

1 [Term Sheet Endorsement - Development of Seawall Lot 337 and Pier 48 and Finding of  
2 Fiscal Feasibility]

3 **Resolution finding the proposed development of Seawall Lot 337 and Pier 48, bounded**  
4 **by China Basin Channel, Third Street, Mission Rock Street, and San Francisco Bay and**  
5 **adjacent to AT&T Park, fiscally feasible under Administrative Code, Chapter 29, and**  
6 **endorsing the Term Sheet between Seawall Lot 337 Associates, LLC and the Port**  
7 **Commission.**

8  
9 WHEREAS, The San Francisco Port Commission (the "Port" or "Port Commission") has  
10 jurisdiction over Seawall Lot 337 ("SWL 337"), portions of Terry A. Francois Boulevard, China  
11 Basin Park, and Pier 48 (together, the "Site"), bounded by China Basin Channel, Third Street,  
12 Mission Rock Street, and San Francisco Bay and adjacent to AT&T Park, and offered the Site  
13 for development through a two-step public solicitation process begun in 2007; and

14 WHEREAS, On May 12, 2009, by Port Resolution 09-26, the Port Commission  
15 awarded the development opportunity to Seawall Lot 337 Associates, LLC ("Developer") and  
16 authorized exclusive negotiations for a proposed mixed-use development project at the Site  
17 (the "Project"); and

18 WHEREAS, On May 25, 2010, by Resolution 10-32, the Port Commission authorized  
19 the Port's Executive Director or her designee to execute an Exclusive Negotiating Agreement  
20 (the "ENA") between the Port and Developer for the Project; and

21 WHEREAS, On March 12, 2013, by Resolution No. 13-10, the Port Commission  
22 endorsed a term sheet that describes the fundamental deal terms for the Project (the "Term  
23 Sheet") and directed Port staff to present the Term Sheet to the Board of Supervisors for  
24 endorsement and to submit a request that the Board of Supervisors review the proposed  
25

1 Project under San Francisco Administrative Code Chapter 29 and determine whether the  
2 Project is fiscally feasible and responsible; and

3 WHEREAS, The Term Sheet is on file with the Clerk of the Board of Supervisors in File  
4 No. 130286, which is hereby declared to be a part of this resolution as if set forth fully herein;  
5 and

6 WHEREAS, The construction cost of the Project will exceed \$25 million and more than  
7 \$1 million in public funds will be used for construction of the Project, thus triggering review by  
8 the Board of Supervisors to determine the fiscal feasibility of the Project under Administrative  
9 Code Section 29.1; and

10 WHEREAS, Pursuant to Administrative Code Section 29.3, Port and Developer have  
11 submitted to the Board of Supervisors a general description of the Project, the general  
12 purpose of the Project, and a fiscal plan; and

13 WHEREAS, Pursuant to Administrative Code Section 29.2, prior to submittal to the  
14 Planning Department of an environmental evaluation application (“Environmental Application”)  
15 required under Administrative Code Chapter 31 and the California Environmental Quality Act  
16 (“CEQA”) related to the Project, it is necessary for the Port to procure from the Board of  
17 Supervisors a determination that the plan to undertake and implement the Project is fiscally  
18 feasible and responsible; and

19 WHEREAS, The Board of Supervisors has reviewed and considered the general  
20 description of the Project, the general purpose of the Project, the fiscal plan and other  
21 information submitted to it and has considered the direct and indirect financial benefits of the  
22 Project to the City of San Francisco, the cost of construction, the available funding for the  
23 Project, the long-term operating and maintenance costs of the Project, and the public debt for  
24 the Project; and

25

1           WHEREAS, The Board of Supervisors has reviewed and considered the proposed  
2 terms for the Project as set forth in the Term Sheet; and

3           WHEREAS, The Term Sheet is not itself a binding agreement that commits the City,  
4 including the Port, or Developer to proceed with the approval or implementation of the Project;  
5 rather, the Project will first satisfy environmental review requirements under CEQA and will be  
6 subject to public review in accordance with the processes of the City and other government  
7 agencies with approval rights over the Project before any binding agreements, entitlements or  
8 other regulatory approvals required for the Project will be considered; now, therefore, be it

