

1 [Improvement Area No. 1 (Pier 1) of Special Tax District No. 2009-1 Delinquent Special Tax
2 Payment; Settlement Agreement and Release of Claims]

3 **Resolution accepting payment of delinquent special taxes in Improvement Area No. 1**
4 **of City and County of San Francisco Special Tax District No. 2009-1 (San Francisco**
5 **Sustainable Financing) from AMB Pier One, LLC, approving Settlement Agreement and**
6 **Release of Claims, and providing for other matters related thereto, as defined herein.**

7
8 WHEREAS, On November 24, 2009, this Board of Supervisors (“Board of
9 Supervisors”) of the City and County of San Francisco (“City”) adopted Resolution No. 464-09
10 (“Resolution of Intention”) stating its intention to establish, for the public purposes set forth in
11 the Resolution of Intention, the City and County of San Francisco Special Tax District No.
12 2009-1 (San Francisco Sustainable Financing) (“Special Tax District”), pursuant to Chapter
13 43, Article X of the San Francisco Administrative Code (“Code”), which Code incorporates the
14 Mello-Roos Community Facilities Act of 1982, as amended, sections 53311, et. seq., of the
15 California Government Code (“Act”), to finance and refinance the acquisition, installation and
16 improvement of energy efficiency, water conservation and renewable energy improvements to
17 or on real property and in buildings, whether such real property or buildings are privately or
18 publicly owned; and

19 WHEREAS, The Resolution of Intention stated the intention of the Board of
20 Supervisors to undertake the proceedings to form the Special Tax District under the alternate
21 procedures established by Section 43.10.17 of the Code, pursuant to which a special tax
22 district may initially consist solely of territory proposed for annexation to the special tax district
23 in the future, with the condition that a parcel or parcels within that territory may be annexed to
24 the special tax district and subjected to the special tax only with the unanimous approval
25 (“Unanimous Approval”) of the owner or owners of such parcel or parcels at the time that such

1 parcel or those parcels are annexed or in compliance with other procedures established by
2 the Code; and

3 WHEREAS, The Resolution of Intention stated that the City may, without additional
4 hearings or procedures, designate a parcel or parcels as an improvement area within the
5 Special Tax District; that, after the designation of a parcel or parcels as an improvement area,
6 all proceedings for approval of the appropriations limit, the rate, method of apportionment and
7 manner of collection of special tax and the authorization to incur bonded indebtedness for
8 such parcel or parcels will apply only to the improvement area; and that the City may incur
9 indebtedness payable solely from special taxes levied on property in the improvement area;
10 and

11 WHEREAS, Subsequent to holding noticed public hearings, this Board of Supervisors
12 adopted Resolution No. 6-10 ("Resolution of Formation"), and Resolution No. 7-10
13 ("Resolution of Necessity"), which resolutions defined the facilities to be financed by the
14 Special Tax District ("Facilities"), established the Special Tax District, authorized the levy of a
15 special tax with the Special Tax District and determined the necessity to incur bonded
16 indebtedness in the Special Tax District, respectively; and

17 WHEREAS, Improvement Area No. 1 of the Special Tax District contains a single
18 property (Pier 1) that is owned by the City, through the Port Commission ("Port"), and leased
19 to AMB Pier One LLC ("Lessee"); and

20 WHEREAS, At the request of the Lessee, and because Pier 1 is owned by the Port, the
21 Port signed a Unanimous Approval dated October 1, 2012 ("Pier 1 Unanimous Approval")
22 agreeing to the levy of special taxes on the leasehold interest in Pier 1, and the Lessee
23 executed a Lessee Consent to Special Tax and Other Matters dated October 1, 2012
24 ("Lessee Consent") consenting to the levy of the special taxes; and

25

1 WHEREAS, Each of the Pier 1 Unanimous Approval and the Lessee Consent includes
2 the Method of Apportionment of Special Tax for the Special Tax District, and a Rate
3 Supplement that is specific to Pier 1; and

4 WHEREAS, On October 15, 2012, the City issued \$1,400,000 initial principal amount
5 Improvement Area No. 1 of the City and County of San Francisco Special Tax District No.
6 2009-1 (San Francisco Sustainable Financing) Special Tax Bonds, Series A (“Bonds”) to
7 finance eligible Facilities at Pier 1, which Bonds were secured by payments of special taxes
8 levied on Lessee’s leasehold interest in Pier 1; and

