

1 [Resolution of Formation of Special Tax District]

2

3 **Resolution of Formation to establish Special Tax District No. 2009-1 (San Francisco**
4 **Sustainable Financing), establish boundaries of said special tax district, to describe**
5 **the facilities to be financed, to establish an appropriations limit and to provide for other**
6 **matters related thereto.**

7

8 WHEREAS, On November 24, 2009, this Board of Supervisors (the "Board of
9 Supervisors") of the City and County of San Francisco (the "City") made certain findings,
10 determinations and declarations, and adopted Resolution No. 464-09, entitled "Resolution of
11 Intention to Establish Special Tax District" (the "Resolution of Intention"), pursuant to Chapter
12 43, Article X of the San Francisco Administrative Code (the "Code"), which Code incorporates
13 the Mello-Roos Community Facilities Act of 1982, as amended (the "Act"); and

14 WHEREAS, The Resolution of Intention, incorporating a map of the proposed
15 boundaries of the Special Tax District, stated the intention of this Board of Supervisors to
16 establish a City-wide special tax district, to be called "City and County of San Francisco
17 Special Tax District No. 2009-1 (San Francisco Sustainable Financing)" (the "Special Tax
18 District"), in order to finance and refinance the acquisition, installation and improvement of
19 energy efficiency, water conservation and renewable energy improvements to or on real
20 property and in buildings, whether such real property or buildings are privately or publicly
21 owned, and described the method of apportionment of the special tax to be levied within the
22 Special Tax District; and

23 WHEREAS, The Resolution of Intention stated the intention of the Board of
24 Supervisors to undertake the proceedings to form the Special Tax District under the alternate
25 procedures established by Section 43.10.17 of the Code, pursuant to which a special tax

1 district may initially consist solely of territory proposed for annexation to **the special tax**
2 district in the future, with the condition that a parcel or parcels within that territory may be
3 annexed to the special tax district and subjected to the special tax only with the unanimous
4 approval of the owner or owners of such parcel or parcels at the time that such parcel or those
5 parcels are annexed or in compliance with other procedures established by the Code; and

6 WHEREAS, On January 12, 2010, this Board of Supervisors held a noticed public
7 hearing as required by the Code and the Resolution of Intention relating to the proposed
8 formation of the Special Tax District; and

9 WHEREAS, At the hearing all interested persons desiring to be heard on all matters
10 pertaining to the formation of the Special Tax District, the facilities to be financed by the
11 Special Tax District and the levy of a special tax on property annexed to the Special Tax
12 District were heard and a full and fair hearing was held; and

13 WHEREAS, At the hearing evidence was presented to this Board of Supervisors on the
14 matters before it, including a report caused to be prepared by the Director of the Office of
15 Public Finance (the "Report") as to the facilities to be provided through the Special Tax District
16 and the costs thereof, a copy of which is on file with the Clerk of the Board of Supervisors in
17 File No. _____, and this Board of Supervisors at the conclusion of said hearing is fully
18 advised in the premises; and

19 WHEREAS, Written protests with respect to the formation of the Special Tax District,
20 the furnishing of specified types of facilities and the method of apportionment of the special
21 taxes have not been filed with the Clerk of the Board of Supervisors by 50% or more of the
22 registered voters residing within the territory proposed to be annexed to the Special Tax
23 District in the future, or by the owners of one-half or more of the area of land proposed to be
24 annexed in the future; now, therefore, be it

25 RESOLVED, That the foregoing recitals are true and correct; and, be it

1 FURTHER RESOLVED, That neither the proposed establishment of the Special Tax
2 District, the extent of the Special Tax District nor the furnishing of the specified Facilities has
3 been precluded by majority protest pursuant to Section 43.10.17 of the Code; and, be it

4 FURTHER RESOLVED, That all prior proceedings taken by this Board of Supervisors
5 in connection with the establishment of the Special Tax District and the levy of a special tax
6 therein have been duly considered and are hereby found and determined to be valid and in
7 conformity with the Code; and, be it

8 FURTHER RESOLVED, That the Special Tax District to be designated "City and
9 County of San Francisco Special Tax District No. 20010-1 (San Francisco Sustainable
10 Financing)," is hereby established pursuant to the Code; and, be it

