

1 [Financing - Portsmouth Plaza Parking Corporation - Not to Exceed \$12,500,000]

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3 **Resolution authorizing a financing to be undertaken by the City of San Francisco**
4 **Portsmouth Plaza Parking Corporation on behalf of the City in an amount not to exceed**
5 **\$12,500,000 and approving the forms of and authorizing the execution and delivery of**
6 **documents reasonably necessary for such financing; ratifying and approving any**
7 **action heretofore taken in connection with the financing; granting general authority to**
8 **City officials to take actions necessary to implement this Resolution; and related**
9 **matters.**

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11 WHEREAS, The Board of Supervisors of the City and County of San Francisco (the
12 “Board”) desires to provide for the renovation of and various improvements to the Portsmouth
13 Square Garage at 733 Kearny Street, San Francisco, California, including but not limited to
14 improvements related to drainage and water proofing, security and emergency preparedness,
15 interior improvements and systems upgrades, building repairs and general refurbishment
16 (collectively, the “Project”); and

17 WHEREAS, The Project shall be located within the geographical boundaries of the City
18 and County of San Francisco (the “City”), upon premises owned by the City and leased to the
19 City of San Francisco Portsmouth Plaza Parking Corporation, a California not-for-profit
20 corporation (“Portsmouth Parking Corporation” or “Corporation”), pursuant to that certain
21 Lease, dated April 1, 2011 (the “Lease”), between the City, acting by and through its
22 Recreation and Park Commission, as landlord, and the Portsmouth Parking Corporation, as
23 lessee; and

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1 WHEREAS, On February 15, 2011, pursuant to Resolution 85-11, this Board
2 authorized the Recreation and Park Department General Manager to enter into the Lease;
3 and

4 WHEREAS, Portsmouth Parking Corporation intends to design, develop, construct,
5 operate and maintain the Project; and

6 WHEREAS, Portsmouth Parking Corporation, acting for and on behalf of the City,
7 intends to obtain a tax-exempt loan (the "Loan") from First Republic Bank (the "Bank") in an
8 amount not to exceed \$12,500,000 and to use the proceeds of the Loan to finance a portion
9 of the costs of the Project; and

10 WHEREAS, Portsmouth Parking Corporation intends to satisfy the requirements and
11 conditions set forth by the Internal Revenue Service in Revenue Ruling 63-20, as modified by
12 Revenue Procedure 82-26 (the "IRS Rulings"), in order to enable Portsmouth Parking
13 Corporation to finance a portion of the costs of the Project with proceeds of the Loan; and

14 WHEREAS, Pursuant to the IRS Rulings, (1) Portsmouth Parking Corporation must be
15 organized under the Nonprofit Corporation Law of the State of California and (2) the City must
16 approve the Loan and the purposes and activities of Portsmouth Parking Corporation; and

17 WHEREAS, The Portsmouth Parking Corporation is organized under the Nonprofit
18 Public Benefit Corporation Law for public purposes and its purposes and activities are the
19 financing, construction, and operation of a public off-street parking facility in the area generally
20 known as Portsmouth Square, for and on behalf of the City, and the conduct of matters
21 incident thereto; and

22 WHEREAS, In order to satisfy the requirements of the IRS Rulings, Portsmouth
23 Parking Corporation desires to amend and restate and otherwise update its Articles of
24 Incorporation and its Bylaws to document the organization of Portsmouth Parking Corporation
25 under the Nonprofit Corporation Law of the State of California, which amendment and

1 restatement requires the approval of the City as the holder of all authorized shares of the
2 capital stock of the Corporation; and

3 WHEREAS, On July 21, 2016, by Resolution No.1607-008 (the “Commission
4 Resolution”), the Recreation and Park Commission approved and recommended for approval
5 by this Board (1) the purposes and activities of Portsmouth Parking Corporation, (2) the
6 amendment and restatement of the Articles of Incorporation (the “Articles of Incorporation”)
7 and Bylaws (the “Bylaws”) of Portsmouth Parking Corporation to document the organization of
8 Portsmouth Parking Corporation under the Nonprofit Corporation Law of the State of
9 California, (3) the Loan and Portsmouth Parking Corporation’s use of the proceeds thereof to
10 finance a portion of the costs of the Project, (4) the City’s execution and delivery of the
11 Revenue Commitment Letter (as defined below); and

12 WHEREAS, To facilitate Bank’s issuance of the Loan to Portsmouth Parking
13 Corporation, the Recreation and Park Commission has requested in its Commission
14 Resolution that this Board approve that certain Portsmouth Square Parking Garage Landlord
15 Assurances and Revenue Commitment Letter (the “Revenue Commitment Letter”), which
16 includes, among other terms, (i) a covenant by the City, subject to appropriation by the Mayor
17 and the Board of Supervisors, to pay the Bank any shortfall in the payment of Loan payments
18 then due, (ii) a covenant by the City to include in the proposed budget of the Recreation and
19 Park Commission, which is submitted to the Mayor, an appropriation for such shortfall (unless
20 such appropriation is included in the proposed budget of another department of the City), (iii)
21 certain waivers by the City of provisions of the Lease, and (iv) an obligation to repay the Loan
22 from garage revenues in the event the City terminates the Lease while the Loan is
23 outstanding; and

