Port-TZK TERM SHEET
(April 4, 2016)

As required in the Exclusive Negotiating Agreement (ENA) dated as of September 10, 2015 for reference purposes only, this Term Sheet sets forth the basic terms and conditions on which the parties agree to further negotiate and that will be refined and set forth in more detail in the lease disposition and development agreement ("**LDDA**"), the lease (the "**Lease**"), and related transaction documents between Port and TZK Broadway, LLC. ("**TZK**" or "Developer" or "Tenant").

This Term Sheet is not intended to be, and will not become, contractually binding unless and until environmental review has been completed in compliance with the California Environmental Quality Act and the parties are able and willing to execute and deliver a mutually acceptable LDDA, Lease and related transaction documents regarding the Project. In addition, under San Francisco Charter, no officer or employee of the City and County of San Francisco (the "**City**") has authority to commit the City to the transaction contemplated herein unless and until the San Francisco Port Commission has approved the transaction documents and the San Francisco Board of Supervisors ("Board") of Supervisors has approved the form of Lease.

1.	Parties:	Developer/Tenant: TZK Broadway LLC, a California limited liability company ("TZK" or "Developer" or "Tenant") which is comprised of two member companies: Kenwood Investments No. 6, LLC, a California limited liability company ("KWI #6") and TZZ, LLC, a Washington limited liability company ("TZZ") established by Teatro ZinZanni. Landlord: City and County of San Francisco (the "**City**"), acting by and through the San Francisco Port Commission (the "**Port**")
2.	Key Party:	KWI #6 may not transfer more than 50% of its legal and beneficial interest in TZK without the Port's prior consent which shall not be unreasonably withheld, conditioned or delayed. TZZ may not transfer any of its legal and beneficial interest in Tenant without the Port's prior consent which may be withheld in its sole discretion prior to issuance of a certificate of completion, and which shall not be unreasonably withheld, conditioned or delayed after issuance of a certificate of completion. It shall be reasonable for Port to withhold its consent if any transfer of interest would result in the suspension or closure, whether permanent or temporary, of the dinner theater component of the Project during the minimum number of lease years the dinner-theater is required to serve its marquee and catalyst role on the waterfront pursuant to

the City's music and culture sustainability policy (City Admin Code Chapter 90A).

3. Premises or Site: Approximately 57,180 square feet of Seawall Lots 323 and 324 ("SWLs"), and portions of the unimproved Vallejo Street right-of-way on the west side of the Embarcadero at Vallejo Street ("ROWs"), as depicted on the attached **Exhibit "A,"** Site Map, subject to Board of Supervisors' approval of any jurisdictional transfer of the ROWs to Port at no cost to Port or any other approval required from any other City agency for use of the ROWs for the proposed Project.

4. Proposed Development Program: A mixed-use development including a theater and hotel built to conform to the district's height and bulk limits (40X) with allowed rooftop appurtenances, rooftop hotel open space, and new public open space in the northern most part of the Premises. The mixed use development includes:

a. 180-200 room boutique hotel,

b. approximately 28,301 square feet of dinner-theater-performance space which will be operated by TZZ's Teatro ZinZanni,

c. subject to State Lands approval, no more than 10 hotel rooms at any given time for use by artists from outside the Bay Area performing at the theater on a short-term basis, and

d. approximately 7,500 square-foot public park (collectively, the "**Project**"), all to be built on the Premises at Tenant's sole cost and subject to all required approvals.

A single building with approximately 174,892 square-foot of gross floor area will contain the hotel, short-stay guestrooms, and the dinner-theater. The hotel will occupy approximately 146,591 square-foot of the gross floor area with remaining 28,301 square-feet for the dinner-theater-performance space. A more complete description of the Project is attached as **Exhibit "B," Preliminary Project Description**."

