

1 [Resolution to Establish - Top of Broadway Community Benefit District]

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3 **Resolution establishing a property-based business improvement district known as the**  
4 **“Top of Broadway Community Benefit District;” ordering the levy and collection of**  
5 **assessments against property located in that district for eight years commencing with**  
6 **FY2013-2014, subject to conditions as specified; and making environmental findings.**

7

8 WHEREAS, Pursuant to the Property and Business Improvement Law of 1994,  
9 California Streets and Highways Code Sections 36600 *et seq.* (the "Act"), as augmented by  
10 Article 15 of the San Francisco Business and Tax Regulations Code ("Article 15"), the Board  
11 of Supervisors adopted Resolution No. 165-13 on June 4, 2013, entitled "Resolution declaring  
12 the intention of the Board of Supervisors to establish a property-based business improvement  
13 district (community benefit district) to be known as the "Top of Broadway Community Benefit  
14 District" and levy a multi-year assessment on identified parcels in the district; approving the  
15 management district plan and engineer's report and proposed boundaries map for the district;  
16 ordering and setting a time and place for a public hearing thereon; approving the form of the  
17 Notice of Public Hearing and Assessment Ballots; directing environmental findings; and  
18 directing the Clerk of the Board of Supervisors to give notice of the public hearing and  
19 balloting as required by law" (the "Resolution of Intention"); and

20 WHEREAS, The Resolution of Intention for the Top of Broadway Community Benefit  
21 District (the "Top of Broadway CBD" or "District"), among other things, approved the Top of  
22 Broadway Community Benefit District Management District Plan (the "District Management  
23 Plan"), the detailed District Assessment Engineer's Report, the Proposed Boundaries Map,  
24 and the form of the Assessment Ballots and the Notice of Public Hearing, that are all on file  
25 with Clerk of the Board of Supervisors in File No. 130419; and

1           WHEREAS, The Board of Supervisors caused notice of a public hearing concerning  
2 the proposed formation of the Top of Broadway CBD, and the proposed levy of assessments  
3 against property located within the District for a period of eight years, for fiscal years 2013-  
4 2014 through 2020-2021; and

5           WHEREAS, The Board of Supervisors has caused ballots to be mailed to the record  
6 owner of each parcel proposed to be assessed within the District, as required by law; and

7           WHEREAS, The Management District Plan dated April 15, 2013 was filed with the  
8 Board on June 5, 2013, containing information about the proposed district and assessments  
9 as required by California Streets and Highways Code §36622; and

10           WHEREAS, An amended detailed Engineer's Report dated April 15, 2013 was filed  
11 with the Clerk of the Board on June 5, 2013, as prepared by Edward V. Henning, California  
12 Registered Professional Engineer No. 26549, titled "Top of Broadway Community Benefit  
13 District, District Assessment Engineer's Report," supporting the assessments within the  
14 proposed district; and

15           WHEREAS, The Proposed Boundaries Map was submitted to the Clerk of the Board of  
16 Supervisors pursuant to California Streets and Highways Code §3110, on June 14, 2013; and

17           WHEREAS, A public hearing concerning the proposed formation of the Top of  
18 Broadway CBD and the proposed levy of assessments within such District was held on July  
19 23, 2013 at 3:00 p.m. in the Board's Legislative Chamber located on the Second Floor of City  
20 Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, California; and

21           WHEREAS, At the public hearing, the testimony of all interested persons for or against  
22 the proposed formation of the District, the levy of assessments on property within the District,  
23 the extent of the District, and the furnishing of specified types of improvements, services and  
24 activities within the District, was heard and considered, and a full, fair and complete meeting  
25 and hearing was held; and

1           WHEREAS, The Board of Supervisors heard and considered all objections or protests  
2 to the proposed assessments and the Director of the Department of Elections tabulated the  
3 assessment ballots submitted and not withdrawn, in support of or in opposition to the  
4 proposed assessments, and the Clerk of the Board determined that a majority of the ballots  
5 cast (weighted according to the proportional financial obligations of the property) by the  
6 owners of record of the property located within the proposed District did not oppose  
7 establishing the proposed District; and

8           WHEREAS, The public interest, convenience and necessity require the establishment  
9 of the proposed Top of Broadway Community Benefit District; and

10          WHEREAS, In the opinion of the Board of Supervisors, the property within the District  
11 will be specially benefited by the improvements, services and activities funded by the  
12 assessments; and no assessment has been imposed on any parcel which exceeds the  
13 reasonable cost of the proportional special benefit conferred on that parcel; now, therefore, be  
14 it

