

ORDINANCE NO. 4910

AN ORDINANCE AUTHORIZING A GUARANTY OF THE CITY OF ELIZABETH, IN THE COUNTY OF UNION, NEW JERSEY, SECURING PAYMENT OF PRINCIPAL OF AND INTEREST ON CERTAIN BONDS, NOTES OR OTHER OBLIGATIONS OF THE PARKING AUTHORITY OF THE CITY OF ELIZABETH IN AN AMOUNT NOT TO EXCEED \$5,500,000 AND APPROVING A FIRST AMENDMENT TO GROUND LEASE AND AN ASSIGNMENT AND MODIFICATION OF GROUND SUBLEASE

WHEREAS, The Parking Authority of the City of Elizabeth (the "Authority") has been duly created by an ordinance of the City of Elizabeth ("City") in the County of Union, New Jersey, as a public body corporate and politic of the State of New Jersey (the "State") pursuant to and in accordance with the Parking Authority Law, constituting Chapter 198 of the Pamphlet Laws of 1948 of the State (N.J.S.A. 40:11A-1 *et seq.*), as amended and supplemented from time to time (the "Act"); and

WHEREAS, the City, as tenant, and New Jersey Transit Corporation ("NJ Transit"), as landlord, entered into that certain Ground Lease dated as of May 15, 1997 (the "1997 NJ Transit Lease"), providing for the lease by the City of certain premises located in the City known as 30 West Grand Street (the "Premises"), for a term commencing on May 15, 1997 and ending on May 31, 2027, providing for, among other things, the construction thereon, by the Elizabeth Development Company of New Jersey ("EDC"), a New Jersey nonprofit corporation, of a parking garage with approximately 575 parking spaces known as the Midtown Garage (the "Midtown Garage"); and

WHEREAS, in accordance with the 1997 NJ Transit Lease, the City, as sublandlord, and EDC, as subtenant, entered into a Ground Sublease dated as of May 15, 1997, for a term commencing on May 15, 1997, and ending on May 14, 2027 (the "1997 Sublease"), providing for, among other things, EDC to construct the Midtown Garage on the Premises; and

WHEREAS, the Midtown Garage was constructed by EDC with proceeds received from the issuance by the New Jersey Economic Development Authority (the "NJEDA") of certain Parking Revenue Bonds (Elizabeth Development Company - 1997 Project) dated May 15, 1997 (the "EDA 1997 Bonds"); and

WHEREAS, the EDA 1997 Bonds were refunded by the NJEDA's Parking Revenue Refunding Bonds (Elizabeth Development Company), Series 2007 (the "EDA 2007 Refunding Bonds"); and

WHEREAS, the EDA 2007 Refunding Bonds were secured by, among other things, that certain Deficiency Agreement by and between the City and EDC dated as of February 1, 2007; and

City Clerk

PRESENTED to the Mayor for
APPROVAL or DISAPPROVAL on

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WHEREAS, by resolution adopted on August 9, 2017, NJ Transit has agreed to extend the term of the 1997 NJ Transit Lease until May, 2037; and

WHEREAS, the Authority has, from time to time, issued bonds, notes or other obligations to provide funds for parking facilities within the City, pursuant to a resolution adopted by the Authority on November 9, 2006 and entitled "Resolution Authorizing the Issuance of Parking Revenue Bonds of the Parking Authority of the City of Elizabeth" as amended and supplemented (the "General Bond Resolution"); and

WHEREAS, the Authority has determined that it would be beneficial for it to acquire the Midtown Garage so that it could supervise all existing parking garage space in the City; and

WHEREAS, to further such acquisition the Authority has determined to issue its City Guaranteed Parking Revenue Bonds, Acquisition Series 2017 (the "Bonds"), in an amount not to exceed \$5,500,000 to acquire the Midtown Garage, make certain improvements thereto, defease the outstanding EDA 2007 Refunding Bonds debt service and pay the costs of issuance of the Bonds and fund any related reserve or interest accounts (the "Acquisition Project"); and

WHEREAS, pursuant to the provisions of N.J.S.A. 40:11A-22, the City is authorized to unconditionally guarantee the punctual payment of the principal of and the interest on any bonds of the Authority by ordinance duly adopted by the governing body of the City in the manner provided in the Local Bond Law of the State of New Jersey; and

WHEREAS, the Authority has requested the City's consent to said issuance of Bonds, and that the City guarantee the issuance of the Bonds in accordance N.J.S.A. 40:11A-22(1)(e) and (2); and

WHEREAS, the Authority and City believe: (i) it is in the public interest to accomplish such purpose; (ii) said purpose is for the health, wealth, convenience or betterment of the inhabitants of the City; (iii) the amounts to be expended for said purpose are not unreasonable or exorbitant; and (iv) the proposal is an efficient and feasible means of providing for the needs of the inhabitants of the City and will not create an undue financial burden to be placed upon the City; and

