

1 [Lease Agreement - TZK Broadway, LLC - Seawall Lots 323 and 324 - Teatro ZinZanni -
2 \$1,000,000 Annual Minimum Base Rent]

3 **Resolution approving and authorizing a 50-year Lease with one 16-year option to**
4 **extend between the Port Commission and TZK Broadway, LLC for the mixed-use hotel,**
5 **entertainment venue, and a public open space development at Seawall Lots 323 and**
6 **324, with an annual minimum base rent equal to no less than \$1,000,000 to commence**
7 **following Board approval; adopting findings of consistency with the General Plan, and**
8 **the eight priority policies of Planning Code, Section 101.1; authorizing and directing**
9 **the Port Executive Director to execute documents and take necessary actions to**
10 **implement this Resolution, as defined herein; and affirming the Planning Department's**
11 **determination under the California Environmental Quality Act.**

12
13 WHEREAS, Seawall Lots 323 and 324 and portions of Vallejo Street and Davis Street
14 right-of-ways (the "Site") are under the jurisdiction of the Port Commission ("Port") and
15 generally located west of The Embarcadero and north of Broadway Street; and

16 WHEREAS, Teatro ZinZanni ("Teatro"), a popular dinner-theater performed in a historic
17 Spiegel tent, was a fixture on the San Francisco waterfront for over a decade until 2011 when
18 Teatro and Port mutually terminated Teatro's lease to accommodate the 34th America's Cup
19 and the construction of the James R. Herman Cruise Terminal at Pier 27; and

20 WHEREAS, Under the termination agreement, Teatro and Port identified Seawall Lot
21 324 as a potential relocation site if Teatro satisfied certain conditions (such as project design
22 compatible with the Northeast Waterfront Historic District and completion of environmental
23 review, among others); and

24 WHEREAS, Teatro initially proposed a lease term not exceeding 10 years on a portion
25 of SWL 324 using temporary structures, but abandoned such proposal due to concerns from

1 various stakeholders that temporary structures would be incompatible within the historic
2 district and the cost to amortize permanent structures would be infeasible without a longer
3 lease term and expanded lease footprint; and

4 WHEREAS, In early 2013, Teatro proposed an expanded lease area to include Seawall
5 Lot 323 and portions of the adjacent Vallejo Street and Davis Street right-of-ways for a mixed-
6 use hotel, venue for Teatro, and a public open space (the "Project" or "Development"); and

7 WHEREAS, Teatro formed TZK Broadway, LLC ("Developer" or "TZK") in partnership
8 with Kenwood Investments to develop the Project on the Site; and

9 WHEREAS, On October 28, 2014, the Port Commission approved Resolution No. 14-
10 58 directing Port staff to assist TZK in developing and introducing a Resolution to the Board of
11 Supervisors ("Board") to consider exempting the potential lease of the Site for the
12 Development from the City's competitive bidding policy set forth in Administrative Code,
13 Section 2.6-1; and

14 WHEREAS, On May 5, 2015, the Board adopted Resolution No. 170-15 exempting the
15 potential lease of the Site with TZK from the competitive bidding requirements of
16 Administrative Code, Section 2.6-1; and

17 WHEREAS, On September 8, 2015, by Resolution No. 15-31, the Port Commission
18 authorized its Executive Director ("Executive Director") to enter into an Exclusive Negotiation
19 Agreement ("ENA") with the Developer; and

20 WHEREAS, On April 26, 2016, by Resolution No. 16-18, the Port Commission
21 endorsed a term sheet for the Project ("Term Sheet") and on July 12, 2016, by Resolution No.
22 277-16, the Board endorsed the Term Sheet; and

23 WHEREAS, The San Francisco Planning Department ("Planning Department")
24 prepared an Initial Study/Preliminary Mitigated Negative Declaration ("IS/PMND") for the
25

1 Project and published it for public review on October 17, 2018, no appeal of the IS/PMND was
2 filed and the Mitigated Negative Declaration became final on December 21, 2018; and