11 FURTHER RESOLVED, That the boundaries of the Special Tax District, as set forth in
12 the map of the Special Tax District recorded in the City and County of San Francisco
13 Recorder's Office on December 7, 2009, at 1:01 p.m., as Document 2009-l882362-00, are
14 hereby approved, are incorporated herein by reference and shall be the boundaries of the
15 Special Tax District, and that the Special Tax District shall initially consist solely of territory
16 proposed for annexation to the Special Tax District in the future, with the condition that a
17 parcel or parcels within that territory may be annexed to the Special Tax District and subjected
18 to a special tax only with the unanimous approval of the owner or owners of such parcel or
19 parcels at the time that such parcel or those parcels are annexed or in compliance with other
20 procedures established by the Code; and, be it

21 FURTHER RESOLVED, That the type of facilities proposed to be financed by the
22 Special Tax District and pursuant to the Code shall consist of those items listed in Exhibit A
23 hereto and by this reference incorporated herein (the "Facilities"); and, be it

24 FURTHER RESOLVED, That except to the extent that funds are otherwise available,
25 the City will levy a special tax (the "Special Tax") to pay directly for the Facilities, to pay the

1 principal and interest on bonds of the City issued to finance the Facilities and/or to make lease
2 payments on any lease used to finance the Facilities; and, be it

3 FURTHER RESOLVED, That the Special Tax will be secured by recordation of a
4 continuing lien against all real property in the Special Tax District that annexes to the Special
5 Tax District, will be levied annually within the Special Tax District, and will be collected in the
6 same manner as ordinary ad valorem property taxes, or in such other manner as this Board of
7 Supervisors or its designee shall determine, including direct billing of the affected property
8 owners; and, be it

9 FURTHER RESOLVED, That the proposed method of apportionment of the Special
10 Tax among the parcels of real property within the Special Tax District is described in Exhibit B
11 attached hereto and hereby incorporated herein (the "Method of Apportionment"). Pursuant to
12 Section 43.10.17 of the Code, the rate or rates of the Special Tax applicable to a parcel or
13 parcels in the Special Tax District shall be specified in the unanimous approval described in
14 the following paragraph relating to such parcel or parcels or in compliance with other
15 procedures established by the Code; and, be it

16 FURTHER RESOLVED, That the Special Tax shall be levied on a parcel or parcels in
17 the Special Tax District only with the written unanimous approval (each, a "Unanimous
18 Approval") of the owner or owners of each parcel or parcels to their annexation to the Special
19 Tax District or in compliance with other procedures established by the Code, without any
20 requirement for further public hearings or additional proceedings. The Unanimous Approval
21 shall be in substantially the form and substance of the Unanimous Approval attached hereto
22 as Exhibit C, or such other form authorized by the Director of the Office of Public Finance;
23 and, be it

24 FURTHER RESOLVED, That the Special Tax on any parcel or parcels shall not be
25 levied in the Special Tax District after the fiscal year set forth in the Unanimous Approval for

1 such parcel or parcels or in compliance with other procedures established by the Code,
2 except that a Special Tax that was lawfully levied in or before the final tax year and that
3 remains delinquent may be collected in subsequent years. Under no circumstances shall the
4 Special Tax levied against any parcel in the Special Tax District to be used for private
5 residential purposes be increased as a consequence of delinquency or default by the owner of
6 any other parcel or parcels within the Special Tax District by more than 10%; and, be it

7 FURTHER RESOLVED, That the Director of the Office of Public Finance of the City
8 and County of San Francisco, 1 Dr. Carlton B. Goodlett Place, City Hall, Room 336, San
9 Francisco, CA 94102, (415) 554-5956, is the officer of the City who will be responsible for
10 preparing annually a current roll of Special Tax levy obligations by assessor's parcel number
11 and who will be responsible for estimating future Special Tax levies pursuant to the Code;
12 and, be it

