
LOAN AGREEMENT

among

FIRST REPUBLIC BANK,
as Lender

and

CITY OF SAN FRANCISCO PORTSMOUTH PLAZA PARKING CORPORATION,
as Borrower

relating to

Up to \$_,000,000
2016 Tax-Exempt Loan
(Portsmouth Plaza Parking Corporation)

Dated as of [_____], 2016

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LOAN AGREEMENT

THIS LOAN AGREEMENT, dated as of [_____], 2016 (this "Loan Agreement"), among **FIRST REPUBLIC BANK**, a state chartered bank organized and existing under the laws of the State of California ("Lender"), and **CITY OF SAN FRANCISCO PORTSMOUTH PLAZA PARKING CORPORATION**, a California nonprofit [public benefit] corporation (the "Borrower").

WITNESSETH:

WHEREAS, the Borrower desires to finance the Project (as defined herein) on the terms and conditions set forth below,

WHEREAS, in order to finance the Project, the Borrower intends to obtain a loan from the Lender (as further defined herein, the "Loan"), the interest with respect to which shall be excluded from income of Lender for federal income tax purposes, and Lender has agreed to loan to the Borrower, the principal amount of up to \$_,000,000; and

WHEREAS, for and in consideration of such Loan, the Borrower agrees, inter alia, to make loan payments to the Lender sufficient to pay on the dates specified herein, the principal of, premium, if any, and interest thereon, and other Additional Payments (as defined herein); and

WHEREAS, Lender and Borrower have duly authorized the execution and delivery of this Loan Agreement.

NOW, THEREFORE, in consideration of the payments to be made hereunder and the mutual covenants contained herein, the parties agree as follows:

ARTICLE I

DEFINITIONS

The following terms used herein will have the meanings indicated below unless the context clearly requires otherwise.

"501(c)(3) Organization" means an organization described in Section 501(c)(3) of the Code.

"Additional Payments" means the amounts, other than Payments, payable by Borrower pursuant to the provisions of this Loan Agreement, including, without limitation, amounts pursuant to Section 12.03 hereof, indemnity payments and reimbursement of advances due hereunder.

"Advance" means the Closing Advance and/or a Periodic Advance.

"Affiliate" means an affiliate of Lender or any related entity.

“Applicable Loan Rate” means (i) for the Fixed Rate Interest Period, 3.30% per annum, and (ii) for the Variable Rate Interest Period, a rate equal to the LIBOR Index Rate plus the Applicable Spread %.¹

“Applicable Spread” means 1.50%.

“Authorized Borrower Representative” means [] or any other person or persons designated from time to time in writing as an Authorized Borrower Representative of the Borrower by the Borrower's Board of Directors.

“Borrower” means (a) City of San Francisco Portsmouth Plaza Parking Corporation, a California nonprofit [public benefit] corporation organized and existing under and by virtue of the laws of the State of California; (b) any surviving, resulting or transferee entity thereof permitted pursuant to the terms of this Loan Agreement; and (c) except where the context requires otherwise, any assignee(s) of Borrower permitted pursuant to the terms of this Loan Agreement.

“Business Day” means any day which is not one of the following: (a) a Saturday, Sunday or legal holiday as set forth by the Federal Reserve Bank of San Francisco; (b) any other day on which banks in New York, New York or San Francisco, California are authorized or required to be closed by the appropriate regulatory authorities; or (c) a day on which the New York Stock Exchange is authorized or required to be closed.

“City” means the City and County of San Francisco.

“City Lease” means that certain Lease, dated April 1, 2011, between the City and County of San Francisco, acting by and through its Recreation and Park Commission, as Landlord, and the Borrower, as Lessee, for the operation of the Facility.

“Closing Advance” means that portion of the Loan advanced as a loan to Borrower on the Closing Date pursuant to the terms and conditions of Section 3.01 hereof.

“Closing Date” means [], 2016.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” means the Collateral (as defined in the Security Agreement).

“Construction Contract” means an agreement with a general contractor for the construction of the Project which agreement, together with any agreements between the general contractor and subcontractors responsible for 10% or more of the costs relating to the Project, shall be subject to the approval of the Lender. The Lender may, as a requirement for such approval, require that the general contractor obtain a performance bond for the Project.

“Construction Inspector” means the construction inspector or a consulting engineer and/or architect engaged by the Lender to inspect the Project (provided that a construction

¹ This draft follows the term sheet's Option A with respect to the interest rate provisions.

manager engaged by the Borrower may serve as Construction Inspector with the consent of the Lender) pursuant to Section 5.02(j). The reasonable out-of-pocket cost incurred by Lender in retaining such Construction Inspector shall be paid by Borrower.

“Construction Period” means the period beginning on the Closing Date and ending on [____], 20__.

“Debt Service” means for each Fiscal Year, the sum (determined on a consolidated basis in accordance with GAAP and without duplication) of the following: (a) all payments of principal of debt of Borrower scheduled to be made during such Fiscal Year, plus (b) all interest expense scheduled to be made during such Fiscal Year.

“Debt Service Coverage Ratio” means for each Fiscal Year, beginning with the Fiscal Year ended [April 30], 20__, the ratio for such Fiscal Year of (a) the sum of (i) total unrestricted operating revenues minus total unrestricted operating expenses, (ii) interest and any annual or ongoing fees on all long-term indebtedness and (iii) depreciation and amortization to (b) annual Debt Service due in such Fiscal Year. Non-operating extraordinary gains or losses (including realized and unrealized gains and losses with respect to investment activities), or any non-operating assets released from restrictions will be excluded from determining this ratio (each as evidenced in the financial statements of the Borrower).

“Default” means an event that, with giving of notice or passage of time or both, would constitute an Event of Default as provided in Article X hereof.

“Default Rate” means the Prime Rate plus 5%, but not to exceed the highest rate permitted by law.

“Determination of Taxability” means any determination, decision, decree or advisement by the Commissioner of Internal Revenue, or any District Director of Internal Revenue or any court of competent jurisdiction, or an opinion obtained by Lender, of counsel qualified in such matters, that an Event of Taxability has occurred. A Determination of Taxability also shall be deemed to have occurred on the first to occur of the following:

(a) the date when Borrower files any statement, supplemental statement, or other tax schedule, return or document, which discloses that an Event of Taxability has occurred;

(b) the effective date of any federal legislation enacted or federal rule or regulation promulgated after the date of this Loan Agreement that causes an Event of Taxability; or

(c) upon the sale, lease or other deliberate action within the meaning of Treas. Reg. § 1.141-2(d), the failure to receive an unqualified opinion of Tax Counsel to the effect that such action will not cause interest on the Loan to become includable in the federal gross income of the Holder.

“Environmental Regulations” or “Environmental Laws” means any federal, state or local law, statute, code, ordinance, regulation, requirement or rule relating to dangerous, toxic or hazardous pollutants, Hazardous Substances or chemical waste, materials or substances.

“Event of Default” shall have the meaning assigned to such term in Section 11.01.

“Event of Indirect Taxability” means the enactment of any federal legislation, or the promulgation of any federal rule or regulation, after the date of this Loan Agreement, that has the effect (no matter how accomplished or implemented) of causing all or any portion of the interest on the Loan to be taken into account under any provision of the Code in such manner as to cause an increase in the federal income tax liability of Lender.

“Event of Taxability” means: (a) the application of the proceeds of the Loan, or other amounts treated as “gross proceeds” of the Loan, in such manner that such Loan becomes an “arbitrage bond” within the meaning of Code Sections 103(b)(2) and 148, with the result that interest on the Loan is or becomes includable in the federal gross income (as defined in Code Section 61) of the Holder; (b) if as a result of any act, failure to act or use of the proceeds of any portion of the Loan or the Project or any misrepresentation or inaccuracy in any of the representations, warranties or covenants contained in this Loan Agreement by Borrower or the enactment of any federal legislation or the promulgation of any federal rule or regulation after the date of this Loan Agreement, the interest on such Loan is or becomes includable in a Holder’s federal gross income (as defined in Code Section 61).

“Facility” means collectively (a) the Property; (b) all buildings, structures and other improvements situated, placed or constructed on the Property; (c) any other real estate acquired or operated by the Borrower in the future; and (d) all materials, supplies, equipment, apparatus and other items of personal property owned by Borrower and attached to, installed in or used in connection with (a), (b), or (c) above, including (without limitation) water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements.

“Fiscal Year” means the period beginning on [May 1] of each year and ending the next succeeding [April 30] or any other 12-month or 52-week period hereafter selected and designated as the official Fiscal Year of the Borrower by the Authorized Borrower Representative.

“Fixed Rate Interest Period” means the period commencing on the Closing Date and terminating on [____], 20__.

“FRB” means First Republic Bank and its Affiliates.

“Governmental Unit” means a State or political subdivision thereof under Section 103(c)(1) of the Code and the Treasury Regulations promulgated thereunder.

“Gross-Up Rate” means, with respect to the Loan, an interest rate equal to the Applicable Loan Rate plus a rate sufficient such that the total interest to be paid on any payment date would, after such interest was reduced by the amount of any federal, state and local income tax (including any interest or penalties) actually imposed thereon, equal the amount of interest due with respect to the Loan.

“Gross-Up Rate Payment” shall have the meaning set forth in Section 4.01(b).

“GAAP” means generally accepted accounting principles and practices set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession).

“Hazardous Substances” or “Hazardous Materials” means (a) any oil, flammable substance, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which (i) pose a hazard to the Facility or to persons on or about the Facility or (ii) cause the Facility to be in violation of any Environmental Regulation; (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls, or radon gas; (c) any chemical, material or substance defined as or included in the definition of “waste,” “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous waste,” “restricted hazardous waste,” or “toxic substances” or words of similar import under any Environmental Regulation including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 USC §§ 9601 et seq.; the Resource Conservation and Recovery Act (“RCRA”), 42 USC §§ 6901 et seq.; the Hazardous Materials Transportation Act, 49 USC §§ 1801 et seq.; the Federal Water Pollution Control Act, 33 USC §§ 1251 et seq.; the California Hazardous Waste Control Law (“HWCL”), Cal. Health & Safety Code §§ 25100 et seq.; the Hazardous Substance Account Act (“HSAA”), Cal. Health & Safety Code §§ 25300 et seq.; the Underground Storage of Hazardous Substances Act, Cal. Health & Safety Code §§ 25280 et seq.; the Porter-Cologne Water Quality Control Act (the “Porter-Cologne Act”), Cal. Water Code §§ 13000 et seq., the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65); and Title 22 of the California Code of Regulations, Division 4, Chapter 30; (d) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or agency or may or could pose a hazard to the health and safety of the occupants of the Facility or the owners and/or occupants of property adjacent to or surrounding the Facility, or any other person coming upon the Facility or adjacent property; or (e) any other chemical, materials or substance which may or could pose a hazard to the environment.

“Holder” means Lender or an assignee of Lender to which the Loan is assigned.

“Lender” means (a) First Republic Bank; (b) any surviving, resulting or transferee corporation of First Republic Bank; and (c) if this Loan Agreement has been assigned by Lender pursuant to Section 10.01 hereof, such assignee shall be considered Lender with respect to this Loan Agreement, subject to Section 10.01.

“Lender’s Counsel” means Hawkins Delafield & Wood LLP.

“LIBOR Index Rate” means the one-month U.S. LIBOR rate published in the “Money Rates” section of the Wall Street Journal or any successor source for such rate, on the last Business Day of each calendar month. If the Wall Street Journal or successor source publishes more than one one-month U.S. LIBOR rate on such date, the one-month U.S. LIBOR Rate shall be the lowest of such LIBOR rates. If the Wall Street Journal or successor source publishes a

correction or retraction of the LIBOR Rate then the term "LIBOR Index Rate" shall mean the LIBOR Rate published in such correction or retraction.

"Lien" shall have the meaning set forth in Section 8.01 hereof.

"Lien Claims" shall have the meaning set forth in Section 8.01 hereof.

"Loan" means the up to \$_,000,000 term loan from Lender to Borrower under this Loan Agreement.

"Loan Agreement" means this Loan Agreement, including the exhibits hereto, as any of the same may be supplemented or amended from time to time in accordance with the terms hereof.

"Loan Disbursement Instructions" means the Loan Disbursement Instructions dated the Closing Date and executed by the Borrower and delivered to the Lender.

"Loan Documents" means, collectively, this Loan Agreement, the Security Agreement, and the Tax Certificate.

"Maturity Date" means [_____], 20__.

"Net Proceeds" means any insurance proceeds or condemnation award paid with respect to the Facility, to the extent remaining after payment therefrom of all expenses incurred in the collection thereof.

"Parity Debt" means obligations secured on a parity with the Loan.

"Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001.

"Payments" means payments of principal, interest, and prepayment charges, if any, with respect to the Loan (excluding Additional Payments) payable by Borrower pursuant to the provisions of this Loan Agreement. Payments shall be payable by Borrower directly to Lender in the amounts and at the times as set forth in this Loan Agreement.

"Periodic Advance" means that portion of the Loan advanced as a loan to Borrower from time to time subject to compliance with Section 5.02 hereof.

"Periodic Advance Date" means each date when a Periodic Advance is requested by the Borrower pursuant to Section 3.01(b).

"Periodic Advance Request" means the request of Borrower to receive a Periodic Advance which shall be submitted to Lender in the form of Exhibit A hereto.

"Permitted Encumbrances" means (a) Liens and security interests securing indebtedness owed by Borrower to Lender, including the Security Agreement; (b) Liens arising by reason of good faith deposits in connection with tenders, leases of real estate, bids or contracts (other than

contracts for the payment of borrowed money); (c) any Lien arising by reason of deposits with, or the giving of any form of security to, any governmental agency or any body created or approved by law or governmental regulation for any purpose at any time as required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license, or to enable Borrower to maintain self-insurance or to participate in any funds established to cover any insurance risks or in connection with workers' compensation, unemployment insurance, pensions or profit sharing plans or other social security plans or programs, or to share in the privileges or benefits required for corporations participating in such arrangements; (d) Liens arising by reason of good faith deposits made by or to Borrower in the ordinary course of business (for other than borrowed money), deposits by Borrower to secure public or statutory obligations or deposits to secure, or in lieu of, surety, stay or appeal bonds, and deposits as security for the payment of taxes or assessments or other similar charges; (e) attachment or judgment liens not constituting a default hereunder, or any attachment or judgment lien against Borrower so long as such judgment is being contested in accordance with the Lien Contest Criteria set forth in Section 8.01 hereof; (f) rights reserved to or vested in any municipality or public authority by the terms of any right, power, franchise, grant, license, permit or provision of law affecting the Property, to: (1) terminate such right, power, franchise, grant, license, or permit, provided, that the exercise of such right would not materially impair the use of such Property in the ordinary course by Borrower or materially and adversely affect the value thereof, or (2) purchase, condemn appropriate or recapture, or designate a purchaser of, the Property or any portion thereof; (g) Liens for taxes, assessments, or similar charges either not yet due or being contested in accordance with the Lien Contest Criteria set forth in Section 8.01 hereof; (h) Liens of materialmen, mechanics, warehousemen, or carriers, or other like Liens arising in the ordinary course of business and securing obligations which are not yet delinquent; or which are being contested in accordance with the Lien Contest Criteria set forth in Section 8.01 hereof; (i) easements, rights-of-way, servitudes, restrictions, oil, gas, or other mineral reservations and other minor defects, encumbrances, and irregularities in the title to the Property which do not materially impair the use of such Property in the ordinary course by Borrower or materially and adversely affect the value thereof; (j) rights reserved to or vested in any municipality or public authority to control or regulate the Property or to use such Property in any manner, which rights do not materially impair the use of such Property or materially or adversely affect the value thereof, to the extent that it affects title to the Property; (k) Liens on property received by Borrower through gifts, grants or bequests, such Liens being due to restrictions on such gifts, grants or bequests or the income thereon, so long as the fair market value of any such property is greater than the amount of the indebtedness secured by the Lien on such property; (l) the exceptions to the City's fee title and Borrower's leasehold title as approved by Lender; (m) use or license agreements which are immaterial with respect to use of portions of the Facility for purposes consistent with Borrower's nonprofit corporate purposes; (n) Liens to secure indebtedness permitted under Section 8.06; and (o) any other Lien approved in writing by the Lender.