24 WHEREAS, For the foregoing reasons, the Recreation and Park Commission
25 recommends and requests that this Board approve (1) the purposes and activities of

1 Portsmouth Parking Corporation described above, (2) the Articles of Incorporation and
2 Bylaws, (3) the Loan and Portsmouth Parking Corporation's use of the proceeds thereof to
3 finance a portion of the costs of the Project, (4) the City's execution and delivery of the
4 Revenue Commitment Letter; and

5 WHEREAS, There have been prepared and presented to this Board for consideration
6 at this meeting proposed forms of the Articles of Incorporation, the Bylaws and the Revenue
7 Commitment Letter (collectively the "Financing Documents"); and

8 WHEREAS, All acts, conditions and things required by the Constitution and laws of the
9 State of California to exist, to have happened and to have been performed precedent to and in
10 connection with the consummation of the transactions authorized hereby do exist, have
11 happened and have been performed in regular and due time, form and manner as required by
12 law, and the City is now duly authorized and empowered, pursuant to each and every
13 requirement of law, to consummate its role in such transactions for the purpose, in the manner
14 and upon the terms herein provided; now, therefore, be it

15 RESOLVED, By this Board of Supervisors of the City and County of San Francisco as
16 follows:

17 Section 1. Approval of Recitals. This Board hereby finds and declares that the above
18 recitals are true and correct.

19 Section 2. Approval of Parking Corporation Purposes and Activities; Approval of
20 Loan. The Board hereby approves the purposes and activities of Portsmouth Parking
21 Corporation and the Loan to Portsmouth Parking Corporation to finance a portion of the costs
22 of the Project. It is the intent of the Board that this resolution should constitute approval of the
23 purposes and activities of Portsmouth Parking Corporation and the Loan for purposes of the
24 IRS Rulings.

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1 Section 3. Approval of Parking Corporation Articles of Incorporation and Bylaw. The
2 Board hereby approves the forms of the Articles of Incorporation and Bylaws and authorizes
3 and directs each of the Mayor, the City Attorney, the Director of Public Finance of the City and
4 the General Manager of the City’s Recreation and Park Department or in each case their
5 designees, and all other appropriate officers of the City (collectively, the “Authorized Officers”
6 and individually, an “Authorized Officer”), acting individually or collectively, to execute,
7 acknowledge and deliver the Articles of Incorporation and Bylaws, such approval to be
8 conclusively evidenced by the execution and delivery thereof, together with such additions
9 thereto and changes therein as the City Attorney may approve or recommend in accordance
10 with Section 5 hereof, and to execute all other documents and certificates and take all other
11 steps necessary or desirable to effect the amendment and restatement of the Articles of
12 Incorporation and Bylaws.

13 Section 4. Approval of Revenue Commitment Letter. The Board hereby approves
14 the terms and form of the Revenue Commitment Letter. The Board further authorizes and
15 directs any of the Authorized Officers, acting individually or collectively, to execute,
16 acknowledge and deliver the Revenue Commitment Letter in substantially the form presented
17 at this meeting together with such additions thereto and changes therein as the City Attorney
18 may approve or recommend in accordance with Section 5 hereof necessary or desirable to
19 facilitate the issuance of the Loan to the Corporation, such approval to be conclusively
20 evidenced by the execution and delivery thereof.

21 Section 5. Modifications, Changes, Additions. Any Authorized Officer executing the
22 Financing Documents, in consultation with the City Attorney, is hereby authorized to approve
23 and make such modifications, changes or additions to the Financing Documents as may be
24 necessary or advisable, provided that such modification (1) does not authorize a loan amount
25 of in excess of \$12,500,000 or otherwise materially increase the obligations or liabilities of the

1 City, (2) does not authorize the performance of any activities without pursuing all required
2 regulatory and environmental review and approvals, and (3) is necessary or advisable to
3 effectuate the purposes and interests therein or of this resolution. The approval of any
4 modification, addition or change to any of the Financing Documents shall be evidenced
5 conclusively by the execution and delivery of the document in question.

6 Section 6. Ratification. All actions heretofore taken by the officers and agents of the
7 City with respect to the Loan, as consistent with the Financing Documents and this
8 Resolution, are hereby approved, confirmed and ratified.

9 Section 7. General Authority. The proper officers of the City, including but not limited
10 to the Authorized Officers, are hereby authorized and directed, for and in the name and on
11 behalf of the City, to do any and all things and take any and all actions and execute and
12 deliver any and all certificates, agreements and other documents, including but not limited to
13 subordinations, assignments, tax documents and those documents described in the Financing
14 Documents, which they, or any of them, may deem necessary or advisable and to effectuate
15 the purposes thereof and of the Financing Documents. Any such actions are solely intended
16 to further the purposes of this Resolution, and are subject in all respects to the terms of the
17 Resolution. No such actions shall increase the risk to the City or require the City to spend any
18 resources not otherwise granted herein. Final versions of any such documents shall be
19 provided to the Clerk of the Board for inclusion in the official file within 30 days of execution
20 (or as soon thereafter as final documents are available) by all parties.

21 Section 8. File. All documents referenced herein as being on file with the Clerk of
22 the Board are located in File No. 160887, which is hereby declared to be a part of this
23 Resolution as if set forth fully herein.