Lodged with Port Commission Secretary
February 22, 2013

CITY AND COUNTY OF SAN FRANCISCO
EDWIN LEE, MAYOR

TERM SHEET

BETWEEN

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

AND

SEAWALL LOT 337 ASSOCIATES, LLC

MONIQUE MOYER, EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

DOREEN WOO HO, PRESIDENT
KIMBERLY BRANDON, VICE PRESIDENT
WILLIE ADAMS, COMMISSIONER
LESLIE KATZ, COMMISSIONER

[Page intentionally left blank.]

.

TABLE OF CONTENTS

Exhibits and Appendix

TERM SHEET FOR PROPOSED MISSION ROCK PROJECT AT SEAWALL LOT 337 AND PIER 48

This Term Sheet (including all attachments), dated for reference purposes only as of __________, 2013, is the "Term Sheet" referred to in the Performance Benchmarks in the Exclusive Negotiation Agreement dated as of May 25, 2010, between the City and County of San Francisco (the "City"), acting by and through its Port Commission (the "Port"), and SWL 337 Associates, LLC ("Master Developer"), as amended by the First Amendment to Exclusive Negotiation Agreement dated as of October 9, 2012 (as amended, the "ENA"), and sets forth the basic terms on which the Port and Master Developer will negotiate further agreements for the development of Seawall Lot 337 ("SWL 337"), Pier 48, and a portion of Terry Francois Boulevard and other properties (together, the "Site") as further described in **Section 2** (Site Description) as a mixed-use project called Mission Rock (the "Project"). The terms in this Term Sheet are intended to provide for development that will be consistent with the Port's obligations under the Burton Act (stats. 1968, ch. 1333), as amended including amendments effected by Senate Bill 815 (stats. 2007, ch. 660) ("SB 815"), and the public trust for commerce, navigation, and fisheries (collectively, the "public trust").

This Term Sheet: (1) expands upon the Financial and Negotiating Principles incorporated into the ENA; (2) summarizes negotiations regarding the Project, including financial projections in **Exhibit E** (Summary Pro Forma); (3) has been informed by the ongoing public review process for the Project; (4) is subject to endorsement by the Port Commission and the Board of Supervisors (the "Board"), each in its respective sole discretion; and (5) is intended to satisfy the requirements of Sections 4.1 and 4.3 of the ENA. After Port Commission and Board endorsement, the parties will further negotiate and amplify the terms in the Term Sheet and incorporate them into a Disposition and Development Agreement (the "DDA") and related transaction documents between the Port and Master Developer (collectively, the "Transaction Documents"). The Project is subject to completion of environmental review under the California Environmental Quality Act ("CEQA") and certification of the final environmental impact report for the Project, adoption of a mitigation monitoring and reporting plan if necessary and approval of the Project and the Transaction Documents, (collectively, the "Project Approval"). Along with any attached or underlying documents, this Term Sheet outlines certain basic terms contemplated for the Transaction Documents but is not intended to be, and will not become, contractually binding on any party except to the extent the City, including its Port, and Master Developer execute and deliver the DDA and other Transaction Documents incorporating the Term Sheet provisions and any other conditions to Project Approval.

OVERVIEW

The Site and the Port's Objectives for Development

The major parcel in the Site is SWL 337, an approximately 16-acre site located south of Mission Creek/China Basin Channel in the Mission Bay community. SWL 337 is currently improved with China Basin Park at the north end and an asphalt parking lot that is leased to China Basin Ballpark Company, LLC, an affiliate of Master Developer, for ballgame and non-ballgame parking and special events.

Like the majority of Port properties, SWL 337 was historically composed of tide and submerged lands owned by the State of California (the "State") and subject to the common law public trust doctrine. Public trust lands are held on behalf of the people of the State for purposes of commerce, navigation, and fisheries. Tidal and submerged lands remain subject to the public trust even after they have been filled, unless the public trust is terminated by the California Legislature. The State transferred SWL 337 and other State sovereign lands to the City in 1969 under the Burton Act, which imposed a statutory trust and other requirements on the granted lands. The public trust generally prohibits certain land uses (such as general office, housing, many types of retail, commercial, and non-water-oriented recreational uses) in favor of maritime, open space, environmental restoration, and visitor-oriented activities (including tourist retail and hotels). Based on findings that certain designated Port seawall lots, including SWL 337, have been cut off from the water and are no longer needed, in whole or in part, for public trust purposes, SB 815 authorizes the public trust use restrictions to be lifted from those designated seawall lots until 2094.

Given its size and location, SWL 337 is one of the Port's most desirable development sites. Consistent with the Port's land use policy document, the Waterfront Land Use Plan, the Port engaged in a multi-year public planning process culminating in the following vision statement for development of the parcel:

> *Create a vibrant and unique mixed-use urban neighborhood focused on a major new public open space at the water's edge. This new neighborhood should demonstrate the highest quality of design and architecture, and the best in sustainable development with a mix of public and economic uses that creates a public destination which enlivens the Central Waterfront, celebrates the San Francisco Bay shoreline, and energizes development at Mission Bay. Consistent with enabling state legislation, the development program for the site should generate significant revenues to fund the Port's historic preservation and waterfront open space needs, and maximize public trust uses.*

The Site also includes Pier 48, a pile-supported 212,500 square-foot facility containing about 181,200 square feet of enclosed warehouse space and a 31,300 square-foot valley. Pier 48 is bounded by China Basin on the north, Pier 50 on the south, and Terry Francois Boulevard to the west. Pier 48 was originally constructed in 1928 and is the southernmost pier structure in the Port of San Francisco Embarcadero Waterfront Historic District, which is listed in the National Register of Historic Places.

Through the planning process, the Port identified the following objective for Pier 48, if included in any development proposal for SWL 337:

> *Propose a use program for Pier 48 that is publicly-oriented and water-related to the extent possible, and which complements and enhances the public use and*

enjoyment of the major new open space at China Basin. The Pier 48 use program must be consistent with the public trust, and any improvements must comply with the Secretary of the Interior Standards for Rehabilitation.

Using the Port's vision statement for SWL 337, together with development objectives and criteria for the Site developed in the public planning process, the Port initiated in 2007 a two-step public solicitation process by a Request for Developer Qualifications/Proposals, followed in 2008 by a Request for Proposals, for development of SWL 337, with an option to include Pier 48. After reviewing a community-based evaluation panel's recommendations, including "Financial and Negotiation Principles," and staff evaluation of the economic proposal, the Port Commission in May 2010 selected Master Developer for exclusive negotiations for development of the Site, subject to a requirement to negotiate a term sheet consistent with the offering documents and the Financial and Negotiation Principles. This Term Sheet is a result of the exclusive negotiations process.

General Project Description

Mission Rock will be a new mixed-use neighborhood created on a site now used principally to provide parking for AT&T Park. The Project will complement and link Mission Bay to the urban fabric of the City. At build-out, the Project, including Pier 48, would include approximately 3,600,000 gross square feet of above-grade development and create approximately 8 acres of new and expanded parks and shoreline access.

SWL 337 would be divided into 11 buildable parcels, 10 of which (each, a "Development Parcel") would be developed in phases of one to three Development Parcels (each, a "Phase") as a mix of commercial/office, retail, and market rate and affordable residential uses. The precise combination of uses would be determined in response to market demands as the Project moves forward. The 11th parcel would hold structured parking (the "Parking Structure") to serve the new development and other nearby uses, including games and other events at AT&T Park.

Pier 48 would be rehabilitated in compliance with the Secretary of the Interior's Standards for the Treatment of Historic Properties. Master Developer proposes a mix of uses such as light industrial/manufacturing, barging, general office and storage supporting onsite uses, retail, restaurant, tours, events and event parking, maritime operations including continued operations on the south apron, and public access.

Open Spaces, Parks, and Recreation

The Project would create major new parks and open spaces connecting Mission Rock with surrounding neighborhoods and the waterfront, including:

- China Basin Park, originally built as part of the AT&T Park project, will be expanded into a 5-acre regional waterfront park located on China Basin across from AT&T Park, with a great lawn open space and special event area, a waterfront café with outdoor seating, a junior baseball field, gardens and picnic areas, and a promenade connection to the new Channel Plaza between Piers 48 and 50.

- Mission Rock Square will be a new 1.3-acre park located at the heart of Mission Rock. Mission Rock Square will include a large multi-use lawn, plaza, and café pavilion. It will be framed by a mix of residential and commercial uses, including vibrant ground-floor retail, and will include a pedestrian connection to Channel Plaza.

- Channel Plaza will convert the area between Piers 48 and 50 into a hardscaped ½-acre plaza set upon an active maritime wharf with views of working vessels and other maritime uses, subject to Port Commission approval to add the area to the Site.

The development of these parks and open spaces will be distributed among the Project Phases to assure that they are completed concurrently with the adjacent Development Parcels. As shown in **Exhibit C** (Illustrative Phasing Plan), development of China Basin Park is expected in Phase 2 and Mission Rock Square in Phase 3.

Parks and open spaces will be owned by and remain under the jurisdiction and control of the Port, and will be programmed by Master Developer subject to Port approval and conditions of the San Francisco Bay Conservation and Development Commission ("BCDC") major permit applicable to the Site. Operations and maintenance of the parks and open spaces will be funded by special taxes imposed on privately-owned and occupied land and buildings on the Site under the Mello-Roos Community Facilities Act of 1982.

Flexible Zoning Scheme

A key element of the design proposal is the flexibility to respond to future market demands. Certain parcels will be residential (above ground floor), some parcels will be commercial, and others will be zoned flexibly to allow either product type. See **Exhibit B** (Project Description).

Heights of buildings, reflecting the mixed-use nature of their uses, will be diverse. Up to two tall slender signature residential towers are anticipated, which could be from 320 up to 380 feet in height. Other buildings would range from about 90 up to 280 feet in height.

Design guidelines for Mission Rock will emphasize physical and visual access to the Bay and surrounding landmarks, reinforced by a pattern of development that lays multiple paths through the Project to the water. Project buildings will demonstrate a respect for their waterfront setting through a stepped profile in relation to each other and in relation to the waterfront. Lower floors of buildings will serve to enliven and frame the public realm, while upper floors will retain a form and profile that complements Mission Rock and the cityscape as a whole.

While zoning will allow a certain amount of flexibility, Master Developer will retain control over ground floor design and tenant mix, and will manage park operations and maintenance subject to the Port's control. Comprehensive planning and programming of ground floor spaces will address both the design and the nature of Mission Rock's retail, defining the public realm and neighborhood identity. The Project will feature a dynamic range of restaurants, cafes, boutique stores, grocery stores, and other shops made possible by careful programming of the entire Site. In consultation with the Port and community, Master Developer will create a retail blueprint for locations and tenant types. This comprehensive programming will address not only types of stores, but also the appropriate mix of local, regional, and national retailers. Minimum threshold requirements for local and regional operators will reduce the threat of homogeneity that otherwise might adversely affect the Project's retail success. This building-to-building variety will strengthen the pedestrian environment and establish an authentic neighborhood for San Franciscans to enjoy.

Parking Structure

The Parking Structure will be developed on Parcel D of SWL 337 as part of an early Phase of the Project and will provide approximately 2,300 spaces for use by the entire development and for ballpark, event, and other public and transit-based parking.

Affordable Housing

New rental housing built for the Project will meet City inclusionary housing requirements under Planning Code sections 415.1-415.11 for onsite inclusionary housing, which requires that 15% of the units be available at rents affordable to households at 55% of area median income as determined by the U.S. Department of Housing and Urban Development for the San Francisco area. Master Developer will be required to deliver affordable housing in a balanced manner throughout the phasing of the Project. Although Master Developer may deliver a higher percentage in early Phases and count these units towards overall requirements, it will not be allowed to defer delivery of affordable units to later Phases of the Project, except at the City's direction, in its sole discretion.

