

File No. 160887

Committee Item No. 3  
Board Item No. 10

**COMMITTEE/BOARD OF SUPERVISORS**  
AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date September 14, 2016

Board of Supervisors Meeting

Date September 20, 2016

**Cmte Board**

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
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Completed by: Linda Wong Date September 9, 2016  
Completed by: Linda Wong Date September 15, 2016

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

2  
3 **Resolution authorizing a financing to be undertaken by the City of San Francisco**  
4 **Portsmouth Plaza Parking Corporation on behalf of the City in an amount not to exceed**  
5 **\$12,500,000 and approving the forms of and authorizing the execution and delivery of**  
6 **documents reasonably necessary for such financing; ratifying and approving any**  
7 **action heretofore taken in connection with the financing; granting general authority to**  
8 **City officials to take actions necessary to implement this Resolution; and related**  
9 **matters.**

10  
11 WHEREAS, The Board of Supervisors of the City and County of San Francisco (the  
12 "Board") desires to provide for the renovation of and various improvements to the Portsmouth  
13 Square Garage at 733 Kearny Street, San Francisco, California, including but not limited to  
14 improvements related to drainage and water proofing, security and emergency preparedness,  
15 interior improvements and systems upgrades, building repairs and general refurbishment  
16 (collectively, the "Project"); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 Section 2. Approval of Parking Corporation Purposes and Activities; Approval of  
20 Loan. The Board hereby approves the purposes and activities of Portsmouth Parking  
21 Corporation and the Loan to Portsmouth Parking Corporation to finance a portion of the costs  
22 of the Project. It is the intent of the Board that this resolution should constitute approval of the  
23 purposes and activities of Portsmouth Parking Corporation and the Loan for purposes of the  
24 IRS Rulings.  
25

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

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

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

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

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

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

21 Section 8. File. All documents referenced herein as being on file with the Clerk of  
22 the Board are located in File No. \_\_\_\_\_, which is hereby declared to be a part of this  
23 Resolution as if set forth fully herein.  
24  
25

**Item 3**

File 16-0887

**Department:**

Recreation and Parks Department (RPD)

**EXECUTIVE SUMMARY****Legislative Objectives**

- Authorize Portsmouth Plaza Parking Corporation (PPPC) to undertake a loan in an amount not to exceed \$12,500,000 for renovation of the City-owned Portsmouth Square Garage.
- Approve the amendment and restatement of the Articles of Incorporation and Bylaws of PPPC to document the organization of PPPC under the Nonprofit Corporation Law of the State of California, in accordance with IRS requirements.
- Approve the execution and delivery of the Portsmouth Square Parking Garage Landlord Assurances and Revenue Commitment Letter.

**Key Points**

- The City owns the land and improvements commonly known as Portsmouth Square in Chinatown, including the underground Portsmouth Square Garage. The garage is within the jurisdiction of the Recreation and Park Department (RPD). PPPC, a non-profit public benefit organization, has operated the garage since 1960. In FY 2014-15, RPD received \$1,308,000 in revenue from the garage.
- In 2011, RPD entered into a new 40-year lease with PPPC for the operation of the garage. The 40-year lease anticipates that PPPC, with approvals from the City, will renovate the garage to address deferred maintenance in the facility.
- The total estimated cost of the Portsmouth Square Garage renovations is \$11,959,068.

**Fiscal Impact**

- The \$12,500,000 loan from First Republic Bank has a 30-year term at 3.30 percent interest.
- Based on a cash flow projection, the garage will be able to fund its annual operating expenses, fund the \$1,000,000 loan reserve required by First Republic Bank, pay debt service, and meet the required debt service coverage ratio of 1.25:1.
- As part of the loan financing agreement, the City agrees to make debt service payments on the loan from parking facility revenues if the City terminates the lease with PPPC, which is unlikely.

**Policy Consideration**

- SFMTA was authorized by Proposition A in 2008 to issue revenue bonds, making debt financing by public benefit corporations overseeing City-owned garages unnecessary. However, in this case, SFMTA-issued revenue bonds could be more costly than the proposed private financing package.

**Recommendation**

- Approve the proposed resolution.



**MANDATE STATEMENT**

According to the existing lease between the City and the Portsmouth Plaza Parking Corporation (PPPC), financing of capital improvements at the Portsmouth Square Garage are subject to approval by the Board of Supervisors.

**BACKGROUND**

The City owns the land and improvements commonly known as Portsmouth Square in Chinatown, including the underground Portsmouth Square Garage located beneath the Square at 733 Kearny Street. In 1960, the City entered into a lease with Portsmouth Plaza Parking Corporation (PPPC) for the construction, financing, and operation of the garage. PPPC is a non-profit public benefit organization established for the sole purpose of building and operating the garage. The garage is within the jurisdiction of the Recreation and Park Department (RPD).

In February 2011, the Board of Supervisors authorized RPD, as landlord, to enter into a new 40-year lease with PPPC, as tenant, for the operation of the Portsmouth Square Garage from January 1, 2011, through December 31, 2051 (File No. 10-1431).

Under the lease, PPPC pays RPD percentage rent of 85 percent of net revenues, with the remaining 15 percent of net revenues deposited into a Capital Improvement Reserve Account. The garage also collects the City's parking taxes charged at a rate of 25 percent of the parking fee. Following the completion of the proposed renovations to the garage as described below, PPPC will pay RPD percentage rent of 95 percent of net revenues for the first three years, and 90 percent of net revenues for the second three-year period, with the understanding that the need for a substantial capital improvement reserve fund would be temporarily reduced following the renovations. In FY 2014-15, RPD received \$1,308,000 in revenue from the garage. Such revenues are credited to the RPD budget.

The 40-year lease between RPD and PPPC anticipates that PPPC, with approvals from the City, will renovate the garage to address deferred maintenance in the facility, as identified in a 2002 structural assessment of the garage. According to Ms. Katharine Petrucione, RPD Director of Administration and Finance, only two small renovations have been completed in the garage since it opened in 1961: 1) installation of a new cashier booth in 2004, and 2) ADA-compliant improvements to the public restrooms in 2008.

**DETAILS OF PROPOSED LEGISLATION**

The proposed resolution would:

1. Authorize PPPC on behalf of the City to undertake a loan in an amount not to exceed \$12,500,000 for the renovation of the City-owned Portsmouth Square Garage.
2. Approve the amendment and restatement of the Articles of Incorporation and Bylaws of PPPC to document the organization of PPPC under the Nonprofit Corporation Law of the State of California, in accordance with IRS requirements.

3. Approve the execution and delivery of the Portsmouth Square Parking Garage Landlord Assurances and Revenue Commitment Letter, which includes, among other terms, an obligation for the City to repay the outstanding balance of the \$12,500,000 loan from parking facility revenues if the City terminates the lease while the loan is outstanding.

The proposed new renovations to the garage include relocation and renovation of staff areas; improvements to pedestrian circulation, lighting, mechanical, electrical, plumbing, and sprinkler systems; repairs to concrete; installation of a new fire alarm system; implementation of a new parking revenue control system; and construction of new elevators. The total estimated cost of the Portsmouth Square Garage renovations is \$11,959,068, as shown in Table 1 below.

**Table 1: Portsmouth Square Garage Renovations Estimated Budget**

<i>Construction</i>	
Direct Construction	\$4,908,540
Design/Estimate Contingency	294,512
Mobilization & Demobilization	260,153
General Contractor's General Conditions	546,321
Bonds and Insurance	120,191
Overhead and Profit	367,783
Phasing Premium	245,427
Mid-point Cost Escalation	366,141
<i>Construction Subtotal</i>	<i>\$7,109,068</i>
<i>Soft Costs</i>	
Loan Fee	\$25,000
Architect Services	420,000
Construction Management	610,000
Permits and Fees	45,000
<i>Soft Costs Subtotal</i>	<i>\$1,100,000</i>
<i>Additional Scope</i>	
SFMTA Revenue Control System	\$1,600,000
Elevator Modernization	1,500,000
Signage Package	150,000
Owner-supplied Items	350,000
Service/Soft Cost Contingency	150,000
<i>Additional Scope Subtotal</i>	<i>\$3,750,000</i>
<b>TOTAL</b>	<b>\$11,959,068</b>

Design, regulatory, and permit approvals for the renovation project have been completed, and PPPC is preparing to issue a bid package for contractors. Construction bidding is expected to commence upon Board of Supervisors approval of the project loan. The garage would remain operational during construction, which is expected to take 12 to 14 months.

PPPC is responsible for financing all renovations to the garage. According to Ms. Petrucione, PPPC's financial advisor, First Southwest Company, evaluated financing alternatives for the proposed improvements, including private financing and financing from the California

Infrastructure and Economic Development Bank<sup>1</sup>, and determined that private financing was the best alternative for the project.

With the assistance of First Southwest Company and the City's Office of Public Finance, PPPC secured loan financing of up to \$12,500,000 from First Republic Bank to fund the renovation project. According to the terms of the lease between RPD and PPPC, the terms of the \$12,500,000 loan financing, including a Revenue Commitment Letter from the City, are subject to approval by the Board of Supervisors. Under the Internal Revenue Code, the purposes and activities of PPPC and the revised Articles of Incorporation and Bylaws for PPPC are subject to approval by the Board of Supervisors.

### FISCAL IMPACT

The \$12,500,000 loan financed from First Republic Bank has a 30-year term and a 3.30 percent interest rate. Annual debt service is estimated to be \$684,000, or total debt service payments of \$20,520,000 including principal of \$12,500,000 and interest of \$8,020,000.

Based on a cash flow projection prepared by RPD and shown in the Attachment to this report, the garage will be able to fund its annual operating expenses, fund the \$1,000,000 loan reserve required by First Republic Bank, pay debt service, and meet the required debt service coverage ratio<sup>2</sup> of 1.25:1.

As shown in the Attachment, the cash flow analysis projects that annual net income to RPD during the first 10 years of the 30-year loan will range from a low of approximately \$1,112,000 in FY 2018-19 to a high of \$1,590,000 in FY 2025-26. Income from the Portsmouth Plaza Garage accrues to the RPD budget. As shown in the Attachment, the debt service coverage ratio ranges from 1.72:1 in FY 2018-19 to 2.74:1 in FY 2025-26, which exceeds the required minimum of 1.25:1.

#### **Obligation of the City to Make Loan Payments if the Lease is Terminated Early**

As part of the loan financing agreement between First Republic Bank and PPPC, First Republic Bank requires a Revenue Commitment Letter from the City, in which the City agrees to make debt service payments on the loan from parking facility revenues if the City terminates the lease with PPPC. According to Ms. Petrucione, RPD does not anticipate any likely circumstances in which they would terminate the lease with PPPC early. However, in the event of an early termination of the lease, the City would make loan payments solely from parking facility revenues in accordance with the Revenue Commitment Letter. The agreement would not result in a liability to the City's General Fund.

<sup>1</sup> The California Infrastructure and Economic Development Bank is a State agency with authority to issue tax-exempt revenue bonds.

<sup>2</sup> Debt service coverage ratio is the ratio of the annual operating surplus to the annual debt service. Annual debt service is estimated to be \$684,000 and the annual operating surplus is estimated to range between a low of \$1,169,000 and a high of \$2,118,000. At the low estimate, the debt service coverage ratio would be 1.72:1, which is higher than the 1.25:1 minimum requirement.

**POLICY CONSIDERATION**

PPPC was set up as a non-profit public benefit corporation in 1960 to issue debt because City-owned garages had no mechanism for debt financing when they were built. Although the Portsmouth Square Garage lease is under the jurisdiction of RPD, the San Francisco Municipal Transportation Agency (SFMTA) is responsible for the administration of the leases and operating agreement of all City-owned parking garages that are open to the public. SFMTA was authorized by Proposition A in 2008 to issue revenue bonds, therefore, making debt financing by the public benefit corporations overseeing the City-owned garages no longer necessary.

According to Ms. Sonali Bose, Director of Finance and Information Technology of SFMTA, except for Portsmouth Square Garage, SFMTA has issued revenue bonds for all of the other City-owned garages. According to Ms. Bose, as of September 6, 2016, the total interest cost (including cost of issuance, debt service reserve fund, etc.) of a 30-year revenue bond would be approximately 4 percent. Therefore, in this case, SFMTA-issued revenue bonds could be more costly than the proposed private financing package at 3.30 percent interest over 30 years.

**RECOMMENDATION**

Approve the proposed resolution.

Debt Service Coverage Ratio

	FY 2017-18	FY 2018-19	FY 2019-20	FY 2021-22	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27
Net Revenues	4,327,000	4,416,000	4,830,000	4,830,000	4,830,000	5,237,000	5,237,000	5,237,000	5,677,000	5,691,000
Expenses	2,493,000	2,564,000	2,637,000	2,712,000	2,790,000	2,870,000	2,952,000	3,037,000	3,125,000	3,215,000
Net Income	1,834,000	1,852,000	2,193,000	2,118,000	2,040,000	2,367,000	2,285,000	2,200,000	2,552,000	2,476,000
Debt Service	416,000	682,000	682,000	682,000	682,000	682,000	682,000	682,000	682,000	682,000
Operating Surplus	1,418,000	1,170,000	1,511,000	1,436,000	1,358,000	1,685,000	1,603,000	1,518,000	1,870,000	1,794,000
Capital Reserve Allocation	71,000	58,000	151,000	143,000	136,000	253,000	240,000	228,000	280,000	269,000
Net Income to Recreation and Park Department	1,347,000	1,112,000	1,360,000	1,293,000	1,222,000	1,432,000	1,363,000	1,290,000	1,590,000	1,525,000
Debt Service Coverage Ratio	3.41	1.72	2.22	2.11	1.99	2.47	2.35	2.23	2.74	2.63

1069

Certificate of Amendment and Restatement of Articles of Incorporation  
of

**CITY OF SAN FRANCISCO PORTSMOUTH PLAZA PARKING CORPORATION**  
(Entity No. C0321556)

Conversion to Nonprofit Public Benefit Corporation

The undersigned President and Secretary of the City of San Francisco Portsmouth Plaza Parking Corporation, a California corporation, hereby certify (1) that the Articles of Incorporation of the Corporation have been amended to convert the Corporation into a nonprofit public benefit corporation pursuant to Section 911 of the California Corporations Code, (2) that such amendment, together with a restatement of the Articles of Incorporation, was approved by the Board of Directors of the Corporation and by the sole stockholder of the Corporation, in accordance with Sections 902 and 911(c) of the California Corporations Code, and (3) that, as so amended and restated, the Amended and Restated Articles of Incorporation of the Corporation now read in full as follows:

FIRST: The name of this Corporation is,

CITY OF SAN FRANCISCO PORTSMOUTH PLAZA PARKING CORPORATION.