"Plans and Specifications" means the applicable plans and specifications for the Project, as approved by the Lender.

"Prepayment Premium" means the following premium, expressed as a percentage of the amount to be prepaid, which shall apply only to the portion of prepaid principal of the Loan during any consecutive twelve-month period commencing on the Closing Date in excess of

twenty percent (20%) of the original principal amount of the Loan (so long as a Determination of Taxability has not occurred):

<u>Prepayment Date</u>	<u>Prepayment Premium</u>
After the Closing Date and before [____], 20__	1.00%
On or after the date of a Determination of Taxability and on and after [____], 20__	None

“Prime Rate” means that floating rate of interest per year identified from time to time as the Prime Rate as published in The Wall Street Journal or any successor source for such rate, which at any time may or may not be the lowest rate charged by Lender. Changes in the rate of interest resulting from a change in the Prime Rate shall take effect on the date of publication of a change in the Prime Rate.

“Prior Interest Payment” means a payment of interest on the Loan made on or prior to the date of any Determination of Taxability that becomes subject to taxation.

“Project” means [(i) payment and/or reimbursement of the Borrower for the costs of constructing, improving, renovating, furnishing and/or equipping of the Facility, and (ii) payment of costs of issuance of the Loan]. The term “Project” may also refer, depending on the context in which it is used herein, to the improvements to the Facility financed and/or refinanced as part of the Project.

“Project Budget” means a budget relating to the Project submitted by the Borrower to the Lender and certified by the Borrower to be a true, accurate and complete listing of all costs which Borrower reasonably anticipates will be incurred in connection with the completion of the Project and the commencement of operations thereat, and shall have been approved by the Lender.

“Project Costs” means the amount paid or to be paid for any portion of the Project incurred by Borrower in connection with the Project prior to or after the Closing Date and as permitted under this Loan Agreement and the Tax Certificate, including but not limited to costs of issuance of the Loan.

“Project Disbursement Schedule” means a disbursement schedule for anticipated payment of costs relating to the Project, as submitted to and approved by the Lender.

“Property” means the real property leased by the Borrower located at [733 Kearny Street, San Francisco, California 94108], as described in the City Lease, together with any greater estate therein as hereafter may be acquired by Borrower.

“Referee” has the meaning set forth in Section 12.18(b) hereof.

“Reference” has the meaning set forth in Section 12.18(a) hereof.

“Side Letter” means the Portsmouth Square Parking Garage Landlord Assurance and Revenue Commitment Letter dated [____], 2016 from the City to the Lender and approved by the City and County of San Francisco Recreation and Park Commission.

“Security Agreement” means the Security Agreement (Accounts, General Intangibles, Inventory and Other Collateral – Loan) of even date herewith executed and delivered by Borrower in favor of Lender, securing its obligations under this Loan Agreement.

“State” means the State of California.

“Statutory Bond Criteria” has the meaning set forth in Section 8.01 hereof.

“Tax Certificate” means the [Tax Certificate] relating to the Loan, executed and delivered by the Borrower and the City, together with any supplements, exhibits or certificates related thereto.

“Tax Counsel” means Hawkins Delafield & Wood LLP, as counsel to Lender, or any other firm of nationally recognized municipal finance attorneys, selected by Lender, experienced in the issuance of municipal obligations and matters relating to the exclusion of the interest thereon from gross income for federal income tax purposes.

“Variable Rate Interest Period” means the period commencing on [____], 20__ and ending on the Maturity Date.

ARTICLE II

REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

Section 2.01. Representations, Warranties and Covenants of Borrower. The Borrower represents, warrants and covenants, for the benefit of Lender that (such representations and warranties to remain operative and in full effect regardless of the funding of the Loan or of any investigations by or on behalf of the Lender or the results thereof):

(a) The Borrower is a nonprofit [public benefit] corporation duly incorporated and in good standing under the laws of the State, authorized to finance the Project with the proceeds of the Loan, and, has full legal right, power and authority to enter into the Loan Documents, and to carry out all of its obligations under and consummate all transactions contemplated by the Loan Documents, and by proper corporate action has duly authorized the execution, delivery and performance of the Loan Documents.

(b) As of the Closing Date, the officers of the Borrower executing the Loan Documents are duly and properly in office and fully authorized to execute the same.

(c) The Borrower has duly authorized the execution, delivery and performance of the Loan Documents and the Loan Documents have been duly executed and delivered by the Borrower.

(d) The Loan Documents constitute the legal, valid and binding agreements of the Borrower enforceable against the Borrower by the Lender; except as enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity and by public policy.

(e) The execution and delivery of the Loan Documents, the consummation of the transactions contemplated by the Loan Documents and the fulfillment of or compliance with the terms and conditions of the Loan Documents, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under the articles of incorporation of the Borrower, its bylaws, any applicable law or administrative rule or regulation to which Borrower is subject, or any applicable court or administrative decree or order to which Borrower is subject, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties are otherwise subject or bound, including but not limited to the City Lease, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Loan Documents, or the financial condition, assets, properties or operations of the Borrower.

(f) As of the Closing Date, no consent or approval of the City or any trustee or holder of any indebtedness of the Borrower or any guarantor of indebtedness of or other provider of credit or liquidity of the Borrower, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of the Loan Documents, or the consummation of any transaction contemplated by the Loan Documents, or the fulfillment of or compliance with the terms and conditions of the Loan Documents, except as have been obtained or made or will be made pursuant to Section 4.03 and as are in full force and effect.

(g) As of the Closing Date, there is no action, suit, proceeding, inquiry or investigation, before or by any court or federal, state, municipal or other governmental authority, pending, or to the knowledge of the Borrower, after reasonable investigation, threatened, against or affecting the Borrower or the assets, properties or operations of the Borrower which, if determined adversely to the Borrower or its interests, would have a material adverse effect upon the consummation of the transactions contemplated by, or the validity of, the Loan Documents, or upon the financial condition, assets, properties or operations of the Borrower, and the Borrower is not in default (and no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Loan Documents, or the financial condition, assets, properties or operations of the Borrower. All tax returns (federal, state and local) required to be filed by or on behalf of the Borrower have been filed, and all

taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Borrower in good faith, have been paid or adequate reserves have been made for the payment thereof which reserves, if any, are reflected in the audited financial statements described therein. The Borrower enjoys the peaceful and undisturbed possession of the Property.

(h) As of the Closing Date, no written information, exhibit or report furnished to the Lender by the Borrower in connection with the negotiation of the Loan Documents contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided that with respect to projected financial information, Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

(i) The Borrower has good leasehold title to the Property free and clear from all encumbrances other than Permitted Encumbrances.

(j) As of the Closing Date, the Borrower's audited consolidated balance sheets at [April 30, 20__] and [April 30, 20__], and the related consolidated statements of income and consolidated statements of cash flows for the years ended [April 30, 20__] and [April 30, 20__] (copies of which have been furnished to the Lender) fairly present the financial position of the Borrower at such date and the results of operations for the year ended on such date, and since [April 30, 20__] there has been no material adverse change in the financial condition or results of operations of the Borrower.

(k) The Borrower complies in all material respects with all applicable Environmental Regulations.

(l) Neither the Borrower nor the Facility are the subject of a federal, state or local investigation evaluating whether any remedial action is needed to respond to any alleged violation of or condition regulated by Environmental Regulations or to respond to a release of any Hazardous Substances into the environment.

(m) As of the Closing Date, the Borrower does not have knowledge of any material contingent liability in connection with any release of any Hazardous Substances into the environment.

(n) The Borrower is in compliance with Section 21000, of the Public Resources Code (the "CEQA Requirements") with respect to the Project and has received all documentation evidencing such compliance, or the Project is not defined as a "project" or is "statutorily exempt" or is "categorically exempt" in accordance with the CEQA Requirements.

(o) The Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to the Project; that it is familiar with the provisions of all of the documents and instruments relating to the Project to which

the Borrower is a party or of which it is a beneficiary, including this Loan Agreement; that it understands the risks inherent in such transactions; and that it has not relied on Lender for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Loan Documents or otherwise relied on Lender for any advice.

(p) No part of the Project to be financed or refinanced by any portion of the proceeds of the Loan is or at any time will be used by any person which is not an "exempt person" within the meaning of the Code and the regulations proposed and promulgated thereunder, or by a Governmental Unit or a 501(c)(3) Organization (including the Borrower) in an "unrelated trade or business" within the meaning of Section 513(a) of the Code and the regulations proposed and promulgated thereunder, in such manner or to such extent as would result in loss of exclusion from gross income for federal tax purposes of interest on the Loan under Section 103 of the Code.

(q) No Event of Default under Section 11.01 of this Loan Agreement has occurred and is continuing, and no event has occurred and is continuing which, with the lapse of time or the giving of notice or both, would constitute such an Event of Default.

(r) The Borrower is not in default under and is not violating any provision of its Articles of Incorporation or Bylaws or any material provision of any indenture, mortgage, lien, administrative regulations, order, judgment, decree or other instrument or restriction of any kind or character to which it is a party or by which it is bound or to which it or any of its assets is subject.

(s) The Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to the Loan and the financing of the Project; that it is familiar with the provisions of all of the documents and instruments relating to such financing to which the Borrower is a party or of which it is a beneficiary; and that it understands the risks inherent in such transactions.

ARTICLE III

ISSUANCE OF TERM LOAN; APPLICATION OF PROCEEDS

Section 3.01. Loan. Lender hereby agrees, subject to the terms and conditions in this Loan Agreement, to loan up to \$_,000,000 to Borrower for the purposes of financing the Project.

(a) Upon fulfillment of the conditions precedent set forth in Section 5.01 hereof, Lender shall disburse a portion of the Loan to the Borrower in the principal amount of \$[_____] (the "Closing Advance") less \$_____ of original issue discount, as provided in the Loan Disbursement Instructions.

(b) During the Construction Period, upon fulfillment of the conditions set forth in Section 5.02, Lender shall disburse from time to time additional proceeds of the Loan in the amount requested by the Borrower and approved by Lender; provided that

draws would be limited to no more than once per month and each draw shall be subject to a minimum amount of \$250,000 (each such disbursement, a "Periodic Advance"); and provided further that the total Advances drawn hereunder shall not exceed \$_,000,000 in a non-revolving term loan.

(c) The total amount of the Closing Advance and the Periodic Advances made hereunder (collectively, the "Advances") shall be the principal amount of the Loan due hereunder. Borrower's obligation to repay the Loan shall commence, and interest shall begin to accrue, on the date that the Closing Advance, less \$_____ of original issue discount, is transferred to the Borrower subject to compliance with the terms and conditions hereunder.

Section 3.02. Establishment of Loan Proceeds Account. Borrower shall establish and maintain an account with FRB designated as the "Loan Proceeds Account." Borrower shall maintain a separate record of the Loan Proceeds Account on its books and shall account for all deposits and withdrawals from the Loan Proceeds Account (including investment earnings thereon, if any) in accordance with Borrower's accounting procedures. Funds in the Loan Proceeds Account shall only be used for Project Costs (including reimbursement of Project Costs, which amounts may be transferred for other uses as directed by the Borrower) or to repay the Loan. Deposits into the Loan Proceeds Account relating to Periodic Advances shall be made in accordance with Section 5.02(a). Without limiting any right or remedy of Lender under this Loan Agreement, Lender shall not be accountable for the use or application by the Borrower of any of the Loan Proceeds. The Account (defined in Section 7.11(b)) with FRB provided for under Section 7.11 may serve as the Loan Proceeds Account and the proceeds of the Loan Proceeds Account may be commingled with other amounts in such Account, provided that the Borrower shall separately account for proceeds of the Loan deposited in the Loan Proceeds Account.

Section 3.03. Term. The term of the Loan shall commence on the Closing Date and shall terminate upon the earliest to occur of any of the following events:

(a) so long as no Event of Default has occurred and is continuing hereunder, the payment by Borrower of all Payments with respect to the Loan, any rebate payments and any other payments required to be paid by Borrower hereunder; or

(b) so long as no Event of Default has occurred and is continuing hereunder, the prepayment pursuant to the terms herein of the entire outstanding principal amount, accrued interest and the other amounts due hereunder.

ARTICLE IV

REPAYMENT OF THE LOAN

Section 4.01. Interest.

(a) The total amount of the Advances made hereunder shall determine the principal amount of the Loan outstanding hereunder, which shall not exceed \$_,000,000.

The principal amount of the Loan hereunder outstanding shall bear interest (computed on the basis of a 360-day year and actual days elapsed) at the Applicable Loan Rate. Interest shall accrue on the principal balance of the Loan outstanding from and after the Closing Date or the Periodic Advance Date, as applicable, to the Maturity Date or until the Loan is paid in full or the earlier prepayment of the Loan as provided herein, and shall be payable by Borrower in arrears on or prior to the date required by Section 4.02 hereof and upon earlier demand in accordance with the terms hereof or prepayment in accordance with Section 4.06 hereof.

(b) Upon the occurrence of a Determination of Taxability, Borrower shall pay to Lender future interest payments calculated at the Gross-Up Rate. In addition, Borrower shall make immediately, upon demand of Lender after a Determination of Taxability, a payment to Lender sufficient to reimburse Lender and supplement Prior Interest Payments to equal the Gross-Up Rate (the "Gross-Up Rate Payment"), and such obligation shall survive the termination of this Loan Agreement. The Lender acknowledges that the Gross-Up Rate Payment may be amounts which are not excluded from gross income for federal income tax purposes pursuant to Section 103 of the Code.

Section 4.02. Payments.

(a) Borrower shall pay to Lender Payments in the amounts and at such times as set forth in Section 4.01, this Section 4.02 and Section 4.07 hereof. Borrower shall pay all Additional Payments when due hereunder.