Transportation Demand Management Plan

Master Developer will implement a Transportation Demand Management Plan ("TDMP") that provides a comprehensive strategy to manage the transportation demands created by the Mission Rock Project. The mixed-use nature of the Project's land use program, its rich transit options, and proximity to San Francisco's resources and services mandate that single-occupancy vehicle trips be reduced. The transportation strategy at Mission Rock is based on reducing vehicle miles traveled by fostering multiple modes of sustainable transportation, emphasizing pedestrian, bicycle, and public transit options.

The TDMP will incorporate smart and sustainable transportation planning principles to address the transportation needs of the Project, consistent with the City's Transit First, Better Streets, Climate Action, and Transportation Sustainability Plans and Policies.

Sustainability

Master Developer will implement a Sustainability Plan that will provide a comprehensive strategy to achieve the Project goal of becoming a model of sustainability by exhibiting the concepts and practices of sustainable community development throughout the development process. Master Developer will collaborate with the City through the Department of the Environment, the Planning Department, and the Port Planning Division to develop the Sustainability Plan that will be included in the DDA.

Master Developer, the Port, and the City will seek to have the Project designated as a "Type I Eco-District" to help meet environmental goals. A Type 1 Eco-District is characterized by a large amount of undeveloped land typically owned by a single property owner, enabling horizontal infrastructure development to be implemented in advance of vertical development and maximizing efficiency through district-scale systems. The Planning Department has identified Mission Rock as one of three potential Type 1 Eco-Districts in San Francisco.

Master Developer, the Port, and the City will develop an integrated Eco-District Plan that identifies measurable goals, standards, and performance metrics. This Eco-District Plan will be included in the DDA. Multiple sustainable site approaches will be considered from the outset of horizontal development to enable vertical development design proposals to exceed Port Building Code requirements and achieve Project goals for integrated sustainable design and a low carbon community.

Workforce Development

Build-out of the Project will create thousands of construction and permanent jobs, and the planning, design, and construction work will provide substantial contracting opportunities for local contractors and professional service firms as well as countless businesses, employers, and organizations. Master Developer will implement a Jobs and Equal Opportunity Program designed to assure that a portion of the jobs and contracting opportunities generated by the Project be directed, to the extent possible based on the type of work required and consistent with collective bargaining agreements, to local, small, and economically disadvantaged companies and individuals.

Statutory, Regulatory, and Plan Amendments

Site Zoning

Master Developer will work with the Planning Department and Port staff to draft a proposed Special Use District ("SUD") that would establish development parameters for the Project. If approved, as appropriate, by the Port Commission, the Planning Commission, and the Board of Supervisors, the SUD would be incorporated into the City's Planning Code. SWL 337 is currently zoned MB-OS, and Pier 48 is zoned M-2. The Waterfront Land Use Plan will be amended to incorporate the SUD limitations and set forth other development requirements, such as the design review body and process.

BCDC

The Project will require approvals by state and regional bodies. BCDC, in collaboration with the San Francisco Bay Area Metropolitan Transportation Commission, adopted the Bay Area Seaport Plan, which currently designates Pier 48 as a future site for neobulk cargo shipping and the eastern 6 acres of SWL 337 adjacent to Pier 48 as a "port priority" use area to provide backland area for potential cargo operations. Amendments to BCDC's San Francisco Waterfront Special Area Plan (an element of the Bay Plan) are also anticipated. In addition, all development within 100 feet of the shoreline will be subject to BCDC approval.

State Lands Commission

Under SB 815, the State has determined that SWL 337 is no longer useful for the promotion of the public trust and the Burton Act, except for the production of revenue to support Port trust uses, including preservation of historic piers and structures, and the construction and maintenance of waterfront plazas and open space. The Port is required to obtain the State Lands Commission's ("State Lands") prior approval of the conclusions of a Port study on the retention of certain public trust uses on SWL 337 and adjacent piers (including public parks and walkways, restaurants, hotels, maritime training, sales, and rentals, and waterfront visitor-serving retail services). The public trust study must also address the transportation needs of the ballpark, and trust uses on other Port property in the vicinity.

State Lands must also find that all nontrust leases are for fair market value, consistent with the public trust (other than land use restrictions), and otherwise are in the best interests of the State. In addition, Port staff will work with State Lands to obtain state legislation for certain Project-implementing amendments to SB 815, including the addition to SWL 337 of an approximately 20-foot wide strip along the Mission Rock Street edge of the parcel. To the extent necessary and after further consultation with State Lands staff and Master Developer, the Port may also seek other Project-implementing amendments to the Burton Act and other state legislation.

The Port believes that it may be able to obtain State approval for a trust swap that would allow the Port to sell up to two of the Development Parcels (each, a "Trust Swap Parcel") free of the public trust. If so, the Port would deposit the proceeds of sale into a deposit account to be used as described in **Section 14** (Development Rights Payments).

FINANCIAL STRUCTURE

Overview

As described in this Term Sheet, Master Developer and the Port have created a conceptual framework to take advantage of the lessons learned during the City's recent experience with phased, master planned developments and innovative financing mechanisms for public infrastructure serving new infill projects. The entitlement of a large site and building infrastructure for multiple development opportunities includes many risks, and the structure under discussion includes several provisions to reduce the normal risks of development. The following concepts serve as the foundation for this public-private partnership and will be implemented through the course of the Project.

a. Parcelization of Site and Development Phasing: The transaction structure allows for development of the Project in Phases, each incorporating one or more of the parcels at the Site - 10 Development Parcels, the Parking Structure on Parcel D, and Pier 48. Phases will be timed to take advantage of positive market cycles. The phased implementation strategy will also provide opportunities for additional partnerships and third-party investment as needed to maximize market value and the resulting base and percentage rent payments to the Port.

b. Verification of Market Value: The Port will offer development rights for individual parcels only after consultation among the parties and market expert(s) as to current market conditions. The Port will release parcels to vertical developers (each, a "Vertical Developer") for fair market value in each case. Master Developer, itself or through its affiliated Vertical Developers ("Master Developer Affiliates"), may acquire development rights to parcels through exercise of Master Developer's option, with fair market value consideration for the transfer established by appraisal before closing. The Port will offer development rights for some parcels through a public, competitive disposition process as an alternate means to determine fair market value if Master Developer does not exercise its option and in certain other circumstances.

c. Efficient Delivery of Infrastructure and Public Facilities: The just-in-time method of horizontal development, along with built-in flexibility to access public financing mechanisms, ensures cost-efficient delivery of required Infrastructure and Public Facilities (defined in **Section 3** (Project Description)) in coordination with the completion of vertical development (i.e., buildings) in each Phase to minimize the period that Master Developer's costs accrue Developer Return (defined in **Section 12** (Developer Return)).

d. Development Will Increase Land Value and Port Revenue: Parcel transfers will be timed to take advantage of the benefits of a stable or growing real estate market through base rent, with the goal of realizing higher and more diversified rents to the Port than under the existing parking lease. Proceeds from the sale of development rights and ongoing Port participation in lease revenues and future lease transfers provide the Port with a cushion against a weakened market and a path to recover lost value if a given parcel transfer takes place in a weaker market. As an incentive to maximize lease revenues to the Port, Master Developer will receive 20% of the amount by which annual rents from SWL 337 exceed $4.5 million for 45 years.

e. Shared Risks through Phased Development: Master Developer's equity investment, public bond issuance, and Port reimbursements to Master Developer are timed and sized to keep the parties' interests aligned, provide a means to achieve both parties' development objectives over time, and balance the risks through downturns in the real estate market.

Master Developer is responsible for funding entitlements and development of Infrastructure and Public Facilities. Developer's investment in horizontal development costs will be entitled to a market-based return on its investment from payments by Vertical Developers of prepaid ground lease rents (each, a "Development Rights Payment"), proceeds of the sale of Trust Swap Parcels if authorized, and public financing proceeds generated by the Project. The Port will receive fair market leasehold value ("Leasehold FMV") for its improved parcels through ground and percentage rent under long term ground leases. The overall financial structure is discussed below.

After the Project has been fully entitled, Master Developer will enter into an interim master lease for SWL 337 (the "Master Lease"), with rent terms based on the current parking lease between the Port and China Basin Ballpark Company, LLC. As dictated by market conditions, Master Developer will initiate the transfer of parcel development rights to Vertical Developers for vertical development for Leasehold FMV. Master Developer will be required to take the first two designated Development Parcels (each, a "Lead Parcel") and will have the option to develop the other Development Parcels, subject to exceptions specified in this Term Sheet. The Port will enter into long-term ground leases with Vertical Developers for each Development Parcel (not including Parking Structure Parcel D) for consideration equal to Leasehold FMV in the form of: (i) an upfront Development Rights Payment (see **Section 14** (Development Rights Payments)) that will reimburse Master Developer for a portion of its investment in horizontal development; and (ii) ongoing rent payments to the Port. Master Developer's base rent obligation under the Master Lease will reduce proportionally as Development Parcels are removed from the Master Lease through the execution of parcel ground leases (each, a "Parcel Lease").

After execution of the Parcel Lease(s) for parcels included in each Phase, Master Developer will construct just-in-time horizontal development required for that Phase. Master Developer will bear the cost of the horizontal development ("Horizontal Development Costs"), subject to its right of reimbursement under the DDA.

The Port will retain ownership of ground-leased land and will purchase the Infrastructure and Public Facilities that Master Developer constructs on the Site by reimbursing Master Developer for its Horizontal Development Costs along with a market-based return on its equity investment ("Developer Return"). The Port's funding sources will include Development Rights Payments, special taxes, and property tax increment derived from the Site.

<u>Predevelopment Costs and Lead Parcels</u>

Master Developer will pay all costs of predevelopment, including planning, environmental review, and Project Approvals ("Entitlement Costs"), to entitle the Project. Master Developer will be entitled to a Developer Return on its Entitlement Costs in an aggregate amount that is the greater of: (i) an amount equivalent to a 20% cumulative annual return on unreimbursed Entitlement Costs; and (ii) 1.5 times the highest balance of Entitlement Costs outstanding.

A key component of the financial structure is the requirement for Master Developer to accept (itself or through a Master Developer Affiliate) two Development Parcels (each, a “Lead Parcel”) promptly following Project Approval. The fair market value of the Lead Parcels would be applied to Master Developer’s Entitlement Costs and associated Developer Return and is currently projected to fully satisfy those sums.

Development

Development Parcels would be developed as market conditions support their development. For each Phase, the Port and Master Developer will confer and agree on a budget for the Phase (each, a “Phase Budget”). Each Phase Budget will: (i) include Master Developer’s projected Horizontal Development Costs ; (ii) list the Port’s anticipated sources of funding to reimburse Master Developer and to pay the associated Developer Return; and (iii) establish the amount of Development Rights Payments for Development Parcels in the Phase.

The Port will work with the City to issue community facilities district (“CFD”) bonds under the Mello-Roos Community Facilities Act of 1982 or local law early in each Phase. CFD bond proceeds, together with Development Rights Payments made by Vertical Developers, will be the Port’s primary sources to pay Master Developer’s Horizontal Development Costs and associated Developer Return. Tax increment, captured through an infrastructure financing district (“IFD”) as it becomes available, will be used to pay CFD debt, reduce special taxes, and for other Project purposes. Master Developer will receive Developer Returns on its Horizontal Development Costs for each Phase in an amount that is the greater of: (i) an amount equivalent to a 20% cumulative annual return on unreimbursed Entitlement Costs; and (ii) 1.5 times the highest unreimbursed balance of Master Developer’s Horizontal Development Costs for the Phase.