SECOND: This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for public purposes: namely, the financing, construction, and operation of a public off-street parking facility in the area generally known as Portsmouth Square, for and on behalf of the City and County of San Francisco, and the conduct of matters incident thereto.

THIRD: The City and County of San Francisco shall be the sole Member of the Corporation; and the Corporation shall at no time have any members other than the City and County of San Francisco. The issued and outstanding shares of stock in the Corporation, which have heretofore been held by a trustee for the benefit of the City and County of San Francisco, are hereby canceled.

FOURTH: The Corporation shall have such number of Directors as may be designated from time to time pursuant to the By-Laws of the Corporation. All individuals who were Directors of the Corporation immediately prior to its conversion into a nonprofit public benefit

corporation shall continue to be Directors of the Corporation following such conversion, until such time as they may resign or be replaced pursuant to the By-Laws of the Corporation. All individuals serving as officers of the Corporation immediately prior to its conversion into a nonprofit public benefit corporation shall continue to be officers of the Corporation following such conversion, until such time as they may resign or be replaced by the Board of Directors or otherwise pursuant to the By-Laws of the Corporation.

FIFTH: This Corporation is and shall be organized and operated exclusively for the public charitable purposes set forth in Article SECOND above: namely, the financing, construction, and operation of a public off-street parking facility for and on behalf of the City and County of San Francisco and for the conduct of matters incident thereto. Title to such parking facility shall vest in the City and County of San Francisco, and all of the net revenues derived by the Corporation from the operation of such facility shall be paid to or for the account of City and County of San Francisco, *provided, however*, that the Corporation may lease such facility from the City and County of San Francisco and may mortgage or otherwise encumber the interest of the Corporation in any leasehold estate derived by it from the City and County of San Francisco as security for the payment of indebtedness incurred to finance the facility, and, *provided, further*, that the Corporation may apply net revenues from the operation of the facility toward the payment of such indebtedness

The property of the Corporation is irrevocably dedicated to the purposes set forth in Article SECOND above, and no part of the net income or assets of the Corporation shall ever inure to the benefit of any director or officer thereof or to the benefit of any private person.

No substantial part of the activities of the Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, except to the extent that an organization exempt from federal income tax under Code Section 501(c)(3) can engage in such activities without incurring any penalties, excise taxes or losing its status as an organization exempt from federal income tax under Code Section 501(c)(3), and the Corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of any candidate for public office.

Upon the dissolution or winding up of the Corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of the Corporation shall be distributed to the City and County of San Francisco.

\_\_\_\_\_

IN WITNESS WHEREOF, the undersigned Jerry Lee and Rose Chung, who are respectively the duly elected and acting President and Secretary of the Corporation, hereby certify under penalty of perjury that the foregoing is true and correct and that this certificate was executed by them at San Francisco California on \_\_\_\_\_, 2016.

CITY OF SAN FRANCISCO PORTSMOUTH  
PLAZA PARKING CORPORATION

\_\_\_\_\_  
Jerry Lee, President

\_\_\_\_\_  
Rose Chung, Secretary

29639547.4



AMENDED BY-LAWS

of

CITY OF SAN FRANCISCO  
PORTSMOUTH PLAZA PARKING CORPORATION

ARTICLE I

Name

The name of the Corporation is City of San Francisco Portsmouth Plaza Parking Corporation.

ARTICLE II

Offices

Section 1. PRINCIPAL OFFICE. The principal office for the transaction of the business of the Corporation is hereby fixed and located at 733 Kearny Street, in the City and County of San Francisco, State of California. The Board of Directors is hereby granted full power and authority to change said principal office from one location to another in said county.

Section 2. OTHER OFFICES. Branch or subordinate offices may at any time be established by the Board of Directors at any place or places where the Corporation is qualified to do business.

ARTICLE III

Purposes

The Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for public purposes: namely, the financing, construction, and operation of a public off-street parking facility in the area generally known as Portsmouth Square, for and on behalf of the City and County of San Francisco, and the conduct of matters incident thereto.

## ARTICLE IV

### Limitations

Section 1. NONPROFIT STATUS. The Corporation shall not have or issue shares of stock. No part of the Corporation's net earnings shall inure to the benefit of any of its directors, trustees, officers, or any private individual, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered, and to make payments and distributions in furtherance of the purposes of the Corporation and subject to the limitations of Sections 2 and 3 of this Article.

Section 2. DEDICATION. All corporate property is irrevocably dedicated to the purposes set forth in Article III. No director or officer of the Corporation, or any private individual, shall be entitled to share in the distribution of any of the corporate assets upon dissolution of the Corporation or the winding up of its affairs.

Section 3. DISTRIBUTIONS; DISSOLUTION. On the winding up and dissolution of the Corporation, after paying or adequately providing for the debts, obligations, and liabilities of the Corporation, the remaining assets of the Corporation shall be distributed to the City and County of San Francisco.

Section 4. PROHIBITED ACTIVITIES.

(a) No substantial part of the activities of the Corporation shall be devoted to attempting to influence legislation by propaganda or otherwise, except to the extent that an organization exempt from federal income tax under Code Section 501(c)(3) can engage in such activities without incurring any penalties, excise taxes or losing its status as an organization exempt from federal income tax under Code Section 501(c)(3). The Corporation shall not, directly or indirectly, participate in or intervene in (including by the publication or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. The Corporation shall not have objectives or engage in activities that characterize it as an "action" organization within the meaning of the Code.

(b) Notwithstanding any other provisions of these By-Laws, the Corporation shall not conduct or carry on activities not permitted to be conducted or carried on by an organization exempt from federal income tax under Code Section 501(c)(3) or by an organization contributions to which are deductible under Code Section 170(c)(2).

(c) The Corporation is prohibited from engaging in any excess benefit transaction as defined in Code Section 4958(c).

(d) The Corporation is prohibited from engaging in any act of self-dealing as defined in Code Section 4941(d), from retaining any excess business holding as defined in Code Section 4943(c) that would subject the Corporation to tax under Code Section 4943, from making any investments that would subject the Corporation to tax under Code Section 4944, and from making any taxable expenditure as defined in Code Section 4945(d). If Code Section 4942 is deemed applicable to the Corporation, it shall make distributions at such time and in such manner that it is not subject to tax under Code Section 4942.

(e) Notwithstanding any other provisions of these By-Laws, the Corporation shall conduct and carry on activities in accordance with The Ralph M. Brown Act (Gov. Code, § 549501 *et seq.*, as now or hereinafter amended, “the Brown Act,”) and the San Francisco Sunshine Ordinance (SF Administrative Code Chapter 67, as now or hereinafter amended, “the Sunshine Ordinance”).

## ARTICLE V

### Members

Section 1. SOLE MEMBER. The City and County of San Francisco shall be the Sole Member of the Corporation.

Section 2. ACTION WITHOUT MEETING. Any action which, under any provision of the California Nonprofit Public Benefit Corporation Law, may be taken at a meeting of members may be taken by written action of the Sole Member, which action shall be filed with the Secretary of the Corporation.

## ARTICLE VI

### Directors

Section 1. POWERS. Subject to limitations of the Articles of Incorporation, of the By-Laws, and of the California Nonprofit Public Benefit Corporation Law as to actions which shall be authorized or approved by the members of a nonprofit public benefit corporation, and subject to the duties of Directors as prescribed by the By-Laws, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be controlled by, the Board of Directors. Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the directors shall have the following powers to-wit:

First – To select and remove all the other officers, agents and employees of the Corporation; prescribe such powers and duties for them as may not be inconsistent with law, with the Articles of Incorporation or the By-Laws, fix their compensation, and require from them security for faithful service.

Second – To conduct, manage and control the affairs and business of the Corporation, and to make such rules and regulations therefor not inconsistent with law, or with the Articles of Incorporation or the By-Laws, as they may deem best.

Third – To change the principal office for the transaction of the business of the Corporation from one location to another within the same county as provided in ARTICLE II, Section 1, hereof; to fix and locate from time to time one or more subsidiary offices of the Corporation within or without the State of California, as provided in ARTICLE II, Section 2, hereof; and to adopt, make and use a corporate seal, and to alter the form of such seal from time to time, as in their judgment they may deem best, provided such seal shall at all times comply with the provisions of law.

Fourth – To borrow money and incur indebtedness for the purposes of the Corporation, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities therefor.

Fifth – To appoint an executive committee and other committees, and to delegate to the executive committee any of the powers and authority of the Board in the management of the business and affairs of the Corporation, and to adopt, amend or repeal By-Laws. The executive committee shall be composed of two (2) or more Directors.

Section 2. NUMBER AND QUALIFICATION OF DIRECTORS. The authorized number of Directors of the Corporation shall be twelve (12) until changed by amendment of the Articles of Incorporation or by a By-Law duly adopted by the Sole Member amending this Section 2.

Section 3. RESTRICTION ON INTERESTED PERSONS AS DIRECTORS. No more than forty-nine (49) percent of the persons serving on the Board of Directors may be "interested persons." An interested person is (a) any person compensated by the Corporation for services rendered to it within the previous twelve (12) months, whether as a full-time or part-time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a Director as Director; and (b) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of such person. Any violation of this paragraph, however, shall not affect the validity or enforceability of transactions entered into by the Corporation

Section 4. ELECTION AND TERM OF OFFICE. The Directors shall be elected annually by the Sole Member for a term of one year, and shall continue to serve thereafter until such time as their respective successors are elected.

Section 5. RESIGNATION. Any Director may resign at any time by delivering written notice to the President or Secretary of the Corporation, or to the Chairman of the Board, if such an officer has been elected. Any such resignation shall be effective at the time specified therein, or if the time is not specified, upon delivery thereof. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. REMOVAL. One or more Directors may be removed from office without cause by the affirmative vote of a majority of all Directors then in office. A majority of directors present at a meeting at which a quorum exists may remove a Director who has been

convicted of a felony, declared of unsound mind by a court order, or found by final order or judgment of any court to have breached a duty under California Nonprofit Public Benefit Corporation Law, Chapter 2, Article 3.

Section 7. VACANCIES. Vacancies in the Board of Directors may be filled by a majority of the remaining directors though less than a quorum, or by a sole remaining director and each director so elected shall hold office until his or her successor is elected by the Sole Member.

A vacancy or vacancies in the Board of Directors shall be deemed to exist in case of the death, resignation or removal of any Director, or if the authorized number of Directors be increased, or if the Sole Member should fail to elect the full authorized number of Directors.

The Sole Member may elect a Director or directors at any time to fill any vacancy or vacancies not filled by the Directors. If the Board of Directors accepts the resignation of a Director tendered to take effect at a future time, the Board or the Sole Member shall have power to elect a successor to take office when the resignation is to become effective.

No reduction of the authorized number of Directors shall have the effect of removing any Director prior to the expiration of his or her term of office.

Section 8. PLACE OF MEETING. Meetings of the Board of Directors shall be held at the principal office of the Corporation or, to the extent permitted by law, at any other place which has been designated from time to time by resolution of the Board or by written consent of all members of the Board.

Section 9. MEETINGS BY TELEPHONE OR OTHER TELECOMMUNICATIONS EQUIPMENT. To the extent permitted by law, members of the Board or any committee designated by the Board may participate in a meeting of such Board or committee by means of a conference telephone, video screen communication, or similar communications equipment. Participation in a meeting under this Section shall constitute presence in person at the meeting if all of the following apply:

- (a) Each member participating in the meeting can communicate concurrently with all the other members.
- (b) Each member is provided the means of participating in all matters before the Board, including the capacity to propose or to interpose an objection to, a specific action to be taken by the Corporation.
- (c) The Board has adopted and implemented a means of verifying both of the following:
  - (1) A person participating in the meeting is a Director or other person entitled to participate in the Board meeting.
  - (2) All actions of or votes by the Board are taken or cast only by the Directors and not by persons who are not Directors.
- (d) Such use of telecommunications equipment is permitted by the Brown Act and the Sunshine Ordinance.

Section 10. ORGANIZATION MEETING. Immediately following the annual election of the Board of Directors by the Sole Member, the Board of Directors shall hold a regular meeting for the purpose of organization, election of officers, and the transaction of other business.

Section 11. OTHER REGULAR MEETINGS. Other regular meetings of the Board of Directors shall be held without call on the first Thursday of every other month, at 10:00 a.m. of said day, provided, however, should said day fall upon a legal holiday, then said meeting shall be held at the same time on the next day thereafter ensuing which is not a legal holiday. Except as required by the Brown Act and Sunshine Ordinance, notice of all such regular meetings of the Board of Directors is hereby dispensed with. All regular meetings shall be noticed and conducted in the manner prescribed by the Brown Act and the Sunshine Ordinance.

Section 12. SPECIAL MEETINGS. Consistent with the Brown Act and the Sunshine Ordinance, special meetings of the Board of Directors for any purpose or purposes

shall be called by the President or, if he or she is absent or unable or refuses to act, by any Vice-President or by any two (2) Directors.

Written notice of the time and place of special meetings shall be delivered personally to each director, or sent to each Director by mail or by other form of written communication, charges prepaid, addressed to him or her at such Director's address as it is shown upon the records of the Corporation, or if it is not so shown on such records or is not readily ascertainable, at the place in which the meetings of the Directors are regularly held. In case such notice is mailed, it shall be deposited in the United States mail at least forty-eight (48) hours prior to the time of the holding of the meeting. In case such notice is delivered as above provided, it shall be so delivered at least twenty-four (24) hours prior to the time of the holding of the meeting. Such mailing or delivery as above provided shall be due, legal and personal notice to such Director. Written notice of the time, place, and content of special meeting shall be posted and delivered in accordance with the Brown Act and Sunshine Ordinance.