(b) During the Construction Period, beginning with the Payment due on [_____] 1, 20__ and ending with (and including) the Payment due on [_____] 1, 20__, Borrower shall make Payments of interest only at the Applicable Loan Rate on the first calendar day of each month.

(c) Beginning with the Payment due on [_____] 1, 20__ and for the remainder of the Fixed Rate Interest Period, Borrower shall make monthly Payments of principal and interest at the Applicable Loan Rate. Such Payments shall be scheduled by the Lender to provide for approximately level debt service through the Maturity Date (at the Borrower's request, Lender shall provide a schedule showing such Payments). To the extent any prepayments are made by Borrower of such portion of the Loan pursuant to Section 4.06(a), such Payment amortization shall, upon Borrower's request, be adjusted to provide for approximately level debt service through the Maturity Date and Lender shall provide a new schedule showing such reamortized Payments.

(d) During the Variable Rate Interest Period, Borrower shall make monthly Payments of principal and interest (which interest Payments shall be re-calculated at the Applicable Loan Rate as reset on each Interest Reset Date) in amounts sufficient to repay the Loan in full by the Maturity Date.

Section 4.03. Security Agreement.

To further secure the obligations of Borrower to make Payments hereunder, Borrower has executed the Security Agreement. Borrower hereby authorizes Lender to file such financing statements (and all amendments or continuations thereto) as may be necessary to perfect Lender's security in a form satisfactory to Lender.

Section 4.04. Payment on Non Business Days. Whenever any payment to be made hereunder shall be stated to be due on a day which is not a Business Day, such payment may be made on the next succeeding Business Day.

Section 4.05. Borrower Payments to Be Unconditional. The obligations of Borrower to make Payments required under this Loan Agreement and to make other payments hereunder and to perform and observe the covenants and agreements contained herein shall be absolute and unconditional in all events, without abatement, diminution, deduction, setoff or defense for any reason, including (without limitation) any failure to apply the Loan proceeds towards the Project Costs or the failure of the Project or the Facility to be delivered or installed, any defects, malfunctions, breakdowns or infirmities in the Project or the Facility or any accident, condemnation, destruction or unforeseen circumstances. Notwithstanding any dispute between Borrower and Lender or any other person, Borrower shall make all Payments when due and shall not withhold any Payments pending final resolution of such dispute, nor shall Borrower assert any right of setoff or counterclaim against its obligation to make such payments required under the Loan Documents.

Section 4.06. Prepayments.

(a) Borrower may prepay the Loan in whole or in part at any time, in advance of the required Payments set forth in Section 4.02 hereof, by paying the outstanding principal amount of the Loan (or the portion thereof being prepaid), accrued interest to the prepayment date, any applicable Prepayment Premium, and any outstanding and unpaid Additional Payments due under this Loan Agreement. Borrower shall provide Lender written notice of any such prepayment at least 15 days in advance thereof. Upon any prepayment in part of the Loan pursuant to this Section 4.06(a), the prepayment shall be applied in the following order: to interest accrued thereon, to any applicable Prepayment Premium, to any outstanding and unpaid Additional Payments, and to the principal component of the Loan.

(b) Subject to Permitted Encumbrances and to the extent required under Article VIII, Borrower shall prepay the Loan in whole or in part at any time from Net Proceeds by paying some or all of the outstanding principal amount of the Loan, accrued interest to the prepayment date, and any outstanding and unpaid Additional Payments due under this Loan Agreement. Upon any prepayment in part of the Loan pursuant to this Section 4.06(b), the prepayment shall be applied in the following order: to interest accrued thereon, to any outstanding and unpaid Additional Payments, and to the principal component of the Loan.

(c) Borrower shall prepay the Loan in full immediately upon demand of Lender after the occurrence of an Event of Default by paying the outstanding principal amount of the Loan, accrued interest to the prepayment date, any applicable Prepayment Premium, and any outstanding and unpaid Additional Payments due under this Loan Agreement.

(d) Borrower shall prepay the Loan in full immediately upon demand of Lender after the occurrence of a Determination of Taxability by paying the outstanding principal amount of the Loan, interest at the Gross-Up Rate to the date of prepayment as required by Section 4.01(b), and any outstanding and unpaid Additional Payments due under this Loan Agreement, plus an amount necessary to supplement the Prior Interest Payments to the Gross-Up Rate.

Section 4.07. Late Charge. If Borrower fails to make any Payment and such failure results in the late payment of principal and interest on the Loan, or if Borrower fails to make any Additional Payment when due, in each case, taking into account a ten (10) day grace period allowed for such Additional Payment or Payment, Borrower shall pay to Lender a late charge equal to 10% of the past due payment.

ARTICLE V

CONDITIONS PRECEDENT

Section 5.01. Conditions Precedent to Loan Agreement. Lender's agreement to enter into this Loan Agreement and provide the financing contemplated hereby shall be subject to the condition precedent that Lender shall have received or waived the requirement for, all of the following, each in form and substance satisfactory to Lender:

(a) this Loan Agreement, properly executed on behalf of Borrower and Lender;

(b) the Tax Certificate, properly executed on behalf of Borrower and the City;

(c) the Security Agreement, properly executed on behalf of Borrower and Lender;

(d) the Side Letter, properly executed on behalf of the City, in form and substance satisfactory to the Lender;

(e) a certificate of Borrower, certifying as to (i) the resolutions of the Board of Trustees of Borrower, authorizing the execution, delivery and performance of Loan Documents and any related documents, (ii) the Bylaws of Borrower, and (iii) the signatures of the officers or agents of Borrower authorized to execute and deliver Loan Documents and other instruments, agreements and certificates on behalf of Borrower;

(f) a certificate of the City, certifying as to (i) the resolutions of the City authorizing the Loan, the Side Letter [and [____]] and the transactions contemplated hereunder and thereunder, and (ii) the signatures of the officers or agents of the City authorized to execute and deliver the Side Letter and other instruments, agreements and certificates on behalf of the City;

(g) currently certified copies of the Articles of Incorporation of Borrower;

(h) a certificate of good standing issued as to Borrower by the Secretary of State of the State dated not more than fifteen (15) days prior to the Closing Date;

(i) a certificate of good standing or exemption issued as to Borrower by the Franchise Tax Board of the State dated not more than fifteen (15) days prior to the Closing Date;

(j) UCC financing statement(s) as required by Lender to perfect the security interest of Lender;

(k) current searches of appropriate filing offices showing that (i) no state or federal tax liens have been filed and remain in effect against Borrower, (ii) no financing statements have been filed and remain in effect against Borrower relating to the Collateral except for those which constitute Permitted Encumbrances, and (iii) no other material liens encumber the Facility;

(l) a completed and executed Form 8038G or evidence of filing thereof with the Internal Revenue Service;

(m) an opinion of counsel to Borrower, addressed to Lender, Lender's Counsel and Tax Counsel, opining on the matters contained in Exhibit B attached hereto in a form approved by Lender, Lender's Counsel and Tax Counsel;

(n) an opinion of Tax Counsel relating to the validity and tax-exempt status of the Loan, addressed to the Lender, in form and substance acceptable to the Lender;

(o) an opinion of the City Attorney of San Francisco addressed to Lender and Lender's Counsel opining on the matters contained in Exhibit C attached hereto in a form approved by Lender and Lender's Counsel;

(p) certificates of the insurance required under Section 7.04 of this Loan Agreement containing a lender's loss payable clause or endorsement in favor of Lender;

(q) evidence of payment of Lender's costs and the fees of Lender's Counsel on the Closing Date;

(r) Docket Search of the Superior Court of San Francisco and the United States District Court for the Northern District of California; and

(s) Such other documents or certificates that the Lender may reasonably request.

Section 5.02. Conditions Precedent to Periodic Advances for the Project. Lender agrees to provide a Periodic Advance of Loan proceeds to Borrower for the purpose of funding the Project upon submission of a Periodic Advance Request by Borrower in the form of Exhibit A and subject to compliance with the following conditions:

(a) unless otherwise consented to by the Lender, Periodic Advances for the Project may be requested only during the Construction Period and shall be limited to one Periodic Advance per month in the minimum amount of \$250,000;

(b) (i) the representations and warranties of the Borrower in the Periodic Advance Request and in Section 2.01 of this Loan Agreement shall be true and correct in all material respects as of the date of the Periodic Advance Request (except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date), (ii) the Borrower shall be in compliance with all of its covenants in this Loan Agreement, including but not limited to Section 7.05 and Section 7.10, (iii) no Default or Event of Default shall have occurred, and (iv) Borrower shall attach to its Periodic Advance Request the most recent information reported pursuant to Section 7.05;

(c) proceeds of the Periodic Advance shall be applied by Borrower in accordance with Section 3.02 hereof and with the Tax Certificate;

(d) proceeds of the Periodic Advance shall be applied by Borrower to reimburse or pay Project Costs and the specific nature of the expenditures proposed, for the Periodic Advance, including payee, purpose and invoices, shall be included with the Periodic Advance Request.

(e) concurrently with or prior to the submission by the Borrower of the first Periodic Advance Request relating to the Project, Borrower shall provide to Lender the Project Budget, the Project Disbursement Schedule, the Plans and Specifications and the Construction Contract, together with consents by such architect and general contractor to the collateral assignment of their respective contracts to the Lender; all such agreements shall be subject to review and approval by the Lender;

(f) the Project shall be constructed in accordance with the Permits (as defined below), the Project Budget and the Construction Contract. The Borrower hereby certifies to the foregoing and shall certify to the foregoing in the Periodic Advance Request;

(g) the Borrower shall provide to Lender copies of all permits, licenses, approvals and authorizations (collectively, "Permits") required by any governmental authorities for the construction, use and occupancy of the Project to be financed with the Periodic Advance in accordance with all applicable laws, ordinances, requirements and

regulations to the extent obtained or necessary under applicable law for the state of construction as of the date of the Periodic Advance;

(h) the Lender shall have received from the general contractor (1) an appropriate lien waiver and release in the form required by Civil Code Section 3262, duly and timely executed, completed and delivered to the Lender and (2) a surety bond in form and substance acceptable to the Lender;

(i) to the extent requested by the Lender, the Lender shall have received from each subcontractor and materialman a statement of account and such other instruments and documents as the Lender may from time to time specify, in form and content, and containing such certifications, approvals and other data and information, as the Lender may reasonably require, to confirm and evidence that each such subcontractor or materialman has been paid in full for the work that has been performed and has no claims in connection therewith;

(j) all work usually done at the stage of renovation attained when the Periodic Advance Request is submitted by the Borrower shall have been completed and shall have been done in a good and workmanlike manner; and all materials, supplies, fixtures and equipment usually furnished or installed at that stage of renovation shall have been furnished and installed, and the Construction Inspector shall have certified to the Lender that: (i) the renovations are substantially in accordance with the Plans and Specifications; (ii) if requested by the Lender, the percentage of completion of renovation work; and (iii) such other matters as the Lender may reasonably require in connection with the Project or the Periodic Advance Request. Inspections by the Construction Inspector shall be bi-monthly, or more frequently as may be required by the Lender in its reasonable discretion; and

(k) any materials not yet incorporated into the Project which is to be paid out of a Periodic Advance shall have been delivered to and located at the Borrower's premises and shall be intended for inclusion in the construction within fifteen (15) days after the date of the Periodic Advance Request.

Notwithstanding any provision to the contrary herein, the Lender shall have the right to withhold the final Periodic Advance equal to 5% of the amount of the Construction Contract amount until the Lender has received a certificate from the Construction Inspector that the Project has been substantially completed in accordance with the Plans and Specifications and approved by the Construction Inspector, and the following conditions shall have been satisfied: (i) as applicable, certificates of compliance and/or releases of any conditions and/or planning board covenants affecting the site of the Project or any other land use or construction final approvals or permits have been delivered to the Lender; and (ii) a document in final form evidencing approval of such construction by the City and County of San Francisco shall have been delivered to the Lender.

ARTICLE VI

SECURITY

Section 6.01. Change in Name or Corporate Structure of Borrower; Change in Location of Borrower's Principal Place of Business. Borrower's chief executive office is located at the address set forth in Section 12.04 hereof, and all of Borrower's records relating to its business are kept at such location. Borrower hereby agrees to provide written notice to Lender of any change or proposed change in its name, corporate structure, state of its incorporation or organization, place of business or chief executive office, or tax identification number. Such notice shall be provided no fewer than thirty (30) days in advance of the date that such change or proposed change is planned to take effect.

Section 6.02. Security Interest; Parity Debt. (a) This Loan Agreement and the Loan are secured by the Security Agreement and the Liens on the Collateral created thereby. Borrower hereby authorizes Lender to file any financing statement (and any amendments or continuations to any financing statement) or record any other documents necessary to perfect the security interest granted in this Loan Agreement under the laws of the State.

(b) The Borrower may incur additional indebtedness only as provided under Section 8.06 and such indebtedness may be payable and secured by the Collateral on parity with the Loan, provided that the Borrower and Lender identify such indebtedness as Parity Debt in the documentation for such indebtedness. The security interest in the Collateral under the Loan Agreement and the Security Agreement shall be on parity with all and any future loans from Lender to Borrower that are identified in the related documentation to be Parity Debt.

Section 6.03. Assignment of Insurance. As additional security for the payment and performance of Borrower's obligations under this Loan Agreement, Borrower hereby grants to Lender, a security interest in any and all moneys (including, without limitation, proceeds of insurance) due or to become due under, and all other rights of Borrower with respect to, any and all policies of insurance now or at any time hereafter covering the Facility or any evidence thereof or any business records or valuable papers pertaining thereto, and Borrower hereby directs the issuer of any such policy to pay all such moneys directly to Lender, such funds to be applied as set forth in Section 9.02 hereof. Borrower hereby assigns to Lender any and all moneys due or to become due with respect to any condemnation proceeding affecting all or any portion of the Facility; such funds to be applied as set forth in Section 9.01. At any time, whether before or after the occurrence of any Event of Default, Lender may (but need not), in Lender's name or in Borrower's name, execute and deliver proof of claim, receive all such moneys, endorse checks and other instruments representing payment of such moneys, and adjust, litigate, compromise or release any claim against the issuer of any such policy or party in any condemnation proceeding; provided, however, that so long as (i) no Event of Default has occurred and is continuing and (ii) Borrower is diligently pursuing its rights and remedies with respect to an insurance claim, then Borrower shall be allowed to adjust, litigate, compromise or release any claim against the issuer of any such policy or party in any condemnation proceeding.

ARTICLE VII

AFFIRMATIVE COVENANTS OF BORROWER AND TAX COVENANTS

Section 7.01. Maintenance of Facility.

