

_____, 2016

First Republic Bank
111 Pine Street
San Francisco, CA 94111

**Re: Portsmouth Square Parking Garage Landlord Assurances and
Revenue Commitment Letter**

Ladies and Gentlemen:

The undersigned, the General Manger (the "General Manager") of the City and County of San Francisco Recreation and Park Commission (the "Commission"), acting as a duly authorized representative of the City and County of San Francisco (the "City"), hereby delivers to First Republic Bank (the "Lender") this Letter Agreement (the "Letter Agreement") in connection with a \$ _____ tax-exempt loan (the "Loan") from the Lender to finance certain improvements to the Portsmouth Square Parking Garage located in the City and County of San Francisco. To induce Lender to provide the Loan to Borrower and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby certifies and agrees for the benefit of Lender, its participants, successors and assigns, as follows:

- (1) Findings. The City hereby makes the following findings:
 - (a) The City owns certain real property (the "Site") located in the City and County of San Francisco, California, as described in Exhibit A attached hereto, and certain buildings, structures and other improvements situated, placed or constructed on the Site, as described in Exhibit A attached hereto (the "Improvements," and, together with the Site, the "Premises"). hereto.
 - (b) The City and San Francisco Portsmouth Plaza Parking Corporation, a nonprofit public benefit corporation ("Borrower") are parties to that certain Lease, dated April 1, 2011 (the "Lease"), between the City, acting by and through the Commission, as landlord, and the Borrower, as lessee, a true and correct copy of which is attached as Exhibit B hereto.
 - (c) Borrower will obtain a the Loan from Lender pursuant a Loan Agreement, dated as of _____ 1, 2016 (the "Loan Agreement"), by and between Borrower and Lender, the proceeds of which the Borrower will use primarily to construct the Project, as defined in Exhibit C hereto (the "Project"), on the Premises. The Loan will also be secured by a Security Agreement, dated as of _____ 1, 2016 executed and delivered by Borrower in favor of Lender.
 - (d) City desires for the Borrower to finance the Project with the proceeds of the Loan.
 - (e) Pursuant to the terms of the Lease, the Premises are leased and operated by the Corporation on behalf of the City as a revenue producing public off-street parking facility and debt service on the Loan will be payable from the Gross Revenues (as defined in the Lease) of the Premises and rent is payable to the City as a percentage of the Net Revenue

(defined under the Lease as Gross Revenues less applicable taxes, debt service on the Loan and operating expenses).

- (f) The Loan, the Loan Agreement, the Security Agreement and this Letter Agreement were approved by the Board of Supervisors of the City pursuant to Resolution No. _____ adopted _____, 2016. The Loan, the Loan Agreement, the Security Agreement and this Letter Agreement were approved by the Commission pursuant to Resolution No. _____ adopted _____, 2016. The Loan, the Loan Agreement, the Security Agreement and this Letter Agreement were approved by the board of directors of the Borrower pursuant to Resolution No. _____ adopted _____, 2016.

(2) Landlord Representations. City hereby certifies that the following information contained in this Letter Agreement is true and correct, that Lender may rely upon such information and the consents, representations and warranties of City herein, and that City is executing this Letter Agreement with the understanding that Lender is contemplating providing financing to Borrower and if Lender does so, it will do so in reliance on this Letter Agreement.

- (a) As of the date hereof, the Lease constitutes the only agreement between Borrower and City with respect to the Premises, and there have been no modifications, supplements, amendments, assignment or extensions thereto.
- (b) As of the date hereof, the Lease is in full force and effect; Borrower has accepted the Premises and presently occupies the Premises and is paying the Rent, as defined in the Lease, on a current basis; City has no setoffs, claims or defenses to the enforcement of the Lease; Borrower, to City's knowledge, has not assigned, transferred or hypothecated its interest under the Lease; and City is not the subject of any bankruptcy, reorganization, insolvency, readjustment of debt dissolution of liquidation proceeding.
- (c) As of the date hereof, City has received no notice of default from Borrower, City is not in default in the performance of the Lease and no event has occurred which, with the passage of time or the giving of notice of both, would constitute such a default.
- (d) As of the date hereof, City has given no notice of default to Borrower, and to City's knowledge, Borrower is not in default in the performance of the Lease and no event has occurred which, with the passage of time or the giving of notice or both, would constitute such default.
- (e) The Lease expires on March 31, 2051 (the "Lease Expiration Date"), subject to City's right to terminate the Lease early pursuant to its terms. The Lease contains no options to extend or renew the term thereof.
- (f) Borrower owes no security deposit or prepaid fee to City under the Lease in excess of \$1.
- (g) City represents and warrants that is has not used, generated, released, discharged, stored or disposed of any hazardous materials on, under, in or about the Premises other than hazardous materials used in the ordinary and commercially reasonable course of City's business in full compliance with all applicable laws.
- (h) As of the date hereof, City has not granted a mortgage on the Premises to any party or otherwise encumbered the Premises except for easements, rights of way, permits and/or licenses reserved to the City as permitted by Section 3.2 of the Lease.