Section 13. "WRITTEN NOTICE," "WRITTEN CONSENT." For purposes of complying with the requirements of these By-Laws, with respect to notices of special meetings, director actions taken without a meeting, and for other purposes, the terms "written notice" and "written consent" shall include transmitting a notice or consent by facsimile, electronic mail, voice mail, or similar means of electronic communication in the case of any director who has previously provided the secretary of the Corporation with written notice (which may be transmitted to the secretary by such a means of electronic communication) of a facsimile number, email address, or other address at which such Director is willing to accept electronic notices. Notices and consents provided by electronic communication are effective when they are electronically transmitted to the address authorized by the recipient. A Director who has consented to accept notices by a means of electronic communication may revoke such consent by written notice to the secretary of the Corporation (which may be transmitted to the secretary by such a means of electronic communication). In addition, such authorization shall be automatically revoked if the Corporation is unable to transmit by electronic means two consecutive notices to a Director, and this inability is known to the person responsible for giving notice.



Section 14. NOTICE OF ADJOURNMENT. Notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place be fixed at the meeting adjourned.

Section 15. WAIVER OF NOTICE. To the extent permitted by law, the transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present, and if, either before or after the meeting, each of the Directors not present signs a written waiver of notice, or a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 16. QUORUM. A majority of the authorized number of Directors shall be necessary to constitute a quorum for the transaction of business, except to adjourn as hereinafter provided. Every act or decision done or made by a majority of the Directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Directors, unless a greater number be required by law or by the Articles of Incorporation.

Section 17. ADJOURNMENT. A quorum of the Directors may adjourn any directors' meeting to meet again at a stated day and hour; provided, however, that in the absence of a quorum, a majority of the Directors present at any directors' meeting, either regular or special, may adjourn from time to time until the time fixed for the next regular meeting of the Board.

Section 18. FEES AND COMPENSATION. Directors shall not receive any stated salary for their services as Directors, but, by resolution of the Board, a fixed fee, with or without expenses of attendance, may be allowed for attendance at each meeting. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity as an officer, agent, employee, or otherwise, and receiving compensation therefor.

## ARTICLE VII

### Officers

Section 1. OFFICERS. The Officers of the Corporation shall be a President, a Vice-President, a Secretary, and a Treasurer. The Corporation may also have, at the discretion of the Board of Directors, a Chairman of the Board, one or more additional Vice-Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers, and such other Officers as may be appointed in accordance with the provisions of Section 3 of this Article. One person may hold two or more offices, except that neither the Secretary nor the Treasurer may serve concurrently as the President or Chairman of the Board.

Section 2. ELECTION. The officers of the Corporation, except such Officers as may be appointed in accordance with the provisions of Section 3 or Section 5 of this Article shall be chosen annually by the Board of Directors, and each shall hold his office until he or she shall resign or shall be removed or otherwise disqualified to serve, or his or her successor shall be elected and qualified.

Section 3. SUBORDINATE OFFICERS, ETC. The Board of Directors may appoint such other Officers as the business of the Corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in the By-Laws or as the Board of Directors may from time to time determine.

Section 4. REMOVAL AND RESIGNATION. Any Officer may be removed, either with or without cause, by a majority of the directors at the time in office, at any regular or special meeting of the Board, or, except in case of an Officer chosen by the Board of Directors, by any officer upon whom such power of removal may be conferred by the Board of Directors.

Any Officer may resign at any time by giving written notice to the Board of Directors or to the President, or to the Secretary of the Corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. VACANCIES. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in the By-Laws for regular appointments to such office.

Section 6. CHAIRMAN OF THE BOARD. The Chairman of the Board, if there shall be such an Officer, shall, if present, preside at all meetings of the Board of Directors, and exercise and perform such other powers and duties as may be from time to time assigned to him or her by the Board of Directors or prescribed by the By-Laws.

Section 7. PRESIDENT. Subject to such supervisory powers, if any, as may be given by the Board of Directors to the Chairman of the Board, if there be such an Officer, the President shall be the chief executive officer of the Corporation and shall, subject to the control of the Board of Directors have general supervision, direction and control of the business and officers of the Corporation. The President shall preside at all meetings of the Board of Directors. He or she shall be *ex officio* a member of all the standing committees, including the executive committee, if any, and shall have the general powers and duties of management usually vested in the office of President of a corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or the By-Laws.

Section 8. VICE-PRESIDENT. In the absence or disability of the President, the Vice-Presidents in order of their rank as fixed by the Board of Directors, or if not ranked, the Vice-President designated by the Board of Directors, shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to, all the restrictions upon the President. The Vice-Presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board of Directors or the By-Laws.

Section 9. THE SECRETARY. The secretary shall keep, or cause to be kept, a book of minutes at the principal office or such other place as the Board of Directors may order, of all meetings of Directors and any meetings or other actions of the Sole Member, which minute book shall comply with the requirements set forth in Article X, Section 2 of these By-Laws.

The Secretary shall give, or cause to be given, notice of all the meetings of the Sole Member and of the Board of Directors required by the By-Laws or by law to be given, and he shall keep the seal of the Corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the By-Laws.

Section 10. TREASURER. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities receipts, disbursements, gains, losses, and capital. The books of account shall at all reasonable times be open to inspection by any director.

The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositaries as may be designated by the Board of Directors. He shall disburse the funds of the Corporation as may be ordered by the Board of Directors, shall render to the President and directors, whenever they request it, an account of all of his or her transactions as Treasurer and of the financial condition of the Corporations and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the By-Laws.

## **ARTICLE VIII**

### **Standard of Conduct for Officers and Directors**

Directors and Officers shall discharge their respective duties, including the duties of any committee of the Board upon which a Director may serve:

- (a) in good faith;
- (b) with such care including reasonable inquiry, as an ordinary prudent person in like position would exercise under similar circumstances; and
- (c) in a manner such Director or Officer believes to be in the best interests of the Corporation and in accordance with such written conflict of interest policy as may be adopted by the Board.

## ARTICLE IX

### Indemnification

Section 1. DEFINITIONS. For purposes of this Article IX,

(a) "Agent" means any person who is or was a Director, Officer, employee, or other agent of the Corporation, or is or was serving at the request of the Corporation as a Director, Officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, or was a Director, Officer, employee, or agent of a foreign or domestic corporation that was a predecessor corporation of the Corporation or of another enterprise at the request of the predecessor corporation.

(b) "Proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative, or investigative; and

(c) "Expenses" includes, without limitation, all attorneys' fees, costs and any other expenses reasonably incurred in the defense of any claims or proceedings against an Agent by reason of his or her position or relationship as Agent and all attorneys' fees, costs and other expenses reasonably incurred in establishing a right to indemnification under this Article IX.

Section 2. APPLICABILITY OF INDEMNIFICATION PROVISIONS. To the fullest extent permitted by law, this Corporation shall indemnify its Agents against all Expenses actually and reasonably incurred by them in connection with any Proceeding and including an action by or in the right of the Corporation, by reason of the fact that the person is an Agent.

Section 3. ADVANCE OF EXPENSES. Expenses incurred in defending any proceeding shall be advanced by the Corporation before the final disposition of the proceeding, on receipt by the Corporation of an undertaking by or on behalf of the Agent to repay the amount of the advance unless it is ultimately determined that the Agent is entitled to be indemnified by the Corporation as authorized in this Article IX.

Section 4. REQUIRED STANDARDS OF CONDUCT FOR INDEMNIFICATION.

(a) *Third Party Proceedings.* Any indemnification granted to an Agent in Section 2 above is conditioned on the following. The Board must determine, in the manner provided in Section 5, that the Agent seeking reimbursement acted in good faith, in a manner he or she reasonably believed to be in the best interest of the Corporation, and, in the case of a criminal proceeding, he or she must have had no reasonable cause to believe that his or her conduct was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or on a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or in a manner he or she reasonably believed to be in the best interest of the Corporation or that he or she had reasonable cause to believe that his or her conduct was unlawful.

(b) *Proceeding by or on Behalf of the Corporation.* In any proceeding brought (i) by or in the right of the Corporation, or (ii) by a Director, Officer or person granted relator status by the Attorney General, or by the Attorney General, on the ground that the defendant Director was or engaging in self-dealing within the meaning of section 5233 of the California Nonprofit Public Benefit Corporation Law, or (iii) by the Attorney General or person granted relator status by the Attorney General for any breach of duty relating to assets held in charitable trust (any such proceeding is referred to in these Bylaws as a proceeding "by or on behalf of the Corporation"), the Board must determine, in the manner provided in Section 5, that the Agent seeking reimbursement acted in good faith, in a manner he or she believed to be in the best interest of the Corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in like position would use under similar circumstances.

Section 5. DETERMINATION OF AGENT'S GOOD FAITH CONDUCT.

The indemnification granted to an Agent by Section 2 is conditioned on the relevant finding required by Section 4 being made by:

(a) The Board by a majority vote of a quorum consisting of Directors who are not parties to the proceeding or

(b) The court in which the proceeding is or was pending. Such determination may be made on application brought by the Corporation or the Agent or the attorney or other

person rendering a defense to the Agent, whether or not the application by the Agent, attorney, or other person is opposed to the Corporation.

Section 6. INSURANCE. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any Director, Officer, employee, or other Agent, against any liability asserted against or incurred by any Director, Officer, employee, or other Agent in such capacity or arising out of the Agent's status as such.

## ARTICLE X

### Miscellaneous

Section 1. CHECKS, DRAFTS, ETC. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Corporation, shall be signed or endorsed by such person or persons and in such manner as, from time to times, shall be determined by resolution of the Board of Directors.

Section 2. MINUTE BOOK. The Corporation shall keep or cause to be kept a minute book in written form which shall contain a record of all actions by the Board or any committee, as well as of any meetings or other written actions of the Sole Member, including (i) the time, date and place of each meeting; (ii) whether a meeting is regular or special and, if special, how called; (iii) the manner of giving notice of each meeting and a copy thereof; (iv) the names of those present at each meeting of the Board or any committee thereof; (v) the minutes of all meetings; (vi) any written waivers of notice, consents to the holding of a meeting or approvals of the minutes thereof; (vii) all written consents for action without a meeting; (viii) all protests concerning lack of notice; and (ix) formal dissents from Board actions.

Section 3. CONTRACT, ETC., HOW EXECUTED. The Board of Directors, except as in the By-Laws otherwise provided, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances; and unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit to render it liable for any purpose or to any amount.

Section 4. INSPECTION OF BY-LAWS. The Corporation shall keep in its principal office for the transaction of business the original or a copy of the By-Laws as amended or otherwise altered to date, certified by the Secretary, which shall be open to inspection by the Sole Member, Directors and Officers at all reasonable times during office hours.

Section 5. INTERPRETATION. Unless the context requires otherwise, the general provisions, rules of construction and definitions in the California Nonprofit Public Benefit Corporation Law shall govern the construction of these By-Laws. Without limiting the generality of the preceding sentence, the masculine gender includes the feminine and neuter, the singular includes the plural, the plural includes the singular and the term "person" includes both a legal entity and a natural person.

Section 6. ANNUAL REPORT. The Corporation shall file an annual report and an annual statement of purpose with the Mayor and Clerk of the Board of Supervisors of the City and County of San Francisco, consistent with the San Francisco Charter Sections 4.102(2) and 4.103.

## ARTICLE XI

### Amendments

Section 1. POWER OF SOLE MEMBER. New By-Laws may be adopted or these By-Laws may be amended or repealed by written action of the Sole Member.

Section 2. POWER OF DIRECTORS. Subject to the right of the Sole Member as provided in Section 1 of this ARTICLE XI to adopt, amend or repeal By-Laws, By-Laws may be adopted, amended or repealed by the Board of Directors, other than a By-Law or amendment thereof changing the authorized number of directors.



**CERTIFICATE OF SECRETARY**

I certify that I am the duly elected and acting Secretary of City of San Francisco Portsmouth Plaza Parking Corporation, a California nonprofit public benefit corporation; that these By-Laws are the bylaws of the Corporation as adopted by the Board of Directors on \_\_\_\_\_, 2016; and that these bylaws have not been amended or modified since that date.

Date: \_\_\_\_\_, 2016

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Secretary



**FIRST REPUBLIC BANK**  
It's a privilege to serve you®

June 27, 2016

City of San Francisco Portsmouth Plaza Parking Corporation  
733 Kearny Street  
San Francisco, CA 94108

Attn: Joe Yew

**Re: Proposal for Tax-Exempt Direct Purchase Non-Revolving Loan for Portsmouth Garage Rehabilitation**

Dear Joe,

First Republic Bank ("Lender" or "FRB" or "Bank") is pleased to provide these term loan options (the "Facilities") commitments to City of San Francisco Portsmouth Plaza Parking Corporation ("Borrower" or "Corporation"), as described below.

The following terms and conditions are subject to (i) Final approval by the Bank's Loan Committee, (ii) documentation of covenants, terms and conditions satisfactory to Lender and Lender's counsel, (iii) the absence of any material adverse change in the financial condition and operations of Borrower between the date of this letter and the date of closing of the proposed transaction, and, (iv) the completion of due diligence, the results of which are subject solely to Lender's satisfactory review.

**Tax-Exempt Direct Purchase Non-Revolving Loan for  
Portsmouth Garage Rehabilitation**

<u>Loan Facility</u>	Tax-exempt non-revolving fixed rate loan, direct purchase
<u>Lender</u>	First Republic Bank
<u>Borrower</u>	City of San Francisco Portsmouth Plaza Parking Corporation
<u>Commitment Amount</u>	Up to \$12.5 million
<u>Purpose</u>	To provide funds for the rehabilitation of the Portsmouth Square Garage located at 733 Kearny Street, San Francisco, CA and to provide costs of issuance to the extent permitted by law. We are assuming that construction will commence on or before October 1, 2016, although this is not a condition of Lender approval.
<u>Interest Rate and Maturity</u>	The loan for the Garage project would be amortized over 30 years on a level monthly payment basis. The loan would be structured as a draw down construction loan that would allow the Corporation to fund construction costs over 24 months. Draws would be no more than monthly with minimum amounts



of \$250,000. The loan would be structured as "interest-only" during this construction period and then convert to a fully amortized loan starting at Year 2 and maturing 30 years from the original closing.

30 Year Fixed Rate	
30 Year Amortization	
Term	Interest Rate
30 Year	3.30%

Loan Fee

0.50% of loan commitment, to be paid at closing from loan proceeds

Other Fees/Expenses

Borrower to pay all 3<sup>rd</sup> party charges incurred in the processing of the proposed financing, including but not limited to Lender's counsel, tax counsel, and issuing agency fees.

Prepayment Option

Corporation can prepay up to 20% of original commitment amount per year without penalty. If more than 20% is prepaid, then a 1% prepayment penalty is incurred. In year five, the loan will be prepayable at 100%.