5.	<u>Total Development Cost and Sources of Funding:</u>	Tenant is solely responsible for the funding of the proposed Project estimated to cost approximately $124 million as of March 2016, subject to escalations over time. Tenant has indicated that it will fund the development with approximately $60 million of debt and $64 million in equity subject to the IRR hurdle rates set forth in Number 18 below.
6.	<u>LDDA Effective Date and Period to Close Escrow:</u>	The LDDA Effective Date shall begin on the date the Parties fully execute the LDDA (which shall be not more than three (3) months after the Board' approval of the proposed LDDA, if applicable, with the form of Lease attached to the LDDA) and the LDDA shall terminate at the earlier of the date a Certificate of Completion is issued for the Project or the termination of the LDDA Term, subject to two six-month extensions. Tenant must close escrow ("COE") within 12 months of LDDA Effective Date subject to two six-month extension options so long as Tenant is not then in default under the LDDA, upon payment of an extension fee described in item No. 8 **Error! Reference source not found.** below. The LDDA terminates if COE does not occur within such time period, subject to force majeure events.
7.	<u>LDDA Key Issues to Address:</u>	Specifically, among other matters: a. The conditions to the Close of Escrow b. The Delivery of the Site under the Lease, c. The scope of the Developer's obligations to construct the Project, d. The Schedule of Performance for various obligations and performance benchmarks, including provisions for defined force majeure events, e. Certain First Source Hiring Program, LBEs, Local Hire, and Prevailing Wage Provisions, and f. The required financing for construction of the proposed improvements.

8.	<u>LDDA Fee:</u>	Tenant shall pay the Port an LDDA fee in the amount of $37,500 for the initial 12-month period before COE and $50,000 for each 6-month extension period, as consideration for having exclusivity over the Premises during the LDDA Term, (the "L**DDA Fee**"). The LDDA fee will not be prorated.
9.	<u>LDDA Termination Fee and Assignment of Project Materials:</u>	If the LDDA terminates before the Close of Escrow, due solely to a Tenant Event of Default, then Tenant agrees to pay to Port as liquidated damages a termination fee (the "**LDDA Termination Fee**") in the amount of $50,000 and assign to Port all of its consultants work products, including entitlements received to date. If a third-party seeks to obtain and use the work product assigned to the Port, the third-party will be required to negotiate appropriate compensation for the incremental value of the work product.
10.	<u>Period to Complete Construction; Extension Fee; Liquidated Damages for Failure to Timely Complete:</u>	Tenant must complete construction within the 24-months after lease commencement subject to two six-month extension options at a $50,000 fee for each extension. **<u>Liquidated Damages for Failure to Timely Complete Construction</u>**: If Tenant fails to complete the construction of the Project within the 36-month period the (24 month construction period plus the two 6-month extension periods and extensions for force majeure events) Tenant shall pay Port $1,150 for each day after the 36 month period has been exhausted and Tenant has yet to complete construction.
11.	<u>Reimbursement of Port's Transaction Costs:</u>	Developer will reimburse Port for all of Port's actual direct transaction costs incurred during the term of the LDDA, including any extension periods based on the actual direct costs incurred by the Port as demonstrated by a written invoice provided by the Port. The Developer will deposit quarterly a $45,000 Payment Advance to be applied towards Port's transaction cost. Underpayment and overpayment shall be subject the provisions similar to those under the ENA Section 4.2. There is no cap on the total amount of reimbursable Port's transaction costs. Accrual of new reimbursable transaction costs shall cease upon issuance of the Certificate of Completion. Developer's obligation to reimburse the Port for accrued

unpaid transaction costs shall survive the expiration, termination or issuance of the Certificate of Completion.

12.	Performance and Payment Bond:	Tenant or its General Contractor(s) will provide the Port with Performance and Payment Bonds or other forms of acceptable credit enhancements, guaranteeing completion of construction of the proposed improvements to the Premises, including timely payment of all construction materials and labor, and all applicable fees.
13.	Lease Term:	50 years, plus one 16-year extension option. The 16-year extension option shall be at Tenant's sole and exclusive option, subject to Tenant not being in default under the lease, Tenant having exercised the option to extend no later than two years prior to the end of the Initial Term and Port's review of then-existing conditions including sea level rise.
14.	Lease Commencement Date:	Close of Escrow under the LDDA.
15.	Construction Period Rent:	**Lease Years 1 and 2:** For the period commencing as of the close of escrow and ending upon the earlier of issuance of the final certificate of occupancy for the hotel or 24 months after Lease Commencement Date. Construction Period Rent is set at **$890,000 per year**. Rents to be paid monthly in advance.
16.	Minimum Rent Commencement Date:	Commencing from the earlier of issuance of the final certificate of occupancy for the hotel or 24 months after Lease Commencement Date.
17.	*Minimum Base Rent and Percentage Rent:	**Lease Years 3 and 4**: **(Project Operation Years 1 and 2**): The Greater of: • Minimum Base Rent: The Greater of: **$915,000 per year** Or • 90% of the percentage rent (i.e. 3.5% of Hotel