Financial Structure Recap

The financial structure for the Project is summarized briefly immediately below. See **Section 12** (Developer Return) for a fuller explanation

Predevelopment:

Master Developer pays all Entitlement Costs

Developer Return accrues on Entitlement Costs equivalent to greater of:

- a 20% cumulative annual return; and
- 1.5 times the highest unreimbursed balance of Entitlement Costs

If fair market value of Lead Parcels is less than Entitlement Costs:

- Developer Return on the unpaid balance is capped at a 2.0 times the unpaid balance

Master Lease and Lead Parcels:

Parties enter into Transaction Documents, including:

- Master Lease for SWL 337, with $2.4 million annual base rent allocated among 8 Development Parcels

Master Developer Affiliates enter into Parcel Leases for Lead Parcels for prepaid rent at Leasehold FMV

Transaction Structure and Development of Future Phases:

- Each Phase commences when the Port and Master Developer agree market conditions are right for development

Vertical Developers enter into Parcel Leases for Leasehold FMV, paid by:

- Upfront Development Rights Payments; and
- Base and percentage rent

Master Developer pays Horizontal Development Costs of each Phase

Overall Financial Structure:

Prepaid rent for Lead Parcels applied:

- First to accrued Developer Return on Entitlement Costs; and
- Then to Entitlement Costs

Development Rights Payments on subsequent Parcel Leases applied:

- First to accrued Developer Return;
- Then to outstanding balance of Horizontal Development Costs of prior Phase(s); and
- Then to current Phase Horizontal Development Costs

CFD bond proceeds and special taxes are applied:

- First to accrued Developer Return; and
- Then to outstanding Horizontal Development Costs

IFD bonds and tax increment applied to:

- CFD debt service

- Special tax offsets; and
- Other Project needs

Master Developer receives Developer Return in an aggregate amount that is equivalent to the greater of:

- a 20% cumulative annual return on Master Developer's unreimbursed Horizontal Development Costs for each Phase, and
- 1.5 times the highest unreimbursed balance of Horizontal Development Costs for each Phase

Project implementation:

- Periodic and final accounting conducted of Horizontal Development Costs and application of Development Rights Payments and public financing
- Master Developer and Master Developer Affiliates receive ongoing economic benefits from Development Parcels
- Port receives ongoing economic benefit from rents under Parcel Leases
- As an incentive to maximize lease revenues to the Port, Master Developer will receive 20% of the amount by which annual rents from SWL 337 exceed $4.5 million for 45 years

Section and Title	**Basic Terms and Conditions**
1. Parties; Master Developer Affiliates	a. Parties Port: City and County of San Francisco (the "City"), acting by and through its Port Commission (the "Port"). References to the Port in this Term Sheet also mean staff of the Port acting within their delegated authority. Master Developer: Seawall Lot 337 Associates, LLC, a Delaware limited liability company ("Master Developer"). b. Master Developer Affiliates Master Developer expects to affiliate with qualified third parties to form single-asset entities (each, a "Master Developer Affiliate") that will become vertical developers of buildable parcels (each a "Vertical Developer") of buildable parcels (each a "Development Parcel") for the Project.
2. Site Description (all area figures for size are approximate)	The "Site" is depicted in **Exhibit A** (Site Description) and consists of the following: • Seawall Lot 337 ("SWL 337"), a 16-acre parcel located south of Mission Creek/China Basin Channel, bordered by Third Street on the west, Mission Rock Street on the south, and Terry Francois Boulevard on the east; • Pier 48, a 212,500 square-foot facility, with two main pier sheds, Shed A and Shed B, connected by a connector shed, Shed C, at the east end of the pier, containing collectively 181,200 square feet of enclosed warehouse space and a 31,300 square-foot valley between the Shed A and Shed B; • 3.52 acres of Terry Francois Boulevard from Third Street to Mission Rock Street; • subject to Port Commission, Successor Agency Oversight Board, and State of California ("State") approvals, a 20-foot wide strip along the Mission Rock Street edge of SWL 337 known as P20; and • 1/2 acre to the east of Terry Francois Boulevard between Pier 48 and Pier 50, designated as Channel

	Plaza.
3. Project Description (all area figures for size are approximate)	Mission Rock will create a new mixed-use neighborhood, linking Mission Bay to the urban fabric of the City (the "Project"). At final build-out of SWL 337, the Project is proposed to include 3,500,000 gross square feet of vertical development, as depicted in **Exhibit B** (Project Description). The parties anticipate that the Project will continue to evolve throughout review under the California Environmental Quality Act ("CEQA") and the public review process under CEQA and for the required local and other regulatory approvals ("Project Approval"). a. Horizontal Development at SWL 337: The term "horizontal development" generally means the activities described in this Subsection immediately below, and incorporates the preliminary definitions of "Horizontal Development Costs," "Entitlement Costs," "Soft Costs," and "Hard Costs" in **Section 11** (Horizontal Development Costs). The parties will refine these definitions as more detailed information about the Project becomes available. Anticipated horizontal development currently includes: i. predevelopment activities, including preliminary planning and design work, environmental review under CEQA, and negotiating the financial and other terms of the Transaction Documents and Project Approval ("Entitlement"); ii. site preparation, including removal of contaminated soils, grading, soil compaction and stabilization, construction and installation of water, sanitary sewer, storm drainage, utility infrastructure, and stone columns or pilings to stabilize the seawall or other infrastructure ("Infrastructure"); and iii. construction of streets and walkways, maritime facilities, shoreline improvements and parks, ("Public Facilities"), including a 5-acre regional waterfront park and a 1-acre park central to the Site. b. Vertical Development at SWL 337: The term "vertical development" means the construction of new buildings at SWL 337 appropriate for a mixed-use neighborhood. The proposed development and use program follows, subject to change in response to market conditions and

	the maximum development envelope described above. i. Ten of the buildable parcels, i.e., Parcels A-K (but not Parcel D) are anticipated to be developed as follows: • 1,300,000 to 1,700,000 square feet of commercial use, including Class A office and research and development space; • 750,000 to 1,500,000 square feet of residential in 650 to 1,500 units; • 150,000 to 250,000 square feet of retail, entertainment, or ancillary space spread throughout the buildings; and • approximately 700 accessory parking spaces in residential and commercial buildings. ii. The 11th buildable parcel (Parcel D) will hold: • 850,000 square feet of structured parking (the "Parking Structure") with approximately 2,300 parking stalls, as more specifically described in **Section 16** (Parking Structure). c. <u>Rehabilitation and Reuse of Pier 48</u>: Pier 48 sheds and the open space valley area between Shed A and Shed B would be rehabilitated consistent with the Secretary of the Interior's Standards for Treatment of Historic Properties within the existing building envelopes ("Pier 48 Rehabilitation"). The parties intend to preserve and improve Pier 48 aprons for public access and maritime operations, consistent with regulatory requirements and the Port's Maritime Industry Preservation Policy (Reso. No. 11-58).
4. Transaction Documents	As soon as practicable after Project Approval, the Port and Master Developer will enter into a Disposition and Development Agreement (the "DDA") and an interim master ground lease for SWL 337 (the "Master Lease"), as well as other transaction documents (the "Transaction Documents"), some of which may require additional parties, relating to public financing, construction review and approvals by other City departments, and other matters required to implement the Project. Key elements of the DDA, the Master Lease,

	and the form of ground lease for Development Parcels (each, a "Parcel Lease") are described below. a. DDA: The DDA will set the terms and conditions for the disposition and development of parcels at the Site consistent with this Term Sheet and applicable provisions of Port agreements for other development projects of similar scale. Under the DDA, the Port will enter into a Parcel Lease with a Vertical Developer for each parcel concurrently with its release from the Master Lease, and Master Developer will coordinate with each Vertical Developer for concurrent horizontal and vertical development of the parcel, with Infrastructure and Public Facilities appropriately sequenced and distributed among the Phases. In addition to matters covered elsewhere by this Term Sheet, key provisions of the DDA will address: i. conditions to Master Developer's exercise of its option with respect to any Development Parcel; ii. Master Developer's obligation to complete horizontal development of the Project at no cost to the Port or the City, except to the extent that the City applies other funding sources directly to Public Facilities, according to an Infrastructure Plan describing the Infrastructure and Public Facilities that will be phased with each parcel's vertical development; iii. the Port's obligation to acquire Infrastructure and Public Facilities at prices that will reimburse Master Developer for its Horizontal Development Costs and pay Master Developer a market-based return on its equity ("Developer Return," as more specifically defined in **Section 12** (Developer Return)); iv. a plan that identifies the sources of funds that the Port has agreed to use, and the conditions for their use, to satisfy its payment obligations (the "Financing Plan"), including Development Rights Payments (defined in **Section 14** (Development Rights Payments), Port revenues from any prepaid Parcel Leases, proceeds of the sale of any Development Parcel for which the Port has

	obtained State approval to sell (each, a "Trust Swap Parcel"), and proceeds of public financing; v. a schedule of Master Developer's Entitlement Costs incurred and accrued Developer Return as of the DDA effective date (together, the "Total Entitlement Sum"); vi. an acquisition agreement establishing procedures and conditions for the City's and Port's acquisition of Infrastructure and Public Facilities, which will survive the termination of the DDA; vii. a form of purchase and sale agreement that will describe the terms, conditions and procedures for the Port's sale of Trust Swap Parcels (each, a "Purchase Agreement"); viii. anticipated phasing of the Project (the "Project Phasing Schedule") and mechanisms for adjusting the Project Phasing Schedule to address market conditions, force majeure events, and other conditions; ix. a form of Parcel Lease and the minimum qualifications for Vertical Developers, such as appropriate financial resources for the scope of development, development experience and capacity, and other criteria satisfactory to the Port in its reasonable judgment; and providing for Master Developer to assign its rights and obligations under the DDA with respect to the applicable parcel to the Vertical Developer in conjunction with each Parcel Lease, subject to the Port's consent, which the Port will not withhold if Master Developer has satisfied all conditions precedent and the Vertical Developer meets minimum qualifications standards; x. conditions precedent that Master Developer must satisfy, including approvals required by the State Lands Commission ("State Lands") in accordance with SB 815, and, if required for long-term use of Pier 48, determinations by the Port Commission and State Lands that the Pier 48 use would be consistent with the public trust for commerce, navigation, and fisheries and the statutory trust

	imposed by the Burton Act (stats. 1968, ch. 1333) collectively the "public trust"); xi. Master Developer's estimate of the associated costs of Infrastructure and Public Facilities and provisions governing Master Developer's responsibility to complete horizontal development in coordination with vertical development of the parcel, as determined before the conveyance of Parcel Leases; xii. conditions under which the Port will have the right to offer a Development Parcel to third-party Vertical Developers, such as Master Developer's failure to exercise an option or satisfy its DDA obligations; xiii. City and Port construction standards that will apply to horizontal and vertical development; xiv. events of default and appropriate remedies for defaults or events that with the passage of time and failure to cure within any applicable cure period would be defaults by a party; xv. standards of conduct applicable to the parties while implementing the DDA and appropriate limitations on the remedies available to either party following a breach of the DDA; xvi. City programs and requirements that will apply to development at the Site; and xvii. providing for the DDA to expire after all CFD and IFD bonds have been issued and bond proceeds distributed in accordance with the Financing Plan. b. <u>Master Lease</u>: Immediately after execution of the DDA, China Basin Ballpark Company, LLC and the Port will enter into a termination agreement for Lease No. L-14980, and the Port and Master Developer will enter into the Master Lease in concurrent transactions. If the Port also concurrently enters into Parcel Leases with Master Developer Affiliates for the Lead Parcels and Pier 48, those parcels (and associated horizontal development areas) would be excluded from the Master Lease. Rent and other key terms will be consistent with those in Lease No. L-14980, as described in **Section 8**