(a) Borrower shall, at its own expense (including, without limitation, Borrower's use of any proceeds of the Loan in accordance with the terms hereof), maintain, preserve and keep the Facility in good repair, working order and condition, and shall from time to time make all repairs and replacements necessary to keep the Facility in such condition, and in compliance with state and federal laws, ordinary wear and tear excepted. In the event that any parts or accessories forming part of any material item or items of the Facility become worn out, lost, destroyed, damaged beyond repair or otherwise rendered unfit for use, Borrower, at its own expense and expeditiously, to the extent necessary or prudent for Borrower's operation or if required by the City Lease, will replace or cause the replacement of such parts or accessories by replacement parts or accessories free and clear of all Liens and encumbrances (other than Permitted Encumbrances) and with a value and utility at least equal to that of the parts or accessories being replaced (assuming that such replaced parts and accessories were otherwise in good working order and repair). All such replacement parts and accessories shall be deemed to be incorporated immediately into and to constitute an integral portion of the Facility and, as such, shall be subject to the terms of this Loan Agreement. The Lender shall have no responsibility in any of these matters, or for the making of the Facility or additions to the Facility.

(b) Borrower shall observe and comply with all legal requirements applicable to the ownership, use and operation of the Facility, including the terms and conditions set forth in this Loan Agreement and the Tax Certificate. Borrower shall permit Lender and its agents, representatives and employees, upon reasonable prior notice to Borrower, to inspect the Facility and conduct such environmental and engineering studies as Lender may reasonably require, provided such inspections and studies do not materially interfere with the use and operation of the Facility. Such environmental and engineering studies shall be at Borrower's expense, provided that Lender provides Borrower with evidence of Lender's reasonable belief that there is an environmental or structural condition at the Facility that could have a material adverse effect on the Lender's security under the Loan Documents.

(c) Borrower will defend the Facility against all claims or demands of all persons (other than Lender hereunder) claiming the Facility or any interest therein.

Section 7.02. Compliance with Laws and Obligations. Borrower will comply with the requirements of applicable laws and regulations and material contractual obligations, the noncompliance with which would materially and adversely affect its business or its financial condition; provided, however, nothing herein shall preclude Borrower's right to contest in good faith by appropriate proceedings any claim of noncompliance or breach; or interfere with Borrower's ability to renegotiate or terminate or allow to expire, or fail to renew, any contractual obligations, including enrollment contracts or employment contracts.

Section 7.03. Payment of Taxes and Other Claims. Borrower will pay or discharge, when due, (a) all taxes, assessments and governmental charges levied or imposed upon it or upon its income or profits, upon any properties belonging to it (including, without limitation, the Facility) or upon or against the creation, perfection or continuance of the security interest created pursuant to this Loan Agreement or any of the other Loan Documents, prior to the date on which penalties attach thereto; (b) all federal, state and local taxes required to be withheld by it; and (c) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien or charge upon any properties of Borrower; provided, that Borrower shall not be required to pay any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in accordance with the Lien Contest Criteria set forth in Section 7.01 hereof. Borrower will pay, as the same respectively come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Facility, as well as all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Facility.

Section 7.04. Insurance; Indemnity. (a) Borrower shall, at its own expense, maintain and keep in force insurance of the types and in amounts customarily carried by institutions similar to Borrower, including but not limited to:

(i) fire and property damage, extended coverage (which shall include coverage for tangible personal property, which constitutes collateral under the Security Agreement), in an amount at least equal to the lesser of insurable value and outstanding amount of the Loan,

(ii) risk course of construction insurance (which insurance shall be issued before any construction work on the Project is begun, including the delivery of construction materials to the construction site) and protective liability insurance, each in an amount equal to the outstanding principal amount of the Loan (to the extent commercially available), but in no event less than the replacement cost of the Project, each of which shall be outstanding until substantial completion of the Project;

(iii) public liability, in an amount at least equal to \$1,000,000 per occurrence and \$2,000,000 annual aggregate,

(iv) flood, if the Property is located in a flood zone, and

(v) workers' compensation;

with all such insurance carried with companies, in amounts and with deductible amounts reasonably satisfactory to Lender, and shall deliver to Lender from time to time at Lender's request schedules setting forth all insurance then in effect. Alternatively, upon the written approval of Lender, Borrower may insure the Facility under a blanket insurance policy or policies which cover not only the Facility, but also other properties of Borrower or, upon prior written approval of Lender, may provide self-insurance acceptable to Lender. A self-insurance program must include a trust account established for such purpose with a financial institution having trust powers and funded with moneys in an amount sufficient to pay claims in the opinion

of an independent consulting actuary. All of the insurance policies required hereunder shall be issued by corporate insurers licensed to do business in the State and rated A or better by A.M. Best Company, and shall be in form reasonably acceptable to Lender.

(b) All certificates of insurance and “blanket” insurance policies shall reference the specific property being covered by name and address and shall name “First Republic Bank and its Successors and Assigns, as their interests may appear” as loss payee and additional insured. The insurance shall be evidenced by the original policy or a true and certified copy of the original policy, or in the case of liability insurance, by certificates of insurance. The insurance policies (or true and certified copies thereof) or certificates of all insurance required to be maintained hereunder shall be delivered to Lender contemporaneously with Borrower’s execution of this Loan Agreement. Borrower shall use its best efforts to deliver originals of all policies and renewals (or certificates evidencing the same), marked “paid” (or evidence satisfactory to Lender of the continuing coverage) to Lender at least fifteen (15) days before the expiration of existing policies and, in any event, Borrower shall deliver originals of such policies or certificates to Lender at least five (5) days before the expiration of existing policies. If Lender has not received satisfactory evidence of such renewal or substitute insurance in the time frame herein specified, Lender shall have the right, but not the obligation, to purchase such insurance for Lender’s interest only. Nothing contained in this Section shall require Lender to incur any expense or take any action hereunder, and inaction by Lender shall never be considered a waiver of any right accruing to Lender on account of this Section. If any loss shall occur at any time while an Event of Default shall have occurred and be continuing, Lender shall be entitled to the benefit of all insurance policies held or maintained by Borrower, to the same extent as if same had been made payable to Lender and upon foreclosure hereunder, Lender shall become the owner thereof (in accordance with Article VIII hereof). Lender shall have the right, but not the obligation to make premium payments, at Borrower’s expense, to prevent any cancellation, endorsement, alteration or reissuance of any policy of insurance maintained by Borrower, and such payments shall be accepted by the insurer to prevent same;

(c) Borrower shall give to Lender notice within three (3) Business Days of any material loss occurring on or with respect to the Facility. All insurance proceeds for damage to the Facility shall be payable to Lender as provided in Article VIII hereof. Borrower shall furnish to Lender, upon request, certificates of insurance evidencing such coverage while the Loan is outstanding.

(d) Any insurance policy carried or maintained pursuant to this Section shall be so written or endorsed as to make losses payable to Lender or Borrower, as their respective interests may appear and naming Lender as additional insured for liability. The Net Proceeds of the insurance required in this Section shall be applied as provided in Article VIII hereof. Each insurance policy provided for in this Section shall contain a provision to the effect that the insurance company providing such policy shall neither cancel the policy nor modify the policy materially and adversely to the interest of Lender without first giving written notice thereof to Lender at least 30 days (or at least 10 days for non-payment of premium) in advance of such cancellation or modification

(provided that the foregoing shall not release the Borrower of its obligations to comply with the insurance requirements set forth herein).

(e) As between Lender and Borrower, Borrower assumes all risks and liabilities from any cause whatsoever, whether or not covered by insurance, for loss or damage to the Facility, and for injury to or death of any person or damage to any property, whether such injury or death be with respect to agents or employees of Borrower or of third parties, and whether such property damage be to Borrower's property or the property of others, except to the extent that any of the foregoing are caused by the gross negligence or willful misconduct of Lender. Whether or not covered by insurance, Borrower hereby agrees to the indemnification obligations contained in Section 7.08.

Section 7.05. Reporting Requirements. Borrower will deliver, or cause to be delivered, to Lender, copies or notice, as applicable, of each of the following, which shall be in form and detail reasonably acceptable to Lender:

(a) audited financial statements of Borrower commencing with the Fiscal Year ending [April 30], 20__, not later than 150 days after and as of the end of each Fiscal Year. The financial statements shall include a statement of financial position, statement of activities and changes in net assets and statement of cash flows. The audited financial statements shall be audited by independent certified public accountants reasonably acceptable to Lender and certified, without any qualifications, by such accountants to have been prepared in accordance with GAAP consistently applied.

(b) each [April 30], commencing [April 30], 20__, the Borrower shall provide its approved budget for the following fiscal year.

(c) contemporaneously with the submittal of the financial statement required by subsection (a) above, a certificate of an Authorized Borrower Representative stating all relevant facts in reasonable detail to evidence, and the computations as to, whether Borrower is in compliance with the requirements set forth in Section 7.10 hereof (including but not limited to the Debt Service Coverage Ratio described in Section 7.10(a)) applicable to the period covered by the accompanying financial statements;

(d) promptly upon the occurrence thereof, notice of any Reportable Event or Prohibited Transaction, each as defined in the Employee Retirement Income Security Act of 1974, as amended or recodified from time to time ("ERISA"), or any funding deficiency with respect to any defined employee pension benefit plan (as defined in ERISA) maintained or contributed to by Borrower;

(e) promptly upon knowledge thereof, notice of any loss or destruction of or damage to any portion of the Facility in excess of \$100,000, of any pending or threatened condemnation affecting the Facility, or of any material adverse change in any portion of the Facility;

(f) promptly after the amending thereof, copies of any and all amendments to Borrower's articles of incorporation or bylaws;

(g) promptly upon receipt of knowledge thereof by an Authorized Borrower Representative, notice of the violation by Borrower of any law, rule or regulation, the violation of which would have a material adverse effect on the financial or operating condition of Borrower;

(h) promptly upon notice thereof, any termination or cancellation of any insurance policy which Borrower is required to maintain hereunder, or any uninsured or partially uninsured loss through liability or property damage, or through fire, theft or any other cause affecting the Facility in excess of an aggregate of \$100,000;

(i) immediately upon Borrower's knowledge thereof, notice in writing of all litigation and of all proceedings before any governmental or regulatory agency affecting Borrower which seek a monetary recovery against Borrower in excess of \$100,000;

(j) as promptly as practicable (but in any event not later than five Business Days) after an Authorized Borrower Representative obtains knowledge of the occurrence of any event that constitutes a Default or an Event of Default under the Loan Documents, notice of such occurrence, together with a detailed statement by an Authorized Borrower Representative of the steps being taken by Borrower to cure the effect of such Default or Event of Default; and

(k) from time to time such other information regarding Borrower, the City and/or the guarantor(s), if any, as Lender may reasonably request, which information shall be provided in the forms commonly prepared by the Borrower, including, without limitation, other information with respect to any collateral required hereby.

Section 7.06. Books and Records; Inspection and Examination. Borrower will keep accurate books of record and account for itself separate and apart from those of its affiliates, including its officers, pertaining to the Facility and pertaining to Borrower's business and financial condition and such other matters as Lender may from time to time reasonably request in which true and complete entries will be made in accordance with GAAP consistently applied and, upon request of Lender not more than once per calendar year, at any time after the occurrence of an Event of Default or as often as Lender reasonably deems necessary to determine whether Borrower has complied with Environmental Laws, will permit any officer, employee, attorney or accountant for Lender, to audit, review, make extracts from, or copy any and all organization and financial books, records and properties of Borrower and to examine and inspect the Facility, and to discuss the affairs of Borrower with any of its officers, employees or agents at all times during ordinary business hours (a) within 24 hours of a written request by Lender, (b) at any time after the occurrence of an Event of Default, or (c) within 24 hours if Lender reasonably deems necessary to determine whether Borrower has complied with Environmental Laws.

Section 7.07. Preservation of Existence. Borrower will preserve and maintain its existence, its status as a nonprofit [public benefit] corporation, and all of its rights, privileges and

franchises necessary or desirable in the normal conduct of its business; and shall conduct its business in an orderly, efficient and regular manner. Borrower shall hold itself out to the public as a legal entity separate and distinct from any other entity (including any affiliate thereof). So long as the Loan remains outstanding, Borrower will be qualified to transact business in the State and will be engaged in business in the State.

Section 7.08. Borrower Indemnification of Lender. Borrower covenants and agrees as follows:

(a) to indemnify and hold harmless, to the extent permitted by law, Lender and Affiliates, their respective incorporators, members, commissioners, directors, officers, agents and employees against all liability, losses, damages, all costs and charges (including reasonable fees and disbursements of attorneys, accountants, consultants and other experts), taxes, causes of action, suits, claims, demands and judgments of every conceivable kind, character and nature whatsoever, by or on behalf of any person arising in any manner from the transaction of which this Loan Agreement is a part or arising in any manner in connection with the Project and/or Facility or the financing or refinancing of the Project, including, but not limited to, losses, claims, damages, liabilities or reasonable expenses arising out of, resulting from or in any way connected with (i) the work done on the Project or the operation of the Facility during the term of this Loan Agreement, including, without limitation, any liability for any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Facility; (ii) any violation of contract, agreement or certificate (including this Loan Agreement and the Tax Certificate) or restriction relating to the Project or the Facility; (iii) any violation of law, ordinance or regulation affecting the Project or the Facility or any part thereof or the ownership or occupancy or use thereof; or (iv) the carrying out of any of the transactions contemplated by this Loan Agreement and all related documents;

(b) promptly after receipt by an Indemnified Person (as defined below) of notice of the commencement of any action in respect of which indemnification may be sought under this Section 7.08, the person in respect of which indemnification may be sought (the "Indemnified Person") shall promptly notify Borrower in writing, but the omission to so notify Borrower will not relieve Borrower from any liability which it may have to any Indemnified Person under this Section 7.08 other than to the extent of prejudice caused directly or indirectly by such omission nor affect any rights it may have to participate in and/or assume the defense of any action brought against any Indemnified Person. In case such claim or action is brought against Lender or any Affiliate, or their respective incorporators, members, commissioners, directors, officers, agents or employees, and such Indemnified Person notifies Borrower of the commencement thereof, Borrower will be entitled to participate in and, to the extent that it chooses so to do, to assume the investigation and defense thereof (including the employment of counsel reasonably satisfactory to Lender), and Borrower shall assume the payment of all fees and expenses relating to such investigation and defense and shall have the right to negotiate and consent to settlement thereof. Lender, Affiliates and their respective incorporators, members, commissioners, directors, officers, agents or employees shall have the right to employ separate counsel in any such action and to

participate in the defense thereof, and after notice from Borrower of its election to assume the defense thereof, the fees and expenses of such separate counsel shall be at the expense of such indemnifying party if Lender, its Affiliates or their respective incorporators, members, commissioners, directors, officers, agents or employees reasonably determines that a conflict of interest exists between such party and Borrower in connection with such action. Borrower shall not be liable for any settlement of any such action effected without its consent, but, if settled with the consent of Borrower or if there be a final judgment for the plaintiff in any such action as to which Borrower has received notice in writing as hereinabove required, Borrower agrees to indemnify and hold harmless the Indemnified Person from and against any loss or liability by reason of such settlement or judgment to the extent provided in this Section 7.08; and

(c) notwithstanding the previous provisions of this Section 7.08, Borrower is not liable for or obligated to indemnify Lender or any of its Affiliates (or any of their respective incorporators, members, commissioners, directors, officers, employees or agents) or other Indemnified Person (as defined in this Section) against any loss or damage to property or injury or death to any person or any other loss or liability if and to the extent such loss, damage, liability, injury or death results from the gross negligence or willful misconduct of the Indemnified Person seeking such indemnification.

