

File No. 111034

Committee Item No. 12

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: September 28, 2011

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget & Legislative Analyst Report |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ethics Form 126 |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
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OTHER

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|-------------------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | **Amended and Restated Operating Agreement of SFCIF SUB CDE 2 LLC |
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Completed by: Victor Young

Date: Sept 23, 2011

Completed by: Victor Young

Date: _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Tax Credit Agreement – U.S. Bancorp - SFJazz Investment of \$11,104,275]

2
3 **Resolution making findings under the California Environmental Quality Act (CEQA) and**
4 **approving a new market tax credit indemnification agreement with U.S. Bancorp**
5 **Community Development Corporation in connection with its investment of \$11,104,275**
6 **for the new SFJazz Building at 205 Franklin Street.**

7
8 WHEREAS, The Redevelopment Agency of the City and County of San Francisco (the
9 “Agency”), working with the City’s Office of Economic and Workforce Development (“OEWD”),
10 formed the San Francisco Community Investment Fund, a California nonprofit public benefit
11 corporation (“SFCIF”), as a community development entity to apply for a new market tax
12 credits (“NMTC”) allocation from the U.S. Treasury; and,

13 WHEREAS, The NMTC program (U.S. Internal Revenue Code section 45D et. seq.)
14 was designed to attract investors into underserved communities and to provide private capital
15 investment into projects that may not otherwise be completed; and,

16 WHEREAS, SFCIF applied for and received a \$35 million allocation of NMTC from the
17 Community Development Financial Institution Fund of the U.S. Treasury in the 2010 allocation
18 round, which tax credits must be applied to eligible projects before September 30, 2013, if at
19 all; and,

20 WHEREAS, Under the NMTC program, SFCIF or its subsidiary receives private capital
21 investments and uses these funds for qualified projects benefitting low-income communities,
22 and the investors in return receive federal tax credits spread out over 7 years following the
23 date of the initial investment (the “Tax Credit Period”); and,

1 WHEREAS, For each NMTC transaction, SFCIF forms a separate subsidiary
2 community development entity, in this case SFCIF Sub CDE 2, LLC (the "Sub CDE") to
3 receive the private capital and invest in the identified project; and,

4 WHEREAS, NMTC are used to offset amounts that would otherwise be due and owing
5 to the federal government, and do not affect or limit any taxes payable to the State of
6 California or the City and County of San Francisco; and,

7 WHEREAS, SFCIF completed its first NMTC transaction in June 2011 with U.S.
8 Bancorp Community Development Corporation, a Minnesota corporation ("USBCDC"),
9 investing approximately \$2.5 million for the rehabilitation of an existing building for use as a
10 College Track tutoring facility for inner-city youth; and,

11 WHEREAS, SFCIF has proposed a second NMTC transaction, with USBCDC investing
12 approximately \$11 million in the approximately 50,000 square foot performance and
13 educational facility for SFJazz currently under construction at 205 Franklin Street near the
14 corner of Fell Street (the "Project"); and,

15 WHEREAS, In addition to the \$15 million NMTC allocation by SFCIF, the Project is
16 receiving NMTC allocations from three other community development entities including a
17 subsidiary of the Northern California Community Loan Fund (collectively, with the Sub CDE,
18 the "Lenders"), for a total of \$40 million in NMTC investments into the Project; and,

19 WHEREAS, The Project is located in an economically distressed and underserved
20 community (Census Tract No. 06075016200) characterized by a median family income of
21 55.8% of the greater of the statewide median family income or the SF metropolitan area
22 median family income; and,

23 WHEREAS, In connection with the NMTC transaction, SFJazz is entering into a
24 community benefits agreement with the Lenders, a copy of which is on file with the Clerk of
25 the Board under File No. 111034 (the "Community Benefits Agreement"); and,

1 WHEREAS, Under the Community Benefits Agreement, SFJazz agrees to: (i) create at
2 least 95 construction FTE jobs, with at least 50% of the new hires to be San Francisco
3 residents; (ii) pay prevailing wages and provide health care benefits; (iii) create 25 permanent
4 FTE jobs, including 15 non-specialized jobs, with good faith efforts to fill all non-specialized
5 jobs with San Francisco residents and mandating that at least 55% of the non-specialized jobs
6 be filled with San Francisco residents; and (iv) provide discounted and low cost performances,
7 educational opportunities, community outreach, and entrepreneurial opportunities; all as
8 further described in the Community Benefits Agreement; and,

9 WHEREAS, The investment fund that initially will accept the NMTC investments for the
10 Project and SFCIF will enter into an operating agreement for the Sub CDE as part of the
11 NMTC transaction, which will require that the Sub CDE (i) maintain its existence as a
12 community development entity for the Tax Credit Period, including the filing of annual reports
13 and consulting with an advisory board, (ii) use any investments that it receives for qualified
14 low-income community investments, (iii) not make distributions except for Project expenses as
15 set forth in the operating agreement, and (iv) not engage in willful misconduct, gross
16 negligence, fraud, malfeasance or similar acts that may cause the U.S. Treasury to recapture
17 the NMTC (collectively, the "Obligations"), all as more particularly described in the operating
18 agreement, a copy of which is on file with the Clerk of the Board under File No. 111034; and,

19 WHEREAS, USBCDC is not willing to invest in the Project without an indemnification
20 agreement to cover its losses in the event that the U.S. Treasury recaptures or disallows the
21 NMTC granted to USBCDC based upon the Sub CDE's failure to fulfill the Obligations, and
22 this is consistent with NMTC transactions generally; and,

23 WHEREAS, USBCDC, SFCIF and the Sub CDE have negotiated an indemnification
24 agreement, a copy of which is on file with the Clerk of the Board under File No. 111034 (the
25 "Indemnification Agreement"); and,

1 WHEREAS, The Indemnification Agreement is in the same form as was used in the
2 first NMTC transaction described above, but the Agency is not able to enter into the
3 Indemnification Agreement due to the suspension of redevelopment activities and prohibition
4 of new contracts under California Assembly Bills 26 and 27 (Statutes of 2011); and,

5 WHEREAS, The Project could not proceed without the proposed NMTC, and the
6 NMTC transaction cannot proceed without the Indemnification Agreement; and,

7 WHEREAS, The Indemnification Agreement is narrowly tailored to provide USBCDC
8 an indemnity only for a recapture event caused by a breach of the Obligations, all of which are
9 in the reasonable control of SFCIF and Agency and City staff, and before the IRS declares a
10 recapture event, it will provide notice and a 12 month cure period (except for "Bad Acts", as
11 defined in the Indemnification Agreement, such as willful misconduct, gross negligence, fraud,
12 or malfeasance); and,

13 WHEREAS, A mitigated negative declaration was prepared for the Project, and
14 certified by the Planning Commission on July 15, 2010 by Motion No. 18142 (the "FMND");
15 and,

16 WHEREAS, The FMND has been made available for review by the Board of
17 Supervisors and the public, and is part of the record before the Board of Supervisors; now,
18 therefore, be it

19 RESOLVED, The Board of Supervisors has reviewed and considered the FMND and
20 record as a whole, finds that the FMND is adequate for its use as the decision-making body
21 for the discretionary action taken in this Resolution and incorporates the CEQA findings made
22 by the Planning Commission as though set forth in this Resolution; and, be it

23 FURTHER RESOLVED, The Board of Supervisors further finds that since the FMND
24 was finalized, there have been no substantial changes to the Project or to circumstances that
25 would require revisions to the FMND due to new significant impacts or an increase in the

1 severity of previously identified impacts, and there is no new information of importance that
2 would change the conclusions set forth in the FMND; and, be it

3 FURTHER RESOLVED, That the Board approves the Indemnification Agreement and
4 authorizes the Director of the Office of Economic and Workforce Development to execute and
5 deliver the Indemnification Agreement, and to take such actions as may be necessary to
6 ensure that the Obligations have been and will continue to be satisfied; and, be it

7 FURTHER RESOLVED, That all actions heretofore taken by the officers of the City
8 with respect to the Indemnification Agreement and the NMTC transaction for the Project are
9 hereby approved and ratified; and, be it

10 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of the
11 Office of Economic and Workforce Development to enter into any additional modifications to
12 the Indemnification Agreement that he or she determines, in consultation with the City
13 Attorney, are in the best interest of the City, do not materially increase the obligations or
14 liabilities of the City or reduce the benefits to the City, are necessary or advisable to effectuate
15 the purposes of the Indemnification Agreement and the NMTC transaction, and are in
16 compliance with all applicable laws.



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Inclusionary Housing (Sec. 315)
- Jobs Housing Linkage Program (Sec. 313)
- Downtown Park Fee (Sec. 139)
- First Source Hiring (Admin. Code)
- Child Care Requirement (Sec. 314)
- Other

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415.558.6409

Planning
Information:
415.558.6377

Planning Commission Motion 18142

HEARING DATE: JULY 15, 2010

Date: July 9, 2010
Case No.: 2008.1234CV
Project Address: 205 Franklin Street
Zoning: Hayes-Gough Neighborhood Commercial Transit (NCT) District
40-X/50-X/65-X Height and Bulk Districts
Block/Lot: 0816/003
Project Sponsor: SFJAZZ
3 Embarcadero Center
San Francisco, CA 94111
Staff Contact: Kevin Guy – (415) 558-6163
kevin.guy@sfgov.org

ADOPTING FINDINGS RELATED TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION PURSUANT TO PLANNING CODE SECTIONS 121.1, 121.2, 303, 720.48, AND 720.81 TO ALLOW DEVELOPMENT ON A LOT EXCEEDING 10,000 SQUARE FEET, TO ESTABLISH A NON-RESIDENTIAL USE EXCEEDING 3,000 SQUARE FEET, TO ESTABLISH AN "OTHER ENTERTAINMENT" USE, AND TO ESTABLISH AN "OTHER LARGE INSTITUTION" USE ABOVE THE FIRST STORY, FOR A PROJECT TO DEMOLISH AN EXISTING BUILDING CONTAINING AUTO REPAIR AND OFFICE USES, AND TO CONSTRUCT A NEW THREE-STORY BUILDING PLUS A MECHANICAL MEZZANINE LEVEL, MEASURING APPROXIMATELY 38,600 SQUARE FEET, CONTAINING AN AUDITORIUM WITH A CAPACITY OF UP TO 800 PATRONS (WITH ANCILLARY PERFORMER AND TECHNICAL SPACES), EDUCATIONAL AND ADMINISTRATIVE FACILITIES FOR THE SFJAZZ ORGANIZATION, A GROUND-FLOOR RESTAURANT, A SMALL GROUND-FLOOR RETAIL SALES AREA, A LOADING AISLE, AND NO OFF-STREET PARKING, WITHIN THE HAYES-GOUGH NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT, AND THE 40-X, 50-X, AND 65-X HEIGHT AND BULK DISTRICTS AND ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

PREAMBLE

On October 30, 2008, Deborah Frieden, acting on behalf of SFJAZZ ("Project Sponsor"), submitted an Environmental Evaluation Application with the Planning Department ("Department"), Case No. 2008.1234E. A Notification of Project Receiving Environmental Review was sent on July 1,

2009 to owners of properties within 300 feet, adjacent tenants, and other potentially interested parties.

On September 23, 2009, the Project Sponsor filed an application with the Planning Department requesting, under Sections 121.1, 121.2, 303, 720.48, and 720.81, Conditional Use Authorization to allow development on a lot exceeding 10,000 square feet, to establish a non-residential use exceeding 3,000 square feet, to establish an "Other Entertainment" use, and to establish an "Other Large Institution" use above the first story, for a development on a 16,500 square-foot site (Lot 003 in Assessor's Block 0816) at 205 Franklin Street, northwest corner at Fell Street ("Project Site"). The project proposed to demolish an existing auto repair and office building and construct a new three-story building with mechanical mezzanine level containing an auditorium with a capacity of up to 800 patrons (with ancillary performer and technical spaces), educational and administrative facilities, a ground-floor restaurant, a small ground-floor retail sales area, a loading aisle, and no off-street parking, measuring approximately 35,000 square feet. The application was subsequently amended to enlarge the proposed building to add additional administrative spaces and dressing rooms, for a total building area of approximately 38,600 square feet. On June 23, 2010, the Project Sponsor filed an application with the Department requesting a Variance from the requirements of Section 136, to allow an architectural projection over the public right-of-way (Case No. 2008.1234CV; collectively, "Project").

On June 23, 2010, a Draft Initial Study/Mitigated Negative Declaration (IS/MND) for the Project was prepared and published for public review.

The Draft IS/MND was available for public comment until July 13, 2010.

On July 15, 2010, the Commission reviewed and considered the Final MND and found that the contents of said report and the procedures through which the Final MND was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) ("CEQA"), 14 California Code of Regulations Sections 15000 et seq. ("the CEQA Guidelines"), and Chapter 31 of the San Francisco Administrative Code ("Chapter 31").

The Commission found the Final MND was adequate, accurate and objective, reflected the independent analysis and judgment of the Department and the Commission, and that the summary of comments and responses contained no significant revisions to the Draft IS/MND, and approved the Final MND for the Project in compliance with CEQA, the CEQA Guidelines and Chapter 31.

The Planning Department, Linda Avery, is the custodian of records, located in the File for Case No. 2008.1234E, at 1650 Mission Street, Fourth Floor, San Francisco, California.

Department staff prepared a Mitigation Monitoring and Reporting program ("MMRP"), which material was made available to the public and this Commission for this Commission's review, consideration and action.

Octavia Area Plan. The Civic Center district is located to the east, and includes various government buildings, museums, libraries, and performing arts buildings.

The scale of development is varied in the area. Corner properties tend to be larger lots, occupied by buildings averaging four to five stories in height. Mid-block properties tend to be narrower and occupied by lower buildings. Throughout the district, however, there are many individual examples of taller mid-block structures, reaching up to seven stories in height. Many of the institutional and performing arts buildings in the area form complexes that occupy entire blocks, such as Davies Symphony Hall, the War Memorial Opera House, Herbst Theatre, and City Hall. This pattern further contributes to the complexity of the context surrounding the Project Site.