Gross Revenues) if the hotel has 80% occupancy on an annual basis during the prior year

Lease Years 5-7: (Project Operation Years 3, 4 and 5):

Greater of:
<u>Minimum Base Rent: $1,366,000</u> escalated annually by the annual increase of the Consumer Price Index ("CPI") for the Bay Area subject to a minimum increase of 2.5% and the maximum increase of 3.5% annually.
Or

- Percentage Rent: 3.5% of Hotel Gross Revenues plus 3.5%** of Gross Revenue from Dinner-Theater operations

<u>Lease Years 8 through 12</u>:

(Project Operation Years 5 through 10):

The Greater of:

- **<u>Minimum Rent:</u>** The then existing minimum base rent escalated annually by the annual increase of the CPI subject to a minimum increase of 2.5% and a maximum increase of 3.5% annually

Or

- Percentage Rent: 4.5% of Hotel Gross Revenues plus 3.5%** of Gross Revenue from Dinner-Theater operations

<u>Lease Years 13 through 22</u>:

(Project Operation Years 11 through 20):

The Greater of:

- Minimum Base Rent: The then existing minimum base rent reset in Lease Year 13 at greater of Lease Year 12 Minimum Base Rent escalated annually by the annual increase of the CPI subject to a minimum increase of 2.5% increase and a maximum 3.5% increase or 65% of the average of the prior 5 year percentage rent.

Or

- Percentage Rent: 5.5% of Hotel Gross Revenues plus 3.5%** of Gross Revenue from Dinner-Theater operations;

- **Years 23 through 50**:
(Project Operation Years 21 through 48):

The Greater of:

- Minimum Base Rent: The then existing minimum base rent reset in Lease Year 23 escalated annually by the annual increase of the CPI subject to a minimum increase of 2.5% increase and a maximum 3.5% increase or 65% of the average of the prior 5 year percentage rent. Minimum base rent reset at Lease Years 33 and 43 at greater of Lease Years 32 and 42 Minimum Base Rent escalated at between 2.5% to 3.5% annually based on CPI, respectively, or 65% of the average of the prior 5 year percentage rent. Minimum Base Rent escalates annually at between 2.5% to 3.5% annually based on CPI

Or:

- Percentage Rent: 6.5% of Hotel Gross Revenues plus 3.5%** of Gross Revenue from Dinner-Theater operations.

- **The 16-year Extension Period**:

- **Years 51 through 66**
(Project Operation Years 49 through 64):

The Greater of:

- Minimum Base Rent: Lease Year 53 Minimum Base Rent greater of Year 52 Minimum Base Rent escalated annually by the annual increase of the CPI subject to a minimum increase of 2.5% and a maximum of 3.5% annually or 65% of the average of the prior 5 year percentage rent. Minimum Base Rent Reset Lease Year 63 at 65% of the average of the prior 5 year percentage rent and shall be no less than the prior year Minimum Based Rent escalated at between 2.5% to 3.5% annually based on CPI

Or:

- Percentage Rent: 6.5% of Hotel Gross Revenues plus 3.5%** of Gross Revenue from Dinner-Theater operations.

*The above Minimum Base Rent are projections based on the assumption that the Tenant Project Timeline will be met; however, if there is any delay that results in a longer time for entitlement and construction, then the Minimum Base Rent will be escalated for the time lapsed to reflect the time-adjustment Minimum Base Rent.

**If the existing space for the dinner theater operations is no longer used for dinner theater operations, then the 3.5% percentage rent will be subject to negotiation between the parties such that the percentage rent for the use on such space is in line with other Port retail leases.

A table of the projected Minimum Base Rent during the Term shall be attached to the Lease.