9           RESOLVED, That the Board of Supervisors finds that the plan to undertake and  
10 implement the Project is fiscally feasible and responsible as set forth in San Francisco  
11 Administrative Code Chapter 29 (“Fiscal Feasibility Finding”); and, be it

12           FURTHER RESOLVED, That pursuant to San Francisco Administrative Code  
13 Chapter 29, the Environmental Application may now be filed with the Planning Department  
14 and the Planning Department may now undertake environmental review of the Project as  
15 required by Administrative Code Chapter 31 and CEQA; and, be it

16           FURTHER RESOLVED, That the Board of Supervisors endorses the Term Sheet and  
17 urges the Port:

18           (1) with the assistance of the Office of Economic and Workforce Development, the  
19 City Attorney's Office and other City officials as appropriate, to make evaluation and  
20 further negotiation of the proposed Project among its highest priorities;

21           (2) to include in the Project transaction documents, including ground leases and the  
22 development and disposition agreement (“DDA”), the following:

23                   (a) Developer and Port should establish fair market value and Developer  
24 should accept the two lead parcels as reimbursement towards its equity  
25 investment in entitlement costs, based on that fair market valuation, within 90

1 days of the DDA effective date or as expeditiously as possible in order to  
2 minimize the amount of the equity investment subject to the 20 percent  
3 developer return on equity;

4 (b) the Project's final transaction documents should specify that  
5 "unreimbursed" horizontal infrastructure development costs refer only to  
6 Developer's unreimbursed equity investment in entitlement and horizontal  
7 infrastructure development costs and not Project-based debt; and

8 (c) Port should explore and utilize all available public and project financing  
9 mechanisms deemed fiscally advantageous and prudent rather than having  
10 Developer fund all of the entitlement and horizontal infrastructure development  
11 costs; and

12 (3) to report back to the Board of Supervisors on:

13 (a) financing that has been secured for the parking structure as soon as the  
14 feasibility gap has been reconciled and prior to the master lease between Port  
15 and Developer being finalized; and

16 (b) how these recommendations have been included in the Project transaction  
17 documents at the Board of Supervisors hearing on approval of the Project; and,  
18 be it

19 FURTHER RESOLVED, That Board of Supervisors' endorsement of the Term Sheet  
20 and its Fiscal Feasibility Finding do not commit the Board of Supervisors, the Port or any other  
21 public agency with jurisdiction over any part of the Project to approve the terms of final leases  
22 or other transactions or grant any entitlements to Developer, nor does either the Term Sheet  
23 endorsement or Fiscal Feasibility Finding foreclose the possibility of considering alternatives  
24 to the Project or mitigation measures to reduce or avoid significant environmental impacts or  
25 preclude the City, after conducting appropriate environmental review under CEQA, from

1 deciding not to grant entitlements or approve or implement the Project, and while the Term  
2 Sheet identifies certain essential terms of a proposed transaction with the City through the  
3 Port Commission, it does not set forth all of the final, material terms and conditions of the  
4 transaction documents for the Project; and, be it

5           FURTHER RESOLVED, That the Board of Supervisors will not take any discretionary  
6 actions committing the City to implement the Project, and the provisions of the Term Sheet  
7 are not intended to and will not become contractually binding on the City, unless and until:  
8 (1) the Planning Department has reviewed and considered environmental documentation  
9 prepared in compliance with Administrative Code Chapter 31 and CEQA for the Project and  
10 has determined that the environmental documentation complies with Administrative Code  
11 Chapter 31 and CEQA; (2) the Port Commission has adopted appropriate CEQA findings in  
12 compliance with CEQA and has approved the terms of the final transaction documents for the  
13 Project incorporating the Term Sheet provisions; and (3) the Board of Supervisors has  
14 adopted appropriate CEQA findings in compliance with CEQA and approved the terms of the  
15 final leases and any other property transfers for the Project.