5. **Variance Application.** The Project Sponsor is requesting a Variance from the requirements of Planning Code Section ("Section") 136. Section 136 lists a number of features (such as cornices, balconies, bay windows, and flagpoles) that are permitted to project over streets and alleys, with limitations placed on the dimensions of the features and the distance of the projection. The Project proposes a narrow, vertical architectural feature that would project approximately four feet over the Franklin Street sidewalk, near the corner at Fell Street. The purpose of this feature is, in part, to emphasize the corner entry to the facility, provide visibility and identity for the Project, and to enhance the sense of verticality within the building design. There are no provisions within Section 136 that would specifically allow this feature, therefore, a Variance is requested.
6. **Public Comment.** To date, staff has received two communications regarding the Project. The Hayes Valley Neighborhood Association submitted a letter expressing support for the project. The letter also requests that the project sponsor coordinate with the Planning Department to reintroduce a crosswalk to the east side of the intersection at Fell and Franklin Streets, and to upgrade Linden Street as a "living alley" pursuant to the Market and Octavia Area Plan. A neighboring property owner submitted an email that did not specifically object to the Project, but expressed concern with the height, height, massing, and fenestration of the building, as well as the specific design treatment of the Linden Street elevation.
7. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:
 - A. **Use.** The Hayes-Gough Neighborhood Commercial Transit (NCT) District allows Full-Service Restaurant" and "Retail Sales and Services" as principally permitted uses on the first story. An "Other Entertainment" use is permitted through Conditional Use Authorization at the first story. An "Other Large Institution" use is permitted through Conditional Use Authorization above the first story.

The Project proposes a full-service restaurant and a small retail sales area at the ground floor, which are principally permitted. The types of music performance and arts activities associated with the auditorium are categorized as an "Other Entertainment" use, pursuant

to the definition in Section 790.38. The Project would include music educational functions on the first and second stories, and administrative offices for the SFJAZZ organization on the third stories. These activities are categorized as an "Other Large Institution" use, pursuant to the definition in Section 790.50. The Project Sponsor is requesting Conditional Use Authorization for the "Other Entertainment" and "Other Large Institution" uses.

- B. **Height and Bulk.** The subject property is located within the 40-X, 50-X, and 65-X Height and Bulk Districts. Pursuant to Section 270, projects within "-X" Bulk Districts are not subject to specific bulk controls. Pursuant to Section 261.1, upper portions of buildings that abut the southerly side of specified narrow streets must be limited in height in order to preserve a "sun access plane" for Linden Street. This plane is defined by an angle of 45 degrees extending from the most directly opposite northerly property line. This additional height restriction applies to the portion of the narrow street frontage that is located 60 feet away from an intersection with a street wider than 40 feet.

The Project reaches a finished roof height of 40 feet. A mechanical mezzanine level occupies a portion of the roof and reaches a height of 48 feet. However, these features located at this level are necessary to the operation and maintenance of the building, and are therefore excluded from the calculation of building height pursuant to Section 260(1). The Project therefore complies with the basic height limitation for the property.

The Project is situated along the southerly side of Linden Street, which qualifies as a "Narrow Street", pursuant to Section 261.1. Linden Street measures 35 feet in width, therefore, the sunlight access plane must be preserved pursuant to Section 261.1, for the segment of the frontage located 60 feet away from the intersection of Linden and Franklin Streets. The Project incorporates a setback at the third story of the building along the westerly portion of the site that complies with the regulations of Section 261.1.

- C. **Floor Area Ratio.** In the Hayes-Gough NCT District, Section 124 allows a Floor Area Ratio (FAR) of up to 3.0. The Project Site has an area of 16,500 square feet, therefore the allowable FAR would permit a building of up to 49,500 square feet of Gross Floor Area as defined in Section 102.9.

The Project would measure approximately 38,600 square feet, and therefore complies with the maximum allowable FAR.

- D. **Hours of Operation.** Planning Code Section 720.27 states that a Conditional Use Authorization is required for maintaining hours of operation from 2:00AM to 6:00AM.

The Project Sponsor does not propose to operate the facility between the hours of 2:00AM to 6:00AM.

- E. **Off-Street Parking and Car Sharing.** Section 151.1 specifies that no off-street accessory parking is required for any use within an NCT District, and establishes the maximum amount of off-street parking that is permitted as accessory for uses within an NCT District.

The Project proposes no off-street parking, and therefore complies with Section 151.1.

- F. **Off-Street Loading.** Section 152 provides a schedule of required off-street freight loading spaces for all uses in districts other than C-3 or South of Market. Pursuant to this Section, offices, hotels, apartments, and other uses not primarily engaged in the handling of goods do not require off-street loading spaces if the use measures less than 100,000 square feet.

The Project measures 38,600 square feet, and is therefore not required to provide off-street loading. However, a loading area would be situated along the westerly portion of the site, accessible via Linden and Fell Streets. This loading area would be utilized for unloading of musical equipment, deliveries for the restaurant kitchen, and other goods and materials associated with the operations of the various uses within the building.

8. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use authorization. On balance, the Project complies with the criteria of Section 303, in that:

- A. The proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community.

The auditorium will serve as an important cultural and entertainment venue, drawing patrons from throughout the City and the region. This entertainment function is compatible with and will complement the many performing arts venues in the vicinity, including Davies Symphony Hall, Herbst Theater, the War Memorial Opera House, and the Bill Graham Civic Auditorium. The auditorium is relatively small compared to other venues, with a maximum capacity of up to 800 patrons. Therefore, the intensity of events hosted within the Project should not overwhelm the surrounding neighborhood with excessive traffic or noise.

Beyond the performances, the Project will also offer valuable music education opportunities that would serve students from the surrounding neighborhood and the City as a whole. In addition, the upper floor of the building will include administrative offices for SFJAZZ, in support of the mission of the organization to promote the cultural development of the City. The ground floor of the building is transparent along the Fell and Franklin Street frontages, creating a vibrant streetscape by revealing the activities of diners within the restaurant, the patrons congregating in the lobby, and music students practicing within the ensemble room.

The presence of these various functions throughout the day will help to bring vitality and activity to the area, without a single function overwhelming the neighborhood at a given time. The Project is therefore necessary and desirable for, and compatible with, the neighborhood.

- B. The use or feature as proposed will not be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity, or injurious to property, improvements, or potential development in the vicinity, with respect to aspects including, but not limited to the following:
- i. The nature of the proposed site, including its size and shape, and the proposed size, shape, and arrangement of structures.

The Project Site is a regularly-shaped lot that is adequately sized to accommodate the development. The building is generally arranged as a unified form occupying the majority of the lot, similar to other performing arts structures and institutional buildings in the area. However, the Project occupies a smaller footprint and is proposed at a lower height than these structures. Therefore, the Project will serve as a transition between the larger scale of the Civic Center district to the east with the more complex, fine-grained pattern of development within the Hayes Valley neighborhood to the west. In addition, the base of the Project is differentiated by being inset from the upper floors and transparent along the Fell and Franklin Street frontages. This differentiation activates the streetscape and reinforces a human scale for the pedestrian. The shape and size of development on the subject property will not be detrimental to persons or adjacent properties in the vicinity.

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading and of proposed alternatives to off-street parking, including provisions of car-share parking spaces, as defined in Section 166.

The MND prepared for the Project did not identify transportation and circulation impacts beyond those anticipated by the Market and Octavia Neighborhood Plan Environmental Impact Report (EIR). The capacity of the auditorium is relatively small for a performing arts venue, and is not anticipated to draw excessive numbers of vehicles to the area. The transportation demand associated with the various performance, educational, and administrative functions within the Project would be staggered throughout the day, such that the individual functions would not overwhelm the area with traffic at a given time. The Project does not include off-street parking, however, publicly-accessible parking facilities are available in close proximity to the Project Site. In addition, the area is served by ample public transit, so that many of the employees, students, and patrons can be expected to arrive by transit or other means beyond private automobiles. While no off-street loading is required by the Planning Code, the Project includes a loading area at the western portion of the site to accommodate deliveries

associated with music performances, restaurant activities, and the other functions within the building.

As proposed, the traffic patterns, off-street loading, and the lack of off-street parking will not be detrimental to persons or adjacent properties in the vicinity.

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust, and odor.

Performances would occur within the auditorium, which is situated within the interior core of the building and is equipped with acoustic baffling. Therefore, all noise directly resulting from performances would be attenuated and would not be perceptible outside of the building. The MND prepared for the Project identifies that contaminated soils are present on the Project Site. Mitigation Measures for the Project will require the preparation of a Site Mitigation Plan to address this issue, including the suppression of dust during construction activity. Following construction, the operation of the building is not expected to generate unusual amounts of noise, glare, dust, or odor.

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting, and signs.

No open space is required by the Planning Code, however, the Project provides open spaces in the form of a recessed entry plaza at the ground floor, as well as exterior terraces at the second and third floors. The loading and service areas are consolidated at the western portion of the Project Site, and will be screened from adjacent streets by gates and will be roofed by the building floors above. Conditions of approval also require that, as the Project proceeds through the review of building permits, the Project Sponsor will continue to work with Department staff to refine details of lighting, signage, materials, street trees, and other aspects of the design.

- C. Such use or feature as proposed will comply with the applicable provisions of this Code and will not adversely affect the General Plan.

The Project complies with the applicable sections of the Planning Code. The restaurant and small retail uses at the ground floor are principally permitted within the Hayes-Gough NCT. The "Other Entertainment" and "Other Large Institution" uses are allowed through Conditional Use authorization. The Project complies with the height limitations applicable to the Project Site. The Project will not adversely affect the General Plan, as discussed under item #11.

- D. Such use or feature as proposed will provide development that is in conformity with the state purpose of the Hayes-Gough NCT.

Section 720.1 states that, "The Hayes-Gough District controls are designed to allow for growth and expansion that is compatible with the existing building and use scales... to

maintain the mixed-use character of the district, most commercial uses are permitted at the first and second stories..." It further states that, "In order to encourage lively pedestrian-oriented commercial activity, but restrict certain sensitive and problematic uses, eating and drinking, and entertainment uses are directed to the ground story." Finally, this Section states that, "Given the area's central location and accessibility to the downtown and to the City's transit network, accessory parking for residential uses is not required."

The Project would enhance the vitality of the area by drawing patrons, students, and employees at various times of day. The music performances would contribute to the cultural life of the neighborhood and the City as a whole. The ground-floor restaurant will diversify the dining options in the area, activate the streetscape, and reinforce a pedestrian scale at the streetscape. The Project provides no parking and is well-served by transit, reinforcing the transit-oriented purpose of the Hayes-Gough NCT.

- E. With respect to applications filed pursuant to Article 7, Section 703.2(a), zoning categories .46, .47, and .48, that such use or feature will:

- i. Not be open between 2:00AM and 6:00AM.;

The Project Sponsor does not request to operate between the hours of 2:00AM to 6:00AM.

- ii. Not use electronic amplification between midnight and six a.m.;

The majority of events, including those utilizing electronic amplification, would end prior to midnight. However, all events scheduled for the Center would occur within the interior of the building, and noise from the electronic amplification would not be audible from outside the building. Therefore, any occasional or incidental performances that extend past midnight would not generate noise that would become a nuisance to surrounding properties.

- iii. Be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.

Performances would occur within the auditorium, which is situated within the core of the building and is equipped with acoustic baffling. Therefore, all noise directly resulting from events such as concerts would be attenuated and would not be perceptible outside of the building.

9. **Planning Code Section 121.1** establishes criteria for the Planning Commission to consider when reviewing applications for projects within the Hayes-Gough NCT on lots

that exceed 10,000 square feet, through the Conditional Use authorization process. On balance, the Project complies with said criteria in that:

- A. The mass and facade of the proposed structure are compatible with the existing scale of the district.

The existing development in the area surrounding the Project Site is varied in scale and intensity. The building is a unified mass occupying most of the Project Site, a form that is comparable to other performing arts and institutional buildings in the area. However, the Project occupies a smaller footprint than these buildings, and is proposed at a height that transitions from the scale of these structures to the fine-grained pattern of development of Hayes Valley.

- B. The facade of the proposed structure is compatible with the design features of adjacent facades that contribute to the positive visual qualities of the district.

Existing buildings in the area exhibit an eclectic architectural character, with no prevailing style establishing a dominant visual pattern for the neighborhood. The style of the proposed building is contemporary, however, the relatively uniform massing is comparable to the uniform massing of many of the Beaux-Arts structures within the Civic Center District. The upper stories of the Project express a staggered pattern of frosted and vision glazing that is evocative of the punched windows found on many of the older buildings in the vicinity. This glazing pattern utilizes deep reveals, creating depth and shadow across each elevation. The corner terraces at the second and third levels, as well as the recessed entry plaza introduce voids and fracture the massing of the elevations. The design of the Project creates a distinct statement, while respecting the elements that comprise the varied visual character and scale of the surrounding area.

10. **Planning Code Section 121.2** establishes criteria for the Planning Commission to consider when reviewing applications for non-residential uses within the Hayes-Gough NCT that exceed 3,000 square feet, through the Conditional Use authorization process. On balance, the proposed uses comply with said criteria in that:

- A. The intensity of activity in the district is not such that allowing the larger use will be likely to foreclose the location of other needed neighborhood-serving uses in the area.

While the entertainment, educational, and institutional functions within the building are each relatively large, they would not compete with or otherwise foreclose the location of other needed neighborhood-serving uses in the area. Instead, the presence of the various users of the building would bolster the viability of the existing commercial spine of the neighborhood along Hayes Street, as well as the other scattered retail and restaurant uses in the vicinity. In addition, the Project would include a ground-floor restaurant space that would enhance the diversity of dining options in the area and draw customers into the District, both during and outside of performance hours.

- B. The proposed use will serve the neighborhood, in whole or in significant part, and the nature of the use requires a larger size in order to function.

The Project will contribute to and serve the neighborhood by providing employment opportunities, offering music education and performances for area residents, and by drawing patrons who will bolster the neighborhood economy by patronizing nearby businesses.

Although the auditorium is somewhat smaller than other such facilities, performance spaces inherently require larger footprints and volumes to operate. By co-locating the educational and administrative functions of SFJAZZ with the auditorium, each function can utilize the common building systems and facilities. Accordingly, the Project results in a relatively compact structure in proportion to the multiple functions that it serves.