3 WHEREAS, On December 21, 2018, the Planning Department approved the issuance
4 of the Final Mitigated Negative Declaration (“FMND”) as prepared by the Planning Department
5 in compliance with the California Environmental Quality Act (“CEQA”), CEQA Guidelines (Title
6 14 California Code of Regulations, Sections 15000 et seq.), and San Francisco Administrative
7 Code, Chapter 31 (“Chapter 31”); and

8 WHEREAS, On March 6, 2019, the Historic Preservation Commission adopted Motion
9 No. 0370 finding that the proposed Development is consistent with Article 10 of the Planning
10 Code and the Secretary of the Interior’s Standards for Rehabilitation in conformance with the
11 architectural plans filed with the Planning Department subject to the conditions and findings
12 listed in its Motion No. 0370; and

13 WHEREAS, On May 2, 2019, the Planning Commission conducted a duly noticed
14 public hearing at a regularly scheduled meeting on Conditional Use Authorization Application
15 and General Plan Referral Nos. 2015-016326 CUA and 2016- 011011GPR; at that hearing,
16 pursuant to Resolution No. 20443, the Planning Commission made findings of consistency
17 with the General Plan, and with the eight priority policies of Planning Code, Section 101.1 for
18 the street vacations for the Project, pursuant to Section 4.105 of the City Charter and Section
19 2A.53 of the Administrative Code; in addition, pursuant to Motion No. 20444, the Planning
20 Commission granted a Conditional Use Authorization for the Development pursuant to
21 Planning Code, Sections 210.1, 240.3 and 303 to allow a hotel use within the C-2 Zoning
22 District, the Waterfront Special Use District No. 3, and a 40-X Height and Bulk District, subject
23 to the conditions and findings listed in the Motion No. 20444; and

24 WHEREAS, In Resolution No. 20443, the Planning Commission, having reviewed the
25 FMND, concurred with the Planning Department’s determination that, pursuant to the FMND,

1 including its mitigation measures, the Project could not have a significant impact on the
2 environment; and

3 WHEREAS, In Motion No. 20444, the Planning Commission made the same findings
4 as in Resolution No. 20443, and more specifically found that, based on review and
5 consideration of the FMND and the record as a whole, there is no substantial evidence that
6 the Project will have a significant effect on the environment with the adoption of the mitigation
7 measures contained in the Mitigation Monitoring and Reporting Program (“MMRP”); a copy of
8 the MMRP is on file with the Clerk of the Board in File No. 191182; the Planning Commission
9 adopted the FMND and the MMRP and included all required mitigation measures identified in
10 the FMND and contained in the MMRP as conditions of approval; and

11 WHEREAS, The Planning Department Commission Secretary is the custodian of
12 record for the file for File Nos. 2015-016326ENV, 2015-016326 CUA and 2016- 011011GPR
13 at 1650 Mission Street, Suite 400, San Francisco, California; and

14 WHEREAS, The FMND and the MMRP have been made available to the public, the
15 Port Commission, and the Board for their review and action and are incorporated herein by
16 this reference; and

17 WHEREAS, The Port Commission, pursuant to Resolution No. 19-36 found that the
18 FMND is adequate, that there is no substantial evidence that the Project will have a significant
19 effect on the environment with the adoption of the mitigation measures contained in the
20 MMRP, and adopted the FMND and MMRP; and

21 WHEREAS, Pursuant to Section 23.33 of the Administrative Code, it is City policy that
22 any and all leases awarded without following the City’s competitive bid procedures shall be in
23 an amount not less than the fair market value of the leased property; and

24 WHEREAS, The Director of the Real Estate Division, in consultation with Port staff,
25 conducted an appraisal of the Site, and such appraisal, along with hotel consultant reports,

1 shows that the financial terms of the Lease are not less than the fair market value of the Site;
2 and

