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

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

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

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

WHEREAS, On March 12, 2013, by Resolution No. 13-10, the Port Commission endorsed a term sheet that describes the fundamental deal terms for the Project (the “Term Sheet”) and directed Port staff to present the Term Sheet to the Board of Supervisors for endorsement and to submit a request that the Board of Supervisors review the proposed
Project under San Francisco Administrative Code Chapter 29 and determine whether the Project is fiscally feasible and responsible; and

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

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

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

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

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

Mayor Lee, Supervisors Kim, Chiu, and Wiener
BOARD OF SUPERVISORS
WHEREAS, The Board of Supervisors has reviewed and considered the proposed terms for the Project as set forth in the Term Sheet; and

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

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

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

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

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

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

(a) Developer and Port should establish fair market value and Developer should accept the two lead parcels as reimbursement towards its equity investment in entitlement costs, based on that fair market valuation, within 90
days of the DDA effective date or as expeditiously as possible in order to minimize the amount of the equity investment subject to the 20 percent developer return on equity;

(b) the Project’s final transaction documents should specify that “unreimbursed” horizontal infrastructure development costs refer only to Developer’s unreimbursed equity investment in entitlement and horizontal infrastructure development costs and not Project-based debt; and

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

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

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

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

be it

FURTHER RESOLVED, That Board of Supervisors’ endorsement of the Term Sheet and its Fiscal Feasibility Finding do not commit the Board of Supervisors, the Port or any other public agency with jurisdiction over any part of the Project to approve the terms of final leases or other transactions or grant any entitlements to Developer, nor does either the Term Sheet endorsement or Fiscal Feasibility Finding foreclose the possibility of considering alternatives to the Project or mitigation measures to reduce or avoid significant environmental impacts or preclude the City, after conducting appropriate environmental review under CEQA, from
deciding not to grant entitlements or approve or implement the Project, and while the Term Sheet identifies certain essential terms of a proposed transaction with the City through the Port Commission, it does not set forth all of the final, material terms and conditions of the transaction documents for the Project; and, be it

FURTHER RESOLVED, That the Board of Supervisors will not take any discretionary actions committing the City to implement the Project, and the provisions of the Term Sheet are not intended to and will not become contractually binding on the City, unless and until:

1. the Planning Department has reviewed and considered environmental documentation prepared in compliance with Administrative Code Chapter 31 and CEQA for the Project and has determined that the environmental documentation complies with Administrative Code Chapter 31 and CEQA;
2. the Port Commission has adopted appropriate CEQA findings in compliance with CEQA and has approved the terms of the final transaction documents for the Project incorporating the Term Sheet provisions; and
3. the Board of Supervisors has adopted appropriate CEQA findings in compliance with CEQA and approved the terms of the final leases and any other property transfers for the Project.
Resolution finding the proposed development of Seawall Lot 337 and Pier 48, bounded by China Basin Channel, Third Street, Mission Rock Street, and San Francisco Bay and adjacent to AT&T Park, fiscally feasible under Administrative Code, Chapter 29, and endorsing the Term Sheet between Seawall Lot 337 Associates, LLC and the Port Commission.

April 22, 2013 Land Use and Economic Development Committee - CONTINUED TO CALL OF THE CHAIR

May 08, 2013 Budget and Finance Sub-Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

May 08, 2013 Budget and Finance Sub-Committee - RECOMMENDED AS AMENDED

May 14, 2013 Board of Supervisors - ADOPTED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

I hereby certify that the foregoing Resolution was ADOPTED on 5/14/2013 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Date Approved: 5/12/13