Permitted Indebtedness

The Corporation would be permitted to borrow with reasonable Bank Consent so long as the long-term loan is outstanding.

**Security and Other Covenants:**

Collateral

Security interest in Borrower's Operating Revenues and Assets (each as defined below and perfected through a UCC-1 financing statement).

- "Operating Revenues" means all cash and unrestricted investments and all revenues, income, receipts and money held or received by or on behalf of the Borrower, including (a) revenues derived from fees from the operation and possession of and pertaining to the Borrower, the Borrower's property and the Assets; and (b) proceeds with respect to, arising from or relating to the property of the Borrower, including, but not limited to, amounts derived from (i) condemnation proceeds and (ii) insurance proceeds.
- "Assets" means the personal property, equipment and other assets earned or associated with the day-to-day operations of the Borrower located on the Borrower's property and which are not real property.

Subject to approval by the City and County of San Francisco, City of San Francisco will provide a letter to First Republic Bank indicating that the City will pay or cause to be paid, in either case solely from Parking Revenues derived from the Garage Operations, all payments due to First Republic Bank under the loan in the event the City terminates the current land lease or management contract with the City of San Francisco Portsmouth Plaza Parking Corporation.



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Debt Service Reserve Fund

The Corporation will fund a \$1 MM Debt Service Reserve Fund, in part up front and over time. The first \$500K will be funded from the current Capital Reserve Fund. The Corporation will then fund \$50K per year from excess cashflow into this fund until it reaches \$1 MM.

Banking Relationship

The Borrower will establish and maintain its primary banking relationship with the Bank and will authorize Lender to debit such checking/general deposit account for all term loan repayments when due, subject to standard revocation or termination of such debit authorization by Borrower or Lender as will be provided in the final loan agreement and related documents.

Financial Covenants

The Loan Agreement will contain covenants satisfactory to both Lender and Borrower, and will be fully defined in further conversations between parties. The following financial covenant(s) will be included, but are not necessarily limited to, the final agreed covenants in the Loan Agreement:

Annual Debt Service Ratio Covenant

As measured annually as of Borrower's Fiscal Year, Borrower shall maintain a minimum annual Debt Service Coverage Ratio of 1.25:1. Debt Service Coverage Ratio means, for any Fiscal Year, 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.

Reporting/Other Requirements

Annually, Borrower shall furnish to Lender its consolidated CPA-Audited Financial Statement, due within 150 days after Borrower's fiscal year end. Borrower's financial ratios will be calculated based upon the audited financial statements and due at this same time, 150 days after Borrower's fiscal year end.

Typical construction financing disbursement control and costs review. We estimate costs of approximately \$25,000 for independent construction review assuming monthly inspections and monthly disbursements.



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The terms and conditions set forth in this letter are intended to serve as a general framework upon which the final loan agreement and related documents can be built, and should therefore not be interpreted as a complete set of terms and conditions.

Borrower understands and acknowledges that Bank (i) is representing and acting on behalf of Bank's own interests; and (ii) is not acting as the Borrower's adviser in connection with this transaction, including providing any advice to Borrower with respect to the structure, timing, terms or other similar matters concerning the proposed transaction. Borrower represents and acknowledges that it has been advised by, or has had the opportunity to be advised by, its own financial advisors in connection with the proposed transaction.

First Republic Bank is appreciative of this chance to share this letter with you, and looks forward to the opportunity to work with such a highly regarded organization as the City of San Francisco Portsmouth Plaza Parking Corporation. After your review, we welcome any feedback as we work together on a mutually beneficial relationship.

Sincerely,

Dirk A. ten Grotenhuis  
Managing Director, Business Banking

Acknowledged and accepted:

\_\_\_\_\_  
City of San Francisco Portsmouth Plaza Parking Corporation

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_, 2016

First Republic Bank  
111 Pine Street  
San Francisco, CA 94111

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

Ladies and Gentlemen:

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

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

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

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

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

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

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



- (h) City hereby waives the provisions of Section 16 and 17 of the Lease to the extent necessary for City to comply with its agreements in Section 7 and 8 of this Letter Agreement.
- (i) City agrees and consents to the security interest in the Gross Revenues and personal property created under the Security Agreement for the benefit of the Lender to secure the Loan.

(5) Affirmative Covenants of Borrower under the Loan Agreement.

- (a) City agrees to permit Lender and its agents, representatives and employees, upon reasonable prior notice, to inspect the Premises; and
- (b) City agrees to comply with the requirements of applicable laws and regulations and material contractual obligations of City, the noncompliance with which would materially and adversely affect Borrower's beneficial use of the Premises.

(6) Negative Lien. City agrees that it shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Premises (together, "Liens") other than Liens that do not materially adversely affect the operation of the parking facility operations on the Premises and the generation of revenues from such operations. City shall promptly, at its own expense, take such action as may be necessary duly to discharge or remove any such unpermitted Lien.

(7) Disposition of Premises. City agrees that it will not sell, lease, assign, transfer or otherwise dispose of any material portion of the Premises without the prior written consent of Lender which shall not be unreasonably withheld and the delivery to the Lender of an opinion of a nationally recognized bond counsel firm to the effect that any such sale, lease, assignment, transfer or other disposition will not adversely affect the tax-exempt status of the interest on the Loan. City shall provide Borrower and Lender with prior written notice of its intention to sell, lease, assign, transfer or otherwise dispose of any material portion of the Premises or any interest therein.

(8) Insurance.

- (a) City agrees to cause all Net Proceeds of any insurance award resulting from any damage to or destruction of any portion of the Premises by fire or other casualty, as applicable, or of any title insurance award to be applied as set forth in Section 9.02 of the Loan Agreement, which requires, under certain circumstances, that such proceeds be applied to the prepayment of the Loan.
- (b) City consents to Lender being an additional insured and loss payee on Borrower's insurance policies described in Section 21 of the Lease, subject to the condition that City remains fully indemnified and that adequate provision exists for repair and or restoration of damaged or destroyed improvements on the Premises as required by the Lease.

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

(10) Notice and Right to Cure.

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

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

*[Remainder of page intentionally left blank.]*

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: General Manager

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

ACKNOWLEDGED AND AGREED TO BY:

CITY OF SAN FRANCISCO PORTSMOUTH  
PLAZA PARKING CORPORATION

FIRST REPUBLIC BANK

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

**EXHIBIT A**

Legal Description of the Premises

**EXHIBIT B**

Copy of Lease Agreement

## **EXHIBIT C**

### **The Project**

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



**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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EXHIBIT C – Form of Opinion of City Attorney of San Francisco

## 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 3.30% per annum.

“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).

“Commission” means the City and County of San Francisco Recreation and Park Commission.

“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 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.

“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.

“Required Amount” means \$500,000 on the Closing Date and shall increase by \$50,000 on \_\_\_\_\_ 1 of each Fiscal Year, commencing \_\_\_\_\_ 1, 2017 until such Required Amount is \$1,000,000.

“Reserve Fund” means the fund by that name held by the Lender and established under Section 4.08 hereof..

“Side Letter” means the Portsmouth Square Parking Garage Landlord Assurances and Revenue Commitment Letter dated [\_\_\_\_\_] , 2016 from the City to the Lender.

“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.

## 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.

Section 4.08. Reserve Fund. A Reserve Fund is hereby established with the Lender which shall be funded and maintained at the Required Amount. Such deposits to the Reserve Fund shall be funded from amounts provided by the Borrower. The Reserve Fund shall be held as a deposit account of Borrower with Lender and Borrower hereby irrevocably agrees that Lender may deduct any Payments or Additional Payments from such account in accordance with this Section. All amounts in the Reserve Fund shall be used and withdrawn solely for the purpose of paying Payments and Additional Payments with respect to the Loan to the extent that moneys made available by the Borrower are not sufficient for such purpose, and making the final Payments on the Loan.

Payments or Additional Payments which are made from draws out of the Reserve Fund shall not relieve or excuse the Borrower of the obligation to make such Payments or Additional Payments in accordance with the terms hereunder. Further, Borrower shall be obligated to replenish the Reserve Fund to its Required Amount after any such withdrawal. Any interest earnings from time to time accruing on the Reserve Fund shall be available to the Borrower to the extent the amount on deposit in the Reserve Fund is above the Required Amount.

## 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) certificates of the City and the Commission, as appropriate, certifying as to (i) the resolutions authorizing the Loan, the Side Letter 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;

(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; and

(l) the work to be paid for with the Periodic Advance Request shall have been approved by an independent construction review consultant reasonably acceptable to Lender.

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 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  
[ ]

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

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,

**SECURITY AGREEMENT  
(ACCOUNTS, GENERAL INTANGIBLES, INVENTORY & OTHER COLLATERAL)**

This Security Agreement (as modified from time to time, this "Agreement") is dated as of [\_\_\_\_], 2016, and has been executed by **CITY OF SAN FRANCISCO PORTSMOUTH PLAZA PARKING CORPORATION**, a California nonprofit [public benefit] corporation, as debtor ("Debtor"), with a principal place of business at 733 Kearny Street, San Francisco, California 94108, in favor of **FIRST REPUBLIC BANK**, a California state chartered bank (the "Lender"), with an office at 111 Pine Street, San Francisco, California 94111. Various capitalized terms used in this Agreement have the meanings set forth in Section 1 of this Agreement.

**RECITALS**

Debtor desires to obtain a loan from the Lender (the "Loan") to be secured by the Collateral (as defined below) for the purpose of financing working capital and other authorized purposes of the Debtor; the terms of the Loan are set forth in that certain Loan Agreement of even date herewith (the "Loan Agreement"), by and between the Lender and Debtor.

In consideration of the Loan, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, Lender and Debtor agrees as follows:

**1. DEFINITIONS.**

(a) As used in this Agreement the following terms shall have the indicated meanings:

"Account(s)" has the meaning set forth in Section 2 of this Agreement.

"Account Debtor(s)" means any person or entity now or hereafter obligated to Debtor on or with respect to any Accounts, General Intangibles, or other Collateral.

"Collateral" has the meaning set forth in Section 2 of this Agreement.

"Constituent Documents" means the articles or certificate of incorporation, by-laws, partnership agreement, certificate of limited partnership, limited liability company operating agreement, limited liability company articles of organization, trust agreement and all other documents and instruments pertaining to the formation and ongoing existence of any person or entity which is not an individual.

"Default Rate" has the meaning set forth in the Loan Agreement.

"Event of Default" has the meaning set forth in Section 8 of this Agreement.

"Facility" has the meaning set forth in the Loan Agreement.

"Guarantor" means any person, or any persons severally, who now or hereafter guarantees payment or collection of all or any part of the Liabilities or provides any collateral for the Liabilities.

“Liabilities” has the meaning set forth in Section 3 of this Agreement.

“Loan Documents” means collectively, the Loan Agreement, this Agreement and any and all other documents now or hereafter evidencing, securing or guaranteeing the Loan or the Liabilities, as the same may be amended from time to time.

“Permitted Encumbrances” has the meaning set forth in the Loan Agreement.

“Person” means and includes natural persons, corporations, limited liability companies, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governments and agencies and political subdivisions thereof and their respective permitted successors and assigns (or in the case of a governmental Person, the successor functional equivalent of such Person).

“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.

“Related Party(ies)” means any Guarantor, any Subsidiary, and, in addition to the extent applicable, any general or limited partner, controlling shareholder, joint venturer, member or manager, of Debtor.

“Secured Party” means the owner of the Loan, which shall initially be Lender and Lender’s successors and assigns.

“Subsidiary” means any corporation, partnership, limited liability company, joint venture, trust, or other legal entity of which Debtor owns directly or indirectly 50% or more of the outstanding voting stock or interest, or of which Debtor has effective control, by contract or otherwise.

“Unmatured Event of Default” means any event or condition that would become an Event of Default with notice or the passage of time or both.

(b) As used in this Agreement, unless otherwise specified: the term “including” means “including without limitation” the term “days” means “calendar days”; and terms such as “herein,” “hereof” and words of similar import refer to this Agreement as a whole. References herein to partners of a partnership, joint venturers of a joint venture, or members of a limited liability company, mean, respectively, Persons owning or holding partnership interests, joint venture interests, or membership interests in such partnership, joint venture or limited liability company. Unless otherwise defined herein, all terms (including those not capitalized) that are defined in the Uniform Commercial Code of California, as such Code may be amended or restated from time to time (the “Code”), shall have the same meanings herein as in the Code. Unless the context requires otherwise, wherever used herein the singular shall include the plural and vice versa, and the use of one gender shall also denote the others. Captions herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof; references herein to sections or provisions without reference to the document in which they are contained are references to this Agreement.

2. **SECURITY INTEREST.** Debtor hereby grants to Secured Party, for the benefit of Secured Party, to secure payment and performance of the Liabilities (as defined in Section 3 below) a continuing security interest in all of Debtor's right, title and interest in the following property or types of property now owned by Debtor or hereafter created or acquired by Debtor, wherever located (any or all of such property, the "Collateral"), including but not limited to Operating Revenues and Assets (as defined below):

(a) "Operating Revenues" defined as all Accounts of the Debtor and all revenues, income and receipts held or received by or on behalf of the Debtor, including (1) revenues derived from the operation and possession of and pertaining to the Debtor, the Property and the Assets; (2) unrestricted gifts, grants, bequests, donations and contributions to the Debtor, but excluding any gifts, grants, bequests, donations and contributions to the extent specifically restricted by the donor to a particular purpose inconsistent with their use either for the payment of loan repayments or the payment of operating expenses of the Debtor; and (3) proceeds with respect to, arising from or relating to the Property, including but not limited to, amounts derived from (i) condemnation proceeds and (ii) insurance proceeds;

(b) "Assets" defined as the personal property, equipment and other assets earned or associated with the day-to-day operations of the Debtor located on the Property and which are not real property;

(c) All reserve, fund, deposit, checking, escrow or investment accounts, including accounts receivables now or hereafter existing, and any interest thereon or amounts realized with respect thereto; electronic and other chattel paper; contract rights; letters of credit and letter-of credit rights; instruments; rights to payment under policies of insurance, and documents (collectively, the "Account(s)");

(d) All general intangibles, including: all payment intangibles, patents, patent applications, trademarks, trademark applications, trade names, copyrights, copyright applications, software, plans, schematics, engineering drawings, writings and goodwill, all licenses, permits, approvals and agreements of any kind or nature pursuant to which Debtor possesses, uses or has the right to possess or use tangible or intangible property of others or pursuant to which others possess, use or have the right to possess or use the tangible or intangible property of Debtor; leasehold interests; tax refund claims; and guaranty claims (collectively, the "General Intangibles(s)");

(e) All goods ("Goods"), including inventory ("Inventory"), equipment and any accessions thereto (as each such term is defined in the Uniform Commercial Code in effect in California);

(f) All revenue, Accounts and other property now or at any time hereafter in the possession or under the control of Secured Party or its bailee, and any funds deposited therein, and any interest thereon;

(g) All books and records, including customer lists, credit files, computer programs, print outs, and other materials and records, pertaining to any of the foregoing or pertaining to Debtor's use, occupation or management of the Facility;

(h) All documents of title evidencing or issued with respect to, and supporting obligations pertaining to, any of the foregoing;

(i) All proceeds, products, replacements and increases or additions and accessions to, and substitutions for, the property described in the foregoing part of this Section, and rights in and claims to or benefits under contracts of insurance covering any of the property described in the foregoing part of this Section and any interest thereon or amounts realized with respect thereto; and

(j) All other accounts, general intangibles, instruments, investment property, documents, chattel paper, goods, moneys, letters of credit, letter of credit rights, certificates of deposit, deposit accounts, commercial tort claims, oil, gas and minerals, and all other property and interests in property of Debtor, whether tangible or intangible.