All indemnifications by Borrower in this Section 7.08 shall survive the termination of this Loan Agreement and payment of the indebtedness hereunder.

Section 7.09. Covenant to Enter into Agreement or Contract to Provide Ongoing Disclosure. Borrower and Lender hereby agree that this Loan Agreement is exempt from the requirements of Paragraph (b)(5)(i) of the Securities and Exchange Commission Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (17 CFR Part 240, § 240.15c2-12) (the "Rule"). Borrower hereby covenants and agrees that if this Loan Agreement ceases to be exempt under the Rule, Borrower will enter into an agreement or contract, constituting an undertaking, to provide ongoing disclosure as may be necessary to comply with the Rule as then in effect.

Section 7.10. Financial and Leasehold Covenants. The Borrower shall comply with the following covenants and provide the Lender with certificates that show a calculation of the following covenants as described in Section 7.05(a):

(a) Debt Service Coverage Ratio. The Borrower shall maintain a minimum Debt Service Coverage Ratio of 1.25:1 for each Fiscal Year, commencing with the Fiscal Year ending [April 30, 20__], calculated as of [April 30] of each year based on the Borrower's audited financial statements; and

(b) Side Letter from City. The Borrower shall also provide additional security collateral for the Loan and the benefit of Lender in the form of the Side Letter.

(c) City Lease.

(i) The Borrower hereby represents and warrants that as of the Closing Date it has leasehold title to the Property under the City Lease and that there are no events of default

under the City Lease. Borrower shall not cause or permit to occur any event of default under the City Lease and agrees to comply with the terms of the City Lease so as to retain its leasehold interest in the Property under the City Lease.

(ii) If an event of default occurs or is declared under the City Lease, the Borrower shall promptly notify the Lender, with written notification to follow. The Borrower shall provide the Lender copies of all correspondence and notices from the City or its Recreation and Park Commission relating to the City Lease, including but not limited to notices or correspondence relating to defaults or termination.

(iii) Any event of default, notice of termination or material adverse change in the status of Borrower's leasehold under the City Lease shall be an Event of Default hereunder.

(iv) Borrower shall not enter into any amendment or supplement to the City Lease without the prior written consent of the Lender.

Section 7.11. Banking Relationship. Borrower and Lender agree as follows:

(a) Account Maintenance and Banking Relationship. So long as the Loan is outstanding, Borrower shall maintain its primary checking and deposit accounts and its primary banking relationship with FRB.

(b) Automatic Payment Authorization. Borrower authorizes Lender to make automatic deductions from the following deposit account ("Account") maintained by Borrower at FRB's offices in order to pay, when and as due, all of the Payments that Borrower is required or obligated to make under this Loan Agreement:

Account No: []

Without limiting any of the terms of the Loan Documents, Borrower acknowledges and agrees that if Borrower defaults in its obligation to make a Payment because the collected funds in the Account are insufficient to make such Payment in full on the date that such Payment is due, then Borrower shall be responsible for all late payment charges and other consequences of such default by Borrower under the terms of the Loan Documents.

(c) Revocation of Authorization. Subject to subparagraph (d) below, this authorization shall continue in full force and effect until the date which is five (5) Business Days after the date on which Lender actually receives written notice from Borrower expressly revoking the authority granted to Lender to charge the Account for Payments in connection with the Loan. No such revocation by Borrower shall in any way release Borrower from or otherwise affect Borrower's obligations under the Loan Documents, including Borrower's obligations to continue to make all Payments required under the terms of this Loan Agreement, or Lender's lien on the Collateral, as defined in the Security Agreement, pursuant to the Security Agreement.

(d) Termination by Lender. Lender, at its option and in its discretion, reserves the right to terminate the arrangement for automatic deductions from the Account pursuant to subparagraph (c) above at any time effective upon written notice of

such election (a “Termination Notice”) given by Lender to Borrower. Without limiting the generality of the immediately preceding sentence, Lender may elect to give a Termination Notice to Borrower if Borrower fails to comply with any of Lender’s rules, regulations, or policies relating to the Account, including requirements regarding minimum balance, service charges, overdrafts, insufficient funds, uncollected funds, returned items, and limitations on withdrawals.

Section 7.12. Expenses. Borrower covenants and agrees to pay, and to indemnify Lender against, all reasonable costs, charges and expenses, including fees and disbursements of attorneys, accountants, consultants and other experts, incurred by Lender in good faith in connection with the Loan Documents. The provisions of this Section shall survive the termination of this Loan Agreement, and the obligation to pay expenses contained herein shall not be assigned or deemed assigned in any way to Lender.

Section 7.13. Tax Covenants of Borrower.

(a) The Borrower shall not take any action, or fail to take any action, if such action or failure to take such action would result in the interest on the Loan not being excluded from gross income of the recipient for federal income tax purposes under Section 103 of the Code (including, without limitation, intentional acts under Treas. Reg. § 1.148-2(c) or deliberate action within the meaning of Treas. Reg. § 1.141-2(d)), and Borrower will take and will cause its officers, employees and agents to take all affirmative actions necessary to ensure that the interest on the Loan does not become includable in gross income of the recipient for federal income tax purposes under the Code (including, without limitation, the calculation and payment of any rebate required to preserve such exclusion). Without limiting the generality of the foregoing, the Borrower covenants that it shall comply with the requirements of the Tax Certificate, which is incorporated herein as if fully set forth herein. This covenant shall survive the payment in full and prepayment of the Loan. The Borrower covenants that it has adopted management practices and procedures to ensure the Borrower complies with the Post-Issuance Requirements with respect to the Loan.

(b) The Borrower hereby covenants to take any and all actions necessary to assure compliance with Section 148(f) of the Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such Section is applicable to the Loan. In furtherance of this covenant, the Borrower covenants to take all such actions including but not limited to (A) initially, on or before [____], 2019 be calculated, the “rebate amount” in accordance with Section 148(f) and Section 1.148-3 of the Regulations, and (B) to pay the federal government any such “rebate amount” so calculated to the extent required by Section 148(f) of the Code. The Borrower further agrees to comply with the provisions and requirements of the Tax Certificate relating to its obligation to calculate (or cause the calculation of) and pay the rebate amount as required hereunder and under Section 148 of the Code.

(c) In the event that at any time the Borrower is of the opinion that for purposes of this Section it is necessary or helpful to restrict or limit the yield on the

investment of any moneys under this Loan Agreement, the Borrower shall take such action as may be directed by Tax Counsel.

Section 7.14. OFAC; Patriot Act Compliance

(a) The Borrower is not an entity (i) whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (ii) who engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such Person in any manner violative of such Section 2, or (iii) who is on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control regulation or executive order ("OFAC").

(b) The Borrower is in compliance with the Patriot Act. No proceeds of the Loan will be used, directly or indirectly, for payments to any governmental official or employee, political party or its officials, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

ARTICLE VIII

NEGATIVE COVENANTS OF BORROWER

So long as the Loan shall remain unpaid, Borrower agrees that:

Section 8.01. Liens. Borrower 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 its interest in the Facility or in the Collateral (together, "Liens") other than the rights of Lender as herein provided and the Permitted Encumbrances. Borrower shall promptly, at its own expense, take such action as may be necessary duly to discharge or remove any such unpermitted Lien. Borrower shall reimburse Lender for any expenses incurred by Lender to discharge or remove any unpermitted Lien.

"Lien Claims" means all claims (including mechanics liens and claims for labor, services, materials and supplies) that by law have or may become a lien upon any of the Collateral or any other property or assets of Borrower, or a Lien against funds advanced to or available for advancement to (whether or not all conditions with respect to such advancement have been satisfied) pursuant to the Loan Documents, including, without limitation, stop notices and other claims against the Lender pertaining to disbursement of such funds or liability with respect thereto. "Impositions" means all rents, taxes, assessments, premiums, and ground lease rents (if applicable) attributable to the Property. "Lien Claims" do not, however, include any claims or Liens that are Permitted Encumbrances.

Notwithstanding anything herein or in any of the other Loan Documents to the contrary, Borrower shall not be required to pay, discharge or remove any Imposition or Lien Claim so long

as the following criteria (the "Lien Contest Criteria") shall be satisfied as to the same: (i) Borrower shall contest in good faith the validity, applicability or amount of the Imposition or Lien Claim by an appropriate legal proceeding which operates to prevent the collection of the secured amounts and the sale of the applicable Property, the Collateral, or any portion thereof, and (ii) prior to the date on which such Imposition or Lien Claim would otherwise have become delinquent, Borrower shall have given Lender written notice of its intent to contest said Imposition or Lien Claim, and (iii) Borrower either shall have complied with the Statutory Bond Criteria set forth below or shall have deposited with Lender (or with a court of competent jurisdiction or other appropriate body approved by Lender) such additional amounts as are necessary to keep on deposit at all times, an amount equal to at least one hundred twenty five percent (125%) (or such higher amount as may be required by applicable law) of the total of the balance of such Imposition or Lien Claim then remaining unpaid, plus all interest, penalties, costs and charges having accrued or accumulated thereon, and (iv) in the reasonable judgment of Lender, no risk of sale, forfeiture or loss of any interest in the Property, other Collateral, or any part thereof within thirty (30) days arises at any time, and (v) such contest does not, in Lender's reasonable discretion, have a material adverse effect on the value of the Collateral or Borrower's obligations under the Loan Documents, and (vi) such contest is based on bona fide claims or defenses, and (vii) Borrower shall prosecute any such contest with due diligence, and (viii) Borrower shall promptly pay the amount of such Imposition or Lien Claim as finally determined, together with all interest and penalties payable in connection therewith. Anything to the contrary notwithstanding, Lender shall have full power and authority, but no obligation, to advance funds or to apply any amount deposited with Lender under this Section to the payment of any unpaid Imposition or Lien Claim at any time if an Event of Default shall occur, or if Lender reasonably determines that a risk of sale, forfeiture or loss of any interest in the Property, other Collateral, or any part thereof within 30 days has arisen. Borrower shall reimburse Lender on demand for all such advances, together with interest thereon at the same rate that is then applicable to principal outstanding hereunder. Any surplus retained by Lender after payment of the Imposition or Lien Claim for which a deposit was made shall be promptly repaid to Borrower unless an Event of Default shall have occurred, in which case said surplus may be retained by Lender and applied by Lender to any of the obligations of Borrower to make Payments or Additional Payments hereunder, as Lender may determine in its sole discretion. The "Statutory Bond Criteria" will be deemed satisfied if (i) by statute in the jurisdiction where the Property is located, a bond may be given as security for the particular form of Imposition or Lien Claim in question, with the effect that the Property shall be forever released from any Lien securing such Imposition or Lien Claim, and (ii) Borrower shall cause such a bond to be issued, and Borrower shall comply with all other requirements of law such that the Property shall be forever released from such Lien, and (iii) Borrower shall provide to Lender such evidence of the foregoing as Lender may reasonably request.

Section 8.02. Sale of Assets. Borrower will not sell, lease, assign, transfer or otherwise dispose of all or a material portion of its assets or its interest in the Property and the improvements thereon or of any of the Facility or any interest therein (whether in one transaction or in a series of transactions), without the prior written consent of Lender and the delivery to Lender of an opinion of Tax Counsel to the effect that any such sale, lease, assignment, transfer or other disposition will not cause the interest on the Loan to be included in federal gross income of the owners thereof. Notwithstanding the previous sentence, the Loan shall become due and payable upon the sale, assignment, transfer or other disposition of the Facility without the prior

written consent of Lender and, if required by Lender, an opinion of Tax Counsel. Borrower shall provide Lender with prior written notice of its intention to sell, lease, assign, transfer or otherwise dispose of all or any portion of the Facility or any interest therein and shall agree in writing to remain liable under the Loan Documents. In the event of a sale, assignment or transfer of the Facility to an affiliate of Borrower (which shall also be subject to Lender's prior written consent), such purchaser, assignee or transferee shall assume in writing Borrower's obligations under the Loan Documents.

Section 8.03. Consolidation and Merger. Borrower will not consolidate with or merge into any person, or permit any other person to merge into it, or acquire (in a transaction analogous in purpose or effect to a consolidation or merger) all or substantially all of the assets of any other person without the prior written consent of Lender (which consent will not be unreasonably withheld).

Section 8.04. Accounting. Borrower will not adopt, permit or consent to any material change in accounting principles other than as required or permitted by GAAP or adopt, permit or consent to any change in its Fiscal Year unless Borrower provides Lender restated financial statements in comparative form.

Section 8.05. Transfers. Borrower will not in any manner transfer any Property, other than transfers made in the ordinary course of business, without prior or present receipt of full and adequate consideration; provided, that the restriction contained in this Section 8.05 shall not prohibit Borrower from making transfers in furtherance of its charitable purposes.

Section 8.06. Other Indebtedness. Borrower shall not, without the prior written consent of Lender, incur any additional indebtedness or swap agreement, secured or unsecured, direct or contingent other than [(i) trade payables and (ii) equipment leases and other similar financing arrangements (including, but not limited to, vehicle financings) each as incurred in the ordinary course of business up to \$100,000].

Section 8.07. Other Defaults. Borrower will not permit any breach, default or event of default to occur beyond any applicable cure period under any note, loan agreement, indenture, lease, mortgage, contract for deed, security agreement or other contractual obligation binding upon Borrower or any judgment, decree, order or determination applicable to Borrower; provided, however, nothing herein shall preclude Borrower's right to contest in good faith by appropriate proceedings any breach, default or event of default; provided, such contest shall not be reasonably expected to adversely affect the Lender's interests hereunder or under any of the other Loan Documents.

Section 8.08. Prohibited Activities. Borrower shall not use any portion of the proceeds of the Loan to finance or refinance any facility, place or building used or to be used by a Person that is not a 501(c)(3) Organization or a Governmental Entity or by a 501(c)(3) Organization (including the Borrower) in an unrelated trade or business (as set forth in Section 513(a) of the Code), in such manner or to such extent as would result in any portion of the Loan being treated as an obligation not described in Section 103(a) of the Code.

Section 8.09. Use of Facility. Borrower will not install, use, operate or maintain the Facility improperly, carelessly, in violation of any applicable law or in a manner in violation of this Loan Agreement or the Tax Certificate.

Section 8.10. Maintenance of Business. Borrower shall not change its business activities in any material respect from the business activities conducted by Borrower as of the date of this Loan Agreement.

Section 8.11. Restrictive Agreements. Borrower shall not enter into any agreement containing any provision which would be violated or breached by the performance by Borrower of its obligations hereunder or under any other Loan Documents or any instrument or document delivered or to be delivered by Borrower in connection herewith. In addition, all now existing or hereafter arising agreements or arrangements entered into by Borrower involving any form of credit accommodations shall not, at any time, contain any material terms, conditions or covenants that are more restrictive than the terms, conditions and covenants set forth in this Loan Agreement.