	(Master Lease Terms). c. Form of Parcel Lease: As part of the Project Approval, the Port will request that the Port Commission and the Board of Supervisors (the "Board") approve the form of Parcel Lease to be used for SWL 337 Development Parcels, including a Board delegation of authority to the Port Commission to modify terms of the Parcel Lease form for individual Development Parcels to respond to changing market conditions, requirements of construction and permanent lenders over time, and options to adjust payment and default provisions to encourage successful and expeditious build-out, so long as the Port will receive then-current fair market value and the other essential business terms are consistent with the form approved by the Board. As each vertical development parcel is released from the Master Lease, Master Developer will assign vertical development rights and obligations under the DDA to the selected Vertical Developer, and the Port will enter into a separate Parcel Lease with each Vertical Developer consistent with the approved form and its delegated approval. The Parcel Lease form will be consistent with this Term Sheet and applicable terms of comparable long-term ground leases between the Port and its development partners, and include or address: i. the maximum term permitted under Senate Bill 815 (as amended, "SB 815"); ii. triple net provisions requiring the Vertical Developer to pay all taxes, assessments, and expenses for the parcel; iii. compliance with the Planning Code (as amended to incorporate a special use district for the Project) (the "SUD"), the Waterfront Land Use Plan (as amended), design guidelines for the Project, and the DDA, subject to additional review and approval by Master Developer to assure quality and coordination among all Development Parcels in the Project; iv. a performance schedule for commencement and completion of vertical development (the "Parcel Performance Schedule") within a reasonable period, subject to extension for force majeure, and

	with the potential for additional extensions under specified conditions, and giving the Port the ultimate right to terminate the Parcel Lease, subject to mortgagee protection provisions, if the Vertical Developer does not meet the Parcel Performance Schedule after notice and an opportunity to cure; v. covenants to provide information and otherwise cooperate with the City and the Port as necessary for Master Developer to satisfy its disclosure obligations with respect to any public financing; vi. a mechanism by which a Vertical Developer may choose to receive IFD financing of pilings to stabilize filled land, conditioned on an appropriate increase in base rent, as determined by a real estate economics consultant selected according to procedures in the Parcel Lease; vii. standard provisions such as allowed and prohibited uses; indemnification (including hazardous materials obligations) and insurance; limitations on assignment and subletting; maintenance and repair obligations, including obligations following a casualty; and surrender obligations; viii. reasonable and customary mortgagee protection provisions and mechanisms providing for notice and an opportunity to cure: (1) to Master Developer, any mortgagee, and the Port with respect to any tax or special tax default before foreclosure; and (2) to Master Developer or a mortgagee with respect to the Vertical Developer's failure meet the Parcel Performance Schedule; ix. events of default and cure rights, and providing each party with appropriate remedies for defaults or events that with the passage of time and failure to cure within any applicable cure period would be defaults by the other party, including the possibility of early termination; and x. other terms as necessary to accomplish cost-effective public financing as contemplated in the Financing Plan, which may include provisions to protect the interests of the bond trustee similar to

	mortgagee protection provisions.
5. Phasing	The parties anticipate that the Project Site will be developed in phases (each a "Phase"), as shown conceptually in **Exhibit C** (Illustrative Phasing Plan). a. Each Phase will consist of one or more Development Parcels and associated areas for streets and open spaces. Phasing for Pier 48 will be determined when more information about its use and tenant requirements are known. i. The DDA will provide specific requirements for each Phase of the Project, so that delivery of public benefits, including development of parks and the Parking Structure, will be fairly distributed among adjacent Phases, assuring that these benefits are completed concurrent with the completion of associated vertical development of each Phase. The DDA will designate, or provide a procedure for designating, two Development Parcels that Master Developer will be required to accept to begin Phase 1 (each, a "Lead Parcel"). ii. The Project Phasing Schedule will take into account the bonding and other financial capacity of each Phase and provide for a construction and completion schedule for both horizontal and vertical development of each parcel and each Phase. b. Master Developer and the Port will work cooperatively to decide when vertical development on each Development Parcel should begin, with the goal of spurring the development of the Project as promptly as market conditions allow. As provided in **Section 18** (Public Offerings), the Port will have the right to offer a Development Parcel through public solicitation if Master Developer fails to exercise its option.
6. Statutory, Regulatory, and Plan Amendments	The Port and Master Developer will apply jointly to secure state and regional approvals as necessary. a. The Bay Area Seaport Plan of the Bay Conservation and Development Commission ("BCDC") and the San Francisco Bay Area Metropolitan Transportation Commission designates Pier 48 as a future site for neo-bulk cargo shipping and the eastern six acres of

	SWL 337 adjacent to Pier 48 (and Pier 50) as a "port priority" area to provide backland area for potential cargo operations. The Project will require an amendment to the Bay Area Seaport Plan to allow for the proposed uses at Pier 48 and Seawall Lot 337. b. BCDC's Special Area Plan for the San Francisco Waterfront imposes certain replacement fill limitations (known as the "50% rule") and water-dependent use restrictions on Pier 48. Seismic upgrades to Pier 48 may trigger a need to amend the Special Area Plan. c. All development within 100 feet of the shoreline will be subject to BCDC approval. d. SB 815 imposes the following conditions to any nontrust lease of SWL 337: i. The Port must obtain the amendment to the Seaport Plan described above; ii. The Port must obtain State Lands' prior approval of the conclusions of a Port study on the retention of trust uses (including public parks and walkways, restaurants, hotels, maritime training, sales, and rentals, and waterfront visitor-serving retail services) at SWL 337, the location of trust uses at SWL 337, Pier 48, and Pier 50, the transportation needs of the ballpark, and trust uses on nearby Port property. iii. State Lands must concur that the Port will receive fair market value for the lease and that the lease is consistent with the public trust (other than land use restrictions) and otherwise in the best interests of the State. e. To the extent necessary and after consultation with staff of State Lands and with Master Developer, the Port may seek technical amendments to the Burton Act and other legislation.
7. Zoning	a. SWL 337 is currently zoned MB-OS, and Pier 48 is zoned M-2. Master Developer will seek approval to rezone the Site by a new SUD for the Mission Rock Project under which flexible zoning controls will permit

	certain parcels to be developed for either commercial or residential uses to allow for development that responds to market conditions. i. Parcels B, C, and E are expected to be restricted to commercial use; ii. Parcel D will be zoned to allow for structured public parking with ancillary commercial uses; iii. Parcel K is expected to be restricted to primarily residential use above the ground floor; and iv. Pier 48 may be rezoned to restrict long-term use to uses compatible with the rest of the Mission Rock Project. b. The SUD will establish height limits ranging from 90 up to 380 feet, allowed density expressed as permissible floor area ratio ("FAR") limits, bulk limits, and other controls on development. More specifically with respect to building heights, up to two tall slender signature residential towers are anticipated, which could be from 320 up to 380 feet in height. Other buildings would range from about 90 up to 280 feet in height. Master Developer's preliminary proposal for height limits is reflected in **Exhibit D** (Conceptual Height Map). c. The Port and Master Developer will explore mechanisms to provide Master Developer with assurances that zoning changes for the Site will remain in effect through Project build-out, unless Master Developer consents to or seeks amendments. d. The Waterfront Land Use Plan will be amended to incorporate the SUD's development controls and limitations for the Site and set forth other development requirements, such as the role of the Waterfront Design Advisory Committee in the design review process. e. The Port will cooperate with Master Developer to develop design guidelines for Mission Rock that will inform design review and encourage Vertical Developers to: (i) emphasize the physical and visual access to the Bay and surrounding landmarks, reinforced by a pattern of development that lays multiple paths through the Project to the water; (ii) step building

	heights in relation to each other and to the waterfront to demonstrate a respect for their waterfront setting; and (iii) enliven and frame the public realm at the lower floors of buildings, while retaining on upper floors a form and profile that complement Mission Rock and the cityscape as a whole. f. Comprehensive planning and programming of ground floor spaces will address both the design and the nature of Mission Rock's retail, defining the public realm and neighborhood identity. A dynamic range of restaurants, cafes, boutique stores, grocery stores, bookstores, and other shops will only be possible through careful programming of the entire Site. In consultation with the Port and community, Master Developer will create a retail blueprint for locations and tenant types.. This comprehensive programming will address not only types of stores, but also the appropriate mix of local, regional, and national retailers. Minimum threshold requirements for local and regional operators will reduce the threat of homogeneity that otherwise might adversely affect the Project's retail success. This building-to-building variety will strengthen the pedestrian environment and establish an authentic neighborhood for San Franciscans and visitors to enjoy. g. The Project will be subject to all applicable development impact fees. The Transaction Documents, including the allocation of responsibility for any applicable mitigation and neighborhood improvement measures, will take into account payment of those fees to avoid double-charging. In the context of negotiations of Transaction Documents, the parties will explore allowing Master Developer or Vertical Developers, as applicable, to defer paying applicable development impact fees until the Port issues a certificate of occupancy, on terms and conditions generally consistent with the City's current fee deferral program (which is scheduled to sunset in July 2013).
8. Master Lease Terms	The SWL 337 Master Lease terms will be the same as those in Lease No. L-14980, with modifications generally as described below. a. <u>Base Rent</u>: Base rent will be $2.4 million. The Master Lease will provide for partial termination upon the release of each Development Parcel (and areas

	required for associated horizontal development) and a pro rata reduction in the $2.4 million base rent when the Port enters into each Parcel Lease. The revised base rent will reflect the available parking spaces on the remaining parcels subject to the Master Lease. b. Percentage Rent: Master Developer will be required to pay the Port 66% of gross lease revenues after allowed expenses. c. Term: The term of the Master Lease will end when all of the Development Parcels have been released for development. If the Master Lease is terminated early and the early termination would occur during a baseball season, the Master Lease will not terminate until the last day of the first full month following the end of that season or, at the Port's election, when: (i) the Master Lease term would have otherwise expired; or (ii) the Port has entered into contract with a parking operator or other tenant. d. Coordination with DDA: Technical changes may be required to coordinate the Master Lease with the DDA, including provisions such as mortgagee protection and restrictions on assignment and subletting.
9. Rent under Parcel Leases	The Parcel Leases will include rent provisions described briefly below. a. Reserve Rent: The Port has established a minimum of $3.5 million in annual base rent in the aggregate (the "Reserve Rent") for eight of the Development Parcels (each, an "Option Parcel"), excluding the two Lead Parcels described in **Subsection c** below, Parking Structure Parcel D, and Pier 48. The DDA will allocate the Reserve Rent among the Option Parcels, taking into account their projected use and FAR. The allocated Reserve Rent will set the floor for the annual base rent that the Port expects to receive under each Parcel Lease after deducting Development Rights Payments described in **Section 14** (Development Rights Payments). If the Port agrees to enter into a Parcel Lease with prepaid rent or with a greater proportion of rent as percentage rent, the Reserve Rent will be adjusted accordingly. The Port will not be required to enter into any Parcel Lease for an Option Parcel unless

	the Port has determined that the initial base rent that the Port will receive under the Parcel Lease will be equal to or exceed the Reserve Rent allocated to that Option Parcel. b. Initial Base Rent for Option Parcels: Initial annual base rent for each Option Parcel will be determined in relation to the amount of the Development Rights Payment and its fair market leasehold value ("Leasehold FMV"), as determined by valuation procedures described in **Section 17** (Master Developer's Option Rights). Generally speaking, the sum of base rent over the life of the Parcel Lease plus the amount of the Development Rights Payment should represent an Option Parcel's Leasehold FMV. A Vertical Developer may propose to pay reduced base rent or a greater proportion of rent as percentage rent during construction and pre-stabilization periods under the Parcel Lease, and if Port staff is reasonably satisfied that the Port would receive an economic benefit such as an increase in the value of the Option Parcel under the proposed rent structure, the proposal for that Option Parcel will be placed on the Port Commission's agenda at the earliest feasible opportunity. c. Prepaid Base Rent for Lead Parcels: The Lead Parcels will be transferred to Master Developer Affiliates by Parcel Leases under which rent will be fully prepaid, subject to **Section 10** (Port Participation in Capital Events) The parties will meet and confer before Project Approval and the close of the Transaction Documents to agree on the Development Parcels to be designated as Lead Parcels and to initiate the appraisal process with a goal of establishing Leasehold FMV within 90 days after the DDA effective date. The Leasehold FMV will be determined as provided in **Section 17** (Master Developer's Option Rights), except that the parties will instruct the appraiser(s) to determine the Leasehold FMV of the Lead Parcels assuming that rent is prepaid in full. The parties anticipate that they will designate as Lead Parcels the two parcels most appropriate to lead development of the Project, but will consider also whether the Port has obtained authorization from State Lands to sell any Trust Swap Parcels and whether the anticipated Leasehold FMV of the Lead Parcels is at least equal to the Total Entitlement Sum. The DDA will provide that the Port will enter into Parcel Leases for the