15          RESOLVED, That the Board of Supervisors declares as follows:

16          **Section 1.   MANAGEMENT DISTRICT PLAN, DISTRICT ASSESSMENT**

17 **ENGINEER'S REPORT, AND BOUNDARIES MAP.** The Board hereby approves the  
18 Management District Plan and District Assessment Engineer's Report, including the estimates  
19 of the costs of the property-related services, activities and improvements set forth in the plan,  
20 and the assessment of said costs on the properties that will specially benefit from such  
21 services, activities and improvements. The Board also hereby approves the Boundaries Map,  
22 showing the exterior boundaries of the District. A copy of the Management District Plan, the  
23 District Assessment Engineer's Report, and the Boundaries Map are on file with the Clerk of  
24 the Board of Supervisors in File No. 130419, which is hereby declared to be a part of this  
25 Resolution as if set forth fully herein.

1           **Section 2. FINDING OF NO MAJORITY PROTEST.** The Board of Supervisors  
2 hereby finds that a majority protest does not exist as defined in Section 4(e) of Article XIID of  
3 the California Constitution and Section 53753 of the California Government Code with respect  
4 to the formation of Top of Broadway Community Benefit District. All objections or protests  
5 both written and oral, are hereby duly overruled.

6           **Section 3. ESTABLISHMENT OF DISTRICT.** Pursuant to the Act and Article 15, a  
7 property-based business improvement district designated as the "Top of Broadway  
8 Community Benefit District" is hereby established.

9           **Section 4. DESCRIPTION OF DISTRICT.** The Top of Broadway Community Benefit  
10 District shall include all parcels of real property within the district. The proposed District  
11 contains approximately 39 identified parcels, located on approximately six whole or partial  
12 blocks near the intersection of Columbus Avenue and Broadway Street and the intersection of  
13 Montgomery Street and Broadway Street. The District is generally located at: (1) Columbus  
14 Avenue from the intersection of Grant Avenue and Fresno Street running along the east side  
15 only of Columbus Avenue down to Pacific Avenue; (2) Kearny Street on both sides of the  
16 street from Broadway Street to Pacific Avenue; and (3) Broadway Street, from the  
17 northeastern corner of the intersection of Columbus Avenue and Broadway Street running  
18 eastward on the north side of the street up to the west side of Montgomery Street and then  
19 from the southeastern corner of the intersection of Columbus Avenue and Broadway Street on  
20 the south side running eastward on the south side up to Montgomery Street, but also including  
21 the property at the southeastern corner of the intersection of Montgomery Street and  
22 Broadway Street.

23           Reference should be made to the detailed maps and the lists of parcels identified by  
24 Assessor Parcel Number that are contained in the Management District Plan in order to  
25 determine which specific parcels are included in the Top of Broadway Community Benefit

1 District.

2 **Section 5. FINDING OF BENEFIT.** The Board of Supervisors hereby finds that the  
3 property within the District will be benefited by the improvements and activities funded by the  
4 assessments proposed to be levied.

5 **Section 6. SYSTEM OF ASSESSMENTS.** (a) Annual assessments will be levied to  
6 pay for the activities to be provided within the District, commencing with fiscal year 2013-  
7 2014, and continuing for eight (8) years, ending with fiscal year 2020-2021. For purposes of  
8 levying and collecting assessments within the District, a fiscal year shall commence on each  
9 July 1st and end on the following June 30th.

10 (b) The total amount of the proposed assessments to be levied and collected for  
11 fiscal year 2013-2014 shall be \$105,502 (as shown in the Management District Plan and  
12 Engineer's Report, each dated April 15, 2013). The amount of assessments to be levied and  
13 collected in fiscal years two (2) through eight (8) may be increased annually by an amount not  
14 to exceed the change in the Consumer Price Index for All Urban Consumers in the San  
15 Francisco-Oakland-San Jose Consolidated Metropolitan Statistical Area, or three percent  
16 (3%), whichever is less.

17 (c) The method and basis of levying and collecting the assessment shall be as set  
18 forth in the Management District Plan.

19 (1) The levy of the assessments shall commence with fiscal year 2013-2014.  
20 Each year the assessment shall be due and payable in two equal installments. The first  
21 installment shall be due on November 1 of each fiscal year during the life of the District, and  
22 shall become delinquent on December 10 of that fiscal year. The second installment shall be  
23 due on February 1 of each fiscal year during the life of the District, and shall become  
24 delinquent on April 10 of that fiscal year.