9 WHEREAS, On October 21, 2013, the City caused a bill to be sent to Lessee for the
10 first installment of the fiscal year 2013-14 special tax levy, in the amount of \$47,184.16
11 (“December 10, 2013 Installment”); the bill stated: “Payment must be postmarked on or before
12 December 10, 2013. Otherwise, payment will be considered late and subject to an immediate
13 10% penalty (among other penalties specified by the Revenue Taxation Code), and interest
14 will accumulate at a rate of 1.5% per month starting July 1, 2014”; and

15 WHEREAS, Lessee did not pay the December 10, 2013 Installment, which Lessee has
16 informed City staff was a result of an administrative oversight; and

17 WHEREAS, The City, in anticipation of the receipt of the special tax payment from the
18 Lessee, advanced moneys for the payment of debt service on the Bonds and as a
19 consequence there was no default in the payment of debt service on the Bonds; and

20 WHEREAS, Lessee has paid all other special tax installments when and as due; and

21 WHEREAS, This Board of Supervisors wishes to approve a Settlement Agreement and
22 Release of Claims (“Settlement Agreement”) between the City and the Lessee, in substantially
23 the form on file with the Clerk of the Board of Supervisors, pursuant to which (i) the Lessee
24 would pay to the City an amount that would include: (a) the amount of the December 10, 2013
25 Installment, a delinquency penalty equal to 10% of the December 10, 2013 Installment, and

1 compounded interest on the December 10, 2013 Installment calculated using the monthly
2 interest rate earned by the Treasurer's Pool beginning on December 10, 2013 and continuing
3 through the date the City notified Lessee of the missed payment ("Missed Payment Amount")
4 and (b) costs relating to the collection of the taxes ("Collection Costs Amount") (together, the
5 "Settlement Amount"), and (ii) the City would release any right to receive additional amounts
6 from Lessee related to the December 10, 2013 Installment; and

7 WHEREAS, The City will use the amount received from Lessee under the Settlement
8 Agreement to reimburse the City for: the foregone interest earnings on amounts advanced
9 equal to the December 10, 2013 Installment; now, therefore, be it

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

11 FURTHER RESOLVED, That this Board of Supervisors hereby approves the form of
12 the Settlement Agreement, in substantially the form on file with the Clerk of the Board of
13 Supervisors; the City Attorney is hereby authorized and directed to execute and deliver the
14 Settlement Agreement in substantially the form on file with the Clerk of the Board of
15 Supervisors, together with such additions or changes as are approved by the City Attorney,
16 provided that the amount paid by the Lessee to the City must be equal to or greater than the
17 Settlement Amount; the approval of such additions or changes shall be conclusively
18 evidenced by the execution and delivery by the City Attorney of the Settlement Agreement;
19 and, be it

20 FURTHER RESOLVED, That all actions heretofore taken by the officers and agents of
21 the City with respect to the Settlement Agreement and the matters addressed thereby are
22 hereby approved, confirmed and ratified, and the appropriate officers of the City are hereby
23 authorized and directed to do any and all things and take any and all actions and execute any
24 and all certificates, agreements and other documents, which they, or any of them, may deem
25 necessary or advisable in order to accomplish the purposes of this Resolution; all actions to

1 be taken by the City Attorney may be taken by the City Attorney or any designee, with the
2 same force and effect as if taken by City Attorney; and, be it

3 FURTHER RESOLVED, That if any section, subsection, sentence, clause, phrase, or
4 word of this Resolution, or any application thereof to any person or circumstance, is held to be
5 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
6 shall not affect the validity of the remaining portions or applications of this Resolution, the
7 Board hereby declaring that it would have passed this Resolution and each and every section,
8 subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional
9 without regard to whether any other portion of this Resolution or application thereof would be
10 subsequently declared invalid or unconstitutional; and, be it

11 FURTHER RESOLVED, that this Resolution shall take effect upon its adoption.

12
13 OFFICE OF THE CONTROLLER

14
15 By: /s/ _____
16 Greg Wagner
Controller

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18 APPROVED AS TO FORM:
DAVID CHIU, City Attorney

19
20 By: /s/ Mark D. Blake
Mark D. Blake
Deputy City Attorney

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