3 WHEREAS, Port staff and TZK have negotiated the terms of the (1) Lease Disposition
4 and Development Agreement (“LDDA”), (2) form of Lease No. L-16585 (“Lease”) with a term
5 of 50 years with one 16-year extension option, and (3) such other documents related to the
6 Project as contemplated in the foregoing documents (collectively, the “Transaction
7 Documents”), as further described in the Memorandum for Agenda Item 12B for the Port
8 Commission meeting of September 6, 2019 (“Port Memorandum”), which copy of the Port
9 Memorandum and Lease are on file with the Clerk of the Board in File No. 191182; and

10 WHEREAS, The material terms of the Lease include, among other terms, the following
11 financial terms: (1) an annual minimum base rent equal to no less than \$1 million, as
12 increased over time, (2) percentage rent above the minimum rent equal to 3.5%-6.5% of
13 annual gross revenues as further described in the Port Memorandum, (3) participation rent on
14 net cash flow, net transfer proceeds and net refinancing proceeds from the Project after the
15 tenant has earned a minimum return on tenant equity, as further described in the Port
16 Memorandum, (4) a cap of \$60 million on the initial tenant’s equity that is eligible to earn a
17 return, and (5) tenant obligation to maintain the public park and open space within the Site
18 without any reimbursement or payment by Port or the City; and

19 WHEREAS, The Lease also limits the type of post-construction tenant equity eligible
20 for return as follows: (1) a reduced return (11% IRR) on tenant equity for capital improvements
21 only, (2) a reduced return equal to the lesser of the interest rate on the then outstanding
22 senior loan on the Project or 10%, both at simple interest, on tenant equity (capped at \$20
23 million over the Lease term, subject to increases set forth in the Lease) used to offset
24 operational shortfalls due a downturn lasting at least 12 consecutive months in the San
25 Francisco hotel market, as further described in the Port Memorandum; and

1 WHEREAS, City and Port staff and consultants have conducted feasibility analysis of
2 the Project benefits for the Port and City and a copy of the feasibility analysis and projected
3 public benefits are on file with the Clerk of the Board in File No. 191182; and

4 WHEREAS, On September 10, 2019, pursuant to Resolution No. 19-36, the Port
5 Commission approved the Transaction Documents, the schematic drawings for the Project
6 and found that the Project provides numerous benefits to the Public Trust, including (a) new
7 hotel, dinner-theater, and other visitor-serving uses that will enhance public use and
8 enjoyment of the Waterfront, (b) creation of a new public open space, (c) elimination of
9 barriers to the Waterfront and uniting the landside with the Waterfront, (d) enhanced
10 pedestrian, bicycle and transit access along the Waterfront, and (e) increased rental revenues
11 to the Harbor Fund that will exceed the current and projected revenues from existing parking
12 operations on the Site, as further described in the Port Memorandum; and

13 WHEREAS, (1) The actions proposed for approval in this Resolution were
14 contemplated as part of the FMND and present no substantial changes to the Project that will
15 require major revisions of the FMND due to the involvement of new significant environmental
16 effects or a substantial increase in the severity of previously identified significant effects;
17 (2) the actions proposed for approval in this Resolution present no substantial changes with
18 respect to the circumstances under which the Project was approved that will require major
19 revisions of the FMND due to the involvement of new significant environmental effects or a
20 substantial increase in the severity of previously identified significant effects; (3) no new
21 information of substantial importance, which was not known and could not have been known
22 with the exercise of reasonable diligence at the time the FMND was adopted, has become
23 available which indicates that: (A) the Project will have significant effects not discussed in the
24 FMND, (B) significant environmental effects will be substantially more severe than shown in
25 the FMND, (C) mitigation measures or alternatives found not to be feasible would in fact be

1 feasible, and would substantially reduce one or more significant effects of the Project, or
2 (D) mitigation measures or alternatives which are considerably different from those in the
3 FMND would substantially reduce one or more significant effects on the environment; now,
4 therefore, be it