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

Section 9.01. Eminent Domain. If all or any portion of the Facility or interest therein shall be taken permanently under the power of eminent domain, sold to a government threatening to exercise the power of eminent domain, taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, or should Borrower receive any notice or other information regarding such proceeding, Borrower shall give prompt written notice thereof to Lender, and, subject to the provisions of the City Lease:

(a) Lender shall be entitled to all compensation, awards and other payments or relief therefore, and shall be entitled at its option to commence, appear in and prosecute, in its own name or in Borrower's name, any action or proceedings. Lender shall also be entitled to make any compromise or settlement in connection with such taking or damage. All Net Proceeds are hereby assigned to Lender, and Borrower agrees to execute such further assignments of the Net Proceeds as Lender may require.

(b) If any portion of the Property is so taken or damaged, Lender shall have the option, subject to the Loan Agreement and the City Lease, in its sole and absolute discretion, to apply all such Net Proceeds, to prepay the Loan pursuant to Section 4.06, or to apply all or a portion of such Net Proceeds to the restoration of the Facility upon such conditions as Lender may determine to be advisable. No such application or release shall cure or waive any Event of Default or notice of Event of Default hereunder, or invalidate any act done pursuant to any such notice.

Section 9.02. Application of Net Proceeds.

(a) The Net Proceeds of any insurance award resulting from any damage to or destruction of any portion of the Facility (subject to the requirements of the City Lease) by fire or other casualty, as applicable, or of any title insurance award shall be deposited with Lender, who shall determine the application of such proceeds; *provided, however,* that if no Event of Default has occurred and is continuing under the Loan Documents, Borrower shall receive without further limitations all fire or casualty insurance awards of up to \$100,000 received on behalf of Borrower in the normal course of business. Borrower, except as provided below, shall cause the proceeds of such insurance to be utilized for the repair, reconstruction, or replacement of the damaged or destroyed portion of the Facility. Provided that no Default or Event of Default has occurred and is continuing under the Loan Documents, Lender shall permit withdrawals of the proceeds from time to time upon receiving the written request of Borrower, stating that Borrower has expended moneys or incurred liabilities in an amount equal to the amount therein requested to be paid over to it for the purpose of repair, reconstruction or replacement of the Property damaged, destroyed, lost or taken by eminent domain, and specifying the items for which such moneys were expended or such liabilities were incurred. Any balance of the proceeds not required for such repair, reconstruction, or replacement shall be applied by Lender as provided in Section 4.06 hereof.

(b) If an Event of Default has occurred and is continuing under the Loan Documents, the Net Proceeds received by Borrower of any condemnation or insurance award shall be deposited with Lender and Lender shall have the right to apply any such Net Proceeds to Borrower's obligations under the Loan Documents and other amounts owed to Lender under any other obligations in any order of priority elected by Lender in its sole discretion.

(c) Alternatively, Borrower, at its option, and if the proceeds of such insurance or eminent domain award, together with any other moneys then available for the purpose, are at least sufficient to prepay the Loan in full pursuant to Section 3.08 hereof, may elect not to repair, reconstruct, or replace the damaged or destroyed portion of the Facility, as applicable, and thereupon shall cause the proceeds to be used for the prepayment of the Loan in full, but not in part. With the written consent of the Lender, Borrower may elect not to repair, reconstruct, or replace the damaged, destroyed, lost or taken Property and shall cause such proceeds to prepay the Loan in part.

(d) There shall be no abatement of Payments during any period in which, by reason of damage or destruction, there is substantial interference with the use and occupancy by Borrower of the Facility or any portion thereof.

ARTICLE X

ASSIGNMENT, PARTICIPATION, MORTGAGING AND SELLING

Section 10.01. Assignment by Lender. This Loan Agreement and related Loan and the right to receive Payments and the Prepayment Premium, if any, from Borrower hereunder, may be assigned and reassigned in whole to one assignee by Lender, at any time, without the necessity of obtaining the consent of Borrower. Borrower agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements, which may be reasonably requested by Lender or its assignee to protect its interest in the Facility, the Loan and/or this Loan Agreement.

Section 10.02. No Sale, Assignment or Leasing by Borrower. This Loan Agreement and the interest of Borrower in the Facility and the Collateral may not be sold, assumed, assigned or encumbered by Borrower other than a Permitted Encumbrance or pursuant to the terms of this Loan Agreement. No agreement or interest in this Loan Agreement, the Facility or the Collateral and no improvement thereon shall be subject to involuntary assignment, lease, transfer or sale or to assignment, lease, transfer or sale by operation of law in any manner whatsoever except as expressly provided in this Loan Agreement and except for Permitted Encumbrances, and any such attempted assignment, lease, transfer or sale shall be void and of no effect and shall, at the option of Lender, constitute an Event of Default hereunder.

ARTICLE XI

EVENTS OF DEFAULT AND REMEDIES

Section 11.01. Events of Default. The following constitute “Events of Default” under this Loan Agreement:

- (a) failure by Borrower to pay to Lender any Payment on the due date thereof;
- (b) failure by Borrower to pay to Lender any Additional Payment or any other amount required to be paid hereunder or under the Security Agreement (other than Payments) within ten (10) days of the due date thereof;
- (c) failure by Borrower to pay, as and when due, any payment required to be paid under any other Loan Document between Lender or any of its Affiliates and Borrower, or under any agreement relating to Parity Debt or other debt payable to Lender, subject to the applicable grace and cure periods set forth in such agreement;
- (d) failure by Borrower to maintain insurance in accordance with Section 7.04 hereof;
- (e) a Determination of Taxability shall occur;
- (f) except as otherwise specified in this Section 10.01, failure by Borrower to observe and perform any other covenant, condition or agreement on its part to be

observed or performed hereunder or under any other Loan Document, in each case, for a period of thirty (30) days after written notice is given to Borrower by Lender, specifying such failure and requesting that it be remedied; provided, however, if such failure is correctable but cannot be corrected within the applicable period and corrective action is instituted by the Borrower within the applicable period and diligently pursued until corrected, then no Event of Default shall be deemed to have occurred, unless such cure has not been completed within ninety (90) days after such written notice;

(g) (i) Borrower shall be or become insolvent, or admit in writing its inability to pay its or his debts as they mature, or make an assignment for the benefit of creditors; or (ii) Borrower shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction; or (iii) Borrower shall apply for or consent to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property or (iv) such receiver, trustee or similar officer shall be appointed without the application or consent of Borrower, which appointment without Borrower's consent continues undischarged for a period of within ninety (90) days;

(h) the making of any order or the entry of any decree by a court of competent jurisdiction enjoining or prohibiting Borrower from performing or satisfying its covenants, obligations or conditions contained herein and such proceedings are not discontinued or such order or decree is not vacated within thirty (30) days after the making or granting thereof;

(i) Borrower is determined by Lender to (i) have made any material false or misleading statement or representation in connection with this Loan Agreement; or (ii) Borrower sells, assigns, leases, or otherwise transfers or encumbers all or any part of its interest in this Loan Agreement or all or a material part of the Facility other than as permitted by the terms of this Loan Agreement or as a Permitted Encumbrance hereunder;

(j) the occurrence and declaration with notice of a default or event of default which represents a liability of Borrower in the amount of \$100,000 or more under any instrument, agreement or other document evidencing or relating to any indebtedness or other monetary obligation of Borrower; or in such other amount specified under any instrument, agreement or document evidencing Parity Debt of the Borrower;

(k) upon the occurrence and declaration of any final judgment which represents a liability of Borrower in the amount of \$250,000 or more, the Borrower either has not complied with Section 8.01 or, with respect to any final, non-appealable judgment that has not been vacated, discharged, satisfied or stayed by the Borrower within 60 days of the declaration thereof, the Borrower has failed to pay such judgment when due;

(l) the sale of Borrower to, or merger of Borrower into, any person, or the merger of any other person into Borrower, or acquisition (in a transaction analogous in

purpose or effect to a consolidation or merger) of all or substantially all of the assets of any other person by Borrower without the prior written consent of Lender;

(m) failure by Borrower to maintain its primary checking or other deposit account with Lender in accordance with Section 7.11 hereof;

(n) any event of default shall occur under and as defined in any other Loan Document, subject to the applicable grace and cure periods set forth in such Loan Document; or

(o) any event of default by Borrower occurs under the City Lease or notice of termination pursuant to the City Lease is delivered, subject to any cure period under the City Lease; or there is any material adverse change in the status of Borrower's leasehold interest in the Property, or the City Lease is amended, changed, modified or termination without the prior required written consent of Lender; or the Borrower violates the covenants described in Section 7.10(c) hereof.

Section 11.02. Remedies on Default. Whenever any Event of Default shall have occurred and be continuing, Lender shall have the right, at its sole option, without any further demand or notice, to take any one or any combination of the following remedial actions insofar as the same are available to secured parties under the laws of the State from time to time and which are otherwise accorded to Lender:

(a) by notice to Borrower, declare the entire unpaid principal amount of the Loan (and the obligations to pay Additional Payments) then outstanding, all interest accrued and unpaid thereon and all amounts payable under this Loan Agreement to be forthwith due and payable, whereupon such Loan (and the obligations to pay Additional Payments), all such accrued interest and all such amounts shall become and be forthwith due and payable, without presentment, notice of dishonor, protest or further notice of any kind, all of which are hereby expressly waived by Borrower;

(b) the obligation, if any, of Lender to extend any further credit under any of the Loan Documents shall immediately cease and terminate; and

(c) exercise all rights and remedies legally available to Lender;

(d) proceed by appropriate court action to enforce performance by Borrower of the applicable covenants of the Loan Documents or to recover for the breach thereof, including the payment of all amounts due from Borrower, in which event Borrower shall pay or repay to Lender all costs of such action or court action including without limitation, reasonable attorneys' fees; and

(e) take whatever action at law or in equity that may appear necessary or desirable to enforce its rights, in which event Borrower shall pay or repay to Lender all costs of such action or court action, including, without limitation, reasonable attorneys' fees.

(f) Upon the occurrence of an Event of Default, the Loan shall bear interest at the Default Rate. All proceeds derived from the exercise of any rights and remedies shall be applied in the following manner:

FIRST, to the United States any rebatable arbitrage due or accrued pursuant to Section 148(f) of the Code;

SECOND, to pay (a) to Lender the amount of all unpaid Payments, if any, which are then due and owing, together with interest at the Default Rate from the date of such Event of Default and late charges thereon; (b) to Lender any Additional Payments payable to Lender hereunder and (c) to Lender the amount of any other payments due to Lender under obligations of the Borrower to Lender;

THIRD, to pay all proper and reasonable costs and expenses associated with the exercise of remedies hereunder and the recovery, repair, storage and sale of the Facility, including reasonable attorneys' fees and expenses; and

FOURTH, to pay the remainder of any such proceeds, purchase moneys or other amounts paid by a buyer of the Facility or other person, to Borrower.

Notwithstanding any other remedy exercised hereunder, Borrower shall remain obligated to pay to Lender, as its interests may appear, any unpaid Payments and Additional Payments. To the extent permitted by applicable law, Borrower hereby waives any rights now or hereafter conferred by statute or otherwise which might require Lender to use, sell, lease or otherwise dispose of any portion of the Facility in mitigation of Lender's damages or which might otherwise limit or modify any of Lender's rights hereunder.

All of Borrower's right, title and interest in the Facility and any portion thereof, the possession of which is taken by Lender upon the occurrence of an Event of Default (including, without limitation, construction, contracts, warranties, guarantees or completion assurances applicable to such Facility) shall pass to Lender, and Borrower's rights in such Facility shall terminate immediately upon such repossession.

All rights, powers and remedies of Lender may be exercised at any time by Lender, and from time to time after the occurrence and continuance of an Event of Default, are cumulative and not exclusive, and shall be in addition to any other rights, powers or remedies provided by law or equity.

Borrower shall pay or repay to Lender all costs of such action or court action, including, without limitation, reasonable attorneys' fees.

Section 11.03. Performance by Lender. If Borrower at any time is in Default under the Loan Documents, immediately upon the occurrence of such Default, without notice or lapse of time, Lender may, but need not, perform or observe such covenant on behalf and in the name, place and stead of Borrower (or, at Lender's option, in Lender's name) and may, but need not, take any and all other actions which Lender may reasonably deem necessary to cure or correct such Default (including, without limitation, the payment of taxes, the satisfaction of security interests, liens or encumbrances, the performance of obligations owed to account debtors

or other obligors, the procurement and maintenance of insurance, the execution of assignments, security agreements and financing statements, and the endorsement of instruments); and Borrower shall thereupon pay to Lender on demand the amount of all moneys expended and all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with or as a result of the performance or observance of such agreements or the taking of such action by Lender, together with interest thereon from the date expended or incurred at the highest rate permitted by law; *provided, however*, that such rate shall not exceed 12% per annum. To facilitate the performance or observance by Lender of such covenants of Borrower, Borrower hereby irrevocably appoints Lender, or the delegate of Lender, acting alone, as the attorney in fact of Borrower, with a limited power of attorney, coupled with an interest, with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file in the name and on behalf of Borrower, but only if Borrower has failed to do so within five (5) Business Days following receipt of written demand from Lender, any and all instruments, documents, assignments, security agreements, financing statements, applications for insurance and other agreements and writings relating to the Property or the Facility required to be obtained, executed, delivered or endorsed by Borrower under this Loan Agreement.

Section 11.04. Lender's Right to Perform the Obligations. If Borrower shall fail, refuse or neglect to make any payment or perform any act required by the Loan Documents to which it is a party, then while any Event of Default exists, and without notice to or demand upon Borrower and without waiving or releasing any other right, remedy or recourse Lender may have because of such Event of Default, Lender may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Borrower and interest on such payment shall accumulate from the date of the advance at the Default Rate until such advance is paid, and shall have the right to enter upon the Facility for such purpose and to take all such action thereon and with respect to the Facility as it may deem necessary or appropriate. If Lender shall elect to pay any sum due with reference to the Facility, Lender may do so in reliance on any bill, statement or assessment procured from the appropriate governmental authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by this Loan Agreement or, the Security Agreement, Lender shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. Additionally, if any Hazardous Materials affect or threaten to affect the Facility, Lender may (but shall not be obligated to) give such notices and take such actions as it deems necessary or advisable in order to abate the discharge of any Hazardous Materials or remove the Hazardous Materials; provided, however, that the use and storage of reasonable quantities of office supplies, cleaning and maintenance materials and pest control products shall not be deemed to "affect" the Facility in a manner entitling Lender to act so long as such use and storage is executed safely and in compliance with applicable law. Borrower shall indemnify, defend and hold Lender harmless from and against any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever, including reasonable attorneys' fees, incurred or accruing by reason of any acts performed by Lender pursuant to the provisions of this Section, except as a result of Lender's gross negligence or willful misconduct. Anything to the contrary herein or elsewhere notwithstanding, Lender may cease or suspend any and all performance required of Lender herein or under any of the other Loan Documents upon

and during the continuance of any breach or default, and upon and at any time after the occurrence of any Event of Default.