- (3) Copies of Lease Correspondence Provided to Lender. City will use best efforts to promptly provide the Lender with copies of any material correspondence with Borrower regarding the Lease, including but not limited to any notices of default or noncompliance described in Section 10 hereof and the annual statement required by Section 5.5(e) of the Lease[, but not including the monthly reporting required by Sections 5.5(a) and (e) of the Lease]. [Name of City Officer] shall be responsible for providing Lender with the documents required by this Section 3.
- (4) City Agreements. Notwithstanding any provision in the Lease to the contrary, City hereby agrees and consents to the following:
- (a) City hereby acknowledges and consents to the Loan Agreement and agrees that for all purposes of the Lease, including but not limited to Sections 5.6 and 8.6 thereof, the Loan shall be deemed permitted indebtedness of Borrower.
 - (b) City agrees that \$_____ from the Borrower's Capital Improvement Reserve Account is to be transferred to a Reserve Fund for the Loan as provided by the Loan Agreement and held in a deposit account with Lender.
 - (c) City hereby consents to the Project, which consent shall satisfy any requirement of City's consent (including but not limited to the consent of the General Manager, the Commission and the MTA Board) to improvements to the Premises under the Lease, including without limitation Section 8.1 of the Lease.
 - (d) City agrees that the Project is "Necessary Capital Improvements," as defined in the Lease, that the Loan shall be deemed an approved financing source for the Necessary Capital Improvements pursuant to Section 8.6 of the Lease, and that Borrower's payments on the Loan shall be "Approved Debt Service," as defined in the Lease.
 - (e) City hereby waives City's right to terminate the Lease pursuant to Sections 8.7 and 8.8 of the Lease.
 - (f) Notwithstanding the provisions of Sections 5.4, 9.2 and 12.2 of the Lease, City hereby agrees that all funds in the Capital Improvement Reserve Account, as defined in the Lease, shall be available to Borrower to make payments on the Loan without further need for approval from City (including but not limited to approval of the General Manager, the Commission and the MTA Board), and that all such funds shall constitute "Collateral" under the Loan Agreement and the Security Agreement; provided however, that (i) the Bank shall only have the right to payment from this Account if the Borrower is late on its payments due hereunder and (ii) the City can also use the Account to finance permitted capital expenditures as described in Section 9.2 of the Lease.
 - (g) City hereby agrees that Lender shall be an express third party beneficiary of Section 14.2 of the Lease and hereby agrees to set and establish rates and charges for the parking of vehicles on the Premises adequate to insure that the gross receipts collected by the Borrower will at least equal the amounts sufficient to make payments due on the Loan and provide for compliance with the rate covenant in Section 7.10(a) of the Loan Agreement.