WHEREAS, the Bonds shall be special, limited obligations of the Authority payable solely from certain revenues of the Authority, and may be issued in one or more series from time to time; but at no time shall the aggregate outstanding amount of the Bonds exceed \$5,500,000; and

WHEREAS, to assist the Authority and in order to induce the prospective purchasers of the Bonds to purchase the Bonds, the Bonds shall be secured by this ordinance of the City unconditionally and irrevocably guaranteeing the principal of and interest on the Bonds, all pursuant to Section 22 of the Act (N.J.S.A. 40:11A-22(1)(e) and (2)) (the "Guaranty"); and

WHEREAS, pursuant to an Agreement dated July 20, 1973 (the "1973 Agreement"), between the City and the Authority, the Authority will not authorize the issuance of any additional Parking Revenue Bonds or Refunding Parking Revenue Bonds without the consent of the City, and the City desires to consent to the issuance of the Bonds; and

WHEREAS, the City has determined the 1973 Agreement is in full force and effect and applicable to the Bonds, however the City waives the right to deposit monies with the Authority to redeem additional parking revenue bonds at any time on and after five (5) years from the date of issue of such bonds, and agrees that the Authority shall not be required by the 1973 Agreement to provide for the redemption of the Bonds on or after five (5) years from the date of issue of the Bonds; and

WHEREAS, the City desires to approve an agreement (the "First Amendment to Ground Lease") with NJ Transit extending the term of the 1997 NJ Transit Lease for an additional ten (10) years; and

WHEREAS, the City desires to approve an agreement (the "Assignment and Modification of Ground Sublease") by and between the City and EDC and acknowledged and agreed to by the Authority extending the term of the 1997 Sublease and assigning EDC's rights under the 1997 Sublease to the Authority.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELIZABETH, IN THE COUNTY OF UNION, NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring) AS FOLLOWS:

Section 1. This guaranty ordinance shall be adopted by the City in the manner provided for adoption of a bond ordinance as provided in the Local Bond Law, constituting Chapter 169 of the Pamphlet Laws of 1960 of the State, as amended and supplemented (the "Local Bond Law").

Section 2. Pursuant to and in accordance with the terms of the Act, the City is hereby authorized to and hereby shall guaranty the timely payment of the principal of and interest on any Bonds which are issued from time to time by the Authority in an aggregate principal amount not exceeding at any time \$5,500,000 to be issued for or with respect to the Acquisition Project as described in the preamble hereof on such terms as shall be determined by resolution of the Authority and in a manner which is consistent with the provisions of the Act. Upon the endorsement of the Bonds referred to in Section 3 below, the City shall be unconditionally and irrevocably obligated to pay the principal of and interest on the Bonds in the same manner and to the same extent as in the case of bonds issued by the City and, accordingly, the City shall be unconditionally and irrevocably obligated to levy ad valorem taxes upon all the taxable property within the City for the payment thereof without limitation as to rate or amount when required under the provisions of applicable law. Any Bonds which are no longer considered outstanding

under the resolution(s) of the Authority authorizing the Bonds shall not be considered outstanding for the purpose of the Guaranty. The full faith and credit of the City are hereby pledged for the full and punctual performance of the Guaranty.

Section 3. The Mayor of the City shall, by manual or facsimile signature, execute an endorsement on each of the Bonds evidencing the Guaranty by the City as to the punctual payment of the principal thereof and interest thereon. The endorsement on each Bond shall be in substantially the following form, and absent the fully executed endorsement in such following form on any such Bonds, such Bonds shall not be entitled to the benefits of the Guaranty:

GUARANTY OF THE CITY OF ELIZABETH, IN THE COUNTY OF UNION OF
THE STATE OF NEW JERSEY

The payment of the principal of and interest on the within Bond is hereby fully, unconditionally and irrevocably guaranteed by the City of Elizabeth, New Jersey and the City is unconditionally and irrevocably liable for the payment, when due, of the principal of and interest of this Bond.

IN WITNESS WHEREOF, the City of Elizabeth, in the County of Union of the State of New Jersey, has caused this Guaranty to be executed by the manual or facsimile signature of the Mayor of the City.

CITY OF ELIZABETH, in the
COUNTY OF UNION and
STATE OF NEW JERSEY

By: _____
Name: J. Christian Bollwage
Title: Mayor

Section 4. It is hereby found, determined and declared by the City that:

(a) This guaranty ordinance may be adopted notwithstanding any statutory debt or other limitations, including particularly any limitation or requirement under or pursuant to the Local Bond Law, but the aggregate principal amount of the Bonds outstanding at any time which shall be entitled to the benefits of the Guaranty, being an amount not to exceed \$5,500,000, shall, after their issuance, be included in the gross debt of the City for the purpose of determining the indebtedness of the City under or pursuant to the Local Bond Law.