18. Equity Repayment and Return on Equity:

Tenant is limited to earn 18% IRR on actual equity capital invested ("Actual Equity Capital Invested") in the Project and after earning the 18% IRR, surplus cash flow shall be shared at (i) 70/30 (Tenant/Port) until Tenant receives a 25% IRR and then (ii) 60/40 (Tenant/Port) (collectively, the "IRR Hurdle Rates"). With respect to Tenant only, Actual Equity Capital Invested is defined as the actual amount of money Tenant invests in the Project as "Total Project Costs" through project completion, less tax credit equity, debt, and Port capital contributions made to the Project, if any. The Total Project Cost includes Tenant's costs directly related to the development and construction of the Project incurred from and after the effective date of the ENA until and including opening of the hotel to the public as follows: (i) Tenant's hard and soft fees and costs for design, government relations, development, permit processing, impact fees, insurance, and general and administration costs; (ii) all construction costs and fees, including all materials costs and fees, and contractor and subcontractor overhead costs and fees, insurance and performance and payment bonds and costs, and general and administrative costs and fees; (iv) all legal and other professional costs and fees, (v) all financing costs and fees that are capitalized, (vi) all project-related expenses of Tenant, including reasonable costs incurred in opening the hotel and dinner theater and a proportionate share of Tenant's overhead such as salaries paid by Tenant for employees below the level of manager working directly on the Project, and (vii) a development fee of 5% of hard costs during the development phase of the Project.

The above definition of "Actual Equity Capital Invested" does not apply to subsequent Tenants."

Subject to Port's prior consent, which shall not be unreasonably conditioned, withheld, delayed or denied, future equity invested in the Project shall be entitled to receive the approved IRR Hurdle Rate on its invested equity based only on those amounts of equity that are actually invested into the acquisition, maintenance and operation of the Project, and not for a future equity investor's employment costs or management fees.

19. Port's Share of Excess Cash Flow: After Tenant has earned 18% IRR, Tenant, surplus cash flow shall be shared at (i) 70/30 (Tenant/Port) until TZK receives a 25% IRR and then (ii) 60/40 (Tenant/Port).

20. Port Share of Transfer and Refinance Proceeds: After Tenant has earned 18% IRR, net transfer and refinance proceeds shall be shared at (i) 70/30 (Tenant/Port) until Tenant receives a 25% IRR and then (ii) 60/40 (Tenant/Port).

Net transfer proceeds means all consideration received by or for the account of Tenant in connection with a Transfer less costs incurred in connection with the Transfer, such as legal and broker fees, and transfer proceeds applied so that Tenant can hit either the initial minimum IRR or subsequent IRR so that Port may share in the remaining net transfer proceeds, as further defined in the lease

Net Refinancing proceeds means all funds disbursed by a lender, less (i) funds used (a) to take out any existing loans secured by the leasehold estate, if any, (b) directly for the maintenance and repair of the project, (ii) legal fees associated with the financing, (iii) funds applied so that Tenant can hit either the initial minimum IRR or subsequent IRR so that Port may share in the remaining net refinancing proceeds, all as further refined in the lease.

21. **Security Deposit:** Within 30 days prior to the applicable period, Tenant shall provide the Port with a Security Deposit in the following amounts:

a Two months of Construction Period Rent prior to the commencement of the Construction Period,

b Tenant shall increase its Security Deposit every year prior to annual increase of Minimum Base Rent such that the security deposit always equals no less than 2 months of the then Minimum Base Rent.

22. **Environmental Oversight Deposit:** No later than 60 days prior to estimated opening date of the hotel, Tenant shall provide the Port with its operations plan related to use, storage and disposal of hazardous materials in the Project, which plan will include a list of hazardous materials and their quantities, in the Project. After Port's review of the operations plan, Port may require tenant to deposit an Environmental Oversight Deposit which can be provided through a cash deposit, a letter of credit or other mutually acceptable form of credit enhancement.

23. **Payment of Impositions** Tenant shall pay when due all impositions, such as possessory tax, license fee, or periodic permits, as applicable.

24. **Uses:** Approximately 180-200 room hotel, retail/commercial on the ground floor, dinner theater, and privately financed public park. Any change in use of the dinner-theater-performance space will be subject to Port's prior written consent, which consent will not be unreasonably withheld, conditioned or delayed.