13 FURTHER RESOLVED, That upon recordation of a notice of Special Tax lien pursuant
14 to Section 3114.5 of the Streets and Highways Code of California, a continuing lien to secure
15 each levy of the Special Tax shall attach to all nonexempt real property in the Special Tax
16 District and this lien shall continue in force and effect until the Special Tax obligation is
17 prepaid and permanently satisfied and the lien canceled in accordance with law or until
18 collection of the tax by the City ceases, and that Pursuant to Section 43.10.17 of the Code, a
19 notice of special tax lien shall not be recorded against any parcel or parcels in the Special Tax
20 District without the unanimous approval of the owner or owners of such parcel or parcels'
21 annexation to the Special Tax District or in compliance with other procedures established by
22 the Code, at which time the notice of special tax lien shall be recorded against such parcel or
23 parcels as set forth in Section 53328.3 of the Act; and, be it

24 FURTHER RESOLVED, That in accordance with the Code, the annual appropriations
25 limit, as defined by subdivision (h) of Section 8 of Article XIII B of the California Constitution,

1 of the Special Tax District is hereby preliminarily established at \$150,000,000, and pursuant
2 to Section 43.10.17 of the Code, the appropriations limit for the Special Tax District shall be
3 specified and approved by the Unanimous Approval of the owner or owners of each parcel or
4 parcels at the time that such parcel or parcels are annexed to the Special Tax District or in
5 compliance with other procedures established by the Code. No additional hearings or
6 procedures are required, and such Unanimous Approval shall be deemed to constitute a
7 unanimous vote in favor of the appropriations limit, and the proposition shall be adjusted in
8 accordance with the applicable provisions of the Code; and, be it

9 FURTHER RESOLVED, That pursuant to Section 43.10.17 of the Code, in lieu of
10 approval pursuant to an election held in accordance with the procedures set forth elsewhere
11 in the Code and in Sections 53326, 53327, 53327.5 and 53328 of the Act, the appropriations
12 limit for the Special Tax District, the applicable rate, method of apportionment and manner of
13 collection of the Special Tax and the authorization to incur bonded indebtedness for the
14 Special Tax District shall be specified and approved by the Unanimous Approval of the owner
15 or owners of each parcel or parcels at the time that such parcel or parcels are annexed to the
16 Special Tax District or in compliance with other procedures established by the Code. No
17 additional hearings or procedures are required, and such Unanimous Approval shall be
18 deemed to constitute a unanimous vote in favor of the appropriations limit for the Special Tax
19 District, the authorization to levy the Special Tax on such parcel or parcels and the
20 authorization to incur bonded indebtedness for the Special Tax District; and, be it

21 FURTHER RESOLVED, That pursuant to Section 43.10.19 of the Code, in connection
22 with the annexation of a parcel or parcels to the Special Tax District pursuant to the alternate
23 and independent procedure set forth in Section 43.10.17 of the Code and the conduct of an
24 election on the proposition to authorize bonded indebtedness pursuant to the alternate and
25 independent procedure set forth in Section 43.10.18 of the Code, the City may, without

1 additional hearings or procedures, designate a parcel or parcels as an improvement area
2 within the Special Tax District, and each improvement area will be known as "Improvement
3 Area No. ____ of City and County of San Francisco Special Tax District No. 2009-1 (San
4 Francisco Sustainable Financing)," after the designation of a parcel or parcels as an
5 improvement area, all proceedings for approval of the appropriations limit, the rate, method of
6 apportionment and manner of collection of special tax and the authorization to incur bonded
7 indebtedness for such parcel or parcels shall apply only to the improvement area. The City
8 may incur indebtedness payable solely from special taxes levied on property in the
9 improvement area; and, be it

10 FURTHER RESOLVED, That this resolution shall take effect upon its adoption.

11 APPROVED AS TO FORM:
12 DENNIS J. HERRERA, City Attorney

13
14 By: (See File for Signature)
15 MARK D. BLAKE
16 Deputy City Attorney

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EXHIBIT A

CITY AND COUNTY OF SAN FRANCISCO Special Tax District No. 2009-1 (San Francisco Sustainable Financing)

DESCRIPTION OF FACILITIES TO BE FINANCED BY THE SPECIAL TAX DISTRICT

The Facilities shown below are proposed to be financed and refinanced by the City and County of San Francisco Special Tax District No. 2009-1 (San Francisco Sustainable Financing) (the "Special Tax District").

FACILITIES

It is intended that the Special Tax District will be authorized to finance and refinance all or a portion of the costs of any of the following types of facilities:

Energy efficiency, water conservation and renewable energy improvements to or on real property and in buildings, whether such real property or buildings are privately or publicly owned.