	Lead Parcels with the designated Master Developer Affiliates as soon as feasible and practicable after the Leasehold FMV has been determined. i. If the Leasehold FMV of the Lead Parcels determined as provided in **Section 17** (Master Developer's Option Rights) is equal to the Total Entitlement Sum, the Port's obligation to pay the Total Entitlement Sum to Master Developer will be satisfied in full by the Port's delivery of the Parcel Leases for the Lead Parcels. ii. If the Leasehold FMV of the Lead Parcels is less than the amount of the Total Entitlement Sum when the Port delivers the Parcel Leases to the selected Master Developer Affiliates (an "Upset Transfer"), the following will apply. 1. The Leasehold FMV of the Lead Parcels will be deemed to have been paid by the Port's delivery of the Parcel Leases for the Lead Parcels. Developer Return on the unpaid balance of the Total Entitlement Sum (the "Upset Shortfall") will be subject to the tolling and the other provisions of **Section 12** (Developer Return). 2. During the tolling period under **Section 12** (Developer Return), Master Developer may propose alternate mechanisms to fully satisfy the Port's payment obligations to Master Developer. If Port staff is reasonably satisfied that the proposal would fully or substantially satisfy the Upset Shortfall, the proposed revision will be placed on the Port Commission's agenda at the earliest reasonable opportunity. iii. If the Leasehold FMV of the Lead Parcels is more than the amount of the Total Entitlement Sum when the Parcel Leases close, the Port's obligation to pay the Total Entitlement Sum to Master Developer will be satisfied in full by the Port's delivery of the Parcel Leases for the Lead Parcels. Master Developer, at its option, will: (1) tender to the Port funds equal to any amount by which the Leasehold FMV of the Lead Parcels exceeds the Total Entitlement Sum for deposit into the Development Rights Account described in **Section 14**

	(Development Rights Payments); or (2) coordinate with the Port to create an accounting system reasonably satisfactory to the Port to track the accrual and application of Development Rights Payments. d. <u>Base Rent Increases</u>: Base rent under each Parcel Lease will escalate as follows: In every 10th lease year, annual base rent will be increased to 85% of the average of the sum of annual base rent plus percentage rent ("total rent") paid to the Port under that Parcel Lease over the immediately preceding three years. e. <u>Percentage Rent under Parcel Leases subject to Competitive Solicitation</u>: Each Parcel Lease will include percentage rent in a form dictated by use, as described below. Vertical Developers will be required to pay the Port the greater of percentage rent or base rent, as documented in periodic quarterly reports to the Port and subject to an annual reconciliation, all in a manner similar to that required in other comparable Port development leases. The amount of percentage rent for Option Parcels that are offered through a public solicitation (each, a "Parcel RFP") as described in **Section 18** (Public Offerings) will be determined generally as described immediately below. A Vertical Developer may propose to pay an alternative form of percentage rent under the Parcel Lease, and if Port staff is reasonably satisfied that the Port would receive an economic benefit such as an increase in the value of the Option Parcel under the proposed percentage rent structure, or that the proposal would otherwise meet the Port's revenue objectives for that Option Parcel, the proposal will be placed on the Port Commission's agenda at the earliest feasible opportunity. i. <u>Retail</u>: Beginning in lease year 16, the Vertical Developer must pay percentage rent in the amount of 15% of gross rental revenues payable to the Vertical Developer under its retail subleases. ii. <u>Rental housing</u>: The Vertical Developer must pay percentage rent based on adjusted gross income ("AGI") or net operating income ("NOI"), at the Vertical Developer's election, based on parameters that will be specified in the DDA and Parcel RFP

	(see **Section 18** (Public Offerings)). iii. Commercial/office: The Vertical Developer must pay percentage rent based on AGI or NOI, based on parameters that will be specified in the DDA and Parcel RFP. f. Percentage Rent under Parcel Leases for Option Parcels: Where an Option Parcel is to be acquired by a Master Developer Affiliate through the exercise of i Master Developer's option, the Master Developer Affiliate must collaborate with the Port to set base rent and percentage rent under the Parcel Lease based on: (i) the base rent as determined under **Subsection b** above; and (ii) the Master Developer Affiliate's vertical development pro forma incorporating base rent. The pro forma, which will be based on a model developed by a real estate economics consultant selected by procedures to be specified in the DDA, will be used to demonstrate that the Master Developer Affiliate's proposed percentage rent payments would equal the base rent in the year in which the building rents are projected to reach stabilization. The following example is for illustrative purposes only: • The Master Developer Affiliate has chosen to pay percentage rent based on AGI • Rent is projected to stabilize 7 years after the base rent commencement date • Base rent is $500,000 at stabilization • Projections show AGI will be $6.25 million at stabilization • Percentage rent will be set at 8% of AGI ($500,000 ÷ $6.25 million)
10. Port Participation in Capital Events	Except as provided below, each Parcel Lease and Purchase Agreement will include provisions for Port participation in any transfer or refinancing (either, a "capital event") that results in the Vertical Developer's receipt of proceeds after deducting its costs of acquisition, financing, development and capital improvement for the parcel, and transaction costs of the capital event ("Net Proceeds"). The DDA will define "Net Proceeds" in more detail for each type of capital event and will establish exclusions for affiliate transfers. a. Option Parcel Transfers: When the capital event is a Vertical Developer's transfer of an Option Parcel the

	following will apply: i. If the transfer closes before the date the first site or building permit is issued, the Vertical Developer will tender to the Port 100% of the Net Proceeds of the third-party purchase price and the Port will deposit the payment into the Development Rights Account. ii. If the transfer closes on or after the date the Port first issues vertical development a permit, the Vertical Developer will tender to the Port 1.5% of the Net Proceeds. b. Lead Parcel Transfers: When the capital event is a Vertical Developer's transfer of a Lead Parcel the following will apply: i. If the Port transfers the Lead Parcel to the Vertical Developer in an Upset Transfer, the Port will not be entitled to participate. ii. If the transfer closes before the earlier of the date the first vertical development permit is issued and 3 years after the date the Port tenders the Parcel Lease for the Lead Parcel, the Vertical Developer will tender to the Port 50% of the Net Proceeds of the transfer, and the Port will deposit the payment into the Development Rights Account. iii. If the first transfer closes less than 10 years after the date the Port first issues a certificate of occupancy for the building, the Port will not be entitled to participate, but for any subsequent transfer that closes less than 10 years after the date the Port first issues a certificate of occupancy for the building, the Vertical Developer will tender to the Port 1.5% of the Net Proceeds. iv. If the transfer closes 10 years or more after the date the Port first issues a certificate of occupancy for the building, the Vertical Developer will tender to the Port 1.5% of the Net Proceeds. c. Trust Swap Parcel Transfers: Trust Swap Parcels that are sold to a Vertical Developer will be subject to a deed restriction providing for a contractual transfer fee on each sale after the initial sale of the parcel or,

	where the parcel has been subdivided, of each residential or commercial condominium. The transfer fee will be: (i) 1% of the sale price (after costs of sale only) of a residential condominium; and (ii) 1.5% of the Net Proceeds of commercial condominiums or parcels and multi-family rental buildings. d. Refinancing: When the capital event is a refinancing, the DDA will provide that the Port will be entitled to a transfer fee of 1.5% of the Net Proceeds of the refinancing. Net Proceeds will exclude any loan proceeds that are designated for investment and are actually invested in capital improvement of the parcel.
11. Horizontal Development Costs	As outlined in **Section 13** (Public Financing Mechanisms), public financing of Horizontal Development Costs will be based on the acquisition model under which Master Developer will be responsible for paying upfront for all Horizontal Development Costs, except to the extent that the City provides direct funding for any Public Facilities or Infrastructure. Master Developer will own all Infrastructure and Public Facilities for which it pays until they are delivered to and accepted by the City or Port, as applicable. The City or Port, as applicable, will be obligated to acquire Infrastructure and Public Facilities from Master Developer with acquisition payments. Acquisition payments will be sufficient to reimburse Master Developer for its Horizontal Development Costs and pay Developer Return. Acquisition payments will be funded from Development Rights Payments (including prepaid rent), proceeds of the sale of (any) Trust Swap Parcels, special taxes, Net Available Increment, and the proceeds of public financing in accordance with the Financing Plan. In addition, the Port may apply any other public sources of funds identified in the Financing Plan or Phase Budget (defined below in **Subsection b**) or that the Port otherwise determines in its sole discretion. The Port and Master Developer anticipate using public financing mechanisms funded by revenues generated by the Project to meet the Port's obligation to pay directly for or reimburse Master Developer's eligible Horizontal Development Costs, with the goals of reducing Project risks, accelerating Project benefits, and increasing Port participation payments and other benefits to the parties, Vertical Developers, and the public. A detailed Financing Plan that will be a part of the DDA will set forth all public financing mechanisms and phasing of the public financing

	that the parties anticipate using for Mission Rock development, including public financing mechanisms to be used for ongoing operating and maintenance costs of Public Facilities. a. “Horizontal Development Costs” will consist of “Hard Costs” and “Soft Costs” of horizontal development and predevelopment costs leading to Entitlement and Project Approval (the “Entitlement Costs”). The DDA will include detailed definitions and specify conditions and limitations that will apply to Horizontal Development Costs, but generally speaking will include expenses Master Developer actually incurs and pays in accordance with the DDA for the Infrastructure and Public Facilities. The DDA will also establish the extent to which any additional costs such as pilings installed on Development Parcels and project management fees will be deemed Horizontal Development Costs for the Phase Budgets, all subject to any legal limitations on the anticipated sources of financing for these additional costs. b. Before the first Development Parcel in any Phase is released for vertical development, Master Developer will provide the Port with a detailed, line item estimate of applicable Horizontal Development Costs for the Phase (the “Phase Budget”). Each Phase Budget must be consistent with the DDA, the Infrastructure Plan, and the Financing Plan and include: (i) an accounting of Horizontal Development Costs and Developer Return for previous Phases; and (ii) a proposal for allocating among Development Rights Payments (including prepaid rent), proceeds of any sale of Trust Swap Parcels, special taxes, Net Available Increment, and proceeds of public financing as sources of repayment. The Port will review the Phase Budget and indicate: (x) concurrence or disagreement as to the proposed allocation of sources to meet its payment obligations; and (y) the Port’s intended debt issuance strategy to meet its payment obligations under the DDA, which it will implement in accordance with the DDA. Master Developer’s proposal will be subject to the Port’s reasonable approval before any Development Parcel in the Phase is offered for vertical development. The DDA will specify procedures for the Port’s review of Phase Budgets and resolution of related disputes between