25. **As-Is Condition:** Premises will be delivered in its as-is condition. Port will provide to Tenant all prior studies and reports in its possession pertaining to the Premises in advance of executing the LDDA.

26. Assignment:

Prior to completion of the Project and during the first seven (7) years of the Lease

Tenant may not assign its interest in the LDDA or Lease, as applicable, without the prior written consent of the Port subject to the following: Developer acknowledges that Port is entering into the LDDA and/or Lease on the basis of Developer's special skills, capabilities, and experience. This LDDA and the Lease are personal to Developer and neither is allowed to be Transferred without the Port's prior consent, which consent may not be unreasonably withheld, conditioned or delayed; provided, however, it will be reasonable for Port to withhold its consent to any assignment or transfer (i) that would result in a change in use of the dinner-theater operations and location and provided Port approves of the change in use, the percentage rent owed to Port from the gross revenues from such new use is less than the percentage rent received by Port for similar uses, or (ii) the initial and subsequent IRR thresholds are not reduced to account for the assignee's or transferee's reduced risk on its investment in the Project.

Under the LDDA and/or Lease, "**Transfer**" means: (1) dissolution, merger, consolidation, or other reorganization; (2) any cumulative or aggregate sale, assignment, encumbrance, or other transfer of (i) fifty (50) percent or more of, as applicable, Kenwood's or Tenant's legal or beneficial interests in Developer, or (ii) any percentage of TZZ's legal or beneficial interests in Developer, if applicable; (3) the withdrawal or substitution (whether voluntary, involuntary, or by operation of law and whether occurring at one time or over a period of time) of any member of Developer owning ten (10) percent or more of the interests in Developer or rights to its capital or profits; (4) the occurrence of any of the events described in (1), (2), or (3) with respect to either Kenwood Investments, LLC No. 6 or TZZ, LLC, or such other entity related to any subsequent assignee or transferee Port requires in connection with the applicable assignment or transfer; or (5) Darius Anderson or Norman Langill are no longer actively involved in the day-to-day operations of the Project.

No Transfer made with Port's consent, or as herein otherwise permitted, will be effective unless and until Port receives within thirty (30) days after the applicable transferor has entered into a transfer agreement with the transferee, an executed counterpart of such transfer agreement and any changes or amendments of any operating agreement in connection with such Transfer.

27.	Sublease:	All subleases are subject to the prior written consent of Port, which consent will not be unreasonably withheld, conditioned or delayed; provided, however, it will be reasonable for Port to withhold its consent to any sublease that would result in a change in use of the dinner/theater operations and location and provided Port approves of the change in use, the percentage rent owed to Port from the gross revenues from such new use is less than the percentage rent received by Port for similar uses any change in use. All subleases are subject to Port Percentage and Participation Rents.
28.	Leasehold Financing:	Tenant has the right to obtain construction financing, mezzanine financing, other interim financings, and permanent take-out financing from bona fide institutional lenders for the development of the Project that will be secured by Tenant's leasehold interest.
29.	Maintenance and Repair of all components of the Project, including the Park:	Sole responsibility of Tenant.
30.	Utilities:	Port makes no representation regarding existing utilities (including water and sewer) or need to construct new utilities (including water and sewer) or relocate existing utilities (including water and sewer) for development of the Project. Sole responsibility of Tenant.
31.	Hazardous Materials:	Sole responsibility of Tenant, provided Tenant will not be responsible for any pre-existing hazardous materials so long as they are not released or exacerbated by Tenant or its agents or invitees.
32.	The development must be self-supporting:	Tenant is responsible for providing the Port with a balanced development pro forma that takes into account reasonable sources and uses, feasible financial projects and assumptions, the Equity IRR and Equity Return, all Port Rent of any kind and ample reserves for debt service,

maintenance and operation reserves. Hotel operator and management selection are also the responsibility of Tenant subject to Port consent as described below.