- C. The building in which the use is to be located is designed in discrete elements which respect the scale of development in the district.

As discussed under Item #9A and #9B above, the Project is situated in a context that is varied in height, scale, and visual character. The building massing complements the larger performance buildings within the Civic Center area, but the height and design is also complementary to the fine-grained pattern of Hayes Valley. Although the building is generally designed as a singular mass, a number of details help to animate the facade and create variety within the massing, such as alternating rhythms of projections and voids within the fenestration pattern, corner terraces, and a recessed entry plaza.

11. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT:

Objectives and Policies

OBJECTIVE 6

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.10:

Promote neighborhood commercial revitalization, including community-based and other economic development efforts where feasible.

The Project would replace an existing auto repair and office building with a facility that will provide educational and cultural opportunities to the area, and will draw patrons from throughout the City and region who will patronize nearby businesses. In addition, the ground-

floor restaurant will activate the streetscape and enhance the pedestrian realm compared with the existing uses on the site.

**ARTS ELEMENT:
Objectives and Policies**

OBJECTIVE I-1:

RECOGNIZE THE ARTS AS NECESSARY TO THE QUALITY OF LIFE FOR ALL SEGMENTS OF SAN FRANCISCO.

Policy I-1.1

Promote inclusion of artistic considerations in local decision-making.

Policy I-1.2

Officially recognize on a regular basis the contributions arts make to the quality of life in San Francisco.

Policy I-1.4

Provide access to the creative process and cultural resources for all neighborhoods, cultural communities, and segments of the city and its populations.

OBJECTIVE VI-1

SUPPORT THE CONTINUED DEVELOPMENT AND PRESERVATION OF ARTISTS' AND ARTS ORGANIZATIONS' SPACES.

Policy VI-1.4

Preserve existing performing spaces in San Francisco.

The auditorium will serve as an important cultural and entertainment venue, that will complement the complex of performing arts venues in the area. In addition, the Project will also offer valuable music education opportunities that would serve students from the surrounding neighborhood and the City as a whole. The upper floor of the building will include administrative offices for SFJAZZ, in support of the mission of the organization to promote the appreciation of jazz music. These activities strengthen the recognition and reputation of San Francisco as a city that is supportive of the arts, support the recreational and cultural vitality of San Francisco, bolster tourism, and add to the local economy by drawing patrons from throughout the region.

**MARKET AND OCTAVIA PLAN:
Objectives and Policies**

OBJECTIVE 1.1

CREATE A LAND USE PLAN THAT EMBRACES THE MARKET AND OCTAVIA NEIGHBORHOOD'S POTENTIAL AS A MIXED-USE URBAN NEIGHBORHOOD.

Policy 1.1.2:

Concentrate more intense uses and activities in those areas best served by transit and most accessible on foot.

Policy 1.1.6:

Preserve and enhance the role of cultural and educational institutions in the plan area.

The Project would establish a cultural and educational institution in an area that is well-served by transit, and has abundant amenities, convenience goods, and services within walking distance.

OBJECTIVE 5.2

DEVELOP AND IMPLEMENT PARKING POLICIES FOR AREAS WELL SERVED BY PUBLIC TRANSIT THAT ENCOURAGE TRAVEL BY PUBLIC TRANSIT AND ALTERNATIVE TRANSPORTATION MODES AND REDUCE TRAFFIC CONGESTION.

Policy 5.2.1:

Eliminate minimum off-street parking requirements and establish parking caps for residential and commercial parking.

Policy 5.2.3:

Minimize the negative impacts of parking on neighborhood quality.

The Project provides no off-street parking, creating an incentive for employees, patrons, and students of the facility to travel by means other than the private automobile. The area is well-served by public transit, and is within walking distance of many retail goods and services. Numerous parking facilities are available in the area for individuals who wish to drive to the facility. Therefore, the lack of parking will not negatively impact the quality of the surrounding neighborhood.

12. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the Project does comply with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

The new employees, patrons, and students visiting the Project will patronize area businesses, bolstering the viability of surrounding commercial base. In addition, the Project would include a ground-floor restaurant store that will provide employment opportunities and will diversify the dining options in the area.

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

The Project will not demolish any existing housing stock, and will complement the cultural performances situated in the Civic Center district, as well as the vibrant nightlife activity within Hayes Valley to the west.

- C. That the City's supply of affordable housing be preserved and enhanced,

The Project will not demolish any existing housing stock.

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The area is well served by public transit, providing connections to all areas of the City and to the larger regional transportation network. The Project does not include off-street parking, helping to encourage transit usage, deemphasize reliance on the private automobile, and retain a desirable environment for pedestrian and bicycle activity. Individuals who choose to arrive by private automobile may park in one of the numerous parking facilities located throughout the area.

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The Project does not propose any office development, and will include a restaurant that will provide service sector employment opportunities for area residents.

- F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The Project is designed and will be constructed to conform to the structural and seismic safety requirements of the City Building Code.

- G. That landmarks and historic buildings be preserved.

The existing building that would be demolished by the Project is not considered to be a historic resource.

- H. That our parks and open space and their access to sunlight and vistas be protected from development.

The Project will not cast shadows or impede views for parks and open spaces in the area, nor have any negative impact on existing public parks and open spaces.

13. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would

contribute to the character and stability of the neighborhood and would constitute a beneficial development.

16. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

DECISION

That based upon the Record, the submissions by the Project Sponsor, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings; and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2008.1234C** subject to the following conditions attached hereto as EXHIBIT A which is incorporated herein by reference as though fully set forth, and in general conformance with the plans stamped EXHIBIT B and on file in Case Docket No. 2008.1234CV.

The Planning Commission has reviewed and considered the IS/MND and the record as a whole and finds that there is no substantial evidence that the Project will have a significant effect on the environment with the adoption of the mitigation measures contained in the MMRP to avoid potentially significant environmental effects associated with the Project, and hereby adopts the FMND.

The Planning Commission hereby adopts the MMRP attached hereto as Exhibit C and incorporated herein as part of this Resolution/Motion by this reference thereto. All required mitigation measures identified in the IS/MND and contained in the MMRP are included as conditions of approval.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 18142. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94012.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on July 15, 2010.

Linda Avery
Commission Secretary

Motion 18142
Hearing Date: July 15, 2010

CASE NO 2008.1234CV
205 Franklin Street

AYES: Miguel, Antonini, Lee, Moore, Olague, Sugaya

NAYS:

ABSENT: Borden

ADOPTED: July 15, 2010

Exhibit A

Conditions of Approval

Wherever "Project Sponsor" is used in the following conditions, the conditions shall also bind any successor to the Project or other persons having an interest in the Project or underlying property.

This Conditional Use Authorization is to demolish an existing auto repair and office building and construct a new three-story building, plus a mechanical mezzanine level, measuring approximately 38,600 square feet, containing an auditorium with a capacity of up to 800 patrons (with ancillary performer and technical spaces), educational and administrative facilities for the SFJAZZ organization, a ground-floor restaurant, and a small ground-floor retail sales area, located at 205 Franklin Street, Lot 003 in Assessor's Block 0816, within the Hayes-Gough Neighborhood Commercial Transit District, and the 40-X, 50-X, and 65-X Height and Bulk Districts, in general conformance with the plans dated July 15, 2010, and marked "Exhibit B", except as modified herein.

1. MITIGATION MEASURES

Mitigation measures described in the MMRP attached as Exhibit C are necessary to avoid potential significant effects of the proposed project and have been agreed to by the project sponsor. Their implementation is a condition of project approval.

2. COMPLIANCE WITH OTHER REQUIREMENTS

This decision conveys no right to construct. The conditions set forth below are additional conditions required in connection with the Project. If these conditions overlap with any other requirement imposed on the Project, the more restrictive or protective condition or requirement, as determined by the Zoning Administrator, shall apply. The conditions set forth below shall remain in effect for the life of the Project, unless specifically noted otherwise.

3. GENERAL CONDITIONS

- A. Recordation. Prior to the issuance of any building permit for the construction of the Project, the Zoning Administrator shall approve and order the recordation of a notice in the Official Records of the Recorder of the City and County of San Francisco, which notice shall state that construction of the Project has been authorized by and is subject to the conditions of this Motion. From time to time after the recordation of such notice, at the request of the Project Sponsor, the Zoning Administrator shall affirm in writing the extent to which the conditions of this Motion have been satisfied, and record said writing if requested.
- B. Reporting. The Project Sponsor shall submit to the Zoning Administrator two copies of a written report describing the status of compliance with the conditions of approval.

contained within this Motion every six months from the date of this approval through the issuance of the first temporary certificate of occupancy.

C. Construction.

(1). The Project Sponsor shall ensure the construction contractor will coordinate with the City and other construction contractor(s) for any concurrent nearby Projects that are planned for construction so as to minimize, to the extent possible, negative impacts on traffic and nearby properties caused by construction activities.

(2). The contractor(s) shall arrange for off-street parking for construction workers.

D. Performance. The Planning Commission may, in a public hearing, consider the revocation of this conditional use authorization if a site or building permit has not been issued within three (3) years of the date of the Motion approving the Project. Once a site or building permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued thenceforth diligently to completion. The Commission may also consider revoking this conditional use authorization if a permit for the Project has been issued but is allowed to expire and more than three (3) years have passed since the Motion was approved. This authorization may be extended at the discretion of the Zoning Administrator only if the failure to issue a permit by the Department of Building Inspection is delayed by a City, state or federal agency or by appeal of the issuance of such permit.

E. The operator of the establishment shall obtain all necessary approvals from the San Francisco Entertainment Commission prior to hosting live entertainment events on-site, but no later than 18 months from the date of this Conditional Use authorization.

F. Severability. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other of the remaining provisions, clauses, sentences, or sections of these conditions. It is hereby declared to be the intent of the Commission that these conditions of approval would have been adopted had such invalid sentence, clause, or section or part thereof not been included herein.

G. First Source. The Project is subject to the requirements of the First Source Hiring Program (Chapter 83 of the Administrative Code) and the Project Sponsor shall comply with the requirements of this Program.

H. Violation of the conditions contained in this Motion or of any other provisions of the Planning Code may be subject to abatement procedures and fines up to \$500 a day in accordance with Sections 176 and 176.1 of the Planning Code and actions to abate violations of this conditional use authorization in accordance with Section 303(f).

- I. Should monitoring of these Conditions of Approval be required, the Project Sponsor or successors shall pay fees as established in Section 351(e)(1) of the Planning Code.
 - J. The Property Owner shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean condition. Such maintenance shall include, at a minimum, daily litter pickup and disposal, and washing or steam cleaning of the main entrance and abutting sidewalks at least once each week.
 - K. Noise and odors shall be regulated so as not to be a nuisance to nearby businesses or residents.
 - L. Signs and exterior lighting for ground floor commercial uses shall be consistent with the approved signage program and shall be reviewed and approved by the Planning Department before they are installed.
 - M. Ground level storefronts and glazing in general conformity with Exhibit B shall be maintained in an attractive manner, providing transparency into the tenancy behind. Visibility of the interiors and activity through all windows shall be maintained in order to ensure that the ground level of the building remains visually active, provides visual interest to pedestrians, and enhances sidewalk security. Interior layouts should be designed with these requirements in mind. Generally, windows should not be visually obscured with the following: blinds, shades or curtains; shelving; equipment; darkly tinted, translucent or opaque film; painted, stenciled or adhesive signage applied to individual window surfaces that has an overall transparency of less than 50%, or any signage that covers more than 1/3 of the area of any individual window; full or partial height interior partition walls placed directly against or within 10 feet from the window glazing; or any other items that significantly block the vision of pedestrians through the storefront windows into the occupiable commercial space. Solid roll-down security gates shall not be installed in storefront openings. The Property Owner shall ensure that this condition of approval is incorporated into all commercial leases.
 - N. An enclosed waste storage area shall be provided within the establishment. All trash and recycling containers shall be kept within the building until pick-up by the disposal company.
 - O. The project sponsor is encouraged to provide equitable, inclusive access to music education opportunities for communities at a variety of socioeconomic levels.
4. CONDITIONS TO BE MET PRIOR TO THE ISSUANCE OF A FIRST SITE OR BUILDING PERMIT
- A. Design. The Project Sponsor and the Project architects shall continue to work on design development with the Department, with particular attention given to details regarding reveal dimensions at all windows, moldings, and other details, as well as building materials and colors.

- B. A final pedestrian streetscape improvement plan, including landscaping and paving materials and patterns, shall be submitted for review by, and shall be satisfactory to the Planning Director, in consultation with staff from the Department of Public Works, the Department of Parking and Traffic, and the Bureau of Urban Forestry. Other agencies shall be contacted as appropriate. The Project shall include street trees in conformance with Section 143. The street trees planted pursuant to this condition shall be maintained in perpetuity by the Project Sponsor.
- C. The project sponsor shall make diligent efforts to coordinate with staff from the Planning Department and the San Francisco Municipal Transportation Agency to explore improvements to improve pedestrian capacity and circulation within the vicinity of the project site, including, but not limited to the installation of a pedestrian crosswalk across Fell Street to the east side of Franklin Street, and the installation of sidewalk "bulb-outs" at the intersection of Fell and Franklin Streets.

5. CONDITIONS TO BE MET PRIOR TO THE ISSUANCE OF AN ARCHITECTURAL ADDENDUM TO A BUILDING (OR SITE) PERMIT

- A. Except as otherwise provided in this Motion, the Project shall be completed in compliance with the Planning Code and in general conformity with plans dated July 15, 2010, labeled "Exhibit B".
- B. Final detailed building plans shall be reviewed and approved by the Planning Department. Detailed building plans shall include a final site plan, elevations, sections, and a landscape plan, and shall specify final architectural and decorative detailing, materials, glazing, color and texture of exterior finishes, and details of construction.
- C. Highly reflective spandrel glass, mirror glass, or deeply tinted glass shall not be permitted. Only clear glass shall be used at pedestrian levels.
- D. Pursuant to Planning Code Section 141, rooftop mechanical equipment is required to be screened so as not to be visible from any point at or below the roof level of the subject building.
- E. Signage. The Project Sponsor shall develop a signage program for the Project which shall be subject to review and approval by Planning Department staff. All subsequent sign permits shall conform to the approved signage program. Once approved by Department staff, the signage program information shall be submitted and approved as part of the first building or site permit for the Project.