25 (2) Nonpayment of the assessment shall have the same lien priority and

1 delinquent payment penalties and be subject to the same enforcement procedures and  
2 remedies as the ad valorem property tax. All delinquent payment of assessments shall be  
3 subject to interest and penalties. The City Treasurer and Tax Collector will enforce imposition  
4 of interest and penalties and collection of delinquent assessments pursuant to the Business  
5 Assessment Law and City Business and Tax Regulations Code Article 6, as each may be  
6 amended from time to time..

7 **Section 7. USE OF REVENUES.** The proposed property-related services,  
8 improvements or activities for the District to be funded by the levy of the assessments include:

9 **District Identity:** A District Identity component to include, without limitation, use of a  
10 public relations firm to promote the business and activities in the District, development of a  
11 website, having special events for the District, preparation of signage, historical markers,  
12 banners and decorations, and other programs or activities to be determined by the nonprofit  
13 owners' association that will administer the property-related services, activities, and  
14 improvements for the District.

15 **Sidewalk Operations, Beautification and Order:** A Sidewalk Operations,  
16 Beautification and Order component to include, without limitation, cleaning sidewalks and  
17 gutters, graffiti removal, trimming trees, periodic steam cleaning, and cleaning tree wells.

18 **Administration, Organization, and Corporate Operations:** Administration,  
19 Organization, and Corporate Operations component to include, without limitation, staffing to  
20 oversee and support the property-related services, activities and improvements for the  
21 District, acquiring office-related services and supplies, such as accounting, legal services and  
22 office supplies, acquiring insurance for the District, managing contractual relations with the  
23 City and others, financial reporting, and advocacy for the District.

24 **Section 8. AUTHORITY TO CONTRACT.** The Board of Supervisors may contract  
25 with a separate private entity to administer the improvements, services and activities set forth

1 in Section 7, as provided in California Streets and Highways Code §36614.5 and §36650.  
2 Any such entity shall hold the funds it receives from the City and County of San Francisco  
3 ("City") in trust for the improvements, services and activities set forth in Section 7. Any such  
4 entity that holds funds in trust for purposes related to the contract shall deliver, at no expense  
5 to the City, a balance sheet and the related statement of income and cash flows for each  
6 fiscal year, all in reasonable detail acceptable to the City, reviewed by a Certified Public  
7 Accountant (CPA); this review shall include a statement of negative assurance from the CPA.  
8 In addition, or alternatively, the Controller in his or her discretion or the Office of Economic  
9 and Workforce Development in its discretion may require the private entity to deliver, at no  
10 expense to the City, an annual independent audit report by a Certified Public Accountant of all  
11 such funds. The CPA review and/or audit may be funded from assessment proceeds as part  
12 of the general administration of the District. At all times the Board of Supervisors shall  
13 reserve full rights of accounting of these funds. The Office of Economic and Workforce  
14 Development shall be the City agency responsible for coordination between the City and the  
15 District.

16 **Section 9. AMENDMENTS.** The properties in the District established by this  
17 Resolution shall be subject to any amendments to the Act and City Business and Tax  
18 Regulation Code Article 6 and Article 15.

19 **Section 10. RECORDATION OF NOTICE AND DIAGRAM.** The County Clerk is  
20 hereby authorized and directed to record a notice and an assessment diagram pursuant to  
21 Section 36627 of the California Streets and Highways Code, following adoption of this  
22 Resolution.

23 **Section 11. LEVY OF ASSESSMENT.** The adoption of this Resolution and  
24 recordation of the notice and assessment diagram pursuant to Section 36627 of the California  
25 Streets and Highways Code constitutes the levy of an assessment in each of the fiscal years

1 referred to in the District Management Plan. Each year, the Assessor shall enter on the  
2 County Assessment Roll opposite each lot or parcel of land the amount of the assessment  
3 and such assessment shall be collected in the same manner as the County property taxes are  
4 collected.

5 **Section 12. BASELINE SERVICES.** To ensure that assessment revenues from the  
6 District are used to enhance the current level of services provided by the City within the  
7 District, the establishment of the District will not affect the City’s policy to continue to provide  
8 the same level of service to the areas encompassed by the District as it provides to other  
9 similar areas of the City for the duration of the District, provided, however, that in the event of  
10 a significant downturn in citywide revenues, the Board of Supervisors may reduce the level of  
11 municipal services citywide, including within the District.

12 **Section 13. ENVIRONMENTAL FINDINGS.** The Planning Department has  
13 determined that the actions contemplated in this Resolution are in compliance with the  
14 California Environmental Quality Act (California Public Resources Code sections 21000 *et*  
15 *seq.*). Said determination is on file with the Clerk of the Board of Supervisors in File No.  
16 130636, which is hereby declared to be a part of this Resolution as if set forth fully herein.

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