The foregoing paragraph is intended to grant in favor of the Secured Party a first priority continuing lien and security interest in all of the Debtor's personal property, subject to Permitted Encumbrances. The Debtor authorizes the Secured Party and its counsel to file UCC financing statements in form and substance satisfactory to the Secured Party, describing the collateral as all assets of the Debtor, or all personal property of the Debtor, in each case, whether now owned or hereafter acquired or arising and wheresoever located, including all accessories thereto and products and proceeds thereof or using words with similar effect.

**3. LIABILITIES.** The Collateral shall secure the payment and performance of all obligations and liabilities of Debtor under the Loan, the Loan Agreement and the other Loan Documents (collectively, the "Liabilities"). This Agreement shall continue and remain in effect until such time that Debtor has paid in full and performed the Liabilities.

**4. PARITY OBLIGATIONS.** The security interest in the Collateral hereunder shall be on parity with any future loans from Secured Party to Debtor that are identified in the loan agreements as parity obligations.

**5. REPRESENTATIONS AND WARRANTIES.**

Debtor hereby represents and warrants to Secured Party that:

(a) Debtor's exact legal name is as set forth in the heading to this Agreement. If Debtor is an organization (i) Debtor's type of organization and jurisdiction of organization or formation are as set forth in the preamble to this Agreement, (ii) Debtor's place of business or, if Debtor has more than one place of business, Debtor's chief executive office is located at the address set forth above and (iii) Debtor has never been organized or formed in any jurisdiction other than the jurisdiction set forth in the preamble to this Agreement. All Collateral is located in one of the fifty states of the United States of America. Further, except as and if specifically disclosed by Debtor to Secured Party IN WRITING prior to the execution of this Agreement, during the five (5) years and six months prior to the date of this Agreement:

(i) Debtor has not been known by any legal name different from the one set forth in the heading of this Agreement, nor has Debtor been the subject of any merger, consolidation, or other corporate or organizational reorganization.



(ii) Debtor's place of business or, if Debtor has more than one place of business, Debtor's chief executive office has been at Debtor's address set forth above.

(iii) Collateral (excluding revenues and Accounts) has been located only at Debtor's Facility.

(b) Debtor and any Subsidiary are validly existing and in good standing under the laws of their state of organization or formation, and are duly qualified, in good standing and authorized to do business in each jurisdiction where failure to do so might have a material adverse impact on the assets, condition or prospects of Debtor. The execution, delivery and performance of this Agreement and all Loan Documents are within Debtor's powers and have been authorized by all necessary action required by law and Debtor's Constituent Documents.

(c) The execution, delivery and performance of this Agreement and all Loan Documents have received any and all necessary governmental approval, and do not and will not contravene or conflict with any provision of law, any Constituent Document or any agreement affecting Debtor or its property.

(d) There has been no material adverse change in the business, condition, properties, assets, operations or prospects of Debtor or any Related Party since the date of the latest financial statements provided by or on behalf of Debtor or any Related Party to Secured Party.

(e) No financing statement, mortgage, notice of judgment or any similar instrument (unless filed on behalf of Secured Party) covering any of the Collateral is on file in any public office, except with respect to any Permitted Encumbrances.

(f) Debtor is the lawful owner of and has rights in or power to transfer all Collateral, free and clear of all liens, pledges, charges, mortgages, and claims other than any in favor of Secured Party, other than Collateral subject to Permitted Encumbrances.

(g) Debtor has filed or caused to be filed all federal, state, and local tax returns that are required to be filed, and has paid or has caused to be paid all of its taxes, including any taxes shown on such returns or on any assessment received by it, to the extent that such taxes have become due.

(h) All Goods are of good and merchantable quality and free from any defects that would affect their market value, except for ordinary wear and tear.

(i) All Accounts and General Intangibles are genuine, are, in all respects, what they purport to be, are not evidenced by a judgment, and (as applicable) represent undisputed, bona fide transactions completed or to be completed in accordance with the terms and conditions of any document related thereto. Debtor has no knowledge of any fact or circumstance which would impair the validity or collectability of any Accounts or General Intangibles.

(j) Except for Permitted Encumbrances, none of the Collateral has been sold or pledged to any other person or entity.

(k) None of the Goods have been or will be bought or used primarily for personal, family or household use. All Collateral has been or will be acquired, and will be used and held, by Debtor for the purpose of conducting Debtor's business. In no event will Collateral be obtained by incurring any liability or obligation that would render the transactions contemplated by this Agreement or any other Loan Document a consumer-goods transaction or consumer transaction.

(l) The execution, delivery and performance of this Agreement and all Loan Documents are in Debtor's best interest in its current and future business operations and will materially benefit Debtor. Debtor has received adequate, fair and valuable consideration, and at least reasonably equivalent value, to enter into and perform this Agreement and all Loan Documents.

(m) None of the Collateral constitutes, or is the proceeds of "farm products" as defined in Section 9102(a)(34) of the Code.

(n) None of the Account Debtors or other persons obligated on any of the Collateral is a governmental authority subject to the Federal Assignment of Claims Act or like federal, state, or local statute or rule in respect of such Collateral.

(o) The Debtor holds no commercial tort claim.

(p) There exists no account that is Debtor's primary checking or general deposit account maintained with any depository institution other than Secured Party either (i) held in Debtor's name, or (ii) over which Debtor has control (whether exclusive or otherwise), or (iii) which otherwise is or contains any part of the Collateral (including any proceeds thereof).

**6. COVENANTS OF DEBTOR.** Debtor agrees that so long as this Agreement remains in effect, it will:

**(a) NOTIFY SECURED PARTY IN WRITING AT LEAST SIXTY (60) DAYS IN ADVANCE OF:**

(i) ANY CHANGE WHATSOEVER IN THE NAME OF DEBTOR;

(ii) ANY CHANGE WHATSOEVER IN THE STATE OR JURISDICTION IN WHICH DEBTOR IS ORGANIZED OR FORMED OR, IF DEBTOR IS AN INDIVIDUAL, IN WHICH DEBTOR'S PRINCIPAL RESIDENCE IS LOCATED;

(iii) ANY NEW NAMES UNDER WHICH DEBTOR INTENDS TO DO BUSINESS;

(iv) ANY NEW ADDRESSES AT OR FROM WHICH DEBTOR INTENDS TO DO BUSINESS OR TO KEEP COLLATERAL OF ANY KIND; OR

(v) ANY CHANGE WHATSOEVER IN DEBTOR'S EMPLOYER IDENTIFICATION NUMBER.

Debtor shall in any event keep all Collateral within one or more states of the United States of America.

(b) Provide and maintain insurance with respect to the Collateral, the operation of Debtor's business, and certain members, managers, partners, joint venturers, employees, or officers of Debtor, as required by the Loan Agreement.

(c) Defend the Collateral against the claims and demands of all persons other than Secured Party and promptly pay all taxes, assessments, and charges upon the Collateral. Debtor agrees not to sign, file, or authenticate, or authorize or permit the signing, filing or authentication of, any financing statements or other documents creating or perfecting a lien upon or security interest in any of the Collateral except in favor of Secured Party, or otherwise create, suffer, or permit to exist any liens or security interests upon any Collateral other than in favor of Secured Party, except for Permitted Encumbrances.

(d) Sign, file, authenticate, and authorize the signing, filing and authenticating of, such financing statements, including, but not limited to, continuations, renewals and amendments thereto, and other documents (and pay the cost of filing and recording the same in all public offices deemed necessary by Secured Party), and do such other acts, as Secured Party may request to establish and maintain a valid and perfected security interest in the Collateral free and clear of all other liens and claims, except for Permitted Encumbrances. If and to the extent the Collateral is in the possession of a third party, Debtor agrees to notify Secured Party and upon Secured Party's request to join with Secured Party in notifying the third party of Secured Party's security interest and obtaining either (i) an acknowledgment in form satisfactory to Secured Party from the third party that such third party is holding the Collateral for the benefit of Secured Party and will act upon the instruction of Secured Party, without the further consent of Debtor, or (ii) a control agreement with respect to such Collateral. Notwithstanding anything to the contrary contained herein, Debtor hereby irrevocably authorizes Secured Party, at any time and from time to time, to file, in any Uniform Commercial Code jurisdiction, any initial financing statements, and any and all amendments, continuations, renewals and terminations thereto as Secured Party may deem reasonably necessary to perfect and/or maintain its security interest in the Collateral.

(e) Deliver to Secured Party any certificates or other documents of title representing or issued with respect to any of the Collateral, with Secured Party's security interest and lien endorsed thereon, and record such certificates or documents with all appropriate regulatory agencies.

(f) Furnish to Secured Party, immediately upon the request of Secured Party, any evidence of ownership of the Collateral, including bills of sale, paid invoices, certificates of title, or applications for title.

(g) Keep at its address for notices hereunder its records concerning the Collateral, which records shall be of such character as will enable Secured Party to determine at any time the status of the Collateral; and permit Secured Party from time to time to inspect the Collateral and to inspect, audit, and make copies of, and extracts from, all records and papers in the possession or control of Debtor pertaining to the Collateral and the Account Debtors.

(h) Ensure that all Goods are of good and merchantable quality, ordinary wear and tear excepted.

(i) Provide to Secured Party from time to time such financial statements of and other information concerning the Collateral, the Account Debtors, Debtor and any Related Party as Secured Party shall reasonably request.

(j) Immediately notify Secured Party of any material loss or depreciation in the value of the Collateral.

(k) Not sell, lease, transfer, contract to sell, grant a license or option or similar right with respect to, or otherwise dispose of any Collateral, or remove any Collateral from Debtor's place of business or one of the locations within the fifty (50) United States of America where Debtor has indicated to Secured Party such Collateral will be located, except for (i) the disposition of obsolete Inventory in the ordinary course of Debtor's business; provided, Debtor replaces such Inventory with new Inventory as reasonably necessary for the continued operation of Debtor's business and Debtor provides Secured Party with written notice of such disposition and replacement no later than thirty (30) days thereafter, and (ii) for the disposition in the ordinary course of the Debtor's business or otherwise to effect the Debtor's corporate purposes of (1) cash, (2) cash equivalents, (3) securities, (4) obligations, (5) annuity contracts or (6) property held principally as a passive vehicle for the production of income.

(l) If any Collateral is or becomes a promissory note or other tangible chattel paper, promptly notify Secured Party thereof and take such action as Secured Party may request, including providing related information, certificates and documents, and promptly delivering to Secured Party the sole original document or, if applicable, certificate, and all counterpart originals, evidencing such Collateral following its execution and/or delivery to Debtor, with whatever endorsements and assignments that Secured Party may reasonably require.

(m) If any Collateral is Goods subject to title registration laws for which a lien may be reflected on a title document, promptly notify Secured Party thereof and take such action as Secured Party may request, including providing related information, certificates and documents and facilitating, or otherwise cooperating with Secured Party in facilitating, the registration and titling of such Collateral in such a manner as is required under applicable law to perfect Secured Party's security interest in such Collateral.

(n) Not create any chattel paper without placing a legend thereon acceptable to Secured Party indicating that Secured Party has a security interest in such chattel paper.

(o) Debtor shall maintain its primary checking and deposit accounts and primary banking relationship with FRB in accordance with Section 7.11 of the Loan Agreement.

## **7. COLLECTIONS AND OTHER ACTIONS.**

(a) For each deposit account that Debtor at any time establishes or maintains with any depository institution other than Secured Party, Debtor shall (i) notify Secured Party of the existence of such deposit account, and (ii) at the Secured Party's request and option, pursuant to an agreement in form and substance satisfactory to Secured Party, cause the depository bank to

agree to comply at any time with instructions from Secured Party to such depository bank directing the disposition of funds from time to time credited to such deposit account, without further consent of Debtor. Anything herein to the contrary notwithstanding, Secured Party agrees with Debtor that Secured Party shall not give any such instructions or withhold any withdrawal rights from Debtor unless an Event of Default has occurred and is continuing, or, after giving effect to any withdrawal not otherwise permitted by any of the other Loan Documents, would occur. This Section 7(a) shall not be deemed to constitute or imply any waiver or exception to Debtor's obligations pursuant to the covenant at Section 6(o) above, and Debtor agrees and acknowledges that any such waiver or exception shall be effective only if separately given in a writing executed by Secured Party.