OTHER

The Special Tax District may also finance any of the following:

1. Bond related expenses, including underwriters discount, reserve fund, capitalized interest, letter of credit fees and expenses, bond and disclosure counsel fees and expenses, bond remarketing costs, and all other incidental expenses.
2. Administrative fees of the City and the bond trustee or fiscal agent related to the Special Tax District and the bonds.
3. Any other costs or fees authorized by the Code.

EXHIBIT B

**CITY AND COUNTY OF SAN FRANCISCO
Special Tax District No. 2009-1
(San Francisco Sustainable Financing)**

METHOD OF APPORTIONMENT OF SPECIAL TAX

EXHIBIT C

**CITY AND COUNTY OF SAN FRANCISCO
Special Tax District No. 2009-1
(San Francisco Sustainable Financing)**

FORM OF UNANIMOUS APPROVAL

UNANIMOUS APPROVAL

**CITY AND COUNTY OF SAN FRANCISCO
SPECIAL TAX DISTRICT NO. 2009-1
(SAN FRANCISCO SUSTAINABLE FINANCING)**

_____, 20__

To the Honorable Board of Supervisors
City and County of San Francisco
1 Dr. Carlton B. Goodlett Place
City Hall
San Francisco, CA 94102

Members of the Board of Supervisors:

The Board of Supervisors of the City and County of San Francisco (the "City") has added Chapter 43, Article X to the San Francisco Administrative Code (the "Code") and, for the purpose of financing and refinancing the acquisition, installation and improvement of energy efficiency, water conservation and renewable energy improvements to or on real property and in buildings, whether such real property or buildings are privately or publicly owned, the City has formed the "City and County of San Francisco Special Tax District No. 2009-1 (San Francisco Sustainable Financing)" (the "Special Tax District").

The Property Owner (as defined below) hereby states and certifies, under penalty of perjury, as follows:

1. Property Owner. This Unanimous Approval is submitted by the record owner(s) (the "Property Owner") of the fee title to the real property identified below (the

"Property"). The Property Owner has supplied to the City current evidence of its ownership of fee title to the Property and possesses all legal authority necessary to execute this Unanimous Approval.

2. Unanimous Approval. This Unanimous Approval constitutes the approval and unanimous vote of the Property Owner in favor of the following matters for the purposes of Sections 43.10.17 and 43.10.18 of the Code and Article XIII A of the California Constitution:

a. Annexation: The annexation of the Property to the Special Tax District for the purpose of financing the acquisition, installation and improvement on the Property of the energy efficiency, water conservation and/or renewable energy improvements described in Appendix 1 hereto and made a part hereof (the "Improvements").

b. Special Tax: The levy of special taxes (the "Special Taxes") on the Property to finance the Improvements, according to (A) the Method of Apportionment of Special Taxes, attached as Appendix 2 and (B) the Rate Supplement to Method of Apportionment of Special Taxes, attached as Appendix 3 (collectively, the "Rate and Method").

c. Bonds and Appropriations Limit: The issuance of bonded indebtedness for the Special Tax District in an aggregate principal amount not to exceed \$150,000,000 and an appropriations limit for the Special Tax District of \$150,000,000.

3. Waivers, Acknowledgment and Agreement.

a. Waivers. The Property Owner hereby waives its right to repeal the Special Tax by initiative or any other action and any necessity, requirement or right to further public hearings or election with respect to the annexation of the Property to the Special Tax District or the levy of the Special Taxes on the Property.

The Property Owner hereby acknowledges that the City has formed the Special Tax District solely for the purpose of assisting the owners of property in the City with the financing of renewable energy, water conservation and energy efficiency improvements,

and that the City has no responsibility of any kind for, and shall have no liability arising out of, the installation, operation, financing, refinancing or maintenance of the Improvements. The Property Owner hereby agrees that the Property Owner and its successors in interest to fee title in the Property shall be solely responsible for the installation, operation, financing, refinancing and maintenance of the Improvements. The Property Owner hereby acknowledges that the Property will be responsible for payment of the Special Tax according to the Rate and Method regardless of whether the Improvements are properly installed, operated or maintained as expected.