	the parties. c. The DDA will also provide standards and procedures for a third-party audit of all Horizontal Development Costs for each Phase and the entire Project.
12. Developer Return	Through research, the parties have determined a rate of Developer Return that reflects the risk of horizontal development in the Bay Area under current economic conditions. Developer Return will be calculated separately for Entitlement Costs and for each Phase of the Project. Developer Return will accrue on Entitlement Costs beginning on January 1, 2012. a. Except in the case of an Upset Transfer, Developer Return will be the greater of: (i) the amount that is equivalent to a 20% cumulative annual return on unreimbursed Horizontal Development Costs; and (ii) the amount that is 1.5 times the highest balance of Horizontal Development Costs outstanding for that Phase. Developer Return will accrue only on Horizontal Development Costs that Master Developer actually incurs and pays, subject to: (x) any cost caps established by guaranteed maximum price contracts where feasible; and (y) conditions specified in the DDA. b. In the case of an Upset Transfer of Lead Parcels, the following will apply to the Upset Shortfall. i. Developer Return will be tolled for 6 months after the Parcel Leases for the Lead Parcels close to provide the Port with an opportunity to marshal available funding sources to pay off the Upset Shortfall. The Port may take any measures to marshal funds or choose not to take any measures in its sole discretion, except that Master Developer must agree to any Port proposal to use Development Rights Payments payable in later Phases as a source of funds. ii. If the Port has not paid the full amount of the Upset Shortfall to Master Developer within the 6-month tolling period, then Developer Return on the Upset Shortfall will be the greater of: (i) one-half of the amount of the Upset Shortfall; and (ii) the amount that is equivalent to a 20% cumulative annual return on the Upset Shortfall from the date of the Upset

	Transfer, subject to a cap equal to the amount of the Upset Shortfall. When accrued Developer Return reaches the cap, the Port will identify the sources from the Site (which may include rent credits) that it anticipates using to satisfy this payment obligation expeditiously. The following example is provided for the purpose of illustration only: • Assume $30 million in Entitlement Costs and Development Rights Payment of $25 million for the Lead Parcels, leaving an Upset Shortfall of $5 million. • If the Port pays Master Developer 6 months and a day after the Upset Transfer date, then the payment to Master Developer would be $7.5 million representing $5 million of return of equity applied to unreimbursed Horizontal Development Costs and $2.5 million of Developer Return. • If the Port is unable to pay for an extended period, Developer Return continues to accrue at 20% until it reaches the $5 million cap, and the Port's total payment obligation to Master Developer would be $10 million. c. As an incentive for Master Developer to implement the Project and maintain ongoing operations in a manner that will maximize lease revenues to the Port, Master Developer will receive 20% of the amount by which the total rent the Port receives each year from all parcels at SWL 337, excluding participation in capital events, exceeds $4.5 million, without escalation, for 45 years beginning in the year in which total rent first exceeds $4.5 million.
13. Public Financing Mechanisms	The DDA will describe in greater detail principal public financing mechanisms being considered to finance Horizontal Development Costs, address the impacts of public financing (and tax-exempt debt in particular) on the Project, and provide for ongoing operations and maintenance costs of Public Facilities. Before any public debt is issued, the parties will enter into an

	Acquisition Agreement, which will specify the procedures and conditions for the City's purchase of or direct payment for Infrastructure and Public Facilities with public financing and any other available public sources of funds. Currently, the primary financing mechanisms being considered are: a. Community Facilities District: The City would form a single community facilities district ("CFD") over the entire Site in accordance with the Mello-Roos Community Facilities Act of 1982, with improvement areas annexed to the CFD at each Phase. Special taxes will be levied against the leasehold and fee interests in taxable parcels. The DDA will authorize two tranches of CFD bond debt; the first would be used to pay directly for or reimburse Master Developer for its Horizontal Development Costs and pay a portion of Developer Return to be determined after consultation between the parties; the second would be available to pay for a portion of waterfront infrastructure to protect the Project from perils associated with climate change and sea level rise. The City will consult with Master Developer on the timing of CFD debt issuances before horizontal construction for each Phase begins, but the City will retain sole discretion over timing and other conditions of debt issuance. The parties anticipate that CFD debt will be issued in coordination with horizontal and vertical development schedules and will be repaid by special taxes paid by private landowners and ground lessees and, subject to conditions to be specified in the DDA, by Net Available Increment (as defined in **Subsection b** below). The rate and method of apportionment of special taxes ("RMA") for the CFD will establish a maximum tax rate for each taxable parcel, differentiating between residential and non-residential and developed and undeveloped parcels and specify the order in which special taxes will be levied against different types of parcels. The RMA will be developed by the Port's special tax consultant, in consultation with Master Developer, Port and City staff, and other consultants selected by the Port or City. The RMA may provide for the maximum rate for special taxes to escalate over time. The Port and Master Developer will agree upon

	a maximum tax burden, taking into account ad valorem property taxes, the proposed special taxes for the CFD, and any overlapping special taxes and assessments. b. Infrastructure Financing District Project Areas: In early 2013, the Board is expected to consider adopting "*Guidelines for the Establishment and Use of an Infrastructure Financing District with Project Areas on Land under the Jurisdiction of the San Francisco Port Commission*" (the "Port IFD Guidelines") substantially in the form and substance attached as **Exhibit G**. Consistent with the Port IFD Guidelines, if adopted, the City would form a single infrastructure financing district ("IFD") consisting of all Port property ("waterfront district") in accordance with Government Code sections 53395-53397.11. Following CEQA review, the City would then consider formation of project-specific project areas and adoption of project-specific infrastructure financing plans (each, an "IFD financing plan"). The City may seek judicial validation of one or more of the formation of the waterfront district, the allocation of tax increment to the waterfront district, and the issuance of tax increment bonds, and, if so, Master Developer will cooperate reasonably with the City in bringing the validation action(s). The IFD financing plans will authorize tax increment from the project area and allocated to the waterfront district to finance costs of Infrastructure and Public Facilities to be specified in the adopted IFD financing plans. Costs of Pier 48 Rehabilitation (excluding any costs that are the obligation of the Pier 48 tenant under the Pier 48 lease) and pilings installed on Development Parcels will also be eligible uses of tax increment under the IFD financing plans. In this Term Sheet, "project area" means a project area consisting of any portion of the Site. Tax increment may be used: (i) to pay Horizontal Development Costs on a pay-as-you-go basis; (ii) to service tax increment bond financing used to pay Horizontal Development Costs; (iii) to repay CFD debt; and (iv) for any other purpose authorized by IFD law. Vertical Developers will be required to pay any shortfall in anticipated property taxes caused by a downward reassessment of the Development Parcel

		subject to their Parcel Leases through a levy of special taxes. "Net Available Increment" will consist solely of the City's share of available tax increment from the project area that the City receives from the Site, subject to limitations under IFD law, the Port IFD Guidelines, and the IFD financing plan. No tax increment from the project area that is allocated to local school or college districts or other taxing entities will be allocated to the waterfront district under the IFD financing plan for the project area. To the extent permitted by law, Net Available Increment will be used to reimburse Master Developer for its Horizontal Development Costs. The base year for the project area will be the fiscal year in which the Board adopts the ordinance approving the IFD financing plan unless the adopted IFD financing plan for the project area specifies otherwise. The Port will seek Board approval of an IFD financing plan under which up to $0.65 per property tax dollar of Net Available Increment from the project area will be allocated to the waterfront district for the Project beginning in the fiscal year following the base year and will be allocated to the waterfront district for 45 years from the date the waterfront district actually receives $100,000 of Net Available Increment from the project area. The Summary Pro Forma attached as **Exhibit E** assumes that $.65 per property tax dollar of Net Available Increment is allocated to the Project. Until IFD bonds are issued and to the extent that Net Available Increment from the project area has not been pledged for debt service or other Project obligations, the Net Available Increment allocated to the waterfront district will be available to reimburse Master Developer for Horizontal Development Costs on a pay-as-you-go basis. c. <u>Bonds</u>. The City will determine in its sole discretion the timing, amounts, and terms of any bonds that it issues for the Project, but agrees that any bond issuance will be made after consultation with Master Developer, consistent with terms and conditions to be specified in detail in the DDA. Bonds will be issued consistent with the Port's payment obligations under the DDA, applicable federal tax law and regulations,

		other applicable law, and any Acquisition Agreement executed by the Port and Master Developer. The City intends to issue bonds as early in the development process as feasible to limit the Port's reimbursement obligation to the extent possible. One possible means of doing so is the issuance of CFD bonds early in each Phase of the Project, subject to municipal debt policy limitations. Under the City's policy, the City may issue bonds when the assessed value of the land and improvements is at least three times greater than the principal amount of the bonds, or any higher value-to-debt ratio required by bond underwriters. CFD bonds will be issued in amounts that take into account the maximum special tax rate and debt service coverage ratios required by the City's debt policy and any bond indenture. Bonds that the City issues for this purpose will be secured by a pledge of special taxes from the CFD (for CFD bonds), or of Net Available Increment (for IFD bonds), and by the funds and accounts established under the debt issuance instrument. Under no circumstances will any bondholder have recourse to either the City General Fund or the Port Harbor Fund. The DDA will specify certain Events of Default (to be defined in the DDA) that will excuse the City from issuing bonds, levying and applying special taxes to the Project (except to service previously issued CFD bonds), or allocating Net Available Increment to the waterfront district.
	d.	<u>Maintenance Districts</u>: The City anticipates creating a maintenance CFD over the entire Site, with areas annexed to the district as each Phase is developed. Maintenance special taxes levied against each taxable Development Parcel would provide pay-as-you-go funds for operating and maintenance costs of certain Public Facilities to be specified in the DDA and the Financing Plan.