- F. **Lighting.** The Project Sponsor shall develop a lighting program for the Project which shall be subject to review and approval by Planning Department staff. The lighting program shall include any lighting required or proposed within the public right-of-way as well as lighting attached to the building. Once approved by Department staff, the lighting program information shall be submitted and approved as part of the first building or site permit for the Project.

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MITIGATION MONITORING AND REPORTING PROGRAM
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>1. Air Quality (Construction Mitigation Measure for Short-term Exhaust Emissions)</p> <p>1a) To reduce project level exhaust emissions from construction equipment, the following mitigation measures shall be implemented for construction activities in the project area.</p> <ul style="list-style-type: none"> • Confine idle time of combustion engine construction equipment at construction site to five minutes. • Maintain and properly tune construction equipment in accordance to manufacturer's specifications. • Use alternative fueled or electrical construction equipment at the project site when feasible. • Use the minimum practical engine size for construction equipment. • Equip gasoline-powered construction equipment with catalytic converters when feasible. 	<p>Project sponsor and construction contractor(s)</p>	<p>During construction.</p>	<p>Project sponsor and construction contractor(s)</p>	<p>Considered complete on issuance of building permit.</p>
<p>2. Cultural Resources—Archeology</p> <p>The project sponsor shall distribute the Planning Department archeological resource "ALERT" sheet to the project prime contractor; to any project subcontractor (including demolition, excavation, grading, foundation, pile driving, etc. firms); or utilities firm involved in soils disturbing activities within the project site. Prior to any soils disturbing activities being undertaken each contractor is responsible for ensuring that the "ALERT" sheet is circulated to all field personnel including, machine operators, field crew, pile drivers, supervisory personnel, etc. The project sponsor shall provide the Environmental Review Officer (ERO) with a signed affidavit from the responsible parties (prime contractor, subcontractor(s), and utilities firm) to the ERO confirming that all field personnel have received copies of the "ALERT" Sheet.</p>	<p>Project sponsor and construction contractor(s)</p>	<p>Prior to any soils-disturbing activity.</p>	<p>Distribution of "ALERT" sheet among contractors and crew; project sponsor to provide ERO with a signed affidavit.</p>	<p>Prior to any soils-disturbing activity. Considered complete upon ERO approval of affidavit.</p>

MITIGATION MONITORING AND REPORTING PROGRAM
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>Should any indication of an archeological resource be encountered during any soils disturbing activity of the project, the project Head Foreman and/or project sponsor shall immediately notify the ERO and shall immediately suspend any soils disturbing activities in the vicinity of the discovery until the ERO has determined what additional measures should be undertaken.</p>	<p>Head Foreman and project sponsor</p>	<p>During any soils-disturbing activity.</p>	<p>Notification of ERO if any archeological resources encountered.</p>	<p>During any soils-disturbing activity. Considered complete upon notification of ERO.</p>
<p>If the ERO determines that an archeological resource may be present within the project site, the project sponsor shall retain the services of a qualified archeological consultant. The archeological consultant shall advise the ERO as to whether the discovery is an archeological resource, retains sufficient integrity, and is of potential scientific/historical/cultural significance. If an archeological resource is present, the archeological consultant shall identify and evaluate the archeological resource. The archeological consultant shall make a recommendation as to what action, if any, is warranted. Based on this information, the ERO may require, if warranted, specific additional measures to be implemented by the project sponsor.</p> <p>Measures might include: preservation in situ of the archeological resource; an archaeological monitoring program; or an archeological testing program. If an archeological monitoring program or archeological testing program is required, it shall be consistent with the Major Environmental Analysis (MEA) division guidelines for such programs. The ERO may also require that the project sponsor immediately implement a site security program if the archeological resource is at risk from vandalism, looting, or other damaging actions.</p>	<p>Project sponsor and archeological consultant</p>	<p>Before resumption of any soils-disturbing activity (if suspended).</p>	<p>Archeological consultant shall advise the ERO and ERO may require additional measures.</p>	<p>Prior to resumption of soils-disturbing activity. Considered complete upon ERO approval of archeological consultant's recommendations.</p>
<p>The project archeological consultant shall submit a Final Archeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archeological resource and describing the archeological and historical research methods employed in the archeological monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report.</p>	<p>Project sponsor and archeological consultant</p>	<p>Following completion of any required archeological field program.</p>	<p>Archeological consultant submits draft FARR to ERO for approval.</p>	<p>Prior to issuance of final certificate of occupancy. Considered complete upon ERO approval of draft FARR.</p>

MITIGATION MONITORING AND REPORTING PROGRAM
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>Copies of the Draft FARR shall be sent to the ERO for review and approval. Once approved by the ERO, copies of the FARR shall be distributed as follows: California Archaeological Site Survey Northwest Information Center (NWIC) shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Major Environmental Analysis division of the Planning Department shall receive three copies of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public interest or interpretive value, the ERO may require a different final report content, format, and distribution than that presented above.</p>	<p>Project sponsor and archeological consultant</p>	<p>Following completion of FARR.</p>	<p>Distribute FARR. Submittal to ERO of affidavit of FARR distribution.</p>	<p>Prior to resumption of soils-disturbing activities. Considered complete upon Planning Department receipt of report.</p>
<p>3. Hazards and Hazardous Materials</p> <p>3a) Hazardous Materials.</p> <p>Program or project level mitigation measures would vary depending upon the type and extent of contamination associated with each individual project. Mitigation measures to protect the community generally shall include:</p> <ul style="list-style-type: none"> • Airborne particulates shall be minimized by wetting exposed soils, as appropriate, containing runoff, and tarping over-night and weekends. • Storage stockpiles shall be minimized, where practical, and properly labeled and secured. • Vehicle speeds across unpaved areas shall not exceed 15 mph to reduce dust emissions. • Activities shall be conducted so as not to track contaminants beyond the regulated area. • Misting, fogging, or periodic dampening shall be utilized to minimize fugitive dust, as appropriate. • Contaminants and regulated areas shall be properly maintained. 	<p>Project sponsor and construction contractor(s).</p>	<p>During construction.</p>	<p>Project sponsor and construction contractor(s).</p>	<p>Considered complete on issuance of building permit.</p>

MITIGATION MONITORING AND REPORTING PROGRAM
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>3b) Hazards (UST Removal and/or Monitoring)</p> <p>In accordance with San Francisco Health Code Article 21, the project sponsor shall file an application with the San Francisco Department of Public Health (DPH) for removal and/or monitoring of the 500-gallon UST that was identified as existing beneath the sidewalk in front of 210 Fell Street. Given the potential for hazards and hazardous materials release and exposure with abandoned USTs or residual contamination associated with the site's use, the project sponsor has agreed to implement a soil testing program, to determine the nature and extent of soil contamination (if any). The testing program shall include sampling and analysis for contaminants of concern, which includes lead, to the depth of the intended foundation excavations. If the proposed excavation activities encounter groundwater, the groundwater shall also be tested for contaminants. Copies of the test results shall be submitted to the DPH, Division of Environmental Health, and to the Planning Department, prior to the start of construction.</p> <p>If contamination or abandoned tanks are encountered, the project sponsor shall immediately notify the DPH, Division of Environmental Health, and shall take all necessary steps to ensure the safety of site workers and members of the public. These steps shall include implementation of a health and safety plan prepared by a qualified professional, and disposal of any contaminated soils removed from the site at an approved facility. In addition, the project shall be constructed, so that all remaining site soils are entirely encapsulated beneath a concrete slab. If confirmation testing following site excavation indicates that contaminated soils remain on site, a deed restriction notifying subsequent property owners of the contamination and the necessity of maintaining the cap, shall be executed, prior to a certificate of occupancy.</p>	<p>Project sponsor</p>	<p>Prior to removal of any undiscovered USTs.</p>	<p>Sponsor or contractor shall submit a "Certificate of Closure" received from the DPH, under auspice of RWQCB, to Planning Department and DBI.</p>	<p>Considered complete upon receiving "Certificate of Closure" from DPH.</p>

MITIGATION MONITORING AND REPORTING PROGRAM
(Including the Text of the Mitigation Measures Adopted as Conditions of Approval)

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>3c) Hazards (Testing for and Handling of Contaminated Soil)</p> <p>Step 1: Preparation of Site Mitigation Plan</p> <ul style="list-style-type: none"> DPH determined that the soils on the project site are contaminated with contaminants at or above potentially hazardous levels, and thus have determined that preparation of a Site Mitigation Plan (SMP) is warranted. The SMP shall address the two "hot spots" located at the southwestern portion of the site at borings SB-1 and SB-6, and that the characterization and disposal of any soils from the site be submitted to DPH for review. If excavation of the "hot spot" area is proposed, DPH requests that confirmatory sampling be included in the SMP. "Hot spot" removal shall be included as part of the foundation excavation for the project. Should elevated levels of lead remain on the site, a deed restriction shall be required. The SMP shall include a discussion of the level of contamination of soils on the project site and mitigation measures for managing contaminated soils on the site, including, but not limited to: 1) the alternatives for managing contaminated soils on the site (e.g., encapsulation, partial or complete removal, treatment, recycling for reuse, or a combination); 2) the preferred alternative for managing contaminated soils on the site and a brief justification as to why; and 3) the specific practices to be used to handle, haul, and dispose of contaminated soils on the site. The SMP shall be submitted to the DPH for review and approval. A copy of the SMP shall be submitted to the Planning Department to become part of the case file. 	<p>Project sponsor</p>	<p>Prior to excavation.</p>	<p>The DPH shall determine if preparation of an SMP is warranted. If so, the SMP should be prepared according to certain guidelines, and is subject to approval by the DPH.</p>	<p>Prior to excavation. Considered complete upon DPH review and approval of plans.</p>

**MITIGATION MONITORING AND REPORTING PROGRAM
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)**

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>Step 2: Handling, Hauling, and Disposal of Contaminated Soils</p> <ul style="list-style-type: none"> • (a) <u>Specific work practices</u>: If, based on the results of the soil tests conducted, DPH determines that the soils on the project site are contaminated at or above potentially hazardous levels, the construction contractor shall be alert for the presence of such soils during excavation and other construction activities on the site (detected through soil odor, color, and texture and results of on-site soil testing), and shall be prepared to handle, profile (i.e., characterize), and dispose of such soils appropriately (i.e., as dictated by local, state, and federal regulations) when such soils are encountered on the site. If excavated materials contain over one percent friable asbestos, they shall be treated as hazardous waste, and shall be transported and disposed of in accordance with applicable State and federal regulations. These procedures are intended to mitigate any potential health risks related to chrysotile asbestos, which may or may not be located on the site. • (b) <u>Dust suppression</u>: Soils exposed during excavation for site preparation and project construction activities shall be kept moist throughout the time they are exposed, both during and after construction work hours. • (c) <u>Surface water runoff control</u>: Where soils are stockpiled, visqueen shall be used to create an impermeable liner, both beneath and on top of the soils, with a berm to contain any potential surface water runoff from the soil stockpiles during inclement weather. • (d) <u>Soils replacement</u>: If necessary, clean fill or other suitable material(s) shall be used to bring portions of the project site, where contaminated soils have been excavated and removed, up to construction grade. • (e) <u>Hauling and disposal</u>: Contaminated soils shall be hauled off the 	<p>Project sponsor and construction contractor(s)</p>	<p>Prior to excavation and during demolition, excavation, and construction.</p>	<p>If SMP indicates no contaminants in the soil and DPH concurs, then no monitoring required. If DPH determines presence of contaminants or if project sponsor assumes presence of contaminants, then contractor shall take the indicated mitigation action, and shall provide DPH weekly reports during the construction period.</p>	<p>Prior to excavation, or prior to excavation and during demolition, excavation, and construction. Considered complete if DPH determines the absence of contaminants and if project sponsor assumes the same. Otherwise, considered complete upon receipt by DPH of final monitoring plan.</p>

MITIGATION MONITORING AND REPORTING PROGRAM
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>project site by waste hauling trucks appropriately certified with the State of California and adequately covered to prevent dispersion of the soils during transit, and shall be disposed of at a permitted hazardous waste disposal facility registered with the State of CA.</p>				
<p>Step 3: Preparation of Closure/Certification Report After construction activities are completed, the project sponsor shall prepare and submit a closure/certification report to DPH for review and approval. The closure/certification report shall include the mitigation measures in the SMP for handling and removing contaminated soils from the project site, whether the construction contractor modified any of these mitigation measures, and how and why the construction contractor modified those mitigation measures.</p>	<p>Project sponsor and construction contractor</p>	<p>During demolition, excavation, and construction.</p>	<p>Project sponsor to provide DPH with final closure/certification report.</p>	<p>During demolition, excavation, and construction. Considered complete upon receipt of final monitoring report at completion of construction.</p>
<p>3d) Hazards (Disposal of Contaminated Soil, Site Health and Safety Plan) If, based on the results of the soil tests conducted, the DPH determines that the soils on the project site are contaminated with contaminants at or above potentially hazardous levels, any contaminated soils designated as hazardous waste and required by DPH to be excavated shall be removed by a qualified Removal Contractor and disposed of at a regulated Class I hazardous waste landfill in accordance with U.S. Environmental Protection Agency regulations, as stipulated in the Site Mitigation Plan. The Removal Contractor shall obtain, complete, and sign hazardous waste manifests to accompany the soils to the disposal site. Other excavated soils shall be disposed of in an appropriate landfill, as governed by applicable laws and regulations, or other appropriate actions shall be taken in coordination with the DPH.</p>	<p>Project sponsor and construction contractor</p>	<p>During demolition, excavation, and construction.</p>	<p>If SMP indicates no contaminants in the soil and DPH concurs, then no action required. If DPH determines presence of contaminants, then contractor shall take the indicated action, and shall submit weekly monitoring reports to DPH during the construction period.</p>	<p>During demolition, excavation, and construction. Considered complete if DPH determines the absence of contaminants. Otherwise, considered complete upon receipt by DPH of final monitoring plan.</p>