Section 11.05. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lender is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lender to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be required by this Article X. All remedies hereby conferred upon or reserved to Lender shall survive the termination of this Loan Agreement.

ARTICLE XII

MISCELLANEOUS

Section 12.01. Disclaimer of Warranties. LENDER MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, COMPLIANCE WITH SPECIFICATIONS, QUALITY OF MATERIALS OR WORKMANSHIP, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, USE OR OPERATION, SAFETY, PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENTS, TITLE OR FITNESS FOR USE OF THE FACILITY, OR ANY COMPONENT THEREOF OR ANY OTHER WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT THERETO AND, AS TO LENDER. All such risks, as between Lender and Borrower, are to be borne by Borrower. Without limiting the foregoing Lender shall have no responsibility or liability to Borrower or any other person with respect to any of the following: (a) any liability, loss or damage caused or alleged to be caused directly or indirectly by the Project, any inadequacy thereof, or any other circumstances in connection therewith; (b) the use, operation or performance of the Facility or any risks relating thereto; (c) any interruption of service, loss of business or anticipated profits or consequential damages; or (d) the delivery, operation, servicing, maintenance, repair, improvement or replacement of the Facility. If, and so long as, no Default exists under this Loan Agreement, Borrower shall be, and hereby is, authorized to assert and enforce, at Borrower's sole cost and expense, from time to time, whatever claims and rights Borrower or Lender may have against any prior title holder or possessor of the Facility. In no event shall Lender be liable for any loss or damage in connection with or arising out of this Loan Agreement or the Facility.

Section 12.02. Limitations of Liability. In no event, whether as a result of breach of contract, warranty, tort (including negligence or strict liability), indemnity or otherwise, shall Lender, its assignees, if any, be liable for any special, consequential, incidental or punitive damages including, but not limited to, a loss of profit or revenue, loss of use of the Facility or any associated equipment, service materials or software, damage to associated equipment, service materials or software, cost of capital, cost of substitute equipment, service materials or software, facilities, services or replacement power, down time costs or claims of Borrower's

members for such damages and Borrower shall indemnify and hold harmless Lender, its assignees, if any, from any such damages.

Section 12.03. Additional Payments to Lender. Borrower shall pay to Lender the following Additional Payments hereunder, in addition to the Payments payable by Borrower, in such amounts in each year as shall be required by Lender in payment of any reasonable costs and expenses, incurred by Lender in connection with the execution, performance or enforcement of this Loan Agreement and the financing of the Project, including but not limited to payment of all reasonable fees, costs and expenses and all reasonable administrative costs of Lender in connection with the Project, reasonable fees and expenses of auditors, financial consultants or attorneys, insurance premiums not otherwise paid hereunder and all other reasonable, direct and necessary administrative costs of Lender or charges required to be paid by it in order to comply with the terms of, or to enforce its rights under, the Loan Documents. Such Additional Payments shall be billed to Borrower by Lender from time to time, together with a statement certifying that the amount so billed has been paid or incurred by Lender for one or more of the items described, or that such amount is then payable by Lender for such items. Amounts so billed shall be due and payable by Borrower within 30 days after receipt of the bill by Borrower.

Section 12.04. Notices. All notices, certificates, requests, demands and other communications provided for hereunder shall be in writing and shall be (a) personally delivered; (b) sent by registered class United States mail; (c) sent by overnight courier of national reputation; or (d) transmitted by telecopy, or in the case of Borrower, by e-mail (if also sent by nationally recognized express courier service for delivery on the next Business Day), in each case addressed to the party to whom notice is being given at its address as set forth below and, if telecopied or e-mailed, transmitted to that party at its telecopier number or e-mail address set forth below and confirmed by telephone at the telephone number set forth below or, as to each party, at such other address, telecopier number or email address as may hereafter be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section. All such notices, requests, demands and other communications shall be deemed to have been given on (i) the date received if personally delivered, (ii) when delivered if delivered by mail, (iii) the date sent if sent by overnight courier or (iv) the date of transmission if delivered by telecopy. If notice to Borrower of any intended disposition of the Facility or any other intended actions is required by law in a particular instance, such notice shall be deemed commercially reasonable if given (in the manner specified in this Section) at least 10 calendar days prior to the date of intended disposition or other action.

If to Borrower:	City of San Francisco Portsmouth Plaza Parking Corporation []
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If to Lender:	First Republic Bank 111 Pine Street San Francisco, California 94111 Attention: Commercial Loan Servicing Telephone: (415) 364-4410 Telecopier: (415) 262-4141
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Section 12.05. Binding Effect; Time of the Essence. This Loan Agreement shall inure to the benefit of and shall be binding upon Lender, Borrower and their respective successors and assigns, if any. Time is of the essence.

Section 12.06. Severability. In the event any provision of this Loan Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12.07. Amendments.

(a) To the extent permitted by law, the terms of this Loan Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by the parties hereto, and then such waiver, alteration, modification, supplement or amendment shall be effective only in the specific instance and for the specific purpose given; provided, however, that prior to the effectiveness of any such waiver, alteration, modification, supplement or amendment, an opinion of Tax Counsel shall be delivered to the Lender to the effect that such waiver, alteration, modification, amendment or supplement complies with the requirements of this Loan Agreement and that such amendment or supplement will not cause interest on the Loan to be included in the gross income of the Lender for federal income tax purposes.

(b) Notwithstanding the requirement of Section 12.07(a) that the terms of this Loan Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by the parties hereto, if an Event of Indirect Taxability shall occur, then Lender shall have the option, without the consent of Borrower, to amend this Loan Agreement either (i) to adjust the interest rate so as to provide Lender with a yield on the Loan, after taking into account the increase in Lender's federal income tax liability as a result of such Event of Indirect Taxability, that is equivalent to the yield on the Loan immediately before such Event of Indirect Taxability, or (ii) to provide for the reimbursement of Lender for the increase, if any, in its federal income tax liability caused by such Event of Indirect Taxability. Any such amendment shall be subject to the condition that, prior to such amendment, Lender shall have received an opinion of Tax Counsel to the effect that such amendment complies with the requirements of this Loan Agreement and will not, in and of itself, cause interest on the Loan to be included in the gross income of the Lender for federal income tax purposes. If Lender executes such an amendment without the consent of the Borrower, Borrower shall have the right to prepay the Loan at a prepayment price equal to the outstanding principal amount of such loan, together with all interest accrued thereon prepayment date and all outstanding and unpaid Additional Payments due under this Loan Agreement as of such date, but without Prepayment Premium.

Section 12.08. Execution in Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument and any of the parties hereto may execute this Loan Agreement by signing any such counterpart.

Section 12.09. Applicable Law. This Loan Agreement shall be construed in accordance with and governed by the laws of the State of California applicable to contracts made and performed in the State of California. This Loan Agreement shall be enforceable in the State of California, and any action arising hereunder shall be filed and maintained in the San Francisco Superior Court, San Francisco, California.

Section 12.10. Jury Trial Waiver. TO THE EXTENT PERMITTED BY LAW, LENDER AND BORROWER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO JURY TRIAL OF ANY ACTION, PROCEEDING OR HEARING (HEREINAFTER, A "CLAIM") BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS LOAN AGREEMENT OR ANY OF THE RELATED DOCUMENTS, ANY DEALINGS BETWEEN LENDER OR BORROWER RELATING TO THE SUBJECT MATTER OF THE TRANSACTIONS CONTEMPLATED BY THIS LOAN AGREEMENT OR ANY RELATED TRANSACTIONS, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED BETWEEN LENDER AND BORROWER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT (INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS). THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS LOAN AGREEMENT, ANY RELATED DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR SUPPLEMENTS RELATING TO THE TRANSACTIONS CONTEMPLATED BY THIS LOAN AGREEMENT OR ANY RELATED TRANSACTIONS. IN THE EVENT OF LITIGATION, THIS LOAN AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 12.11. Captions. The captions or headings in this Loan Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

Section 12.12. Entire Agreement. The Loan Documents, together with the exhibits and attachments thereto, constitute the entire agreement among Lender and Borrower. There are no understandings, agreements, representations or warranties, express or implied, not specified herein or therein regarding this Loan Agreement, the other Loan Documents or the Project financed hereunder and thereunder. Any terms and conditions of any purchase order or other document submitted by Borrower in connection with this Loan Agreement which are in addition to or inconsistent with the terms and conditions of this Loan Agreement will not be binding on Lender and will not apply to this Loan Agreement.

Section 12.13. Waiver. Lender's failure to enforce at any time or for any period of time any provision of this Loan Agreement shall not be construed to be a waiver of such provision or of the right of Lender thereafter to enforce each and every provision. No express or implied waiver by Lender of any default or remedy of default shall constitute a waiver of any other default or remedy of default or a waiver of any Lender's rights.

Section 12.14. Survivability. All of the limitations of liability, indemnities and waivers contained in this Loan Agreement shall continue in full force and effect notwithstanding the expiration or early termination of this Loan Agreement and are expressly made for the benefit of, and shall be enforceable by, Lender, or its successors and assigns.

Section 12.15. Usury. It is the intention of the parties hereto to comply with any applicable usury laws; accordingly, it is agreed that, notwithstanding any provisions to the contrary in this Loan Agreement, in no event shall this Loan Agreement require the payment or permit the collection of interest or any amount in the nature of interest or fees in excess of the maximum permitted by applicable law.

Section 12.16. Third Party Beneficiary. It is the intention of the parties that any permitted assignee of Lender hereunder be a third party beneficiary of this Loan Agreement.

Section 12.17. Further Assurance and Corrective Instruments. The parties hereto hereby agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further acts, instruments, conveyances, transfers and assurances, as any of them reasonably deems necessary or advisable for the implementation, correction, confirmation or perfection of this Loan Agreement and any rights of such party hereunder or thereunder.

Section 12.18. Dispute Resolution; Provisional Remedies.

(a) Judicial Reference. In the event the jury trial waiver provisions set forth in Section 12.10 are not permitted for any reason and Borrower fails to waive jury trial, Lender and Borrower hereby agree: (i) each Claim (as defined in Section 12.10 hereof) shall be determined by a consensual general judicial reference (the "Reference") pursuant to the provisions of Section 638 et seq. of the California Code of Civil Procedure, as such statutes may be amended or modified from time to time; (ii) upon a written request, or upon an appropriate motion by either Lender or Borrower, as applicable, any pending action relating to any Claim and every Claim shall be heard by a single Referee (as defined below) who shall then try all issues (including any and all questions of law and questions of fact relating thereto), and issue findings of fact and conclusions of law and report a statement of decision. The Referee's statement of decision will constitute the conclusive determination of the Claim. Lender and Borrower agree that the Referee shall have the power to issue all legal and equitable relief appropriate under the circumstances before the Referee; (iii) Lender and Borrower shall promptly and diligently cooperate with one another, as applicable, and the Referee, and shall perform such acts as may be necessary to obtain prompt and expeditious resolution of all Claims in accordance with the terms of this Section 12.18; (iv) either Lender or Borrower, as applicable, may file the Referee's findings, conclusions and statement with the clerk or judge of any appropriate court, file a motion to confirm the Referee's report and have judgment entered thereon. If the report is deemed incomplete by such court, the Referee may be required to complete the report and resubmit it; (v) Lender and Borrower, as applicable, will each have such rights to assert such objections as are set forth in Section 638 et seq. of the California Code of Civil Procedure; and (vi) all proceedings shall be closed to the public and confidential, and all

records relating to the Reference shall be permanently sealed when the order thereon becomes final.

(b) Selection of Referee; Powers. The parties to the Reference proceeding shall select a single neutral referee (the "Referee"), who shall be a retired judge or justice of the courts of the State of California, or a federal court judge, in each case, with at least ten (10) years of judicial experience in civil matters. The Referee shall be appointed in accordance with Section 638 of the California Code of Civil Procedure (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts). If within ten (10) days after the request or motion for the Reference, the parties to the Reference proceeding cannot agree upon a Referee, then any party to such proceeding may request or move that the Referee be appointed by the Presiding Judge of the County of San Francisco Superior Court of California, or of the U.S. District Court for the Northern District of California. The Referee shall determine all issues relating to the applicability, interpretation, legality and enforceability of this Section 12.18(b).

(c) Provisional Remedies, Self Help and Foreclosure. No provision of this Section 12.18 shall limit the right of either Lender or Borrower, as the case may be, to (i) exercise such self-help remedies as might otherwise be available under applicable law, (ii) initiate judicial or non-judicial foreclosure against any real or personal property collateral, (iii) exercise any judicial or power of sale rights, or (iv) obtain or oppose provisional or ancillary remedies, including without limitation injunctive relief, writs of possession, the appointment of a receiver, and/or additional or supplementary remedies from a court of competent jurisdiction before, after, or during the pendency of any the Reference. The exercise of, or opposition to, any such remedy does not waive the right of Lender or Borrower to the Reference pursuant to this Section 12.18(c).

(d) Costs and Fees. Promptly following the selection of the Referee, the parties to such Reference proceeding shall each advance equal portions of the estimated fees and costs of the Referee. In the statement of decision issued by the Referee, the Referee shall award costs, including reasonable attorneys' fees, to the prevailing party, if any, and may order the Referee's fees to be paid or shared by the parties to such Reference proceeding in such manner as the Referee deems just.

Section 12.19. Arm's Length Transaction.

The Borrower acknowledges and agrees that (i) the advance of the Loan by the Lender pursuant to this Loan Agreement is an arm's-length commercial transaction between the Borrower and the Lender, (ii) in connection therewith and with the financing discussions, undertakings and procedures leading up to the consummation of such transaction, the Lender is and has been acting solely as a principal and is not acting as the agent or fiduciary of or in any way advising the Borrower, (iii) the Lender has not assumed an advisory or fiduciary responsibility in favor of the Borrower with respect to the financing contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Lender has provided other services or is currently providing other services to the Borrower on other matters) and the Lender has no obligation to the Borrower with respect to the financing contemplated

hereby except the obligations expressly set forth in this Loan Agreement and (iv) the Borrower has consulted its own legal, financial and other advisors to the extent it has deemed appropriate.

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be executed in their respective corporate names by their duly authorized officers or officials all as of the date first written above.

