

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

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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 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,

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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.