OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE
(SUCCESSOR AGENCY TO THE SAN FRANCISCO REDEVELOPMENT AGENCY)

FIRST AMENDMENT TO THE FILLMORE HERITAGE
GARAGE MANAGEMENT AGREEMENT

This First Amendment to the Fillmore Heritage Garage Management Agreement (the “First Amendment”) is entered into as of April 15, 2014 (the “Effective Date”), by and between the Office of Community Investment and Infrastructure (“OCII” or the “Successor Agency”), the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, and Pacific Park Management Inc., a California corporation (the “Manager”).

RECITALS

This First Amendment is made with reference to the following facts and circumstances:

A. The Successor Agency became the successor to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, exercising its functions and powers and organized and existing under the Community Redevelopment Law of the State of California (the “SFRA”), when the SFRA was dissolved on February 1, 2012, pursuant to California Assembly Bill 26 (“AB 26”) and the California Supreme Court’s decision and order in the case entitled California Redevelopment Association et al. v. Ana Matosantos.

B. About four months later, in June 2012, the California State Legislature passed a follow-up bill to AB 26, commonly called Assembly Bill 1484 (“AB 1484”) (together with AB 26, “Redevelopment Dissolution Law”). Under AB 1484, the successor entity to the SFRA became a separate legal entity, separate from the City and County of San Francisco (the “City”). Under Redevelopment Dissolution Law, the Successor Agency assumed all of the SFRA’s enforceable obligations, including ownership of the SFRA’s real property. The Successor Agency is charged with winding-down these enforceable obligations and disposing of all real property, pursuant to Redevelopment Dissolution Law, and subject to the oversight of the State Department of Finance (“DOF”), which is the lead implementing agency under Redevelopment Dissolution Law.

C. As a result of these legislative acts, the Successor Agency owns a 112-space public parking garage that primarily serves the commercial uses at the Fillmore Heritage Center, a mixed-use development at 1310 Fillmore Street (the “Garage”). The Garage was completed in June 2007 at a cost of about $5.7 million in grant funds. It was built under a Disposition and Development Agreement dated May 18, 2004 between the SFRA and Fillmore Development Associates, LLC, a California limited liability company (the “Developer”).

D. The current operator, Pacific Park Management Inc., a California corporation (the “Manager”), was selected after a competitive public procurement process. On March 15, 2011, the SFRA Commission approved, by Resolution No. 30-2011, a Fillmore Heritage
Garage Management Agreement with the Manager that expires on April 30, 2014 (the “Management Agreement”).

E. Under the Management Agreement, the Successor Agency pays the Manager a fixed monthly fee of $1,000 a month (or $12,000 a year) and a variable incentive fee of 50% of the Garage’s annual net operating income up to a maximum incentive fee of $10,000 a year, if certain conditions are met. In addition, the Successor Agency reimburses the Manager for reasonable Garage operating expenses, which average about $33,500 a month. To date, the Manager has not received any incentive fees because the Garage has not generated any annual net operating income.

F. Staff desires to extend the Management Agreement to allow time to implement the Successor Agency’s disposition plan for the Garage, as is required under Redevelopment Dissolution Law. The Successor Agency proposed selling the Garage under its Long-Range Property Management Plan (“PMP”), which was submitted to DOF for approval in November 2013 pursuant to Redevelopment Dissolution Law. The Successor Agency cannot sell the Garage until DOF approves OCII’s PMP. DOF is still reviewing OCII’s PMP, and staff is hopeful that DOF will approve it later this year.

G. After DOF’s approval of the PMP, staff expects it will take at least six months to either sell the Garage or transfer it to the City so that City staff can sell the Garage. Given the impending sale, staff does not believe it is appropriate to conduct another competitive public procurement process for a new garage operator.

H. Therefore, OCII and the Manager seek to enter into this First Amendment upon the basis of the terms, covenants and conditions of the Management Agreement, as amended below.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, OCII and the Manager agree as follows:

1. Section 2.50 of DEFINITIONS shall be deleted and replaced in its entirety to read as follows:

“Term” shall have the meaning as set forth in Section 4.1 below.”