33.	Competent Hotel Management and Approval of Management Agreement Required; Approved Operating Standard:	Tenant's final selection of a hotel management company and the approval of the hotel management agreement are both subject to prior review, acceptance and approval by Port, which review and acceptance shall not be unreasonably withheld, conditioned or delayed. Except as may otherwise determined by the Port Commission, at a minimum, any hotel management company must have no less than 10 years' of reputable experience operating no less than 3 boutique hotels, in a manner similar to Generally Accepted Operating Standards for downtown locations of major cities in the United States or if the operator does not meet the foregoing minimum qualifications, as may be otherwise determined by the Port in its sole discretion, which determination shall not be unreasonably withheld, conditioned or delayed. The hotel management company must operate the hotel in a commercially reasonable manner that seeks to maximizes hotel gross revenues After notice to Tenant, and good faith discussions between Tenant and Port, the Port may require Tenant to remove the then current hotel management company if the hotel is operated in a manner that is less than the manner for Generally Accepted Operating Standards for downtown locations in major cities in the United States and is not maximizing hotel gross revenues. "Generally Accepted Operating Standard" shall be further defined in the Lease, but at a minimum, shall mean operation and maintenance of a hotel (including the public park) at a level that (i) meets hospitality and service standards at other comparably sized boutique hotels in San Francisco of the highest quality, and (ii) attains from and after the 2nd anniversary of hotel operations, an overall rating of at least 3 diamonds from the American Automobile Association ("AAA") at least 3 years out of each and every consecutive 4 year period during the lease term, (iii) incorporates 4 diamond standards, as

established by AAA, into the design, furniture, fixtures, equipment, utilities, finishes and ambiance of the lobby and guest room areas, and (iv) complies with Port's good neighbor policy.

"**Boutique Hotel**" means a public, lodging establishment having approximately 180-200 separately keyed guest rooms that provides superior services, facilities and amenities for its guests at no less than the Generally Accepted Operating Standards, but which do not necessarily provide all of the services of a full-service hotel, such as a full-service conference, meeting, food and beverage or catering facilities, a full-service health club and spa, or other full-service recreational facilities.

34. No Subordination of Fee Interest or Rent: Under no circumstance will Tenant place or suffer to be placed any lien or encumbrance on Port's fee interest in the Premises. Port will not subordinate its interest in the Premises nor its right to receive rent to any mortgagee.

35. Parking: Tenant has the responsibility to provide an off-site parking plan to accommodate the Project. The Port agrees to consider providing Tenant with off-site parking options that may become available on Port properties on the same terms and conditions that the Port provides to any other parking tenants or licensees.

36. Trust Consistency: Port requires Tenant to submit its Trust Consistency plan to the Port for review and comments. If appropriate or necessary, Port will work with Tenant to obtain trust consistency letter from State Lands Commission staff or approval of the proposed project, including rooms in the hotel for short-term use by artists from outside the Bay Area.

37. Regulatory Approval: Tenant is responsible for obtaining all regulatory approvals, at its sole cost and expense.

38. Public Park and Open Space: Tenant is responsible for funding the costs of construction, operation and maintenance of the proposed public park and during the Lease Term at its sole cost and expense.

39.	Use Program and Conceptual Design:	Tenant is responsible for providing the floor area square footages and schematic design diagrams for all major and minor categories of uses of the proposed Project as part of its efforts to entitle the Project.
40.	Development Management Plan:	Developer/Tenant is responsible for the legal, financial, and operation management plans for all phases of the proposed Development.
41.	Initial Comprehensive Financial Plan Demonstrating Development Feasibility:	Tenant is responsible for providing a preliminary comprehensive financial plan that supports the feasibility of the constituent elements of the proposed development, and the feasibility must be mutually agreed upon by the Port and Tenant, which agreement shall not be unreasonably withheld, conditioned or delayed.
42.	List and Analysis of Public Benefits:	Tenant is responsible for providing a list of the expected public benefits of the Development along with quantitative characterization of the benefits. The benefit list and its characterization are subject to the mutual determination of the Port and Tenant and Port shall not unreasonably withhold condition or delay its approval.
43.	Standard Lease Terms	The Lease will include other standard lease terms customary for a Port lease, including but not limited to force majeure event provisions.

Attached Exhibits:

Exhibit "A," Site Map
Exhibit "B," Preliminary Project Description
Exhibit "C," Performance Schedule

Exhibit “A”
Project Description

Exhibit “B”
Preliminary Project Description

Exhibit “C,”
Performance Schedule