

1 [SFJazz New Market Tax Credits]

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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.**

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8 NOTE: Additions are *single-underline italics Times New Roman*;  
9 deletions are ~~*strike-through italics Times New Roman*~~.  
Board amendment additions are double-underlined;  
Board amendment deletions are ~~strikethrough normal~~.

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

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

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

23 WHEREAS, Under the NMTC program, SFCIF or its subsidiary receives private capital  
24 investments and uses these funds for qualified projects benefitting low-income communities,

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1 and the investors in return receive federal tax credits spread out over 7 years following the  
2 date of the initial investment (the "Tax Credit Period"); and,

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

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

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

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

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

21 WHEREAS, The Project is located in an economically distressed and underserved  
22 community (Census Tract No. 06075016200) characterized by a median family income of  
23 55.8% of the greater of the statewide median family income or the SF metropolitan area  
24 median family income; and,  
25

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

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

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

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

3 WHEREAS, USBCDC, SFCIF and the Sub CDE have negotiated an indemnification  
4 agreement, a copy of which is on file with the Clerk of the Board under File No.

5 \_\_\_\_\_ (the "Indemnification Agreement"); and,

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

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

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

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

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

24 RESOLVED, The Board of Supervisors has reviewed and considered the FMND and  
25 record as a whole, finds that the FMND is adequate for its use as the decision-making body

1 for the discretionary action taken in this Resolution and incorporates the CEQA findings made  
2 by the Planning Commission as though set forth in this Resolution; and, be it

3 FURTHER RESOLVED, The Board of Supervisors further finds that since the FMND  
4 was finalized, there have been no substantial changes to the Project or to circumstances that  
5 would require revisions to the FMND due to new significant impacts or an increase in the  
6 severity of previously identified impacts, and there is no new information of importance that  
7 would change the conclusions set forth in the FMND; and, be it

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

12 FURTHER RESOLVED, That the proposed Indemnification Agreement is limited to  
13 U.S. Bancorp's purchase of \$15,000,000 of New Market Tax Credits from SFCIF and not from  
14 the purchase of New Market Tax Credits from other community development entities; and, be  
15 it

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

19 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of the  
20 Office of Economic and Workforce Development to enter into any additional modifications to  
21 the Indemnification Agreement that he or she determines, in consultation with the City  
22 Attorney, are in the best interest of the City, do not materially increase the obligations or  
23 liabilities of the City or reduce the benefits to the City, are necessary or advisable to effectuate  
24 the purposes of the Indemnification Agreement and the NMTC transaction, and are in  
25 compliance with all applicable laws.