- (h) City hereby waives the provisions of Section 16 and 17 of the Lease to the extent necessary for City to comply with its agreements in Section 7 and 8 of this Letter Agreement.
 - (i) City agrees and consents to the security interest in the Gross Revenues and personal property created under the Security Agreement for the benefit of the Lender to secure the Loan.
- (5) Affirmative Covenants of Borrower under the Loan Agreement.
- (a) City agrees to permit Lender and its agents, representatives and employees, upon reasonable prior notice, to inspect the Premises; and
 - (b) City agrees to comply with the requirements of applicable laws and regulations and material contractual obligations of City, the noncompliance with which would materially and adversely affect Borrower's beneficial use of the Premises.
- (6) Negative Lien. City agrees that it shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Premises (together, "Liens") other than Liens that do not materially adversely affect the operation of the parking facility operations on the Premises and the generation of revenues from such operations. City shall promptly, at its own expense, take such action as may be necessary duly to discharge or remove any such unpermitted Lien.
- (7) Disposition of Premises. City agrees that it will not sell, lease, assign, transfer or otherwise dispose of any material portion of the Premises without the prior written consent of Lender which shall not be unreasonably withheld and the delivery to the Lender of an opinion of a nationally recognized bond counsel firm to the effect that any such sale, lease, assignment, transfer or other disposition will not adversely affect the tax-exempt status of the interest on the Loan. City shall provide Borrower and Lender with prior written notice of its intention to sell, lease, assign, transfer or otherwise dispose of any material portion of the Premises or any interest therein.
- (8) Insurance.
- (a) City agrees to cause all Net Proceeds of any insurance award resulting from any damage to or destruction of any portion of the Premises by fire or other casualty, as applicable, or of any title insurance award to be applied as set forth in Section 9.02 of the Loan Agreement, which requires, under certain circumstances, that such proceeds be applied to the prepayment of the Loan.
 - (b) City consents to Lender being an additional insured and loss payee on Borrower's insurance policies described in Section 21 of the Lease, subject to the condition that City remains fully indemnified and that adequate provision exists for repair and or restoration of damaged or destroyed improvements on the Premises as required by the Lease.

(9) Eminent Domain. If all or a material portion of the Premises shall be taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, City agrees to cause all Net Proceeds of any eminent domain award to be applied to the prepayment of the Loan in accordance with Sections 9.01 and 4.06 of the Loan Agreement

(10) Notice and Right to Cure.

City agrees that Lender shall have the right to prompt notice of any event of default under the Lease and the right to cure any such default. The notice shall specify: the default; the action required to cure the default; a date, not less than 30 days from the date the notice is given to Lender, by which the default must be cured.

(11) Revenue Facilitation and Loan Payment Upon Early Termination of Lease. City agrees to take all reasonable steps to facilitate the operation of the Premises as a revenue producing parking facility with sufficient revenues to pay the payments due on the Loan under the Loan Agreement and compliance by the Corporation with the rate covenant in Section 7.10(a) of the Loan Agreement. In the event City terminates the Lease at any time while the Loan is outstanding, City hereby agrees to pay, or cause to be paid, in either case solely from parking facility revenues to Lender the payments due on the Loan under the Loan Agreement. If the City terminates the Lease and proposes to enter into a new lease of the Premises with a new tenant, the Landlord shall cause such new tenant, as a condition of entering into such new lease, to agree to assume the Loan and to make payments due on the Loan with revenues from the parking facility. If for any reason the Premises do not generate revenue sufficient to pay the Loan Payments, the City agrees, subject to appropriation by the Mayor and the Board of Supervisors of the City, to pay Lender any shortfall in the payment of the Loan Payments then due. Unless included in the proposed budget of another department of the City, the proposed budget of the Commission which is submitted to the Mayor shall include an appropriation for such shortfall. Notwithstanding anything herein or in any other instrument to the contrary, this Letter Agreement is subject to the budget and fiscal provisions of the City's Charter. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Lender's assumption of risk of possible non-appropriation is part of the consideration of this Agreement. This obligation of the City shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations.

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CITY AND COUNTY OF SAN FRANCISCO, acting
by and through its CITY AND COUNTY OF SAN
FRANCISCO RECREATION AND PARK
COMMISSION

By: _____
Name: _____
Title: General Manager

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Name: _____
Title: _____

*[Signature Page to Portsmouth Square Garage
Landlord Assurances and Revenue Commitment Letter]*

ACKNOWLEDGED AND AGREED TO BY:

CITY OF SAN FRANCISCO PORTSMOUTH
PLAZA PARKING CORPORATION

FIRST REPUBLIC BANK

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

*[Signature Page to Portsmouth Square Garage
Landlord Assurances and Revenue Commitment Letter]*

EXHIBIT A

Legal Description of the Premises

EXHIBIT B

Copy of Lease Agreement

EXHIBIT C

The Project

The Project consist of the renovation of and various improvements to the Portsmouth Square Garage at 733 Kearny Street, San Francisco, California, including but not limited to improvements related to drainage and water proofing, security and emergency preparedness, interior improvements and systems upgrades, building repairs and general refurbishment (collectively, the "Project").