MITIGATION MONITORING AND REPORTING PROGRAM
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Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>If the DPH determines that the soils on the project site are contaminated with contaminants at or above potentially hazardous levels, a Site Health and Safety (H&S) Plan shall be required by the California Division of Occupational Safety and Health (Cal-OSHA) prior to initiating any earth-moving activities at the site. The Site Health and Safety Plan shall identify protocols for managing soils during construction to minimize worker and public exposure to contaminated soils. The protocols shall include at a minimum:</p> <ul style="list-style-type: none"> • Sweeping of adjacent public streets daily (with water sweepers) if any visible soil material is carried onto the streets. • Characterization of excavated native soils proposed for use on site prior to placement to confirm that the soil meets appropriate standards. • The dust controls specified in the Construction Dust Control Ordinance (176-08). • Protocols for managing stockpiled and excavated soils. <p>The Site Health and Safety Plan shall identify site access controls to be implemented from the time of surface disruption through the completion of earthwork construction. The protocols shall include as a minimum:</p>	<p>Project sponsor and construction contractor</p>	<p>During demolition, excavation, and construction.</p>	<p>If SMP indicates no contaminants in the soil and DPH concurs, then no action required. If DPH determines presence of contaminants, then an H&S Plan would be required, which shall meet certain requirements.</p>	<p>During demolition, excavation, and construction. Considered complete if DPH determines the absence of contaminants. Otherwise, considered complete upon receipt by DPH of final monitoring plan.</p>

MITIGATION MONITORING AND REPORTING PROGRAM
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Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<ul style="list-style-type: none"> • Appropriate site security to prevent unauthorized pedestrian/vehicular entry, such as fencing or other barrier or sufficient height and structural integrity to prevent entry and based upon the degree of control required. • Posting of "no trespassing" signs. • Providing on-site meetings with construction workers to inform them about security measures and reporting/contingency procedures. <p>If groundwater contamination is identified, the Site Health and Safety Plan shall identify protocols for managing groundwater during construction to minimize worker and public exposure to contaminated groundwater. The protocols shall include procedures to prevent unacceptable migration of contamination from defined plumes during dewatering.</p> <p>The Site Health and Safety Plan shall include a requirement that construction personnel be trained to recognize potential hazards associated with underground features that could contain hazardous substances, previously unidentified contamination, or buried hazardous debris. Excavation personnel shall also be required to wash hands and face before eating, smoking, and drinking.</p> <p>The Site Health and Safety Plan shall include procedures for implementing a contingency plan, including appropriate notification and control procedures, in the event unanticipated subsurface hazards are discovered during construction. Control procedures shall include, but would not be limited to, investigation and removal of underground storage tanks or other hazards.</p>	<p>Project sponsor and construction contractor</p>	<p>During demolition, excavation, and construction.</p>	<p>If SMP indicates no contaminants in the soil and DPH concurs, then no action required. If DPH determines presence of contaminants, then an H&S Plan would be required, which shall meet certain requirements.</p>	<p>During demolition, excavation, and construction. Considered complete if DPH determines the absence of contaminants. Otherwise, considered complete upon receipt by DPH of final monitoring plan.</p>

MITIGATION MONITORING AND REPORTING PROGRAM
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Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>3e) Hazards (Decontamination of Vehicles)</p> <p>If the DPH determines that the soils on the project site are contaminated with contaminants at or above potentially hazardous levels, all trucks and excavation and soil handling equipment shall be decontaminated following use and prior to removal from the site. Cross contamination shall be first removed through brushing, wiping, or dry brooming. The vehicle or equipment shall then be washed clean (including tires). Prior to removal from the work site, all vehicles and equipment shall be inspected to ensure that contamination has been removed.</p>	<p>Project sponsor</p>	<p>After equipment use and prior to removal from the work site.</p>	<p>If required by the DPH, the project sponsor shall follow measures to decontaminate soils and transportation vehicles.</p>	<p>Considered complete on issuance of building permit.</p>

NEW MARKETS TAX CREDIT INDEMNIFICATION AGREEMENT

THIS NEW MARKETS TAX CREDIT INDEMNIFICATION AGREEMENT ("**Agreement**") is given as of September [], 2011, by the **CITY AND COUNTY OF SAN FRANCISCO** ("**CITY**"), **SAN FRANCISCO COMMUNITY INVESTMENT FUND**, a California nonprofit public benefit corporation ("**Managing Member**") and **SFCIF SUB CDE 2, LLC**, a California limited liability company (the "**Company**"; the Company, City and the Managing Member, each an "**Indemnitor**" and together, the "**Indemnitors**"), for the benefit of **U.S. BANCORP COMMUNITY DEVELOPMENT CORPORATION**, a Minnesota corporation, and its successors and assigns ("**USBCDC**").

Recitals

- A. Managing Member is the managing member of the Company.
- B. USBCDC is making an equity investment on or about the date hereof in the net amount of \$[11,104,275] (the "**Fund Equity**") in SF Jazz Investment Fund, LLC, a Missouri limited liability company (the "**Fund**"), pursuant to that certain Operating Agreement for the Fund dated as of the date hereof (the "**Fund LLC Agreement**"), and will acquire a 100% membership interest in the Fund (the "**Fund Membership Interest**").
- C. The Fund is, as of the date hereof, obtaining loans from [], a California nonprofit public benefit corporation, in the aggregate principal amount of \$[29,645,725] (the "**Fund Loan**").
- D. The proceeds of the Fund Equity and the Fund Loan will be used to, among other things, make an equity investment (the "**Company Investment**") in the amount of \$15,000,000 in the Company pursuant to that certain Amended and Restated Operating Agreement of the Company dated as of the date hereof (the "**Company LLC Agreement**"), by and between the Fund and Managing Member. Terms appearing in this Agreement as initially capitalized terms and not otherwise expressly defined herein shall have the respective meanings given them in the Company LLC Agreement.
- E. The Company Investment is intended to constitute a "qualified equity investment" as defined under Section 45D of Internal Revenue Code of 1986, as amended, or corresponding provisions of subsequent superseding federal revenue laws (the "**Code**"), on account of which the Fund is expected to receive a 100% allocable share, and USBCDC is expected to receive a 100% allocable share, of the New Markets Tax Credits generated by such investment.
- F. The Company intends to make the investments as described in the Company LLC Agreement, as Qualified Low-Income Community Investments thereunder, and may from time to time make other Qualified Low-Income Community Investments under the circumstances and in the manner provided for in the Company LLC Agreement.

G. The Managing Member is responsible for carrying out its duties and obligations under the Company LLC Agreement, and in consideration of providing such services, the Managing Member will be entitled to receive certain fees.

H. USBCDC is making its equity investment in the Fund, and the Fund is making its Company Investment in the Company, based on the assumption that the Company Investment will generate New Markets Tax Credits, as specifically set forth in the NMTC Assumption (defined below), based in part on certain representations, warranties and covenants of Managing Member in the Company LLC Agreement. USBCDC is relying on the truth, accuracy and performance thereof in making its investment.

I. USBCDC, as a condition of making an equity investment in the Fund, has required that the Indemnitors enter into this Agreement to provide certain assurances of the performance by the Managing Member of its obligations under the Company LLC Agreement. Each Indemnitor is willing to enter into this Agreement because it shall directly receive substantial benefits therefrom, as set forth herein, and because the activities to be conducted by the Company and the Fund shall be in furtherance of the purposes of each Indemnitor.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Indemnitor agrees as follows:

1. Tax Assumptions. Each Indemnitor acknowledges that, by virtue of the Company Investment, and assuming no Recapture Event occurs, USBCDC expects to be entitled to claim New Markets Tax Credits in an amount equal to 100% of (i) 5% of the Company Investment (*i.e.*, as of the date hereof, \$750,000) on the date on which the same is made in the Company (being the first Credit Allowance Date for such Company Investment) and on each of the next two anniversary dates of such Credit Allowance Date, and (ii) 6% of the Company Investment (*i.e.*, as of the date hereof, \$900,000) on each of the next four anniversary dates of such Credit Allowance Date (the “*NMTC Assumption*”). The NMTC Assumption shall be revised upon the occurrence of future Company Investment.

2. Indemnification for Certain Recapture Events.

(a) Each Indemnitor agrees unconditionally and irrevocably to indemnify USBCDC, in the amount set forth in Section 2(b) below, in the event that there is a Final Determination (as defined below) that a Recapture Event (as defined below) shall have occurred:

(i) under Section 45D(g)(3)(A) as a result of the Company or Managing Member failing to qualify or ceasing to qualify as a CDE;

(ii) under Section 45D(g)(3)(B) as a result of Company’s failure to use substantially all of the Company Investment to make QLICs into QALICBs;

(iii) under Section 45D(g)(3)(C) as a result of any distribution made by the Managing Member contrary to the terms of the Company LLC Agreement and without the consent or approval of USBCDC; or

(iv) as a result of any willful misconduct, gross negligence (including, but not limited to, failure of the Managing Member to notify USBCDC within ten (10) calendar days of (A) the date upon which Managing Member obtains knowledge of any event that could reasonably be determined to cause or result in a Recapture Event and/or (B) the date upon which the Managing Member receives a notice of non-compliance from the CDFI Fund regarding the Company Investment, the status of the Company or the Managing Member as a CDE, or the QLICs, including without limitation any notice regarding the events described in subsections (i) through (iv) above)), fraud, malfeasance, material violation of any law by any Indemnitor, breach of any material provision of the CDE Operating Agreement or any material breach of the representations contained in the CDE Operating Agreement, which results in a Recapture Event (collectively, "**Bad Acts**"); provided, however, that the foregoing indemnification shall not apply to any Recapture Event if and to the extent solely caused by USBCDC's or the Fund's own actions or inactions and not by the actions or inactions of any Indemnitor.

provided, however, that in the case of a Recapture Event set forth in Section 2(a)(ii) and 2(a)(iii) above that is not the result of any Bad Acts, the cumulative liability of the Indemnitors shall be limited to and shall in no event exceed \$[5,500,000].

For purposes of this Agreement, "**Recapture Event**" shall mean any event that results in the recapture or loss of New Markets Tax Credits under the Code. If a Recapture Event is caused by anything that is not identified in Section 2(a)(i) through (iv), or is caused solely by any action or inaction by USBCDC or the Fund, then it shall not be included or covered by the Indemnification in this Agreement. For purposes of this Agreement, "**Indemnification**" shall mean the indemnification described in this Section 2(a).

(b) Amount of the Indemnification. The indemnification set forth in Section 2(a) by the Indemnitors to USBCDC (the "**Indemnified Amount**") shall be equal to the sum of:

(i) All recaptured New Markets Tax Credits and the Present Value (as defined below) of all disallowed New Markets Tax Credits that USBCDC does not or will not actually recognize as a member of the Fund but that would have been recognized by USBCDC as a member of the Fund had such Recapture Event not occurred, as determined by the Accountants (as defined in the Company LLC Agreement) applying all assumptions and methods (including, but not limited to, tax rates, timing of tax credit recognition, and internal rates of return) used in preparing the Projections (as defined in the Fund LLC Agreement), plus

(ii) any federal and state penalties and interest that USBCDC is required to pay as a result of such Recapture Event, plus

(iii) all reasonable legal, accounting, and other fees and costs incurred by USBCDC on behalf of itself and the Fund and the Company (and if such costs are incurred directly by the Fund or the Company, the indemnity payment shall be made directly to the Fund and the Company, as applicable) in connection with collecting any

amounts due under this Agreement, enforcing this Agreement whether or not suit is filed, any tax audit, litigation or other proceedings challenging USBCDC's or the Fund's entitlement to the New Markets Tax Credits as a result of any such Recapture Event, provided that the Managing Member, acting on behalf of the "Tax Matters Member" of the Company pursuant to the Company LLC Agreement, shall be entitled to participate in and to represent the Company in any such audit, litigation or other proceedings, pursuant to and in accordance with the provisions of Section 7.12 of the Company LLC Agreement, plus

(iv) such additional amount (if any) as shall be required to cause USBCDC to have received, on an after-tax basis, an "Annual After Tax Internal Rate of Return" (as defined and calculated in the manner provided in the Projections of [10.45]% (representing USBCDC's projected return from its investment in the Fund), taking into account (in lieu of USBCDC's receipt of the Tax Credits) the effect of the recapture of Tax Credits and the receipt of the cash payments provided for herein, and utilizing the same methodology as used in the Projections, plus

(v) the amount of the federal and state income tax liability (a "**Tax Equivalency Payment**"), if any, that would be imposed on USBCDC from the recognition of any taxable income from the receipt of the amounts described in the foregoing subsections (i), (ii), (iii) and (iv) and before application of any applicable New Markets Tax Credits allocated for such year, which aggregate payment shall be grossed up by any such tax liability payable respecting the Tax Equivalency Payment itself, assuming that USBCDC is subject to tax at a combined tax rate equal to the actual combined federal and state tax rate payable by USBCDC.

For the purposes of this Section 2, "Present Value" shall mean the present value of the New Markets Tax Credits contemplated under Section 2(b)(i) calculated using a discount rate of six percent (6%).

