development and construction of a new parking lot at SWL 337 expired on November 15, 2009, was adjusted to market on April 1, 2011, and has been on holdover status at market rate since that date; and
- WHEREAS, CBBC is a tenant in good standing pursuant to Port Commission policy; and
- WHEREAS, Port staff and CBBC have negotiated terms for a new, interim five-year lease as described in the staff report attached to this Resolution; and
- WHEREAS, The new lease will be directly negotiated with CBBC as a public bid is impractical due to uncertainties presented by the development rights for the premises pursuant to the May 25, 2010, Port Commission approved Exclusive Negotiation Agreement ("ENA") with Seawall Lot 337 Associates, LLC, to negotiate terms for the development and lease of SWL 337 and Pier 48; now, therefore, be it
- RESOLVED, That the Port Commission delegates to the Executive Director or his or her designee, the authority to consent or approve amendments or other implementing documents wherever the New Lease requires or permits; and, be it further
- RESOLVED, That the Port Commission awards, subject to Board of Supervisors' approval, the lease on the terms described in the attached staff report and authorizes and directs the Executive Director or her designee to forward the Lease to the Board of Supervisors (the "Board") for approval, pursuant to the Board's authority under Charter Section 9.118, and upon the effectiveness of such approval, to execute the Lease; and, be it further

RESOLVED, That the Port Commission authorizes the Executive Director to enter into any additions, amendments, or other modifications to the Lease that the Executive Director, in consultation with the City Attorney, determines are in the best interest of the Port, do not materially increase the obligation or liabilities of the City or Port, and are necessary or advisable to complete the transactions which the Lease 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 the Lease, and any such amendments hereto.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of October 25, 2011.


Secretary



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

LEASE NO. L-14980

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

AND

**CHINA BASIN BALLPARK COMPANY, LLC,
A DELAWARE LIMITED LIABILITY COMPANY**

SEAWALL LOT 337

**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**

** Complete copy of document is
located in

File No. 120200