(b) The principal amount of the Bonds entitled to the benefits of the Guaranty and included in the gross debt of the City shall be deducted and is hereby declared to be and to

constitute a deduction from such gross debt under and for all the purposes of the Local Bond Law (i) from and after the date of adoption of this guaranty ordinance and until the end of the fifth fiscal year beginning next thereafter and (ii) in any annual debt statement filed pursuant to the Local Bond Law as of the end of said fifth fiscal year or any subsequent fiscal year if the City shall not have been required to make any payment in such fiscal year on account of the principal of and interest on all such guaranteed Bonds.

Section 5. The following matters are hereby determined, declared, recited and stated:

(a) The maximum estimated cost of the Acquisition Project to be financed in accordance with the transaction contemplated hereby is \$5,500,000.

(b) The purpose described in this guaranty ordinance is not a current expense of the City and no part of the cost thereof has been or shall be assessed on property specially benefited thereby.

(c) A supplemental debt statement of the City has been duly made and filed in the office of the City Clerk, and a complete executed duplicate thereof has been filed in the office of the Director of the Division of Local Government Services in the Department of Community Affairs of the State, and such debt statement shows that while the gross debt of the City, as defined in the Local Bond Law, is increased by this Guaranty by \$5,500,000, in accordance with the provisions of the Act, the net debt of the City is not increased, and the obligation of the City authorized by or incurred pursuant to the terms of this guaranty ordinance is permitted by an exception to the debt limitations of the Local Bond Law which exception is contained in the Act.

(d) All other items to be contained in a bond ordinance adopted pursuant to the Local Bond Law are hereby determined to be inapplicable to this guaranty of the Bonds.

Section 6.

(a) The Mayor of the City is hereby authorized and directed, to the extent necessary or desirable, to enter into, execute and deliver in the name of the City and on its behalf (i) one or more guaranty agreement(s) setting forth such matters with respect to the Guaranty as the Mayor of the City deems appropriate and not inconsistent with this Guaranty ordinance and (ii) one or more continuing disclosure agreement(s) or other instrument(s) undertaking the secondary disclosure obligations of the City required by Rule 15c2-12 of the United States Securities and Exchange Commission.

(b) The forms of the Guaranty Agreement and the Continuing Disclosure Agreement in substantially the forms attached hereto as Exhibits A and B, respectively, are each in all respects hereby authorized and approved, and the Mayor or the Chief Financial Officer of the City are authorized to execute and deliver the Guaranty Agreement and the Continuing Disclosure Agreement to the Trustee designated by the Authority. The Guaranty Agreement and

the Continuing Disclosure Agreement shall be substantially in the forms attached hereto with all necessary and appropriate variations, omissions and insertions as approved, permitted or required by the Mayor or the Chief Financial Officer of the City executing the same and the execution and delivery thereof by such officer shall be conclusive evidence of such approval.

Section 7. In accordance with the 1973 Agreement, the City Council of the City of Elizabeth hereby consents to the issuance by the Authority of the Bonds.

Section 8. All provisions of the 1973 Agreement are in full force and effect, however the City hereby waives the right reserved to the City in the 1973 Agreement to deposit monies with the Authority to redeem the Bonds at any time on and after five (5) years from the date of issue of the Bonds, and agrees that the Authority shall not be required by the 1973 Agreement to provide for the redemption of the Bonds on or after five (5) years from the date of issue of the Bonds.

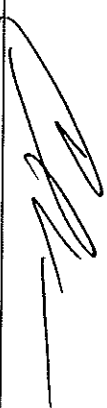
Section 9. The forms of the First Amendment to Ground Lease and the Assignment and Modification of Ground Sublease in substantially the forms attached hereto as Exhibits C and D, respectively, are each in all respects hereby authorized and approved, and the Mayor or the Chief Financial Officer of the City are authorized to execute and deliver the First Amendment to Ground Lease and the Assignment and Modification of Ground Sublease. The First Amendment to Ground Lease and the Assignment and Modification of Ground Sublease shall be substantially in the forms attached hereto with all necessary and appropriate variations, omissions and insertions as approved, permitted or required by the Mayor or the Chief Financial Officer of the City executing the same and the execution and delivery thereof by such officer shall be conclusive evidence of such approval.

Section 10. This guaranty ordinance shall take effect at the time and in the manner provided by the Local Bond Law.

Introduced: _____, 2017

Adopted: _____, 2017

Passed: 9-12-17



Carlos Torres,
President of City Council

Approved: 9/13/17



Christian Bollwage, Mayor

ATTEST: 

Yolanda M. Roberts, City Clerk