(c) Appeal of a Final Determination. If the Indemnitors reasonably believe that there is a valid basis upon which to appeal or contest a Final Determination (as defined below) that a Recapture Event covered by Section 2(a) has occurred, the Indemnitors may submit to USBCDC a detailed explanation of such basis and a proposed plan for appealing or contesting any determination by the IRS (the "**Proposal**"). USBCDC shall review the Proposal in good faith. USBCDC shall determine in its reasonable discretion whether to permit such contest or appeal (the "**Appeal**"). If USBCDC denies the Indemnitors' Proposal to Appeal, USBCDC shall notify the Indemnitors of such denial and provide a brief statement of its reasons for such denial. If USBCDC agrees to permit the Appeal, the Indemnitors shall be solely responsible for retaining all law firms or other professionals involved in the Appeal, subject to the reasonable approval of USBCDC. The Appeal shall not address, affect or impact any issues other than the specific Recapture Event being appealed or contested. The Indemnitors shall be solely responsible for all costs, fees and expenses incurred in connection with, arising out of, or resulting from, the Appeal until such time as Indemnitor prevails in the Appeal or pays the amounts due under Section 2. USBCDC agrees to cooperate in good faith with Indemnitor in pursuing such Appeal; provided, however, that nothing in this Agreement shall be deemed to (x) authorize the Indemnitors or

counsel engaged on behalf of the Indemnitors to agree to any settlement with the IRS with respect to an Appeal without the prior written consent of USBCDC, or (y) preclude USBCDC itself from entering into, or determining that it will not enter into, any settlement with respect to an Appeal, so long as USBCDC has complied with the provisions of this Section 2(d). In no event shall any of the foregoing affect the timing of any payment required to be made hereunder by Indemnitor to USBCDC; provided, however, that if, after the Indemnitors shall have paid the Indemnified Amount to USBCDC (the "**Amount Paid**"), if, as a result of an Appeal or otherwise, the Indemnified Amount is reduced to an amount which is less than the Amount Paid, then USBCDC shall be obligated to return to the Indemnitors the amount by which the Amount Paid exceeds such reduced Indemnified Amount.

For purposes of this subparagraph 2(c), "**Final Determination**" means the earliest to occur of (i) the date on which a decision, judgment, decree or other order has been issued by any court of competent jurisdiction, which decision, judgment, decree or other order has become final (i.e., all allowable appeals requested by the parties to the action have been exhausted), (ii) the date on which the Internal Revenue Service ("**IRS**") has entered into a binding agreement with the Indemnitors (or any one of them) with respect to such issue or on which the IRS has reached a final administrative or judicial determination with respect to such issue which, whether by law or agreement, is not subject to appeal, (iii) a date mutually acceptable to Indemnitors and USBCDC and confirmed in writing, (iv) the date on which USBCDC provides reasonably detailed written notice to any Indemnitor of the existence of a Recapture Event covered by the Indemnification together with supporting documentation thereof with respect to the existence and amount of such Recapture Event, or (v) the date on which USBCDC (or its parent) is required under applicable law to file a federal income tax return reflecting the occurrence of a Recapture Event covered by the Indemnification.

3. Termination. The obligations of Indemnitors set forth in this Agreement hereof shall terminate upon the end of the calendar year that includes the date on which the IRS is prohibited from assessing additional tax liability against the Fund and/or USBCDC for any year in which it claimed New Markets Tax Credits.

4. General.

(a) USBCDC shall not be obligated to make available any confidential information relating to its federal or state income tax returns or any issues relating thereto nor any computer program employed to calculate any such amount except and to the extent required to determine the Indemnified Amount.

(b) In the event of any action at law or in equity to enforce the provisions of this Agreement or to secure relief or damages for the breach of this Agreement, the prevailing party shall be entitled to its reasonable costs (including reasonable attorneys' fees) incurred in such proceedings.

(c) In the event of a disagreement, the Indemnified Amount shall be determined by the Accountants (as defined in the Company LLC Agreement).

(d) All payments made hereunder shall be made in U.S. dollars in immediately available funds (unless the paying party is otherwise instructed by the recipient of such payment) to the account of the recipient. Amounts required to be paid under this Agreement shall be due and payable within twenty (20) business days after written demand therefor. Amounts not paid within such period shall bear interest at a rate equal to the "prime rate" (or its equivalent) announced by U.S. Bank, National Association, from time to time, plus 2% per annum, until such amounts and the interest thereon are paid in full.

(e) This Agreement shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and permissible assigns whether or not an express assignment to any such holder of rights under this Agreement has been made. No Indemnitor may assign its obligations hereunder without the prior written consent of USBCDC. If any or all of the right to claim New Markets Tax Credits with respect to the Company is assigned by USBCDC, this Agreement shall automatically be assigned therewith in whole or in part, as applicable, without the need of any express assignment, and, when so assigned, each Indemnitor shall be bound as set forth herein to the assignee(s) without in any manner affecting such Indemnitor's liability hereunder with respect to any rights hereunder retained by USBCDC.

(f) Each Indemnitor hereby waives notice of the acceptance of this Agreement and of the extension or modification with respect to the NMTC Assumption or Company LLC Agreement or any part thereof. Each Indemnitor further waives presentment, protest, notice, demand or action on delinquency in respect of the NMTC Assumption or Company LLC Agreement or any part thereof, including any right to require USBCDC to sue the Fund or the Company or any other person obligated with respect to the NMTC Assumption or Company LLC Agreement or any part thereof, or otherwise to enforce payment thereof against any collateral securing the NMTC Assumption or Company LLC Agreement or any part thereof.

(g) This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of law, except to the extent that any of such laws may now or hereafter be preempted by Federal law, in which case, such Federal law shall so govern and be controlling. In any action brought under or arising out of this Agreement, each Indemnitor hereby consents to the jurisdiction of any competent court within the Northern District of California and consents to service of process by any means authorized by the laws of such state. Except as provided in any other written agreement now or at any time hereafter in force between USBCDC and the Company and/or the Managing Member, this Agreement shall constitute the entire agreement of the Indemnitors with USBCDC with respect to the subject matter hereof, and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon USBCDC or each Indemnitor unless expressed herein.

(h) No amendment or modification of this Agreement; and no approvals, consents or waivers by USBCDC hereunder, shall be valid or binding unless in writing and executed by the party to be bound and provided to the party to be bound at the address of such party as set forth in the Company LLC Agreement or Fund LLC Agreement, as the case may be.

(i) This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes in their entirety any and all written or oral agreements previously existing between the parties with respect to such subject matter.

(j) Should any one or more provisions of this Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

(k) Each Indemnitor hereby agrees that this Agreement, the indemnified amounts as described in Section 2 hereof, and all other obligations indemnified hereby shall remain in full force and effect at all times hereinafter until paid and/or performed in full, notwithstanding any action or undertakings by or against the Company, the Fund, the Indemnitors and/or any member of any of the Indemnitors, the Fund, or the Company in any proceeding in the United States Bankruptcy Court, including, without limitation, any proceeding relating to valuation of collateral, election or imposition of secured or unsecured claim status upon claims by USBCDC pursuant to any Chapter of the Bankruptcy Code or the Rules of Bankruptcy Procedure as the same may be applicable from time to time. Notwithstanding the foregoing or anything else set forth herein, and in addition thereto, if at any time all or any part of any payment received by USBCDC from either Indemnitor under or with respect to this Agreement is or must be rescinded or returned for any reason whatsoever (including, but not limited to, any determination that the payment was a voidable preference or fraudulent transfer under insolvency, bankruptcy or reorganization laws), then the Indemnitors' obligations hereunder shall, to the extent of the payment rescinded or returned, be deemed to have continued in existence, notwithstanding the previous receipt of payment by USBCDC, and the Indemnitors' obligations hereunder shall continue to be effective or be reinstated as to such payment, all as though such previous payment to USBCDC had never been made. The provisions of the foregoing sentence shall survive termination of this Agreement, and shall remain a valid and binding obligation of each Indemnitor until satisfied.

(l) The obligations of each Indemnitor under this Agreement shall be a recourse obligation of each Indemnitor and shall (to the full extent permitted by law) survive the dissolution of the Company or the Fund and the death, dissolution, retirement, incompetence, insolvency, bankruptcy, or withdrawal of the Managing Member or any member thereof.

(m) Each Indemnitor covenants, represents and warrants to and for the benefit of USBCDC as follows:

(i) the execution, delivery and performance by it of this Agreement does not contravene or conflict with any law, order, rule, regulation, writ, injunction or decree now in effect of any government, governmental instrumentality or court or tribunal having jurisdiction over it, or any contractual restriction binding on or affecting it;

(ii) such Indemnitor has all necessary power and authority to enter into and perform this Agreement, and there are no facts or circumstances of which such Indemnitor is aware that could in any way impair or prevent it from performing its obligations under this Agreement;

(iii) any and all financial information with respect to such Indemnitee given by such Indemnitee to USBCDC fairly and accurately present such Indemnitee's financial condition and results of its operations as of the respective dates thereof and for the respective dates indicated therein, and subsequent to the respective dates thereof there has been no material adverse change in such Indemnitee's financial condition or the results of its operations; and

(iv) with the assistance of counsel of its choice, it has read and reviewed this Agreement and such other documents as it and its counsel deemed necessary or desirable to read.

(n) Managing Member and Company further covenant and agree to promptly notify USBCDC of any change in the financial condition of Managing Member and/or Company that adversely and materially affects its ability to perform hereunder.

(o) Managing Member and Company further covenant and agree to (i) deliver or cause to be delivered unaudited financial statements for Managing Member and Company to USBCDC within one hundred twenty (120) calendar days of the end of each fiscal year, (ii) deliver or cause to be delivered audited financial statements for Managing Member and Company to USBCDC within one hundred eighty (180) calendar days of the end of each fiscal year, and (iii) upon written request of USBCDC, provide or cause to be provided to USBCDC with any other reports or financial information with respect to any Indemnitee reasonably requested by USBCDC or that any Indemnitee is otherwise obligated to provide; provided, however, that to the extent that the Managing Member and/or the Company cannot provide the requested information, the Managing Member and the Company covenant and agree to provide contact information, including a name, phone number and email address, for the applicable City representative(s) that is able to provide the requested information. Indemnitees acknowledge and agree that audited financial statements and other financial information for City are and will be available to USBCDC at the following links: <http://www.sfcontroller.org/index.aspx?page=402> and <http://www.sfcontroller.org/index.aspx?page=275>.

(p) Payment of the Indemnified Amount shall be made by the Indemnitees from their own funds directly to USBCDC. No capital contribution, loan, or advance by the Managing Member to the Company shall be deemed a satisfaction of payment of the Indemnified Amount.

(q) All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by depositing same by overnight delivery for next Business Day delivery or by depositing same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

(i) If to USBCDC: U.S. Bancorp Community Development Corporation
1307 Washington Avenue, Suite 300
St. Louis, Missouri 63103

Attention: Director of Asset Management – NMTC
Project #: 21041
Facsimile: 314.335.2602

With a copy to:

Husch Blackwell LLP
190 Carondelet Plaza, Suite 600
St. Louis, Missouri 63105
Attention: Edward J. Lieberman
Facsimile: 314.480.1505

(ii) If to Indemnitors: City and County of San Francisco
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attention: Executive Director
Facsimile: (415) 749-2525

With a copy to:

San Francisco Community Investment Fund
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attention: Fred Blackwell, President
Facsimile: (415) 749-2525

All notices, demands and requests shall be effective upon such personal delivery or upon being deposited with an overnight carrier or in the United States mail as required above. However, with respect to notices, demands or requests so deposited with an overnight carrier or in the United States mail, the time period in which a response to any such notice, demand or request must be given shall commence to run from the next Business Day following any such deposit with Federal Express or, in the case of a deposit in the United States mail as provided above, the date on the return receipt of the notice, demand or request reflecting the date of delivery or rejection of the same by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent. Each party hereto shall have the right from time to time to change its address and the right to specify as its address any other address within the United States of America by giving to the other party hereto at least thirty (30) calendar days' written notice thereof in accordance with the provisions hereof.

(r) The liability of each Indemnitor under this Agreement shall be an absolute, direct, immediate and unconditional Indemnity of payment and not of collectability. Each Indemnitor shall be jointly and severally liable with any other indemnitor. The amount of each Indemnitor's liability and all rights, powers and remedies of USBCDC hereunder shall be cumulative and not alternative, and such rights, powers and remedies shall be in addition to any and all rights, powers and remedies given to USBCDC under the CDE Operating Agreement or any other document or agreement relating in any way to the terms and provisions thereof or

otherwise provided by law. The obligations of each Indemnitor hereunder are independent of the obligations of any Affiliate or any other party which may be initially or otherwise responsible for performance or payment of the obligations hereunder guaranteed, and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against any one or more Indemnitor, whether or not any Affiliate is joined therein or a separate action or actions are brought against any Affiliate.

(s) When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural, and the masculine shall include the feminine and neuter and vice versa. The word "person" as used herein shall include any individual, company, firm, association, limited liability company, partnership, corporation, trust or other legal entity of any kind whatsoever.

(t) This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, with the same effect as if all parties hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages. Execution by any Indemnitor shall bind such Indemnitor regardless of whether any one or more other indemnitors executes this Agreement.

[Remainder of page intentionally left blank]
[Signature Pages Follow]

IN WITNESS WHEREOF, each Indemnitor has caused this New Markets Tax Credit Indemnification Agreement to be executed by its duly authorized officer as of the date first written above.

CITY AND COUNTY OF SAN FRANCISCO

By: _____
Name: _____
Its: _____

SAN FRANCISCO COMMUNITY INVESTMENT FUND, a California nonprofit public benefit corporation

By: _____
Name: Fred Blackwell
Its: President

SFCIF SUB CDE 2, LLC, a California limited liability company

By: San Francisco Community Investment Fund, a California nonprofit public benefit corporation, its managing member

By: _____
Name: Fred Blackwell
Its: President

ACCEPTANCE BY USBCDC

The undersigned, U.S. Bancorp Community Development Corporation, hereby accepts the foregoing New Markets Tax Credit Indemnification Agreement.

**U.S. BANCORP COMMUNITY
DEVELOPMENT CORPORATION, a
Minnesota corporation**

By: _____
Tina Lin, Officer

COMMUNITY BENEFITS AGREEMENT

THIS COMMUNITY BENEFITS AGREEMENT (this "**Agreement**") is made and entered into as of September [redacted], 2011; by and between SFCIF Sub CDE 2, LLC, a California limited liability company ("**SFCIF Sub CDE**"), Clearinghouse NMTC (Sub 25), LLC, a California limited liability company ("**Clearinghouse Sub CDE**"), Northern California Community Loan Fund NMTC Sub-CDE IV, LLC, a California limited liability company ("**NCCFL Sub CDE**"), NFF New Markets Fund XIV, LLC, a Delaware limited liability company ("**NFF Sub CDE**") (each of SFCIF Sub CDE, Clearinghouse SUB CDE, NCCFL Sub CDE and NFF Sub CDE, a "**Lender**" and, collectively, "**Lenders**"), SFJ Properties, LLC, a California Limited Liability Company, (the "**Borrower**") and San Francisco Jazz Organization, Inc., a California nonprofit public benefit corporation (the "**Sponsor**" and together with the Borrower, the "**NMTC Beneficiary**").