LENDER:

FIRST REPUBLIC BANK

By _____
Authorized Representative

BORROWER:

CITY OF SAN FRANCISCO PORTSMOUTH
PLAZA PARKING CORPORATION
a California nonprofit [public benefit] corporation

By: _____
[]

By: _____
[]

[Signature page to Loan Agreement]

EXHIBIT A
FORM OF BORROWER REQUEST OF PERIODIC ADVANCE
(PROJECT)

[Date of Request]

First Republic Bank
San Francisco, California
Attention: _____

Re: Request for Periodic Advance 2016 Loan (Portsmouth Plaza Parking Corporation)

This Request is being made pursuant to Section 5.02 of that certain Loan Agreement, dated as of [____], 2016 (the "Loan Agreement"), by and between City of San Francisco Portsmouth Plaza Parking Corporation (the "Borrower") and First Republic Bank (the "Lender"). All capitalized terms herein, unless otherwise defined, shall have the meanings as provided in the Loan Agreement. The undersigned hereby certifies that the requirements of Section 5.02 have been fully satisfied and as follows:

1. The undersigned is an Authorized Representative of the Borrower authorized to submit this Request to Lender.
2. The Borrower hereby requests a Periodic Advance in the amount of \$_____ minimum of \$250,000.
3. This Periodic Advance is equal to \$_____, and when added to the Closing Advance and any previous Periodic Advances totals \$_____ and does not exceed \$_____,000,000.
4. (i) The representations and warranties of the Borrower in Section 2.01 of the Loan Agreement are true and correct in all material respects as of the date hereof, (ii) the Borrower is in compliance with all of its covenants in the Loan Agreement, including but not limited to Section 7.05 and Section 7.10, (iii) no Default or Event of Default has occurred on the date hereof.
5. Attached hereto is the most recent information reported pursuant to Section 7.05 of the Loan Agreement.

6. All of the proceeds of this Periodic Advance will constitute Project Costs and will fund capital expenditures of the Borrower located at the Facility. An itemized list of such expenditures, the payees and invoices is provided in Attachment A [*Borrower to attach itemized list*].

7. Borrower has provided to Lender for its review and approval the Project Budget, the Project Disbursement Schedule, the Plans and Specifications and the Construction Contract, and the Borrower's agreements with its architect, together with consents by such architect and general contractor to the collateral assignment of their respective contracts to the Lender.

8. Borrower hereby certifies that the Project shall be constructed in accordance with the Permits (as defined below), the Project Budget and the Construction Contract.

9. Borrower has provided evidence as required by the Lender of the availability and adequacy of municipal storm and waste disposal facilities and other utilities and facilities (including, without limitation, water, electricity and telephone).

10. Borrower has provided to Lender copies of all permits, licenses, approvals and authorizations (collectively, "Permits") required by any governmental authorities for the construction, use and occupancy of the Project to be financed with this Periodic Advance in accordance with all applicable laws, ordinances, requirements and regulations to the extent obtained or necessary under applicable law for the state of construction as of the date of the Periodic Advance.

11. Borrower has provided to Lender an appropriate lien waiver and release in the form required by Civil Code Section 3262, duly and timely executed, completed and delivered by the general contractor to the Lender.

12. To the extent requested by the Lender, the Lender has received from each subcontractor and materialman a statement of account and such other instruments and documents as the Lender may from time to time specify, in form and content, and containing such certifications, approvals and other data and information, as the Lender may reasonably require, to confirm and evidence that each such subcontractor or materialman has been paid in full for the work that has been performed and has no claims in connection therewith.

13. All work usually done at the stage of construction attained on the date of this Periodic Advance Request has been completed and has been done in a good and workmanlike manner; and all materials, supplies, fixtures and equipment usually furnished or installed at that stage of construction shall have been furnished and installed. Attached herewith is a certificate of the Construction Inspector certifying that: (i) the renovations are substantially in accordance with the Plans and Specifications; (ii) if requested by the Lender, the percentage of completion of renovation work; and (iii) such other matters as the Lender has reasonably required in connection with the Project or the Periodic Advance Request.

14. Materials not yet incorporated into the Project which is to be paid out of this Periodic Advance has been delivered to and is located at the Borrower's premises and shall be

intended for inclusion in the construction within fifteen days after the date of this Periodic Advance Request.

15. [Attached herewith is proof of a surety bond obtained by the general contractor in connection with construction costs funded with this Periodic Advance.]

CITY OF SAN FRANCISCO PORTSMOUTH
PLAZA PARKING CORPORATION

By: _____
Name:
Title:

EXHIBIT B

FORM OF OPINION OF COUNSEL TO BORROWER

[Closing Date]

First Republic Bank
111 Pine Street
San Francisco, California 94111

Hawkins Delafield & Wood LLP
One Embarcadero Center, Suite 3820
San Francisco, California 94111

Re: 2016 Tax-Exempt Loan (Portsmouth Plaza Parking Corporation)

Ladies and Gentlemen:

We have acted as special counsel to City of San Francisco Portsmouth Plaza Parking Corporation (the "Corporation"), a California nonprofit [public benefit] corporation. Pursuant to that certain Loan Agreement, dated as of _____ 1, 2016 (the "Loan Agreement"), by and between First Republic Bank (the "Bank") and the Corporation, the Bank has agreed to make a loan to the Corporation in an aggregate amount of \$_____,000,000 ("Loan").

To secure its obligations under the Loan Agreement, the Corporation has agreed to grant to Bank security interests in certain collateral pursuant to the terms of (a) the Loan Agreement; and (b) that certain Security Agreement, dated as of _____ 1, 2016 (the "Security Agreement"), executed and delivered by the Corporation for the benefit of the Bank.

This letter is furnished pursuant to Section 5.01(m) of the Loan Agreement. Capitalized terms defined in the Loan Agreement used herein and not otherwise defined herein shall have the meanings given them in the Loan Agreement.

As such special counsel for the Corporation, we have examined such matters of fact and questions of law as we have considered appropriate for purposes of this letter, except where a specified fact confirmation procedure is stated to have been performed (in which case we have with your consent performed the stated procedure), and except where a statement is qualified as to knowledge (in which case we have with your consent made no or limited inquiry as specified below). We have examined, among other things, the following:

- (i) The Loan Agreement;
- (ii) The Tax Certificate of the Corporation and the City, dated _____, 2016;
- (iii) The Security Agreement;

(iv) A photocopy of the UCC-1 financing statement naming the Corporation as debtor and the Bank, as secured party, together with all schedules and exhibits to such financing statement, to be filed in the Office of the Secretary of State of the State of California (the "California Filing Office"), a copy of which is attached hereto as Exhibit A (the "California Financing Statement");

(v) A copy of the Articles of Incorporation of the Corporation certified by the Secretary of State of the State of California (the "Articles of Incorporation");

(vi) A copy of the Bylaws of the Corporation, certified by the Corporation's Secretary as being a complete and correct copy of the bylaws adopted by the Board of Trustees of the Corporation (the "Bylaws");

(vii) A Certificate of Status (Domestic Corporation) issued by the California Secretary of State dated _____, 2016 (the "Certificate of Good Standing");

(viii) Certificates signed on behalf of the Corporation dated the date hereof (collectively, the "Certificates"), certifying as to certain factual matters;

(ix) A copy of the resolution (the "Authorizing Resolution") adopted by the Board of Directors of the Corporation on _____;

(x) Minutes of the Board of Directors of the Corporation from January 1, 2013 through _____, 2016; and

(xi) Such other documents, opinions and matters we deem necessary to render the opinions set forth herein.

The documents described in subsections (i) through (iii) above are referred to herein collectively as the "Corporation Documents."

As used in this letter, the "California UCC" shall mean the Uniform Commercial Code as now in effect in the State of California.

On the basis of such examination, our reliance upon those assumptions contained herein and our consideration of those questions of law that we considered relevant, and subject to the limitations, assumptions, qualifications and exceptions heretofore and hereinafter set forth in this opinion, we are of the opinion that:

(1) The Corporation is a nonprofit corporation under the nonprofit corporation law of the State of California with power and authority to enter into the Corporation Documents and perform its obligations thereunder. Based solely on the Certificate of Good Standing, the Corporation is validly existing and in good standing under the laws of the State of California.

(2) The execution, delivery and performance of the Corporation Documents by the Corporation have been duly authorized by all necessary action of the Corporation, and Corporation Documents have been duly executed and delivered by Corporation.

(3) Each of the Corporation Documents constitutes a legally valid and binding obligation of the Corporation, enforceable against the Corporation in accordance with its terms, except to the extent enforceability thereof may be subject to or limited by the following:

(a) bankruptcy, reorganization, insolvency, arrangement, fraudulent conveyance, moratorium or other laws relating to or affecting the rights of creditors; and

(b) the application of equitable principles, by the exercise of judicial discretion in appropriate cases and by the limitations on legal remedies against public and nonprofit entities in the State of California.

Notwithstanding anything to the contrary herein, we express no opinion whatsoever (whether in this paragraph 3 or elsewhere) with respect to any indemnification, contribution, penalty, choice of law, choice of forum or waiver provisions contained in any of the Corporation Documents.

(4) The execution and delivery by the Corporation of the Corporation Documents and the borrowing and repayment of the Corporation Loan pursuant to the Loan Agreement by the Corporation (i) will not, to our knowledge, violate any order, decree or judgment (except for any order, regulation or demand of any federal, state, municipal or other governmental authority relating to zoning, land use or environmental matters, as to which we express no opinion), or any provision of any statute, rule or regulation applicable to or binding on the Corporation (except for state or federal blue sky or securities laws, zoning laws, land use laws or environmental laws, as to which we express no opinion); (ii) will not conflict with the provisions of the Corporation's Articles of Incorporation or Bylaws; and (iii) will not result in the breach of, or constitute a default under, any indenture or loan agreement or any other material agreement, lease or instrument to which the Corporation is a party and of which we are aware after reasonable inquiry. For purposes of clause (i) the phrase "statute, rule or regulation" refers only to the internal laws of the State of California and those federal laws that a lawyer practicing in the State of California exercising customary professional diligence would reasonably recognize to be applicable to the Corporation or the transactions contemplated by the Corporation Documents.

(5) No consent or approval of any trustee or holder of any indebtedness of the Corporation, and no consent, permission, authorization, order or license of or filing or registration with, any governmental authority, is necessary in connection with the execution and delivery of the Corporation Documents, or the consummation of any transaction therein contemplated except as have been obtained or made and as are in full force and effect. We express no opinion as to any approvals or consents that may be required under any state or federal blue sky or securities laws, zoning laws, land use laws, or environmental laws.

(6) To our knowledge, there is no action, suit, investigation or proceeding pending or threatened against the Corporation before any court or administrative agency which, if determined adversely to the Corporation, would materially adversely affect the business, operations, assets or financial condition of the Corporation, or the consummation of the transactions contemplated by or the validity or enforceability of the Corporation Documents.

(10) Based upon reasonable inquiry, all tax returns (federal, state and local) required to be filed by or on behalf of the Corporation have been filed and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Corporation in good faith, have been paid and adequate reserves have been made for the payment thereof. To the best of our knowledge, there are no pending tax contests by the Corporation.

(11) No facts have come to our attention that would lead us to conclude (i) that the proceeds of the Corporation Loan will be used by or for the benefit of any person other than members of the general public or the Corporation in furtherance of its exempt purposes, or (ii) that any portion of the proceeds of the Borrower Loan will be used by the Corporation in any "unrelated trade or business" within the meaning of Section 513(a) of the Code.

(13) The Corporation has created under the Security Agreement valid security interests in favor of the Bank in that portion of the collateral described in the Security Agreement in which Corporation has rights, to the extent a valid security interest can be created in such collateral under Division 9 of the California UCC.

(14) The Corporation has created under the Loan Agreement a valid security interest in favor of the Bank in that portion of the collateral described in Section 4.04 and 6.02(a) of the Loan Agreement, in which Corporation has rights, to the extent a valid security interest can be created in such collateral under Division 9 of the California UCC.

(16) The California Financing Statement is in appropriate form to perfect the security interest in favor of the Bank in the right, title and interest of the Corporation in and to the personal property collateral described in the California Financing Statement to the extent that perfection under Division 9 of the California UCC for such collateral may be effected by the filing of a UCC-1 financing statement with the California Filing Office.

Respectfully submitted,

EXHIBIT C

FORM OF OPINION OF CITY ATTORNEY OF SAN FRANCISCO

[Closing Date]

First Republic Bank
111 Pine Street
San Francisco, California 94111

Hawkins Delafield & Wood LLP
One Embarcadero Center, Suite 3820
San Francisco, California 94111

Re: 2016 Tax-Exempt Loan (Portsmouth Plaza Parking Corporation)

Ladies and Gentlemen:

As City Attorney of San Francisco, we have acted as counsel to the City and County of San Francisco (the "City") in connection with the delivery by the City of that certain Side Letter, dated [____], 2016 (the "Side Letter"), from the City to First Republic Bank (the "Bank"), pursuant to which the City has agreed to guaranty the obligations San Francisco Portsmouth Plaza Parking Corporation, a California nonprofit [public benefit] corporation (the "Corporation") under that Loan Agreement, dated as of _____ 1, 2016 (the "Loan Agreement"), by and between First Republic Bank (the "Bank") and the Corporation.

This letter is furnished pursuant to Section 5.01(o) of the Loan Agreement. Capitalized terms defined in the Loan Agreement used herein and not otherwise defined herein shall have the meanings given them in the Loan Agreement.

Regarding questions of fact material to our opinion, we have relied on representations of the City contained in the Side Letter, and in the certified proceedings and other certifications of public officials furnished to us, without undertaking to verify the same by independent investigation.

Based on the foregoing, we are of the opinion that, under existing law:

(1) The City is duly created and validly existing as a charter city and county with the power [to adopt the Resolution,] to enter into the Side Letter and to perform the agreements on its part contained therein.

(2) The Side Letter has been duly authorized, executed and delivered by the City and constitute the valid and binding obligation of the City, enforceable against the City in accordance with its terms.

(3) The execution and delivery by the City of the Side Letter and the payment and performance of the obligations thereunder (i) will not, to our knowledge, violate any order,

decree or judgment (except for any order, regulation or demand of any federal, state, municipal or other governmental authority relating to zoning, land use or environmental matters, as to which we express no opinion), or any provision of any statute, rule or regulation applicable to or binding on the City (except for state or federal blue sky or securities laws, zoning laws, land use laws or environmental laws, as to which we express no opinion); (ii) will not conflict with the provisions of the City's Charter; and (iii) will not result in the breach of, or constitute a default under, any indenture or loan agreement or any other material agreement, lease or instrument to which the City is a party and of which we are aware after reasonable inquiry. For purposes of clause (i) the phrase "statute, rule or regulation" refers only to the internal laws of the State of California and those federal laws that a lawyer practicing in the State of California exercising customary professional diligence would reasonably recognize to be applicable to the City or the transactions contemplated by the Side Letter.

(5) No consent or approval of any trustee or holder of any indebtedness of the City, and no consent, permission, authorization, order or license of or filing or registration with, any governmental authority, is necessary in connection with the execution and delivery of the Side Letter, or the consummation of any transaction therein contemplated except as have been obtained or made and as are in full force and effect. We express no opinion as to any approvals or consents that may be required under any state or federal blue sky or securities laws, zoning laws, land use laws, or environmental laws.

(6) To our knowledge, there is no action, suit, investigation or proceeding pending or threatened against the City before any court or administrative agency which, if determined adversely to the City, would materially adversely affect the business, operations, assets or financial condition of the City, or the consummation of the transactions contemplated by or the validity or enforceability of the Side Letter.

This opinion is given as of the date hereof, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law that may hereafter occur.

Respectfully submitted,