5 RESOLVED, That this Board has reviewed and considered the FMND and the record
6 as a whole, and finds that the FMND is adequate, that there is no substantial evidence that
7 the Project will have a significant effect on the environment with the adoption of the mitigation
8 measures contained in the MMRP, and hereby adopts the FMND; and, be it

9 FURTHER RESOLVED, That this Board hereby adopts the FMND and the MMRP as
10 part of this Resolution and directs Port staff to include in the applicable Transaction
11 Documents, an obligation by the Developer to comply with all required mitigation measures
12 identified in the FMND and contained in the MMRP; and, be it

13 FURTHER RESOLVED, That this Board hereby finds that the Project is consistent with
14 the General Plan, and with the eight priority policies of Planning Code, Section 101.1 for the
15 same reasons as set forth in the Planning Commission Motion Nos. 20443 and 20444, and
16 hereby incorporates such findings by reference as though fully set forth in this Resolution;
17 and, be it

18 FURTHER RESOLVED, That this Board approves the form and substance of the
19 Lease pursuant to its authority under Charter, Section 9.118, including all attachments and
20 exhibits thereto, and the transactions and other agreements which such Transaction
21 Documents contemplate, incorporating the material business terms set forth in the Port
22 Memorandum; and, be it

23 FURTHER RESOLVED, That this Board authorizes and directs the Port Executive
24 Director to execute the Lease in substantially the form on file with the Clerk of the Board in
25 File No. 191182, and in such final form as is approved by the Port Executive Director in

1 consultation with the City Attorney, upon satisfaction or waiver of the conditions precedent set
2 forth in the LDDA; and, be it

3 FURTHER RESOLVED, That this Board authorizes the Port Executive Director (or their
4 designee) to enter into any additions, amendments or other modifications to Lease (including,
5 without limitation, preparation and attachment or, or changes to, any of all of the exhibits and
6 ancillary agreements), and any other documents or instruments necessary in connection
7 therewith that, the Port Executive Director in consultation with the City Attorney determines
8 are in the best interests of the Port, do not materially decrease the benefits to the Port or the
9 City, do not materially increase the obligations or liabilities of the Port and the City, or
10 materially decrease the public benefits accruing to the Port or City, and are necessary or
11 advisable to complete the transaction contemplated and effectuate the purpose and intent of
12 this Resolution; and, be it

13 FURTHER RESOLVED, That within thirty (30) days of the Lease being fully executed
14 by all parties, the Port shall provide a copy of the Lease to the Clerk of the Board for inclusion
15 into the official file.

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City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails
Resolution

File Number: 191182

Date Passed: January 14, 2020

Resolution approving and authorizing a 50-year Lease with one 16-year option to extend between the Port Commission and TZK Broadway, LLC for the mixed-use hotel, entertainment venue, and a public open space development at Seawall Lots 323 and 324, with an annual minimum base rent equal to no less than \$1,000,000 to commence following Board approval; adopting findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; authorizing and directing the Port Executive Director to execute documents and take necessary actions to implement this Resolution, as defined herein; and affirming the Planning Department's determination under the California Environmental Quality Act.

December 11, 2019 Budget and Finance Committee - CONTINUED

January 08, 2020 Budget and Finance Committee - RECOMMENDED

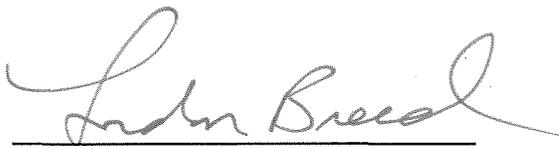
January 14, 2020 Board of Supervisors - ADOPTED

Ayes: 11 - Fewer, Haney, Mandelman, Mar, Peskin, Preston, Ronen, Safai, Stefani, Walton and Yee

File No. 191182

I hereby certify that the foregoing Resolution was ADOPTED on 1/14/2020 by the Board of Supervisors of the City and County of San Francisco.


Angela Calvillo
Clerk of the Board


London N. Breed
Mayor


Date Approved