Based upon the foregoing, the Property Owner hereby waives the right to recover from and fully and irrevocably releases the City and any and all agents, employees, attorneys, representatives and successors and assigns of the City from any and all losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees), relating to the Improvements and their financing by the City that the Property Owner may now have or hereafter acquire against the City and any and all agents, employees, attorneys, representatives and successors and assigns of the City.

To the extent that the foregoing waivers and agreements are subject to Section 1542 of the California Civil Code or similar provisions of other applicable law, it is the intention of the Property Owner that the foregoing waivers and agreements will be effective as a bar to any and all losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees), of whatever character, nature and kind, known or unknown, suspected or unsuspected, and Property Owner agrees to waive any and all rights and benefits conferred upon the Property Owner by the provisions of Section 1542 of the California Civil Code or similar provisions of applicable law. Section 1542 reads as follows:

Exhibit C

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"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

By initialing below, the Property Owner agrees to waive the provisions of Section 1542 in connection with the matters that are the subject of the foregoing waivers and releases.

Property Owner's Initials:

The waivers, releases and agreements set forth in this Section 3 shall survive termination of this Agreement.

b. Absolute Obligation. The Property Owner hereby agrees that the Special Tax will not be subject to reduction, offset or credit of any kind in the event that the bonds or other financing relationship secured thereby are refunded or for any other reason.

c. Delinquencies. The Property Owner acknowledges that if Special Taxes are not paid when due, the City has the right to have the delinquent Special Taxes and the associated penalties and interest stripped off the secured property tax roll and immediately enforced through a judicial foreclosure action that could result in a sale of the Property for the payment of the delinquent installments, associated penalties and interest, and all costs of suit, including attorneys' fees. The Property Owner acknowledges that, if bonds are sold to finance the Improvements or if the City enters into any other financing relationship in order to finance the Improvements, the City may obligate itself, through a covenant with the owners of the bonds or the provider of any other financing relationship, to exercise its foreclosure rights with respect to delinquent Special Taxes under specified circumstances.

4. Recordation of Notice of Special Tax Lien. The Property Owner hereby authorizes and directs the Clerk of the Board of Supervisors to execute and cause to be recorded in the office of the Recorder of the City and County of San Francisco a Notice of Special Tax Lien as required by Section 43.10.17 of the Code, which shall give notice that a lien to secure payment of a special tax is imposed by the City on behalf of the Special Tax District. The Notice of Special Tax Lien shall include the Rate and Method and this Unanimous Approval as exhibits thereto.

5. Notice. To the extent required by applicable law, the Property Owner hereby agrees to provide written notice to any subsequent purchaser of the Property of the annexation of the Property to the Special Tax District and of the authority of the City to levy the Special Taxes on the Property pursuant to the Rate and Method.

6. The Property. The Property subject to this Unanimous Approval and to be annexed to the Special Tax District consists of the following:

<i>Property Address:</i>	_____

<i>City and County of San Francisco Assessors</i>	_____
<i>Parcel(s) Number(s):</i>	_____

The foregoing Unanimous Approval is hereby executed this _____ day of _____, 20__ in _____, California.

The name of the record owner of the Property is:

The following are authorized to sign this Unanimous Approval on behalf of the Property Owner:

Name: _____	Name: _____
By: _____	By: _____
Its: _____	Its: _____
Name: _____	Name: _____
By: _____	By: _____
Its: _____	Its: _____

ACKNOWLEDGMENT

State of California

County of _____)

On _____ before me,

(insert name and title of the officer)

personally appeared

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

State of California

County of _____)

On _____ before me,

(insert name and title of the officer)

personally appeared

_____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

State of California

County of _____)

On _____ before me,

(insert name and title of the officer)

personally appeared

_____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

State of California

County of _____)

On _____ before me,

(insert name and title of the officer)

personally appeared

_____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

APPENDIX 1

CITY AND COUNTY OF SAN FRANCISCO
SPECIAL TAX DISTRICT NO. 2009-1
(SAN FRANCISCO SUSTAINABLE FINANCING)

DESCRIPTION OF IMPROVEMENTS

The Improvements are described in the attached invoice.

APPENDIX 2

CITY AND COUNTY OF SAN FRANCISCO
SPECIAL TAX DISTRICT NO. 2009-1
(SAN FRANCISCO SUSTAINABLE FINANCING)

METHOD OF APPORTIONMENT OF SPECIAL TAX