2. Section 4.1, Term, shall be deleted and replaced in its entirety to read as follows:

"The term of this Management Agreement shall commence on May 1, 2011 and shall continue until June 30, 2015 (“Term”), unless terminated earlier pursuant to the terms of this Management Agreement. The Term may be extended for one 12-month period, to June 30, 2016, at the sole discretion of the Agency’s Executive Director.”

3. Section 12.1 Insurance shall be deleted and replaced in its entirety to read as follows:
“Manager must procure and maintain throughout the term of this Management Agreement, including any extensions, and pay the cost thereof, the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work under this Management Agreement by the Manager, its agents, representatives, employees or subcontractors. If the Manager maintains additional coverage and/or higher limits than the minimums shown in this Section 12, the Agency requires and shall be entitled to the additional coverage and/or the higher limits maintained by the Manager.”

4. Section 12.1(a) shall be deleted and replaced in its entirety to read as follows:

“(a) Commercial general liability insurance with limits not less than $2,000,000 each occurrence, combined single limit for bodily injury, personal injury and property damage, including coverage for contractual liability. Any deductible under such policy shall not exceed $20,000 for each occurrence.”

5. Section 12.1(f) shall be deleted and replaced in its entirety to read as follows:

“(f) The liability insurance policies required under subsections (a) through (c) above shall list Manager as the named insured and be further endorsed to name as additional insureds: “The Successor Agency to the San Francisco Redevelopment Agency, the City and County of San Francisco, and their respective officers, commissioners, members, officers, agents and employees.”

6. A new Section 20.2 shall be added to read as follows:

“Agency Assignment With Sale of Garage. Manager acknowledges that the Agency is subject to the state law dissolving redevelopment agencies and that it must dispose of its assets, including the Garage, under a Long-Range Property Management Plan (“PMP”) submitted to the State Department of Finance (“DOF”) in November 2013 (California Health and Safety Code, Section 34191.5). In its PMP, which is a disposition plan for all of the Agency’s real property assets, the Agency proposed selling the Garage. DOF must approve the Agency’s PMP before the Garage can be sold and does not have a statutory deadline for a decision on the PMP. Manager acknowledges that the Garage must be sold and that the Management Agreement may or may not be assigned to the new owner as part of the sale transaction.”

7. The following Miscellaneous provisions apply to this First Amendment:
   a. Incorporation. This First Amendment constitutes a part of the Management Agreement and any reference in any document to the Management Agreement shall be deemed to include a reference to such Management Agreement as amended hereby.

   b. Ratification. To the extent of any inconsistency between this First Amendment and the Management Agreement, the provisions contained in this First Amendment shall
control. Except as otherwise amended herby, all terms, covenants, conditions and provisions of the Management Agreement shall remain in full force and effect.

c. **Successors and Assigns.** This First Amendment shall be binding upon and inure to the benefit of the successors and assigns of the OCII and Contractor, subject to the limitations set forth in the Management Agreement.

d. **Counterparts.** This First Amendment may be executed in any number of counterparts, all of which, together, shall constitute the original agreement.

e. **Governing Law; Venue.** This First Amendment shall be governed by and construed in accordance with the laws of the State of California. The parties agree that all actions or proceedings arising directly or indirectly under this First Amendment shall be litigated in courts located with the County of San Francisco, State of California.

f. **Integration.** This First Amendment contains the entire agreement between the parties with respect to the subject matter of this First Amendment. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded by this First Amendment. No prior drafts of this First Amendment or changes from those drafts to the executed version of this First Amendment shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party or any other person, and no court or other body shall consider those drafts in interpreting this First Amendment.

g. **Effective Date.** Each of the modifications set forth in Sections 1-3 of this First Amendment shall be effective on and after May 1, 2014.
IN WITNESS WHEREOF, the Successor Agency and the Manager have executed this First Amendment to the Management Agreement as of the date first written above.

MANAGER: PACIFIC PARK MANAGEMENT, INC., a California Corporation

By: ________________________________  
Sam Tadesse, Managing Director  
Federal Tax ID No: 94-3229282

SUCCESSOR AGENCY: OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE, the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic

By: ________________________________  
Tiffany Bohee, Executive Director

Authorized by Agency Resolution No. 26-2014 adopted on April 15, 2014

APPROVED AS TO FORM:

By: ________________________________  
James Morales  
Interim General Counsel