14. Development Rights Payments	Prepaid rents under Parcel Leases (each, a "Development Rights Payment") will provide an important source of funds from which Port will reimburse Master Developer's Horizontal Development Costs and pay Developer Return. a. The parties will use each Phase Budget described in **Section 11** (Horizontal Development Costs) to assist in determining the amount of the Development Rights Payments that Vertical Developers will be required to pay as a condition to entering into Parcel Leases for Option Parcels in the Phase. The parties will take into consideration: (i) the amount of Horizontal Development Costs and anticipated accrual of Developer Return for the Phase; (ii) any outstanding Horizontal Development Costs and Developer Return from previous Phases; and (iii) pay-as-you-go special taxes, Net Available Increment, and net proceeds of CFD bonds that are conservatively projected to be available for the Phase. The Phase Budget will include Master Developer's proposal for the amount of the Development Rights Payment for the Phase and a reasonable allocation among the parcels in the Phase. The DDA will provide mechanisms for the parties to adjust the amounts and allocation of Development Rights Payments within the Phase after receiving the appraisal for the first parcel and at other times by agreement. b. Development Rights Payments (except where credited against Entitlement Costs) and, if applicable, the proceeds of the sale of any Trust Swap Parcel, will be deposited into a deposit account established with a local branch of a financial institution acceptable to both parties (the "Development Rights Account"), subject to a control agreement. The control agreement will set forth conditions under which distributions from the account (each, a "Distribution") may be made. c. The funds will be held and will be disbursed only according to the written, joint instructions of the parties in accordance with the DDA and control agreement. The DDA and control agreement will provide for Distributions to be made immediately after receipt of any Development Rights Payment, and applied as follows:

	i. first to pay any accrued Developer Return; and ii. then to reimburse Master Developer for any unreimbursed Horizontal Development Costs. d. If funds in the account are available at any time when the Port's payment obligations for Developer Return and Horizontal Development Costs are satisfied, the parties may elect to: i. pay directly for Horizontal Development Costs of the Phase then in development; ii. hold the funds for any future Phase until completion of the horizontal development for the entire Project ("Final Completion"); or iii. defer any further Distributions for future payments to Master Developer. e. Periodically, but no less frequently than at the inception of Phase 2 and of each subsequent Phase, the parties will review the Horizontal Development Costs incurred and Developer Return accrued and the application of Distributions and other Port sources of funds as specified in the Phase Budget, and reconcile these figures to the extent practicable, according to procedures that will be set forth in the DDA. Based on these figures, the parties will agree on an amount to be retained in the Development Rights Account to pay Developer Return until a final accounting after Final Completion can be completed, taking into account public financing and other sources available to reimburse Horizontal Development Costs. f. After Final Completion, Distributions of any funds then remaining in the Development Rights Account will be made in the following order of priority, until all funds have been disbursed: i. to Master Developer until Master Developer has been paid in full for all accrued Developer Return; then ii. to Master Developer to pay unreimbursed Horizontal Development Costs; then

	iii. to pay down or create additional reserves for any existing or anticipated public financing for the Project; then iv. to the Port's Harbor Fund.
15. Open Spaces, Parks, and Recreation	As part of the Public Facilities, Master Developer will develop major new parks and open spaces connecting Mission Rock with surrounding neighborhoods and the waterfront. The development of these Public Facilities will be distributed among the Phases so that parks and open spaces are generally completed concurrent with the completion of appropriate adjacent vertical development. Under Master Developer's current proposal for phasing, as shown in **<u>Exhibit C</u>** (Illustrative Phasing Plan), China Basin Park would be included in Phase 2 and Mission Rock Square would be provided in Phase 3. Parks and open spaces will be owned by, and will remain under the jurisdiction of, the Port, and will be managed and programmed by Master Developer, subject to Port approval and conditions of the BCDC major permit applicable to the Site. Maintenance of the parks and open spaces will be funded by special taxes imposed on Vertical Developers through the CFD. These parks, totaling approximately 8 acres, are described below. i. China Basin Park, a 5-acre regional waterfront park located on China Basin across from AT&T Park, will include a great lawn open space and special event area, a waterfront café with outdoor seating, a junior baseball field, gardens and picnic areas, and a promenade connection to Channel Plaza. ii. Mission Rock Square will be located at the heart of Mission Rock. The Square will include a large multi-use lawn, plaza, and café pavilion. The Square will be framed by a mix of residential and commercial uses, including ground-floor retail. iii. Channel Plaza will be a hardscaped ½-acre plaza set upon an active wharf with views of working maritime vessels and other marine uses.
16. Parking Structure	SWL 337 is currently used as a surface parking lot that provides a substantial amount of parking for games and special events at AT&T Park. In light of the need for parking

	to support AT&T Park, and in recognition of soils conditions that limit the construction of subsurface parking: a. The Project includes a Parking Structure on Parcel D with approximately 2,300 spaces that will support new development and maximize shared parking for AT&T Park. The Parking Structure will be developed in an early Phase so that structured parking will be available for the Project, ballpark, event and other public parking needs as available surface parking is lost. b. Street parking and nearby sites external to the Site where public parking is available will be considered when evaluating the parking needs of AT&T Park and the Project during all Phases. c. The San Francisco Municipal Transportation Agency ("SFMTA") has agreed to explore the feasibility of SFMTA financing and operating the Parking Structure. Master Developer acknowledges that any relationship with SFMTA should it decide to finance and operate the Parking Structure may include additional conditions to ensure a successful operation. Should SFMTA conclude that the Parking Structure is not feasible as an SFMTA project, other potential sources of financing and other measures needed to make the Parking Structure financially feasible will be explored. For example, should the Parking Structure be offered for development to a Vertical Developer: (i) the Vertical Developer may be relieved of any obligation to make a Development Rights Payment; and (ii) rent may be abated until construction debt is fully retired and the Vertical Developer has received a reasonable rate of return on its equity. d. Financing for the Parking Structure may be bifurcated so that AT&T Park season ticketholders have the opportunity to reserve parking spaces. Any reserved parking arrangement would be negotiated with reference to the financing plan for the Parking Structure and applicable limitations of federal and state tax law if SFMTA finances any portion of the Parking Structure on a tax-exempt basis. e. The Port does not expect to provide any public financing for the Parking Structure except CFD bond financing that will be repaid by special taxes levied on

	the taxable parcels at the Site or taxable parcels off-site that will benefit from the Parking Structure.
17. Master Developer's Option Rights	Master Developer, itself or through designated Master Developer Affiliates, will have options to enter into Parcel Leases for and to vertically develop the Option Parcels when they are offered for vertical development on conditions described in this Section. a. <u>Market Conditions Consultation</u>: The DDA will describe procedures by which the parties will meet and confer and, with the assistance of a real estate professional, decide when market conditions support vertical development of an Option Parcel, based in part on the anticipated Leasehold FMV of the Option Parcel. If (i) the required amount of the Development Rights Payment has been determined; (ii) the parties have agreed to proceed with development of an Option Parcel; and (iii) Master Developer has indicated its preliminary willingness to exercise its option, contingent on its Leasehold FMV, the parties will begin an appraisal process to confirm the Option Parcel's Leasehold FMV. b. <u>Fair Market Rental Value Determination</u>: Once they have decided to proceed with development of an Option Parcel, the parties will issue joint instructions in a form previously approved by State Lands and attached to the DDA to a member of the Appraisal Institute who meets specified qualifications ("Qualified Appraiser") to prepare an appraisal report. If the parties agree on the value conclusion, the appraisal report will be final for the purpose of the option. Either party may dispute the appraisal report and each party will then have the right to engage another Qualified Appraiser to prepare an appraisal report using the same instructions. Currently, the parties anticipate that appraisal disputes will be resolved as follows: i. If the difference between the parties' value conclusions is 10% or less of the higher value, then the Leasehold FMV will be the average of the two values. ii. If the difference between parties' value conclusions is greater than 10% of the higher value, then the parties will select a third Qualified Appraiser to

	perform a third appraisal using the same instructions, and the Leasehold FMV will be established as follows: 1. If the difference between the value conclusion in the Port's appraisal and the third value is 10% or less, then the Leasehold FMV will be the average of those two values. 2. If the difference between value conclusion in Master Developer's appraisal and the third value is 10% or less, then the Leasehold FMV will be the average of those two values. 3. If neither the Port's nor Master Developer's value conclusion is within 10% of the third value, or if both the Port's and Master Developer's value conclusions are within 10% of the third value, the third value will be deemed Leasehold FMV. c. <u>Port's Right to Put Parcel</u>: If the Port believes after consultation as described above that Leasehold FMV is at least equal to the allocated Reserve Rent for an Option Parcel, the Port will have the right to require Master Developer to exercise or lose its option as follows. The Port will exercise this right by delivering notice to Master Developer (a "Put Notice") that the Port will offer the Option Parcel to the market as described in **Section 18** (Public Offerings) unless, within the time specified in the DDA (the "Put Exercise Period"), Master Developer exercises its option by beginning the appraisal process described above. i. If Master Developer declines to exercise its option within the Put Exercise Period, then the Port will have the right to offer the Option Parcel through a Parcel RFP as described in **Section 18** (Public Offerings). Master Developer will have the right to respond to the Parcel RFP as provided below. 1. During the Put Exercise Period, Master Developer may submit to the Port an offer to enter into a Parcel Lease for an Option Parcel for a sum that is less than Leasehold FMV. The Port must issue the Parcel RFP within a time period to be specified in the DDA. If Master

	Developer's proposal is the highest offer and is equal to or exceeds the reserve price that the Port set for the Parcel RFP, the Port will offer the Parcel Lease to Master Developer for the amount specified in its proposal. 2. If Master Developer's proposal is not the highest offer, the Port must enter into a Parcel Lease for the Option Parcel within a time period to be specified in the DDA. If the Port does not enter into the Parcel Lease with the third party Vertical Developer within this time, then Master Developer's option right as to Option Parcel will be restored. ii. If Master Developer exercises its option right for the Option Parcel within the Put Exercise Period by instructing a Qualified Appraiser to prepare an appraisal of the Option Parcel but does not complete the appraisal process or timely close the Parcel Lease, Master Developer will lose its option right. The Port will have to right to offer the Option Parcel by a Parcel RFP without first obtaining an appraisal, and Master Developer will not be entitled to submit a proposal in response to the Parcel RFP. d. <u>Proposal to Prepay Rent for Option Parcels</u>: In addition to prepaid Parcel Leases for the Lead Parcels, Master Developer may seek the Port's consent, which it may grant or withhold in its sole discretion, to prepaid Parcel Leases under which, in lieu of the Development Rights Payment allocated to the parcel in the Phase Budget, the Leasehold FMV of an Option Parcel will be prepaid, with payment credited as provided in **Section 14** (Development Rights Payments).
18. Public Offerings	Certain Option Parcels may be offered by a Parcel RFP as a means to establish the Leasehold FMV. The solicitation process will be described in the DDA and be conducted by a broker selected by the parties through procedures described in the DDA. After consultation with Master Developer, the Port will specify in its Parcel RFP the amount of the required Development Rights Payment, the reserve price, preferred use(s) and product type on the Development Parcel, and requirements regarding percentage rent. The Parcel RFP

	will define and establish parameters for calculating AGI and NOI and require each respondent to submit a pro forma according to a specified format. The Port may reject any proposal that does not meet financial requirements specified in the Parcel RFP. a. The Port may offer any Trust Swap Parcel by Parcel RFP unless Master Developer offers to pay a premium of 5% above its fair market value as established by an appraisal subject to the same procedures (but different joint instructions) as specified in **Section 17** (Master Developer's Option Rights"). b. If Master Developer or its designated Master Developer Affiliate fails to close escrow after exercising an option, or Master Developer materially defaults on its horizontal development construction or payment obligations during the construction period, then the Port will have the right (but not the obligation) to issue a Parcel RFP for a subsequent Development Parcel of equal or lesser projected value without first offering Master Developer an option. The DDA will provide greater detail on the circumstances under which this right would arise.
19. Other Sources	The City, the Port, and Master Developer will cooperate to explore state and federal incentives that might be available for horizontal and vertical construction of the Project, such as for brownfield remediation, transit-oriented development, and sustainability pilot programs. At its sole option, the Port will have the right to use any source of funds that is less costly than Developer equity to reimburse Master Developer's Horizontal Development Costs. The Port's options, in coordination with the City, could include: a. placing on the ballot an initiative to approve a parks general obligation bond that would include funds for certain public open spaces at Mission Rock. b. continuing to explore with SFMTA the possibility of its building, financing, and operating the Parking Structure. c. exploring with City financial officers and other City departments the feasibility and desirability of using other public financing mechanisms that might be employed to assist in financing the Project, such as:

	i. mortgage revenue bonds; ii. revenue bonds for infrastructure; and iii. GreenFinanceSF bond financing for energy and water conservation and renewable energy improvements to buildings.
20. Affordable Housing	New rental housing built for the Project will meet City inclusionary housing requirements under Planning Code §§ 415.1-415.11 for onsite inclusionary housing for 15% of the units at 55% of area median income as determined by the U.S. Department of Housing and Urban Development for the San Francisco area ("AMI"). Master Developer will work with the City, through the Mayor's Office of Housing, the Office of Economic and Workforce Development, and the Port's Planning Division to investigate alternative potential ways to meet current requirements. These alternatives may include a sliding scale that specifies a higher percentage of units at higher levels of AMI. Affordable housing will be delivered in a balanced manner throughout the phasing of the Project. A higher percentage may be delivered in early Phases and counted towards overall requirements, but delivery of affordable units may not be deferred to later Phases of the Project, except at the City's direction, in its sole discretion. Residential condominiums, if built, will not include inclusionary units. Instead, the Vertical Developer will pay in lieu fees for the Development Parcel.
21. Sustainability	Master Developer will implement a Sustainability Plan that will provide a comprehensive approach to achieve the Project goal of becoming a model of sustainability by exhibiting the concepts and practices of sustainable community development throughout the life span of the Project. Master Developer will collaborate with the City and the Port, specifically, the Department of the Environment, the Planning Department, and the Port Planning Division, to develop the Sustainability Plan. Master Developer and the City will pursue status for the Project as a Type I Eco-District to help meet the City's and Master Developer's environmental goals. A Type 1 Eco-District is characterized by a large amount of undeveloped

	land typically owned by a single property owner. In general, Type 1 Eco-Districts enable horizontal infrastructure development to be implemented in advance of vertical development to help optimize Eco-District goals. This type of Eco-District maximizes efficiencies in the delivery of goods provided by infrastructure through district-scale systems. The Planning Department has identified the following potential Type 1 Eco-Districts: the Transbay Transit Center District Plan Area, Pier 70, and Mission Rock. The Project team will study the technical and financial feasibility of elements of an Eco-District Plan in the course of environmental review to allow one or more of the strategies below to be analyzed in the environmental impact report. Master Developer and the City will develop an integrated Eco-District Plan that identifies measurable goals, standards, and performance metrics. This Eco-District Plan will be included in the DDA. Multiple sustainable site approaches will be considered from the outset of horizontal development, to enable vertical development design proposals to exceed compliance with Port Building Code requirements and achieve Project goals for integrated sustainable design and a low carbon community. The following have been investigated and will continue to be analyzed for potential inclusion into Mission Rock, in addition to future ideas and technological advances: • centralized energy • Bay source cooling • cogeneration plant • recycled water sharing system • photovoltaics and solar thermal • wind power • centralized waste system • reduction of vehicle miles traveled (see **Section 22** (Transportation Demand Management Plan)) Regardless of which of the above approaches are implemented at the Site, Master Developer and the Port will strive to be leaders in the realm of long term sustainability planning and design, and the final strategies employed on

	the Site will follow the direction of Master Developer's investigation as noted above, including the goal of an Eco-District Plan.
22. Transportation Demand Management Plan	Master Developer will implement a Transportation Demand Management Plan ("TDMP") that will provide a comprehensive strategy to manage the transportation demands created by the Mission Rock Project. The mixed-use nature of the Project's land use program, its rich transit options, and proximity to San Francisco's resources and services mandate that single-occupancy vehicle trips be reduced. Market-based pricing strategies for parking will be supported by innovative programs to reduce automobile dependence, and promote the use of public transit. The transportation strategy at Mission Rock is based on reducing vehicle miles traveled by fostering multiple modes of sustainable transportation, emphasizing pedestrian, bicycle, and public transit options. The TDMP will incorporate smart and sustainable transportation planning principles to address the transportation needs of the Project, consistent with the City's Transit First, Better Streets, Climate Action, and Transportation Sustainability Plans and Policies. The TDMP will outline a series of implementation strategies intended to effectively manage the transportation demands created by the Project. The goal of these strategies will be to minimize the Project's dependence on the automobile and to optimize the inclusion of non-auto travel modes providing access to the Project. The parties agree to explore with SFMTA the feasibility of its construction, operation, and maintenance of an E Line loop in the vicinity of the Site to enhance public transportation options. The issue of feasibility may include a discussion of providing a financing mechanism under which landowners benefitting from the loop would contribute to the cost of construction, operation, and maintenance of the loop.
23. Jobs and Equal Opportunity	The build-out of the Project is anticipated to create thousands of construction and permanent jobs, and the planning, design, and construction work will provide substantial contracting opportunities for local contractors and professional service firms as well as countless businesses, employers, and organizations. Master Developer will implement a Jobs and Equal Opportunity Program designed to assure that a portion of the jobs and contracting

	opportunities generated by the Project be directed, to the extent possible based on the type of work required and consistent with collective bargaining agreements, to local, small, and economically disadvantaged companies and individuals.
24. Pier 48 Lease Terms	After receiving more information about the proposed uses and improvements to the facility and further engineering due diligence, the parties will negotiate detailed terms for Pier 48. Lease terms will be substantially as described below, with rents reflecting the Port's parameter rent for similar shed structures. Initial Term: 30 years Options: Options to extend the term to a total of 66 years may be exercised only after the City and the Port have established policies and procedures to address climate change and sea level rise, and the measures necessary to mitigate the associated risks that will be implemented at Pier 48 and their respective obligations with respect to those measures Premises: Approximately 181,200 square feet of shed space and approximately 31,300 square feet of paved yard space Base Rent: $1.8 million annually, payable in monthly increments, based on the Port's parameter rent schedule for similar shed structures, with a potential for reduced base rent if the tenant performs eligible capital improvements Base Rent Adjustment: Periodic increases to base rent would be provided, with a collared market reset for each option Participation Rent: A percentage of gross proceeds from restaurant and retail sales similar to other Port retail and restaurant leases Eligible Capital Improvements: • core & shell improvements including roof repair • apron repair • utility upgrades

	• substructure repair • seismic (joint) upgrades Uses: Light industrial/manufacturing, barging, general office and storage supporting onsite use, retail, restaurant, tours, events, event parking and maritime operations, including continued operations on the south apron, and public access Tenant Improvements: To be determined by tenant Maintenance and Repairs: Tenant would be responsible for ongoing maintenance and repairs to the Pier 48 premises (such as the roof, roof membrane, exterior walls, doors, etc.), at its sole cost and expense Substructure: The Port believes that the current substructure is adequate to support proposed use for the 30-year initial term. Further due diligence is required to verify this condition. Responsibility and funding for future substructure upgrades are subject to further negotiation. IFD: Pier 48 IFD proceeds may be used onsite to fund Pier 48 Rehabilitation and possibly other capital improvements that are eligible under IFD law. IFD proceeds from SWL 337 that are not required to pay for Infrastructure or Public Facilities on SWL 337 may also be available for these costs. The Port and Master Developer will cooperate to identify other sources of funds, including federal historic tax credits, on terms to be described in the DDA and the Financing Plan, if appropriate. Sea Level Rise: An analysis will be undertaken to determine what measures can be implemented to protect Pier 48 from sea level rise and base flood conditions. IFD and CFD proceeds may be available to fund these improvements. Regulatory Approvals (anticipated): BCDC Special Area Plan amendment to lift water-dependent use

	restriction and certain replacement fill limitations BCDC major permit amendment State Lands public trust consistency determination (for exercise of options extending lease term to 66 years)

Term Sheet Non-Binding

Under the San Francisco Charter, no officer or employee of the City has authority to commit the City to the Project until the appropriate City departments and agencies have approved the transaction. Except as set forth in the ENA, no legal obligation will exist with respect to the transactions described in this Term Sheet, unless and until the parties have negotiated, executed, and delivered mutually acceptable agreements based upon information produced from the CEQA process and other public review and hearing processes and subject to all applicable governmental approvals. Before entering into final Transaction Documents, the Port and the City retain the absolute discretion to: (a) make modifications to the Project and any proposed agreements as are deemed necessary to mitigate significant environmental impacts; (b) select other feasible alternatives to avoid such impacts; (c) balance benefits against unavoidable significant impacts before taking final action if identified significant impacts cannot otherwise be avoided; or (d) determine not to proceed with the proposed Project based upon the information generated by the environmental review process. Before entering into final Transaction Documents, Master Developer also retains the absolute discretion to make modifications to the Project and to determine not to proceed with the proposed Project.

MASTER DEVELOPER:

SEAWALL LOT 337 ASSOCIATES, LLC,
a Delaware limited liability company

By: ____________________________
Name: ____________________________

Its: ____________________________

Date: ____________________________

PORT:

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

By: ____________________________
Monique Moyer
Executive Director

Date: ____________________________

Endorsed by Port Resolution No.
and Board Resolution No.

[Page intentionally left blank.]

APPENDIX
Index of Defined Terms

Many key terms are defined in the introductory text for readability. Definitions are also located in the chart at the locations specified below.

Term	Location
AGI	§ 9.e.ii
AMI	§ 20
BCDC	§ 6
Board	§ 4.c
capital event	§ 10
CEQA	§ 3
CFD	§ 13.a
City	§ 1.a
DDA	§ 4
Developer Return	§ 4.a.iii; see also § 12
Development Parcel	§ 1.b
Development Rights Account	§ 14.b
Development Rights Payment	§ 8.b.i
Distribution	§ 14.b
Entitlement	§ 3.a.i
Entitlement Costs	§ 11.a
FAR	§ 7.b
Final Completion	§ 14.d.ii
Financing Plan	§ 4.a.iv
Hard Costs	§ 11.a
horizontal development	§ 3.a
Horizontal Development Costs	§ 11.a
IFD	§ 13.b
IFD financing plan	§ 13.b
Infrastructure	§ 3.a.ii
Lead Parcel	§ 5.a.i
Leasehold FMV	§ 9.b
Master Developer	§ 1.a
Master Developer Affiliate	§ 1.b
Master Lease	§ 4
Net Available	§ 13.b

Term	Location
Increment	
Net Proceeds	§ 10
NOI	§ 9.e.ii
Option Parcel	§ 9.a
Parcel Lease	§ 4
Parcel Performance Schedule	§ 4.c.iv
Parcel RFP	§ 9.e
Parking Structure	§ 3.b.ii; see also § 16
Phase	§ 5
Phase Budget	§ 11.b
Pier 48 Rehabilitation	§ 3.c
Port	§ 1.a
Port IFD Guidelines	§ 13.b
Project	§ 3
Project Approval	§ 3
project area	§ 13.b
Project Phasing Schedule	§ 4.a.viii
Public Facilities	§ 3.a
public trust	§ 4.a.x
Purchase Agreement	§ 4.a.vii
Put Exercise Period	§ 17.c
Put Notice	§ 17.c
Qualified Appraiser	§ 17.b
Reserve Rent	§ 9.a
RMA	§ 13.a
SB 815	§ 4.c.i
SFMTA	§ 16.c
Site	§ 2
Soft Costs	§ 11.a
State	§ 2
State Lands	§ 4.a.x
SUD	§ 4.c.iii

Term	**Location**
SWL 337	§ 2
TDMP	§ 22
Total Entitlement Sum	§ 4.a.v
total rent	§ 9.d
Transaction Documents	§ 4
Trust Swap Parcel	§ 4.a.iv
Upset Transfer	§ 9.c.ii
Upset Transfer Shortfall	§ 9.c.ii.1
Vertical Developer	§ 1
vertical development	§ 3.b
waterfront district	§ 13.b