Recitals

A. San Francisco Community Investment Fund, a California nonprofit public benefit corporation ("**SFCIF**"), received a \$35 million allocation of NMTCs from the Community Development Financial Institution Fund (the "**CDFI Fund**") in the 8th (2010) allocation round; the Clearinghouse Community Development Financial Institution ("**Clearinghouse**"), received a \$100 million allocation of NMTCs from the CDFI in the 7th (2009) allocation round and a \$35 million allocation of NMTCs from the CDFI Fund in the 8th (2010) allocation round; the Northern California Community Loan Fund ("**NCCLF**"), a California nonprofit public benefit corporation, received a \$21 million allocation of NMTCs from the CDFI Fund in the 8th (2010) allocation round; and the Nonprofit Finance Fund, a New York nonprofit public benefit corporation ("**NFF**"), received a \$21 million allocation of NMTCs from the CDFI Fund in the 8th (2010) allocation round, (each of SFCIF, Clearinghouse, NCCFL and NFF, an "**Allocatee**" and, collectively, "**Allocatees**").

B. Under the terms and conditions applicable to the NMTC program and the respective Allocation Agreements between each Allocatee and the CDFI Fund, SFCIF sub-allocated \$15 million of NMTCs to SFCIF Sub CDE, Clearinghouse sub-allocated \$7.3 million of NMTCs from its 2009 allocation and \$5.75 million from its 2010 allocation to Clearinghouse Sub CDE, NCCLF sub-allocated \$7.625 million in NMTCs to NCCLF Sub CDE and NFF sub-allocated \$5 million of NMTCs to NFF Sub CDE, each sub-allocation was made in connection with the loan in the amount of \$39,685,250, (the "**Loan**") provided by Lenders to Borrower under the Loan Agreement (the "**Loan Agreement**") dated as of even date herewith between Lenders and Borrower to finance the redevelopment of an approximately 50,000 square foot performance and educational facility (the "**Project**") as described in the Loan Agreement and related documents between Lenders and NMTC Beneficiary to be signed and delivered in connection with the Loan.

C. The parties understand and acknowledge that the Project is located in a particularly economically distressed and underserved community (Census Tract No. 06075016200) (the "**Project Area**") characterized by a median family income of 55.8% of the greater of the statewide median family income or the Metropolitan Area median family income.

D. The availability of NMTCs has enabled the Lender to provide the Loan on terms and conditions that are flexible and non-conventional, including interest rates that are at least [50%] lower than the prevailing market rates for the same product.

E. NMTC Beneficiary acknowledges that Lender's agreement to execute the Loan Agreement and make the Loan is expressly predicated upon (1) NMTC Beneficiary's agreement to sign, deliver and perform this Agreement, (2) the Project's location in the Project Area, which is a community lacking adequate access to capital, (3) the significant community development benefits that will be delivered within the Project Area and other Low-income Communities as a result of the Project, and (4) the significant benefits that will be delivered to Low-Income Persons within the Project Area and other Low-Income Communities.

F. Lender and NMTC Beneficiary desire to enter into this Agreement to ensure that the expected benefits expected from the Loan will be achieved.

Accordingly, the parties agree as follows:

Agreement

1. **Definitions.** The following capitalized terms will have the following meanings in this Agreement:

(a) **"FTE"** means Full-Time Equivalent constituting permanent employment of at least 35 hours per week;

(b) **"New Hire"** means an employee that is not identified within the group of core workers for the either the General Contractor or Subcontractors as documented with City Build.

(c) **"Living Wages"** means compliance with the provisions of the Minimum Compensation Policy and Health Care Accountability Policy (the **"Policies"**) attached as Exhibit D. Such compliance includes providing all "Covered Employees," as defined under Section 2.7 of the Policies, a minimum level of compensation and offering health plan benefits to such employees or to make payments to the City and County of San Francisco's Department of Public Health, or to participate in a health benefits program developed by the City and County of San Francisco's Director of Health.

(d) **"Locally Sourced"** means individuals that reside within the city limits of San Francisco, California.

(e) **"Low-Income Community"** means any population census tract satisfying the definition of Low-Income Community under the New Markets Tax Credit program as set forth in Internal Revenue Code Section 45D(e), including any population census tract if (1) the poverty rate for such tract is at least 20%, or (2) (a) in the case of a tract not located within a metropolitan area, the median family income of such tract does not exceed 80% of statewide median family income, or (b) in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80% of the greater of statewide median family income or the metropolitan area median family income;

(f) **"Low-Income Person"** means any individual having an income, adjusted for family size, of not more than: (1) for metropolitan areas, 80% of the area median family income; and (2) for non-metropolitan areas, the greater of (a) 80% of the area median family income or (b) 80% of the statewide non-metropolitan area median family income;

(g) **"Permanent FTE Job"** means a job that is at least 24 months in duration and involves at least a 35-hour workweek;

(h) **"Predevelopment or Construction FTE Job"** means a job that is under 24 months in duration and results from the development of the Project or the financing of the Loan and one involving a 35-hour workweek;

2. **Community Impacts.** By completing the Project using the Loan, the NMTC Beneficiary will use diligent and good faith efforts to achieve the following impacts, which are based upon data collected and analysis performed by NMTC Beneficiary and Lender, and compared against the IMPLAN analysis attached as Exhibit A:

Job Creation Benefits

(a) Create at least 95 Construction FTE Jobs, of which a substantial percentage are filled by residents of Low-income Communities and at least 50% of all New Hires will be Locally Sourced;

(b) Provide at least 100% of Predevelopment or Construction FTE Jobs with wages at the California Department of Industrial Relations prevailing wage rate. The general contractor and their subcontractors shall use the Elations system utilized by the City to track contractor payroll. Access and use of the Elations system shall be provided at no charge;

(c) Create 25 Permanent FTE Jobs, including 15 non-specialized jobs, at an operating business as described in Exhibit B. For the 15 non-specialized jobs, make good faith efforts to fill all positions locally and fulfill the minimum requirement of 55% being Locally Sourced;

(d) Provide employees with Living Wages as described in the Exhibit D and the following benefits: medical, dental and vision insurance, life insurance, 401k retirement plan, and vacation and sick leave;

(e) Make good faith effort to focus local hire jobs on NMTC eligible census tracts in San Francisco;

Education and Community Accessibility Benefits

(f) Provide eight family matinees per year at the SFJAZZ Center, priced economically accessible for low-income families, with invitations extended to students at elementary schools in our low-income community, including the Fillmore District, for free attendance;

(g) Provide access to Discover Jazz adult educational programs to Low-Income Persons through scholarships or discounted prices (to at least 10% of attendees);

(h) Provide 12 low cost performances per year at the SFJAZZ Center (\$5 per entry for 2012) that provide a dynamic and interactive jazz experience, rooted in the jazz legacy, to audiences;

(i) Provide one free concert per year, targeted to families and youth in neighboring low-income communities, delivered by our SFJAZZ High School All-Stars;

(j) Expand SFJAZZ's "Jazz in the Middle" program to four (4) disadvantaged Middle schools in San Francisco Unified School District, of which at least 2 of which will be Title 1 schools, over the next 3 years.;

Expanded Community Outreach Benefits

(k) Provide direct access to music instruction and skill-building workshops to economically disadvantaged young musicians (including in their own communities) serving at least 100 musically talented youth per year within San Francisco.;

(l) Market SFJAZZ programs and events to people in disadvantaged communities;

(m) Development of a comprehensive outreach program that targets San Francisco low-income communities within six months of execution of the community benefits agreement;

Community Opportunities

(n) Develop internship program to provide 25 young people per year with skills in areas such as jazz education, administration/production, digital music tools and work to enable participation of youth from disadvantaged communities;

(o) Provide 80 hours of free space per year for community activities for residents of San Francisco's low- income communities;

3. **Stakeholder Input.** The NMTC Beneficiary represents that the community impact goals described in Section 2 were based upon:

(a) Consultation with local stakeholders, residents, civic organizations and institutions, businesses, funders, customers, partners, clients, businesses, government officials, in the local San Francisco area; and

(b) Planning efforts resulting from City and County of San Francisco government and other community planning processes.

4. **Community Benefit Review.** Until maturity of the Loan, by January 31 of each year, NMTC Beneficiary will provide an annual Community Benefits Report (“**CBR**”) to Lender in the form attached as Exhibit C, describing the status and results of the community benefits directly related to the completion of the Project and the Loan for the previous year. NMTC Beneficiary will deliver to Lender such other documents and materials that Lender may reasonably request for the purpose of reviewing and assessing NMTC Beneficiary’s community benefits activities. In addition, at the request of Lender, upon submission of the CBR, NMTC Beneficiary will meet with Lender to discuss the status of the Project, the CBR and the community impacts of the Project. In connection with each interview, upon the reasonable request of Lender, NMTC Beneficiary will arrange for stakeholders benefiting from the Project to participate in each meeting.

5. **Disclosure.** NMTC Beneficiary agrees that the Lender (and its affiliates) may use this Agreement and the information furnished under this Agreement by the NMTC Beneficiary for community reporting purposes to the CDFI Fund and Lender’s investors and stakeholders. NMTC Beneficiary agrees that Lender (and its affiliates) has the right to place advertisements on its website and in financial and other newspapers and otherwise publicize the Project and the Loan, provided no confidential information of NMTC Beneficiary may be used in connection with such advertisements or other disclosures. NMTC Beneficiary will have the right to review and make reasonable modifications to such advertisements and other disclosures at least thirty (30) days prior to their placement or publication.

6. **Miscellaneous.** This Agreement, including any exhibits hereto, contains the entire Agreement by and between the parties hereto concerning the matters set forth herein and supersedes any prior understanding or agreements between the parties hereto. This Agreement may not be amended or modified except in writing by the parties hereto. This Agreement is governed by the laws of the State of California, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement. Any action or proceeding arising out of this Agreement will be litigated in courts located in San Francisco County, California. Each party consents and submits to the jurisdiction of any local, state, or federal court located in San Francisco County, California.

IN WITNESS WHEREOF, the Lender and NMTC Beneficiary have caused this Community Benefits Agreement to be duly executed as of the day and year first above written.

LENDER:

SFCIF SUB CDE 2, LLC, a California limited liability company

By: SAN FRANCISCO COMMUNITY INVESTMENT FUND, its Managing Member

By: _____
Name: Stephen Maduli-Williams
Title: Chief Operating Officer

LENDER:

CLEARINGHOUSE NMTC (SUB 25), LLC, a California limited liability company

By: CLEARINGHOUSE COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION, its Managing Member

By: _____
Name: _____
Title: _____

LENDER:

NORTHERN CALIFORNIA COMMUNITY LOAN FUND NMTC SUB-CDE IV, LLC, a California limited liability company

By: NORTHERN CALIFORNIA COMMUNITY LOAN FUND, its Managing Member

By: _____
Name: _____
Title: _____

LENDER:

NFF NEW MARKETS FUND XIV, LLC, a Delaware limited liability company

By: NONPROFIT FINANCE FUND, its Managing Member

By: _____
Name: _____
Title: _____

BORROWER:

SFJ PROPERTIES, LLC, a California limited liability corporation

By: _____
Name: _____
Title: _____

SPONSOR:

SAN FRANCISCO JAZZ ORGANIZATION, INC., a California nonprofit public benefit corporation

By: _____
Name: _____
Title: _____

EXHIBIT A
IMPLAN ANALYSIS

IMPLAN Analysis Assumptions

Last updated: 9/15/11
 Location: San Francisco
 County: San Francisco

CONSTRUCTION PHASE

Beginning: September 2011
 Duration: 13 months

		<u>Year</u>	<u>Spending</u>
Total Project Cost:	\$51,000,000		
Construction	\$39,000,000	2011	\$ 9,000,000
		2012	\$ 30,000,000
Total :	\$ 39,000,000		\$ 39,000,000

<u>IMPLAN Sector</u>	<u>Sector Description</u>	<u>LPC (% local to study area)</u>
38	Construction	100%
38	Construction	100%

Total Impacts from Construction

	Direct	Indirect	Induced	Total
Output	\$38,521,188	\$8,269,200	\$ 10,770,453	\$57,560,841
Wages	\$16,244,558	\$2,854,935	\$ 3,484,120	\$22,583,613
Business Income	\$4,655,644	\$699,588	\$ 524,944	\$5,880,176
Jobs	271.5	53.4	70.9	395.80

Tax Impacts from Construction

Federal Govt Non-Defense			
Indirect Business Taxes			\$236,373
Personal Taxes			\$1,402,588
Social Insurance Taxes			\$2,151,265

State and Local Govt Non Education			
Indirect Business Taxes			\$1,038,738
Personal Taxes			\$ 694,464
Social Insurance Taxes			\$ 125,526

OPERATIONS

Operatings Beginning: 2013

<u>Use Type</u>	<u>New Employees</u>	<u>IMPLAN Sector</u>
SFJazz Center	30	471-- Performing Arts Companies
Total:	30	

Total Impacts from Operations

	Direct	Indirect	Induced	Total
Output	\$ 986,062	\$ 435,014	\$ 342,968	\$ 1,764,044
Wages	\$ 454,929	\$ 122,561	\$ 110,946	\$ 688,436
Business Income	\$ 152,039	\$ 37,495	\$ 16,716.00	\$ 206,250
Jobs	30.8	4.3	2.3	37.4

Tax Impacts from Operations

Federal Govt Non-Defense			
Indirect Business Taxes			\$ 13,636
Personal Taxes			\$ 44,667
Social Insurance Taxes			\$ 65,516

State and Local Govt Non Education			
Indirect Business Taxes			\$ 59,923
Personal Taxes			\$ 22,116
Social Insurance Taxes			\$ 3,823

EXHIBIT B

JOB DESCRIPTIONS AND WAGES

Position	Description	Perm FTE Jobs	Annual Wage	Living Wage (1)

(1) Assumes 2080 hours per year.