(b) If Debtor shall at any time hold or acquire any certificated securities and plans to hold such certificated securities on a long-term basis rather than sell such securities, Debtor shall forthwith endorse, assign and deliver the same to Secured Party, accompanied by such instruments of transfer or assignment duly executed in blank as Secured Party may from time to time specify. If any securities now or hereafter acquired by Debtor are uncertificated and are issued to Debtor or its nominee directly by the issuer thereof, Debtor shall immediately notify Secured Party thereof and, at Secured Party's request and option, pursuant to an agreement in form and substance satisfactory to Secured Party, either (a) cause the issuer to agree to comply with instructions from Secured Party as to such securities, without further consent of Debtor or such nominee, or (b) arrange for Secured Party to become the registered owner of the securities. If any securities, whether certificated or uncertificated, or other investment property now or hereafter acquired by Debtor are held by Debtor or its nominee through a securities intermediary or commodity intermediary, Debtor shall immediately notify Secured Party thereof and, at Secured Party's request and option, pursuant to an agreement in form and substance satisfactory to Secured Party, either (i) cause such securities intermediary or (as the case may be) commodity intermediary to agree to comply with entitlement orders or other instructions from Secured Party to such securities intermediary as to such securities or other investment property, or (as the case may be) to apply any value distributed on account of any commodity contract as directed by Secured Party to such commodity intermediary, in each case without further consent of Debtor or such nominee, or (ii) in the case of financial assets or other investment property held through a securities intermediary, arrange for Secured Party to become the entitlement holder with respect to such investment property, with Debtor being permitted, only with the consent of Secured Party, to exercise rights to withdraw or otherwise deal with such investment property. Anything herein to the contrary notwithstanding, Secured Party agrees with Debtor that Secured Party shall not give any such entitlement orders or instructions or directions to any such issuer, securities intermediary or commodity intermediary, and shall not withhold its consent to the exercise of any withdrawal or dealing rights by Debtor, unless an Event of Default has occurred and is continuing, or, after giving effect to any such investment and withdrawal rights not otherwise permitted by the other Loan Documents, would occur. The provisions of this paragraph shall not apply to any financial assets credited to a securities account for which Secured Party is the securities intermediary.

(c) If Debtor at any time holds or acquires an interest in any electronic chattel paper or any "transferable record," as that term is defined in § 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, Debtor shall promptly notify Secured Party thereof and, at the request of Secured Party, shall take such action as Secured Party may

reasonably request to vest in Secured Party control under Code Section 9105 of such electronic chattel paper or control under § 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. Secured Party agrees with Debtor that Secured Party will arrange, pursuant to procedures satisfactory to Secured Party and so long as such procedures will not result in Secured Party's loss of control, for Debtor to make alterations to the electronic chattel paper or transferable record permitted under Code Section 9105 or, as the case may be, § 16 of the Uniform Electronic Transactions Act for a party in control to make without loss of control, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by Debtor with respect to such electronic chattel paper or transferable record.

(d) If Debtor is at any time a beneficiary under a letter of credit now or hereafter issued in favor of Debtor, Debtor shall promptly notify Secured Party thereof and, at the request and option of Secured Party, Debtor shall, pursuant to an agreement in form and substance satisfactory to Secured Party, arrange, at Secured Party's sole cost and expense, for the issuer and any confirmer of such letter of credit to consent to an assignment to Secured Party of the proceeds of any drawing under the letter of credit for purposes of granting a security interest to Secured Party.

(e) If Debtor shall at any time hold or acquire a commercial tort claim, Debtor shall immediately notify Secured Party in a writing signed by Debtor of the brief details thereof and grant to Secured Party in such writing a Lien (as defined in the Loan Agreement) thereon and on the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to Secured Party.

(f) Unless an Event of Default or Unmatured Event of Default has occurred and is continuing, Debtor (i) shall have the right to collect the Accounts and other Collateral for Secured Party at Debtor's own expense, and to use any such Accounts and other Collateral for its general corporate purposes, and (ii) may grant, in the ordinary course of business, to any party obligated on any of the Accounts and other Collateral, any rebate, refund, or allowance to which such party may be lawfully entitled and accept in connection therewith the return of any goods the sale or lease of which shall have given rise to such Accounts and other Collateral.

(g) If an Event of Default or Unmatured Event of Default has occurred and is continuing:

(i) at any time, and from time to time, Secured Party, at Debtor's expense, may, or, upon request of Secured Party Debtor shall, notify any Account Debtors of the existence of this Agreement, to the extent such notice has not previously been provided, and direct such Account Debtors to pay directly to Secured Party the amounts due or to become due from such Account Debtors (each an "Account Notice"). Upon receipt of an Account Notice, each such Account Debtor shall be entitled to rely on such Account Notice, shall thereafter pay all amounts due or to become due from such Account Debtors directly to Secured Party, and the receipt of such amounts due shall be a release of such Account Debtor to the extent of all amounts paid. The Account Notice is intended solely for the benefit of Secured Party and the respective Account Debtors, and Debtor and any person claiming through or under Debtor shall have no right to a claim with respect to an

Account Notice or whether or not an Account Notice is given. **Debtor shall have no right or claim against any Account Debtor for the payment of any amounts paid to Secured Party hereunder, and Debtor hereby indemnifies and agrees to hold harmless each Account Debtor from and against all liability, loss, cost, damage or expense suffered or incurred by such Account Debtor by reason of such Account Debtor's compliance with any Account Notice;**

(ii) Secured Party may, at its option, transfer to itself or to any nominee any securities constituting Collateral, receive any income thereon, and hold such income as additional Collateral or apply it to the Liabilities. Secured Party may (but shall have no duty to) enforce collection of any or all of the Accounts and other Collateral by suit or otherwise, and surrender, release, or exchange all or any part thereof, or compromise or extend or renew for any period (whether or not longer than the original period) any indebtedness thereunder. The Secured Party's sole duty with respect to the custody, safe keeping, and physical preservation of the Collateral in its possession, under Section 9207 of the Code or otherwise, shall be to deal with such Collateral in the same manner as Secured Party deals with similar property for its own account.

(h) If an Event of Default has occurred and is continuing, at the request of Secured Party, Debtor will, upon receipt of any and all checks, drafts, cash and other remittances in payment or as proceeds of the Collateral, deposit the same in a special bank account (the "Collateral Account") with Secured Party over which Secured Party alone has legal control and power of withdrawal. Debtor acknowledges that the maintenance of the Collateral Account is solely for the convenience of Secured Party and Debtor does not and shall not have any right, title or interest in the Collateral Account or in the amounts at any time appearing to the credit thereof. Said proceeds shall be deposited in the form received. Pending such deposit, Debtor agrees not to commingle any such checks, drafts, cash and other remittances with any of its funds or property, but will hold them in trust for Secured Party until they are deposited into the Collateral Account. At such time as all Liabilities have been paid and fulfilled in full and there is no committed or uncommitted credit facility extended by Secured Party to Debtor, Secured Party will pay over to Debtor any excess amounts deposited into the Collateral Account.

(i) Secured Party shall apply all payments received with respect to Collateral to the Liabilities in such order as Secured Party shall determine, and shall credit any balance after such payment to the account of Debtor.

**8. EVENTS OF DEFAULT.** The occurrence or continuance of any of the following shall constitute an "Event of Default":

(a) the occurrence of any Event of Default under any of the other Loan Documents;  
or

(b) except as otherwise specified in this Section 8, failure by Debtor to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder or under any other agreement between Secured Party and Debtor for a period of sixty (60) days after written notice is given to Debtor by Secured Party, 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 Debtor 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; or

(c) Any representation or warranty given by Debtor to Secured Party hereunder shall be false or misleading in any material respect; or

(d) there shall occur, with respect to Debtor, any default or event of default that could have, or be associated with, a material adverse effect on Debtor's operations or finances, its ability to comply with this Agreement or the Loan Agreement or any rights or security of Secured Party hereunder or under the Loan Agreement, or any event or condition that might become such with notice or the passage of time or both, or any similar event, or any event that requires the prepayment of borrowed money or permits the acceleration of the maturity thereof, under the terms of any evidence of indebtedness or other agreement issued or assumed or entered into by Debtor or any Related Party, or under the terms of any indenture, agreement, or instrument under which any such evidence of indebtedness or other agreement is issued, assumed, secured, or guaranteed, and such event shall continue beyond any applicable period of notice, grace or cure; or

(e) without limiting any other provision of this Agreement or any Loan Document, unless expressly permitted by this Agreement or the Loan Documents, all or any part of any of the Collateral or any direct, indirect, legal, equitable or beneficial interest therein is assigned, transferred or sold without Secured Party's prior written consent.

(f) There shall occur any default under Section 7, or Subsections 6(l), (m) or (n) of this Agreement which is not cured within 10 business days of written notice thereof;

(g) There shall occur any default under Section 6(c) or Section 6(o) of this Agreement;

(h) There shall occur any default under Section 6(k) of this Agreement which is not cured within thirty days after written notice thereof.

## **9. DEFAULT REMEDIES.**

(a) Notwithstanding any provision of any document or instrument evidencing or relating to any Liability, upon the occurrence and during the continuance of any Event of Default specified in Section 8, Secured Party at its option may declare the Liabilities immediately due and payable without notice or demand of any kind. Upon the occurrence and during the continuance of any Event of Default, Secured Party may exercise any rights and remedies under this Agreement, any Loan Document, or any rights and remedies available to Secured Party at law or in equity.

(b) If any Event of Default shall have occurred and be continuing, then, in addition to having the right to exercise any rights and remedies of a secured party upon default under the Uniform Commercial Code in effect in California and any State in which any Collateral is located, Secured Party may, in its sole discretion, exercise any rights or powers set forth in this



Agreement, Secured Party may require Debtor to assemble the Collateral and deliver it to a place reasonably designated by Secured Party within the State of California. Secured Party has no obligation to marshal Collateral or to clean up or otherwise prepare Collateral for sale, and may specifically disclaim any warranties as to the Collateral, including those of title, merchantability, and fitness for a particular purpose. Secured Party may comply with any applicable local, state or federal law requirements in connection with a disposition of Collateral, and compliance will not be considered adversely to affect the commercial reasonableness of any sale of Collateral. Debtor grants to Secured Party the right to enter into or on any premises where Collateral may be located for the purposes of exercising any remedies upon the occurrence of an Event of Default. Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of Collateral if Secured Party deals with such Collateral in the same manner as Secured Party deals with similar property for its own account, but failure to do so shall not be deemed a failure to exercise ordinary care, and no failure of Secured Party to preserve or protect any right with respect to the Collateral against prior parties shall be deemed of itself a failure to exercise reasonable care in the custody or preservation of the Collateral. Without limiting any other provision hereof, Debtor shall pay all related expenses, including attorneys' fees and reasonable time charges of attorneys who may be employees of Secured Party, incurred by Secured Party in connection with Secured Party's exercise of its rights hereunder. If any notification of intended disposition of any of the Collateral is required by law, such notification, if mailed, shall be deemed reasonably and properly given if mailed at least ten (10) days before such disposition, postage prepaid, addressed to Debtor at the address of Debtor shown above; provided, however failure to provide such ten-day notice shall not be deemed unreasonable if, among other things, the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market. In addition, Debtor waives any and all rights that it may have to a judicial hearing in advance of the enforcement of any of Secured Party's rights hereunder, including, without limitation, Secured Party's right following an Event of Default to take immediate possession of the Collateral and to exercise its rights with respect thereto. Secured Party shall, in addition to and not in limitation of all rights of offset under applicable law, have the right to appropriate and apply all of the Collateral in its possession or under its control to payment of the Liabilities. Secured Party may proceed to sell, lease or otherwise dispose of the Collateral at public or private sale for cash or credit, and may itself make a credit bid. Except as and if otherwise required by law, any proceeds of the Collateral sold or disposed of pursuant hereto shall be applied toward the Liabilities in such order as Secured Party shall determine in its sole discretion. Any balance remaining shall be returned to Debtor.

(c) Secured Party may, by written notice to Debtor, at any time and from time to time, waive any Event of Default or Unmatured Event of Default, which shall be for such period and subject to such conditions as shall be specified in any such notice. In the case of any such waiver, Secured Party and Debtor shall be restored to their former position and rights hereunder, and any Event of Default or Unmatured Event of Default so waived shall be deemed to be cured and not continuing; but no such waiver shall extend to or impair any subsequent or other Event of Default or Unmatured Event of Default. No failure to exercise, and no delay in exercising, on the part of Secured Party of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of Secured Party herein provided are cumulative and not exclusive of any rights or remedies provided by law.

**10. STANDARDS FOR EXERCISING REMEDIES.** To the extent that the Uniform Commercial Code or other applicable law imposes duties on Secured Party to exercise remedies in a commercially reasonable manner, Debtor acknowledges and agrees that it is not commercially unreasonable for Secured Party: (a) to fail to incur expenses reasonably deemed significant by Secured Party to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition; (b) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of; (c) to fail to exercise collection remedies against Account Debtors and other persons obligated on the Collateral or to remove liens or encumbrances on or any adverse claims against Collateral; (d) to exercise collection remedies against Account Debtors and other persons obligated on the Collateral directly or through the use of collection agencies and other collection specialists; (e) to advertise dispositions of Collateral through publications or media of general circulation; (f) to contact other persons, whether or not in the same business as Debtor, for expressions of interest in acquiring all or any portion of the Collateral; (g) to hire one or more professional auctioneers to assist in the disposition of Collateral; (h) to dispose of Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or to match buyers and sellers of assets; (i) to dispose of assets at wholesale, rather than in retail markets; (j) to disclaim all disposition warranties; or (k) to the extent deemed appropriate and desirable by Secured Party, to obtain the services of brokers, investment bankers, consultants and other professionals to assist Secured Party in the collection or disposition of Collateral. Debtor acknowledges and agrees that the purpose of this Section is to provide a non-exhaustive list of the conduct by Secured Party that would not be deemed commercially unreasonable in Secured Party's exercise of remedies in respect of the Collateral. Without limitation upon the foregoing, nothing in this Section shall be construed to grant any rights to Debtor or to impose any duties on Secured Party that would not be granted or imposed by applicable law in the absence of this Section.

**11. RIGHTS OF SECURED PARTY.**

Without limiting any other rights Secured Party has under the law, Secured Party may, at any time and from time to time, at its option (but shall have no duty to):

(a) perform any agreement of Debtor hereunder that Debtor shall have failed to perform;

(b) take any other action which Secured Party deems necessary or desirable for the preservation of the Collateral or Secured Party's interest therein and the carrying out of this Agreement, including: (i) any action to collect or realize upon the Collateral; (ii) the discharge of taxes, liens, security interests or other encumbrances at any time levied or placed on the Collateral; (iii) the discharge or keeping current of any obligation of Debtor having effect on the Collateral; (iv) receiving, endorsing and collecting all checks and other orders for the payment of money made payable to Debtor representing any dividend, interest payment or other distribution payable or distributable in respect of the Collateral or any part thereof, and to give full discharge for the same; and (v) causing any Person having possession of any Collateral to acknowledge that such Person holds such Collateral for the benefit of Secured Party; and

(c) sign, file, authenticate, and authorize the signing, filing and authentication of, such financing statements and other documents respecting any right of Secured Party in the Collateral, in any and all jurisdictions as Secured Party shall determine in its discretion.

