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.

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

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

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

WHEREAS, Teatro initially proposed a lease term not exceeding 10 years on a portion of SWL 324 using temporary structures, but abandoned such proposal due to concerns from
various stakeholders that temporary structures would be incompatible within the historic
district and the cost to amortize permanent structures would be infeasible without a longer
lease term and expanded lease footprint; and

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

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

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

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

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

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

WHEREAS, The San Francisco Planning Department (“Planning Department”)
prepared an Initial Study/Preliminary Mitigated Negative Declaration (“IS/PMND”) for the
Project and published it for public review on October 17, 2018, no appeal of the IS/PMND was filed and the Mitigated Negative Declaration became final on December 21, 2018; and

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

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

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

WHEREAS, In Resolution No. 20443, the Planning Commission, having reviewed the FMND, concurred with the Planning Department's determination that, pursuant to the FMND,
including its mitigation measures, the Project could not have a significant impact on the environment; and

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

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

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

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

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

WHEREAS, The Director of the Real Estate Division, in consultation with Port staff, conducted an appraisal of the Site, and such appraisal, along with hotel consultant reports,
shows that the financial terms of the Lease are not less than the fair market value of the Site; and

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

WHEREAS, The material terms of the Lease include, among other terms, the following financial terms: (1) an annual minimum base rent equal to no less than $1 million, as increased over time, (2) percentage rent above the minimum rent equal to 3.5%-6.5% of annual gross revenues as further described in the Port Memorandum, (3) participation rent on net cash flow, net transfer proceeds and net refinancing proceeds from the Project after the tenant has earned a minimum return on tenant equity, as further described in the Port Memorandum, (4) a cap of $80 million on the initial tenant's equity that is eligible to earn a return, and (5) tenant obligation to maintain the public park and open space within the Site without any reimbursement or payment by Port or the City; and

WHEREAS, The Lease also limits the type of post-construction tenant equity eligible for return as follows: (1) a reduced return (11% IRR) on tenant equity for capital improvements only, (2) a reduced return equal to the lesser of the interest rate on the then outstanding senior loan on the Project or 10%, both at simple interest, on tenant equity (capped at $20 million over the Lease term, subject to increases set forth in the Lease) used to offset operational shortfalls due a downturn lasting at least 12 consecutive months in the San Francisco hotel market, as further described in the Port Memorandum; and
WHEREAS, City and Port staff and consultants have conducted feasibility analysis of the Project benefits for the Port and City and a copy of the feasibility analysis and projected public benefits are on file with the Clerk of the Board in File No. 191182; and

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

WHEREAS, (1) The actions proposed for approval in this Resolution were contemplated as part of the FMND and present no substantial changes to the Project that will require major revisions of the FMND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (2) the actions proposed for approval in this Resolution present no substantial changes with respect to the circumstances under which the Project was approved that will require major revisions of the FMND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (3) no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the FMND was adopted, has become available which indicates that: (A) the Project will have significant effects not discussed in the FMND, (B) significant environmental effects will be substantially more severe than shown in the FMND, (C) mitigation measures or alternatives found not to be feasible would in fact be
feasible, and would substantially reduce one or more significant effects of the Project, or (D) mitigation measures or alternatives which are considerably different from those in the FMND would substantially reduce one or more significant effects on the environment; now, therefore, be it

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

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

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

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

FURTHER RESOLVED, That this Board authorizes and directs the Port Executive Director to execute the Lease in substantially the form on file with the Clerk of the Board in File No. 191182, and in such final form as is approved by the Port Executive Director in
consultation with the City Attorney, upon satisfaction or waiver of the conditions precedent set forth in the LDDA; and, be it

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

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