LIVING WAGE SUMMARY

Total FTEs	
Living Wage	
Living Wage FTEs	
Living Wage FTEs %	

EXHIBIT C

COMMUNITY BENEFITS REPORT

For the period ending December 31, 2011, SFJ Properties, LLC, a California Limited Liability Company, (the "**Borrower**") and San Francisco Jazz Organization, Inc., a California nonprofit public benefit corporation (the "**Sponsor**" and together with the Borrower, the "**NMTC Beneficiary**"), pursuant to the Community Benefits Agreement (the "**Community Benefits Agreement**") dated as of August 10, 2011, between NMTC Beneficiary and SFCIF Sub CDE 2, LLC, a California limited liability company ("**SFCIF Sub CDE**"), Clearinghouse NMTC (Sub 25), LLC, a California limited liability company ("**Clearinghouse Sub CDE**"), Northern California Community Loan Fund NMTC Sub-CDE IV, LLC, a California limited liability company ("**NCCFL Sub CDE**"), NFF New Markets Fund XIV, LLC, a Delaware limited liability company ("**NFF Sub CDE**") (each of SFCIF Sub CDE, Clearinghouse SUB CDE, NCCFL Sub CDE and NFF Sub CDE, a "**Lender**" and, collectively, "**Lenders**"), Borrower affirms and certifies the following:

1. **Definitions.** Each capitalized term used in this Community Benefits Report (this "**CBR**") without definition will have the meaning ascribed in the Community Benefits Agreement.

2. **Community Impacts.** By constructing the Project using the Loan, the NMTC Beneficiary achieved the following community impacts:

(a) Create at least 95 Construction FTE Jobs, of which a substantial percentage are filled by residents of Low-income Communities and at least 50% of all New Hires will be Locally Sourced;

(b) Provide at least 100% of Predevelopment or Construction FTE Jobs with wages at the California Department of Industrial Relations prevailing wage rate. The general contractor and their subcontractors shall use the Elations system utilized by the City to track contractor payroll. Access and use of the Elations system shall be provided at no charge;

(c) Create 25 Permanent FTE Jobs, including 15 non-specialized jobs, at an operating business as described in Exhibit B. For the 15 non-specialized jobs, make good faith efforts to fill all positions locally and fulfill the minimum requirement of 55% being Locally Sourced;

(d) Provide employees with Living Wages as described in the Exhibit D and the following benefits: medical, dental and vision insurance, life insurance, 401k retirement plan, and vacation and sick leave;

(e) Make good faith effort to focus local hire jobs on NMTC eligible census tracts in San Francisco;

Education and Community Accessibility Benefits

(f) Provide eight family matinees per year at the SFJAZZ Center, priced economically accessible for low-income families, with invitations extended to students at elementary schools in our low-income community, including the Fillmore District, for free attendance;

(g) Provide access to Discover Jazz adult educational programs to Low-Income Persons through scholarships or discounted prices (to at least 10% of attendees);

(h) Provide 12 low cost performances per year at the SFJAZZ Center (\$5 per entry for 2012) that provide a dynamic and interactive jazz experience, rooted in the jazz legacy, to audiences;

(i) Provide one free concert per year, targeted to families and youth in neighboring low-income communities, delivered by our SFJAZZ High School All-Stars;

(j) Expand SFJAZZ's "Jazz in the Middle" program to four (4) disadvantaged Middle schools in San Francisco Unified School District, of which at least 2 of which will be Title 1 schools, over the next 3 years.;

Expanded Community Outreach Benefits

(k) Provide direct access to music instruction and skill-building workshops to economically disadvantaged young musicians (including in their own communities) serving at least 100 musically talented youth per year within San Francisco.;

(l) Market SFJAZZ programs and events to people in disadvantaged communities;

(m) Development of a comprehensive outreach program that targets San Francisco low-income communities within six months of execution of the community benefits agreement;

Community Opportunities

(n) Develop internship program to provide 25 young people per year with skills in areas such as jazz education, administration/production, digital music tools and work to enable participation of youth from disadvantaged communities;

(o) Provide 80 hours of free space per year for community activities for residents of San Francisco's low- income communities;

The undersigned certifies the information set forth in this CBR is correct, complete and accurate in all material respects for the period described above.

BORROWER:

SFJ PROPERTIES, LLC, a California limited liability corporation

By: _____
Name: _____
Title: _____

SPONSOR:

SAN FRANCISCO JAZZ ORGANIZATION, INC., a California nonprofit public benefit corporation

By: _____
Name: _____
Title: _____

** Complete copy of document is
located in

File No. 111034

**AMENDED AND RESTATED OPERATING AGREEMENT OF
SFCIF SUB CDE 2, LLC**

Dated as of October ____, 2011

MEMBERSHIP INTERESTS IN SFCIF SUB CDE 2, LLC (THE "COMPANY") HAVE NOT BEEN AND WILL NOT BE REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE STATE SECURITIES LAWS OF ANY STATE. WITHOUT SUCH REGISTRATION, COMPANY INTERESTS MAY NOT BE SOLD, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED BY A MEMBER AT ANY TIME WHATSOEVER EXCEPT UPON DELIVERY TO THE COMPANY OF AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY OR ITS COUNSEL THAT REGISTRATION IS NOT REQUIRED FOR SUCH TRANSFER AND/OR THE SUBMISSION TO THE COMPANY OF SUCH OTHER EVIDENCE AS MAY BE SATISFACTORY TO THE COMPANY OR ITS COUNSEL TO THE EFFECT THAT ANY SUCH TRANSFER WILL NOT VIOLATE THE SECURITIES ACT OF 1933, AS AMENDED, AND/OR APPLICABLE STATE SECURITIES LAWS, AND/OR ANY RULE OR REGULATION PROMULGATED THEREUNDER. IN ADDITION, ANY SALE OR OTHER TRANSFER OF A COMPANY INTEREST IS SUBJECT TO CERTAIN RESTRICTIONS THAT ARE SET FORTH IN THIS AGREEMENT.

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FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors
Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: SF JAZZ Investment Fund, LLC	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
1. NA 2. Tina Lin, sole officer 3. The investment fund is a wholly owned subsidiary of US Bank.	
Contractor address: 1232 Washington Blvd., Suite 200 St. Louis MO 63105 United States of America	
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contract: N/A
Describe the nature of the contract that was approved: The SFCIF will be utilizing New Market Tax Credit allocation to assist in the financing of the SF Jazz Center. This is for the Indemnification Agreement that is part of that transaction.	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

**FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL**
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information (Please print clearly.)	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information (Please print clearly.)
Name of contractor: SFJ Properties, LLC

Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary. **Officers:** Srinija Srinivasan, Chair, Steven R. Bell, Vice-Chair, Randall Kline, Co-President, Felice Swapp, Co-President, James McElwee, Treasurer, Charles Charnas, Secretary **Trustees:** Robert Mailer Anderson, William K. Bowes, Jr., Sam Britton, Shona Brown, Hon. Willie Brown, Lewis E. Byrd, Timothy Dattels, David C. Drummond, Kyle J. Goldman, Daniel Handler, Del Anderson Handy, Brian E. Hollins, Bannus Hudson, Roberta Katz, Carl Kawaja, James Manyika, , Michael Mauze, Nion McEvoy, Andrew Rumer, Greg Stern, Sanjay Vaswani, Thurman V. White, Jr., Mark Zitter, **Honorary Members:** Clinton Gilbert, Shirley Read-Jahn Fretter

Contractor address: 3 Embarcadero Center, Lobby Level San Francisco, CA 94111

Date that contract was approved: (By the SF Board of Supervisors)	Amount of contract: NA
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Describe the nature of the contract that was approved:
The SFCIF will be utilizing New Market Tax Credit allocation to assist in the financing of the SF Jazz Center. This is for the Indemnification Agreement that is part of that transaction.

Comments: SFJ Properties is wholly owned by SF JAZZ and has the same board and officers as SF Jazz
--

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

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Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

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City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: San Francisco Community Investment Fund	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i> Board of Directors: Fred Blackwell, Jennifer Entine Matz, Amy Brown, Nadia Sesay, Brian Strong Advisory Board: Pamela David, Christine Johnson, Jason Trimiew, Russel Morine, Don Marcos COO: Stephen Maduli-Williams	
Contractor address: 1 South Van Ness Avenue, 5 th Floor San Francisco, CA 94103	
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contract: NA
Describe the nature of the contract that was approved: Indemnification Agreement between the City and US Bancorp	
Comments: This is an indemnification agreement for a NMTC project for SFJAZZ located in SF.	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

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City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors
Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: San Francisco Jazz Organization, Inc.	
Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary. Officers: Srinija Srinivasan, Chair, Steven R. Bell, Vice-Chair, Randall Kline, Co-President, Felice Swapp, Co-President, James McElwee, Treasurer, Charles Charnas, Secretary Trustees: Robert Mailer Anderson, William K. Bowes, Jr., Sam Britton, Shona Brown, Hon. Willie Brown, Lewis E. Byrd, Timothy Dattels, David C. Drummond, Kyle J. Goldman, Daniel Handler, Del Anderson Handy, Brian E. Hollins, Bannus Hudson, Roberta Katz, Carl Kawaja, James Manyika, , Michael Mauze, Nion McEvoy, Andrew Rumer, Greg Stern, Sanjay Vaswani, Thurman V. White, Jr., Mark Zitter , Honorary Members: Clinton Gilbert, Shirley Read-Jahn Fretter	
Contractor address: 3 Embarcadero Center, Lobby Level San Francisco, CA 94111	
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contract: NA
Describe the nature of the contract that was approved: The SFCIF will be utilizing New Market Tax Credit allocation to assist in the financing of the SF Jazz Center. This is for the Indemnification Agreement that is part of that transaction.	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

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Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors
Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: U.S. Bancorp Community Development Corporation	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
See attached form (USBCDC Written Action 4.8.10)	
Contractor address: 1232 Washington Blvd., Suite 200 St. Louis MO 63105 United States of America	
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contract: N/A
Describe the nature of the contract that was approved: The SFCIF will be utilizing New Market Tax Credit allocation to assist in the financing of the SF Jazz Center. This is for the Indemnification Agreement that is part of that transaction.	
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Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

**WRITTEN ACTION
OF THE
BOARD OF DIRECTORS
OF
U.S. BANCORP COMMUNITY DEVELOPMENT CORPORATION**

The undersigned, being all of the members of the Board of Directors of U.S. Bancorp Community Development Corporation, a Minnesota corporation (the "Corporation"), in lieu of holding a meeting of the Board of Directors to consider the same, do hereby adopt and approve the following corporate resolutions and instruct the Secretary to file this written action with the minutes of the Corporation.

Election of Officers

RESOLVED, that the following named persons are hereby elected to the offices of this Corporation as set forth opposite their respective names below to hold such offices until their successors be chosen and qualified until their earlier death, resignation, retirement, disqualification or removal from office, and that the following individuals shall be the only officers of the Corporation until this Board of Directors takes action to the contrary:

Zachary M. Boyers, Chairman and Chief Executive Officer

Elizabeth M. Stohr, President

Keith A. Willy, Chief Operating Officer

Gerald M. Klug, Chief Financial Officer

Lawrence M. Backes, Senior Vice President

Lynn Craghead, Senior Vice President

Marc R. Hirshman, Senior Vice President

John P. Kinsella, Senior Vice President

Amanda R. Kozminske, Senior Vice President

Stephen C. Kramer, Senior Vice President

Matthew L. Philpott, Senior Vice President

Gerald H. Thole, Senior Vice President

Robert J. Wasserman, Senior Vice President

Matthew E. Badler, Vice President

Lawrence A. Baerveldt, Vice President

Maria I. R. Bustria-Glickman, Vice President

Karen J. Canon, Vice President

Robert Espeland, Vice President

Jeanne I. Gieseke, Vice President

Sebastian M. Glowacki, Vice President

John J. Lisella III, Vice President

Tracey Gunn Lowell, Vice President

Steven R. Otto, Vice President

Chris K. Roetheli, Vice President

John W. Schiffer, Vice President

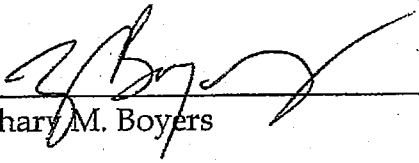
Vihar P. Sheth, Vice President

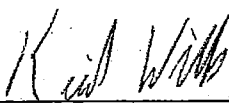
Kristen L. Switzer, Vice President


Darren Van't Hof, Vice President
Ada Laura Vowell, Vice President
Cheryl L. Williams, Vice President
Jerilyn K. Young, Vice President
Deanna M. Breznenik, Assistant Vice President
Eric L. Brinker, Assistant Vice President
Michelle A. Camillo, Assistant Vice President
Ana da Silva, Assistant Vice President
Suzanne M. Furay, Assistant Vice President
Michael Garland, Assistant Vice President
George N. Hettich, Assistant Vice President
Janice S. Mollett, Assistant Vice President
Matthew P. Masiel, Assistant Vice President
W. Paul Olsen, Assistant Vice President
RoxAnne Pickett, Assistant Vice President
Elissa Schauman, Assistant Vice President
Veronica D. Stacker, Assistant Vice President
Michael H. Walker, Assistant Vice President
Jennifer Westerbeck-Pugliese, Assistant Vice President
William F. Bayer, Officer
Nicole Blumner, Officer
Charity M. Braden, Officer
Karen Cordes, Officer
Jennifer Feldhaus, Officer
Lisa Flaherty, Officer
Timothy Karp, Officer
Mary B. Larsen, Officer
Tina Lin, Officer
Joseph A. Manning, Officer
Thomas Oldenburg, Officer
Deborah A. Payne, Officer
Ty L. Scheske, Officer
Daniel Siegel, Officer
AnneMarie Watts, Officer
Ashley E. Weber, Officer
Laura F. Bednarski, Secretary
Cara L. Seeley, Assistant Secretary

FURTHER RESOLVED, that all actions taken prior to the date hereof by the above individuals in their capacity as such officers are hereby approved, adopted and ratified in all respects.

IN WITNESS WHEREOF, the undersigned being all of the directors of the Corporation have hereunto set their hands effective as of the 8th day of April, 2010.


Zachary M. Boyers


Keith A. Willy


Elizabeth M. Stohr