Debtor hereby appoints Secured Party as Debtor's attorney in fact, which appointment is and shall be deemed to be irrevocable and coupled with an interest, for purposes of performing acts and signing and delivering any agreement, document, or instrument, on behalf of Debtor in accordance with this Section. Debtor immediately will reimburse Secured Party for all expenses so incurred by Secured Party, together with interest thereon at a rate per year equal to the Default Rate, and such amounts owed by Debtor to Secured Party shall, until paid in full, be deemed a Liability secured hereunder. This power of attorney is a power coupled with an interest and shall be irrevocable. The powers conferred on Secured Party hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Neither Secured Party nor any of its officers, directors, employees or agents shall be responsible to Debtor for any act or failure to act, except for Secured Party's own gross negligence or willful misconduct, or Secured Party's breach of contractual obligations.

**12. FURTHER ASSURANCES.** Debtor agrees to do (or cause to be done) such further acts and things, and to execute and deliver (or cause to be executed and delivered) such additional conveyances, assignments, agreements, and instruments, as Secured Party may at any time request in connection with the administration or enforcement of this Agreement or related to the Collateral or any part thereof or in order better to assure and confirm unto Secured Party its rights, powers and remedies hereunder; provided, however, that Debtor shall not be required under this Agreement to agree to or accept any instruments or documents which shall have the effect of (a) materially increasing any obligation undertaken by or imposed upon Debtor under any Loan Documents as executed by Debtor, (b) materially changing the applicability, scope or effect of any covenant, condition or restriction from that contained in the Loan Documents as executed by Debtor, or (c) changing the essential economic terms of the Loan.

**13. OBLIGATIONS UNCONDITIONAL; WAIVER OF DEFENSES.** Debtor irrevocably agrees that no fact or circumstance whatsoever which might at law or in equity constitute a discharge or release of, or defense to the obligations of, a guarantor or surety shall limit or affect any obligations of Debtor under this Agreement or any document or instrument executed in connection herewith. Without limiting the generality of the foregoing:

(a) Secured Party may at any time and from time to time, without notice to Debtor, take any or all of the following actions without affecting or impairing the liability of Debtor on this Agreement:

- (i) renew or extend time of payment of the Liabilities;
- (ii) accept, substitute, release or surrender any security for the Liabilities; and
- (iii) release any person primarily or secondarily liable on the Liabilities (including any endorser, any Guarantor and any other Related Party).

(b) No delay in enforcing payment of the Liabilities, nor any amendment, waiver, change, or modification of any terms of any Loan Document, shall release Debtor from any

obligation hereunder. The obligations of Debtor under this Agreement are and shall be primary, continuing, unconditional and absolute, irrespective of the value, genuineness, regularity, validity or enforceability of any Loan Documents. In order to hold Debtor liable or exercise rights or remedies hereunder, there shall be no obligation on the part of Secured Party, at any time, to, either prior to, subsequent to or concurrently herewith, resort for payment to any Related Party or to any other security for the Liabilities. Secured Party shall have the right to enforce this Agreement irrespective of whether or not other proceedings or steps are being taken against any other property securing the Liabilities or any other party primarily or secondarily liable on any of the Liabilities.

(c) Debtor irrevocably waives presentment, protest, notice of intent to accelerate, demand, notice of dishonor or default, notice of acceptance of this Agreement, notice of any loans made, extensions granted or other action taken in reliance hereon, and all other demands and notices of any kind in connection with this Agreement or the Liabilities.

(d) Until all Liabilities have been paid and fulfilled in full, Debtor waives any claim or other right (i) which Debtor might now have or hereafter acquire against any person primarily or contingently liable on the Liabilities (including any Related Party) or (ii) that arises from the existence or performance of Debtor's obligations under this Agreement, including any right of subrogation, reimbursement, contribution, indemnification, or participation in any claim or remedy of Secured Party against any Collateral for the Liabilities, which Secured Party now has or hereafter acquires, however arising.

**14. NOTICES.** All notices, requests and demands to or upon the respective parties hereto shall be deemed to have been given or made five business days after a record has been deposited in the mail, postage prepaid, or one business day after a record has been deposited with a recognized overnight courier, charges prepaid or to be billed to the sender, or on the day of delivery if delivered manually with receipt acknowledged, in each case addressed or delivered to Secured Party to 111 Pine Street, San Francisco, California 94111 (Attention: Commercial Loan Servicing) and if to Debtor to its address set forth above, or to such other address as may be hereafter designated in writing by the respective parties hereto by a notice in accord with this Section.

**15. MISCELLANEOUS.** This Agreement, the Loan Documents, and any document or instrument executed in connection herewith or therewith, unless in each case otherwise specifically provided therein: (i) shall be governed by and construed in accordance with the internal law of the State of California, except to the extent if any that the Uniform Commercial Code of the State of California provides for the application of the law of a different State; and (ii) shall be deemed to have been executed in the State of California. This Agreement shall bind Debtor, its heirs, trustees (including successor and replacement trustees), executors, personal representatives, successors and assigns, as well as all Persons who become bound as a debtor to this Agreement, and shall inure to the benefit of Secured Party, its successors and assigns, except that neither Debtor nor any person or entity who or which becomes bound as a debtor may transfer or assign any rights or obligations hereunder without the prior written consent of Secured Party, which may be withheld in Secured Party's sole and absolute discretion. Debtor agrees to pay upon demand all expenses (including attorneys' fees, legal costs and expenses, and time charges of attorneys who may be employees of Secured Party, in each case whether in or

out of court, in original or appellate proceedings or in bankruptcy) incurred or paid by Secured Party or any holder hereof in connection with the enforcement or preservation of its rights hereunder, under any Loan Document, or under any document or instrument executed in connection herewith or therewith. If there shall be more than one person or entity constituting Debtor, each of them shall be primarily, jointly and severally liable for all obligations hereunder. This Agreement may be executed in two or more counterparts, and (if there is more than one party) by each party on separate counterparts each of which shall be deemed an original but which together shall constitute one and the same instrument. Until paid, all amounts due and payable by Debtor hereunder shall be a Liability secured by the Collateral and shall bear, whether before or after judgment, interest at a rate per year equal to the Default Rate.

**16. WAIVER OF JURY TRIAL, ETC. DEBTOR AND (BY ITS ACCEPTANCE HEREOF) SECURED PARTY HEREBY IRREVOCABLY AGREE THAT ALL SUITS, ACTIONS OR OTHER PROCEEDINGS WITH RESPECT TO, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR ANY RELATED DOCUMENT SHALL BE SUBJECT TO LITIGATION IN CALIFORNIA STATE COURTS HAVING SITUS WITHIN OR JURISDICTION OVER THE STATE OF CALIFORNIA AND THE COUNTY OF SAN FRANCISCO. DEBTOR AND (BY ITS ACCEPTANCE HEREOF AS PROVIDED BELOW) SECURED PARTY HEREBY CONSENT AND SUBMIT TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED IN OR HAVING JURISDICTION OVER SUCH STATE AND SUCH COUNTY, AND HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT THEY OR ANY OF THEM MAY HAVE TO REQUEST OR DEMAND TRIAL BY JURY, TO TRANSFER OR CHANGE THE VENUE OF ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ACCORDANCE WITH THIS SECTION, OR TO CLAIM THAT ANY SUCH PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NO PARTY HERETO MAY SEEK OR RECOVER PUNITIVE OR CONSEQUENTIAL DAMAGES IN ANY PROCEEDING BROUGHT UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY RELATED DOCUMENT. IN THE EVENT THE JURY TRIAL WAIVER PROVISIONS SET FORTH ABOVE ARE NOT PERMITTED FOR ANY REASON AND DEBTOR FAILS TO WAIVE JURY TRIAL, SECURED PARTY AND DEBTOR HEREBY AGREE EACH CLAIM SHALL BE DETERMINED BY A CONSENSUAL GENERAL JUDICIAL 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.**

To the maximum extent permitted by applicable law, Secured Party is hereby authorized by Debtor without notice to Debtor to fill in any blank spaces and dates and strike inapplicable terms herein or in any Loan Document to conform to the terms of the transaction and/or understanding evidenced hereby, for which purpose Secured Party shall be deemed to have been granted an irrevocable power of attorney coupled with an interest. In such event, Secured Party shall promptly deliver to Debtor, a copy of any page so modified.

*[Remainder of Page Intentionally Left Blank]*



**RECREATION AND PARK COMMISSION**  
**City and County of San Francisco**  
**Resolution No. 1607-008**

RESOLUTION OF THE CITY AND COUNTY OF SAN FRANCISCO RECREATION AND PARK COMMISSION APPROVING A FINANCING TO BE UNDERTAKE BY THE CITY OF SAN FRANCISCO PORTSMOUTH PLAZA PARKING CORPORATION ON BEHALF OF THE CITY IN AN AMOUNT NOT TO EXCEED \$12,500,000 AND APPROVING THE FORMS OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REASONABLY NECESSARY FOR SUCH FINANCING, AND RECOMMENDING TO THE BOARD OF SUPERVISORS RELATED APPROVALS

WHEREAS, the City and County of San Francisco Recreation and Park Commission (the "Commission") desires to provide for the renovation of and various improvements to the Portsmouth Square Garage at 733 Kearny Street, San Francisco, California, including but not limited to improvements related to drainage and water proofing, security and emergency preparedness, interior improvements and systems upgrades, building repairs and general refurbishment (collectively, the "Project"); and

WHEREAS, the Project shall be located within the geographical boundaries of the City and County of San Francisco (the "City"), upon premises owned by the City and leased to the City of San Francisco Portsmouth Plaza Parking Corporation, a California not-for-profit corporation ("Portsmouth Parking Corporation"), pursuant to that certain Lease, dated April 1, 2011 (the "Lease"), between the City, acting by and through the Commission, as landlord, and the Portsmouth Parking Corporation, as lessee; and

WHEREAS, on February 15, 2011 the Board of Supervisors of the City (the "Board of Supervisors") authorized the Recreation and Park Department General Manager to enter into the Lease pursuant to its Resolution 85-11; and



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

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

WHEREAS, the terms of the Loan are described in a Letter from the Bank, dated as of June 27, 2016 (the "Loan Proposal Letter") and are further memorialized in a form of Loan Agreement (the "Loan Agreement") and a form of Security Agreement (the "Security Agreement"), all between the Bank and the Portsmouth Parking Corporation; and

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

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

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

WHEREAS, in order to satisfy the requirements of the IRS Rulings, Portsmouth Parking Corporation desires to amend and restate and otherwise update its Articles of Incorporation and its Bylaws to document the organization of Portsmouth Parking Corporation under the Nonprofit Corporation Law of the State of California, which amendment and restatement requires the approval of the City as the holder of all authorized shares of the capital stock of the Corporation; and

WHEREAS, to facilitate Bank's issuance of the Loan to Portsmouth Parking Corporation, the Commission desires to approve that certain Portsmouth Square Parking Garage Landlord Assurances and Revenue Commitment Letter (the "Revenue Commitment Letter"), which shall include, among other terms, certain waivers by the City of provisions of the Lease and an obligation to repay the Loan from garage revenues in the event of the City terminates the Lease while the Loan is outstanding. The Revenue Commitment Letter also includes City covenants that (i) if for any reason the Portsmouth Square Garage does not generate revenue sufficient to pay the Loan, the City agrees, subject to appropriation by the Mayor and the Board of Supervisors of the City, to pay Bank any shortfall in the payment of the Loan payments then due and (ii) unless included in the proposed budget of another department of the City, the proposed budget of the Commission which is submitted to the Mayor shall include an appropriation for such shortfall; and

WHEREAS, for the foregoing reasons, Portsmouth Parking Corporation has requested that the Commission approve (1) the purposes and activities of Portsmouth Parking Corporation described above, (2) the amendment and restatement of the Articles of Incorporation of the Portsmouth Parking Corporation (the "Articles of Incorporation") and Bylaws of the Portsmouth Parking Corporation (the "Bylaws") to document the organization of Portsmouth Parking Corporation under the Nonprofit Corporation Law of the State of California, (3) the Loan and Portsmouth Parking Corporation's use of the Proceeds thereof to finance a portion of the costs of the Project, (4) the City's execution and delivery of the Revenue Commitment Letter; and

WHEREAS, this Commission by adoption of this Resolution is recommending and requesting approval by the Board of Supervisors of the matters approved by this Resolution, including but not limited to approval of (1) the purposes and activities of Portsmouth Parking Corporation, (2) the Loan and the Project, (3) the Articles of Incorporation and Bylaws and (4) the execution and delivery of the Revenue Commitment Letter by the City acting by and through this Commission; and

WHEREAS, there have been presented to this meeting the Loan Proposal Letter and proposed forms of the Loan Agreement, Security Agreement, the Articles of Incorporation, the Bylaws and the Revenue Commitment Letter; and

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

RESOLVED, by the Commission, as follows:

Section 1. The Commission finds and determines that the foregoing recitals are true and correct.

Section 2. The Commission hereby approves the purposes and activities of Portsmouth Parking Corporation and the Loan to Portsmouth Parking Corporation to finance a portion of the costs of the Project.

Section 3. The Commission approves the forms of the Articles of Incorporation and the Bylaws.

Section 4. The Commission hereby approves the terms of the Loan Proposal Letter, the Revenue Commitment Letter, the Loan Agreement and the Security Agreement. The Board further approves the form of Revenue Commitment Letter and authorizes and directs the General Manager of the Commission, to execute, acknowledge and deliver the Revenue Commitment Letter in substantially the form presented at this meeting with such additions thereto and changes therein necessary or desirable to facilitate the issuance of the Loan to the Portsmouth Parking Corporation, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. The General Manager of the Recreation and Park Department and other appropriate officers of the Commission are hereby authorized and directed, individually and collectively, to do any and all things, to adopt any procedures, and to execute and deliver any and all documents and certificates, which in consultation with the City Attorney of San Francisco, they may deem necessary or advisable in order to effectuate the purposes of this Resolution, including but limited to the amendment of the

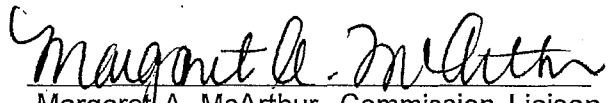
Lease, and any and all such actions previously taken by such officers are hereby ratified and confirmed.

Section 6. This Board hereby recommends and requests that the Board of Supervisors of the City approve this Resolution and the matters and purposes provided herein. This Resolution after its passage and approval by the Commission shall be presented to the Board of Supervisors of the City for approval and shall take effect from and after its passage and approval by the Board of Supervisors.

Adopted by the following vote:

Ayes	5
Noes	0
Absent	0
Recused	1

I hereby certify that the foregoing resolution was adopted at the Recreation and Park Commission meeting held on July 21, 2016.

  
Margaret A. McArthur, Commission Liaison

**Portsmouth Square Garage Renovation**  
**Cash Flow Projections and Debt Coverage Ratio**  
**FY 2014-15 Through FY 2030-31**  
(Figures in Thousands)

Year	Actual 14-15	Budget 15-16	1 16-17	2 17-18	3 18-19	4 19-20	5 20-21	6 21-22	7 22-23	8 23-24	9 24-25	10 25-26	11 26-27	12 27-28	13 28-29	14 29-30	15 30-31
<b>Revenue</b>																	
<i>Transient</i> <sup>1</sup>	\$3,528	\$3,638	\$4,187	\$4,187	\$4,187	\$4,656	\$4,656	\$4,656	\$5,115	\$5,115	\$5,115	\$5,614	\$5,614	\$5,614	\$6,073	\$6,073	\$6,073
<i>Monthly</i> <sup>2</sup>	1,147	1,121	1,122	\$1,122	1,122	1,160	\$1,160	\$1,160	1,199	1,199	1,199	1,237	1,237	1,237	1,276	1,276	1,276
<i>Misc. Parking</i> <sup>3</sup>	197	212	207	207	207	217	217	217	228	228	228	239	258	258	271	271	271
<b>Sub-Total Gross Parking Revenue</b>	<b>4,872</b>	<b>4,971</b>	<b>5,516</b>	<b>5,516</b>	<b>5,516</b>	<b>6,033</b>	<b>6,033</b>	<b>6,033</b>	<b>6,542</b>	<b>6,542</b>	<b>6,542</b>	<b>7,090</b>	<b>7,109</b>	<b>7,109</b>	<b>7,620</b>	<b>7,620</b>	<b>7,620</b>
<i>Less: Parking Taxes</i> <sup>4</sup>	975	995	1,103	1,103	1,103	1,207	1,207	1,207	1,308	1,308	1,308	1,418	1,422	1,422	1,524	1,524	1,524
<b>Net Parking Revenue</b>	<b>3,897</b>	<b>3,976</b>	<b>4,413</b>	<b>4,413</b>	<b>4,413</b>	<b>4,827</b>	<b>4,827</b>	<b>4,827</b>	<b>5,234</b>	<b>5,234</b>	<b>5,234</b>	<b>5,672</b>	<b>5,687</b>	<b>5,687</b>	<b>6,096</b>	<b>6,096</b>	<b>6,096</b>
<i>Non-Parking</i>	6	3	3	3	3	3	3	3	3	3	3	3	3	3	4	4	4
<b>Net Revenue</b>	<b>3,903</b>	<b>3,979</b>	<b>4,327</b>	<b>4,327</b>	<b>4,416</b>	<b>4,830</b>	<b>4,830</b>	<b>4,830</b>	<b>5,237</b>	<b>5,237</b>	<b>5,237</b>	<b>5,677</b>	<b>5,691</b>	<b>5,691</b>	<b>6,100</b>	<b>6,100</b>	<b>6,100</b>
<b>Expenses</b>																	
<i>Salaries</i> <sup>5</sup>	\$971	\$1,101	\$1,000	\$1,030	\$1,061	\$1,093	\$1,125	\$1,159	\$1,194	\$1,230	\$1,267	\$1,305	\$1,344	\$1,384	\$1,426	\$1,468	\$1,512
<i>Fringe Benefits</i> <sup>6</sup>	459	522	470	484	499	514	529	545	561	578	595	613	632	651	670	690	711
<i>Contractual Services</i> <sup>7</sup>	318	349	359	370	381	392	404	416	429	442	455	469	483	497	512	527	543
<i>Materials, Supplies &amp; Equipment</i> <sup>8</sup>	35	37	37	38	39	40	41	41	42	43	44	45	46	47	47	48	49
<i>Utilities</i> <sup>9</sup>	129	140	146	152	158	164	171	178	185	192	200	208	216	225	234	243	253
<i>Maintenance</i> <sup>10</sup>	78	84	85	85	86	87	88	89	90	91	92	93	93	94	95	96	97
<i>Claims, Fees, Marketing</i> <sup>11</sup>	18	24	24	24	24	25	25	25	25	26	26	26	26	27	27	27	27
<i>Community Benefit, MTA Admin</i> <sup>12</sup>	251	180	184	188	192	196	201	205	210	215	220	225	230	235	241	247	253
<i>Corporate Expenses</i> <sup>13</sup>	105	117	119	122	124	127	129	132	134	137	140	143	145	148	151	154	157
<b>Sub-Total Expenses</b>	<b>2,364</b>	<b>2,553</b>	<b>2,424</b>	<b>2,493</b>	<b>2,564</b>	<b>2,637</b>	<b>2,712</b>	<b>2,790</b>	<b>2,870</b>	<b>2,952</b>	<b>3,037</b>	<b>3,125</b>	<b>3,215</b>	<b>3,308</b>	<b>3,403</b>	<b>3,502</b>	<b>3,603</b>
<b>Net Income</b>	<b>\$1,539</b>	<b>\$1,426</b>	<b>\$1,903</b>	<b>\$1,834</b>	<b>\$1,852</b>	<b>\$2,192</b>	<b>\$2,117</b>	<b>\$2,039</b>	<b>\$2,367</b>	<b>\$2,284</b>	<b>\$2,200</b>	<b>\$2,552</b>	<b>\$2,476</b>	<b>\$2,383</b>	<b>\$2,696</b>	<b>\$2,598</b>	<b>\$2,496</b>
<b>Less: Debt Service</b> <sup>14</sup>	<b>\$0</b>	<b>\$0</b>	<b>\$685</b>	<b>\$685</b>	<b>\$685</b>	<b>\$685</b>	<b>\$685</b>	<b>\$685</b>	<b>\$685</b>	<b>\$685</b>	<b>\$685</b>	<b>\$685</b>	<b>\$685</b>	<b>\$685</b>	<b>\$685</b>	<b>\$685</b>	<b>\$685</b>
<b>Annual Surplus</b>	<b>\$1,539</b>	<b>\$1,426</b>	<b>\$1,218</b>	<b>\$1,149</b>	<b>\$1,167</b>	<b>\$1,507</b>	<b>\$1,432</b>	<b>\$1,354</b>	<b>\$1,682</b>	<b>\$1,599</b>	<b>\$1,515</b>	<b>\$1,867</b>	<b>\$1,791</b>	<b>\$1,698</b>	<b>\$2,011</b>	<b>\$1,913</b>	<b>\$1,811</b>
<b>Capital Reserve Allocation</b> <sup>15</sup>	<b>\$231</b>	<b>\$214</b>	<b>\$61</b>	<b>\$57</b>	<b>\$58</b>	<b>\$151</b>	<b>\$143</b>	<b>\$135</b>	<b>\$252</b>	<b>\$240</b>	<b>\$227</b>	<b>\$280</b>	<b>\$269</b>	<b>\$255</b>	<b>\$302</b>	<b>\$287</b>	<b>\$272</b>
<b>Debt Service Reserve Allocation</b> <sup>16</sup>			<b>\$50</b>	<b>\$50</b>	<b>\$50</b>	<b>\$50</b>	<b>\$50</b>	<b>\$50</b>	<b>\$50</b>	<b>\$50</b>	<b>\$50</b>	<b>\$50</b>	<b>\$50</b>	<b>\$50</b>			
<b>Income to Recreation &amp; Parks</b> <sup>17</sup>	<b>\$1,308</b>	<b>\$1,212</b>	<b>\$1,107</b>	<b>\$1,042</b>	<b>\$1,058</b>	<b>\$1,307</b>	<b>\$1,239</b>	<b>\$1,169</b>	<b>\$1,379</b>	<b>\$1,310</b>	<b>\$1,237</b>	<b>\$1,537</b>	<b>\$1,472</b>	<b>\$1,443</b>	<b>\$1,710</b>	<b>\$1,626</b>	<b>\$1,540</b>
<b>Debt Coverage Ratio</b> <sup>18</sup>			2.78	2.68	2.70	3.20	3.09	2.98	3.46	3.33	3.21	3.73	3.61	3.48	3.94	3.79	3.64

- <sup>1</sup> Assumes current lease terms, construction starts in May 2016
- <sup>1</sup> Assumes transient rates are increased by \$1 in all categories as of July 1, 2016 with \$1 increases every three years thereafter. Revenue reduced by 2% during construction in FY 16-17 and FY 17-18.
- <sup>2</sup> Assumes monthly rates are increased by \$20 as of May 1, 2014 with \$10 increases every three years thereafter
- <sup>3</sup> Assumes Misc Parking increases 5% every three years with rate increases
- <sup>4</sup> Parking tax is 25%
- <sup>5</sup> Salaries escalated at 2% through FY 14-15 and 3% thereafter
- <sup>6</sup> Fringe benefits constant at 47% of salaries
- <sup>7</sup> Contractual services escalated at 3% per year
- <sup>8</sup> M&S and equipment escalated at 2% per year
- <sup>9</sup> Utilities escalated at 4% per year
- <sup>10</sup> Maintenance escalated at 1% per year
- <sup>11</sup> Claims, fees, marketing escalated at 1% per year
- <sup>12</sup> Community benefit held constant at \$50,000 per year. MTA administrative fee escalated at 3% per year.
- <sup>13</sup> Corporate expenses assumed to increase 2% per year
- <sup>14</sup> Debt service assumes \$7 million loan, 25 year amortization and repayment to begin upon completion of project in FY 17-18. *Interest only payment in FY 16-17.*
- <sup>15</sup> Capital reserve allocation per lease: 15% of annual surplus to capital reserve until completion of renovation project. Then allocation becomes 5% for three fiscal years (FY17-19), then 10% for three fiscal years (FY20-22), then returns to 15%.
- <sup>16</sup> Debt service reserve fund allocation per loan agreement with First Republic. Funded at \$50,000 for ten years.
- <sup>17</sup> RPD receives remainder of annual surplus after the allocation to capital reserve
- <sup>18</sup> Ratio of annual debt service to annual operating surplus

**Portsmouth Square Garage Renovation**  
**Cash Flow Projections and Debt Coverage Ratio**  
**FY 2014-15 Through FY 2030-31**  
(Figures in Thousands)

16	17	18	19	20	21	22	23	24	25
31-32	32-33	33-34	34-35	35-36	36-37	37-38	38-39	39-40	40-41
\$6,532	\$6,532	\$6,532	6671	6671	6671	7175	7175	7175	7547
1,314	1,314	1,314	1352	1352	1352	1391	1391	1391	1429
284	284	284	299	299	299	314	314	314	330
8,130	8,130	8,130	8,322	8,322	8,322	8,880	8,880	8,880	9,306
1,626	1,626	1,626	1,664	1,664	1,664	1,776	1,776	1,776	1,861
6,504	6,504	6,504	6,657	6,658	6,658	7,104	7,104	7,104	7,445
4	4	4	4	4	4	4	4	4	4
<b>6,508</b>	<b>6,508</b>	<b>6,508</b>	<b>6,661</b>	<b>6,662</b>	<b>6,662</b>	<b>7,108</b>	<b>7,108</b>	<b>7,108</b>	<b>7,449</b>
\$1,558	\$1,605	\$1,653	\$1,702	\$1,753	\$1,806	\$1,860	\$1,916	\$1,973	\$2,033
732	754	777	800	824	849	874	901	928	955
560	576	594	611	630	649	668	688	709	730
50	51	52	53	55	56	57	58	59	60
263	273	284	296	307	320	332	346	360	374
98	99	100	101	102	103	104	105	106	107
28	28	28	29	29	29	29	30	30	30
259	265	271	278	285	292	299	307	314	322
161	164	167	170	174	177	181	184	188	192
<b>3,708</b>	<b>3,816</b>	<b>3,927</b>	<b>4,041</b>	<b>4,159</b>	<b>4,280</b>	<b>4,405</b>	<b>4,534</b>	<b>4,667</b>	<b>4,804</b>
\$2,800	\$2,693	\$2,582	\$2,620	\$2,503	\$2,381	\$2,703	\$2,574	\$2,441	\$2,645
\$685	\$685	\$685	\$685	\$685	\$685	\$685	\$685	\$685	\$685
\$2,115	\$2,008	\$1,897	\$1,935	\$1,818	\$1,696	\$2,018	\$1,889	\$1,756	\$1,960
\$317	\$301	\$284	\$290	\$273	\$254	\$303	\$283	\$263	\$294
\$1,798	\$1,706	\$1,612	\$1,645	\$1,545	\$1,442	\$1,715	\$1,606	\$1,493	\$1,666
4.09	3.93	3.77	3.83	3.65	3.48	3.95	3.76	3.56	3.86



Edwin M. Lee, Mayor  
Philip A. Ginsburg, General Manager

MEMORANDUM

To: Angela Calvillo, Clerk of the Board of Supervisors  
From: Katie Petrucione<sup>KCP</sup>, Director of Administration and Finance  
Re: Resolution Approving a Financing to be Undertaken by the City of  
San Francisco Portsmouth Plaza Parking Corporation on behalf of the City  
Date: July 25, 2016

Attached please find the original and two copies of each of the following:

- Resolution approving a Financing to be Undertaken by the City of San Francisco Portsmouth Plaza Parking Corporation (PPPC) on behalf of the City
- Certificate of Amendment and Restatement of Articles of Incorporation for PPPC
- Amended By-Laws for PPPC
- Loan Proposal Letter between First Republic Bank and PPPC
- Revenue Commitment Letter between the City of San Francisco and First Republic Bank
- Loan Agreement between First Republic Bank and PPPC
- Security Agreement between First Republic Bank and PPPC
- Recreation and Park Commission Resolution No. 1607-008
- Cash flow projections

If you have questions regarding this matter, please contact me at 415-831-2703 or [katharine.petrucione@sfgov.org](mailto:katharine.petrucione@sfgov.org).

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