

**RESOLUTION NO. 10-35**

RESOLUTION OF THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK AUTHORIZING THE SALE AND ISSUANCE OF NOT TO EXCEED \$30,000,000 CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK REVENUE BONDS (SAN FRANCISCO BALLET ASSOCIATION) SERIES 2010 TO EFFECT THE RETIREMENT A PORTION OF THE OUTSTANDING \$44,900,000 CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK VARIABLE RATE REVENUE BONDS (SAN FRANCISCO BALLET ASSOCIATION), SERIES 2008 INITIALLY ISSUED TO PROVIDE FINANCIAL ASSISTANCE FOR REFINANCING THE DEVELOPMENT OF CERTAIN ECONOMIC DEVELOPMENT FACILITIES FOR THE BENEFIT OF SAN FRANCISCO BALLET ASSOCIATION, PROVIDING THE TERMS AND CONDITIONS OF THE SALE AND ISSUANCE OF SAID BONDS AND OTHER MATTERS RELATING THERETO, AND AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS HEREIN SPECIFIED

WHEREAS, the California Infrastructure and Economic Development Bank (the “Bank”) was established pursuant to the Bergeson-Peace Infrastructure and Economic Development Bank Act (California Government Code Section 63000 and following) (the “Act”), for the purpose of promoting economic development; and

WHEREAS, the Bank is authorized to issue tax-exempt revenue bonds to provide financing for economic development facilities (as defined in the Act) located in the State of California (the “State”); and

WHEREAS, San Francisco Ballet Association, a California nonprofit public benefit corporation (the “Borrower”), has submitted an application to the Bank for assistance to provide funds to: (i) effect the retirement of a portion the Bank’s Variable Rate Revenue Bonds, Series 2008 (San Francisco Ballet Association) in the aggregate principal amount of not to exceed \$30,000,000 (the “2008 Bonds”), and (ii) to pay certain costs of issuance incurred in connection with the issuance and sale of the Bonds; and

WHEREAS, the 2008 Bonds were issued to effect the retirement of the Bank’s Variable Rate Revenue Bonds, Series 2006 (San Francisco Ballet Association) (the “2006 Bonds”), which

2006 Bonds were issued (a) in part to refund the Bank's Variable Rate Demand Revenue Bonds, Series 2002 (San Francisco Ballet Association) (the "2002 Bonds") and (b) in part to finance and refinance, among other things, (a) the acquisition, construction, furnishing and/or equipping of (1) the Borrower's administration building; (2) sets and costumes used in connection with certain ballet productions performed by the San Francisco Ballet company; (3) warehouse space; (4) student dormitories; (5) certain computer hardware upgrades; and (6) improvements to and refurbishing of the War Memorial Opera House used by the Borrower, all of which are located in the City and County of San Francisco, California (the "Original 2006 Project"); and

WHEREAS, the principal amount of the 2008 Bonds attributable to the refinancing of the construction, furnishing and/or equipping of the Borrower's student dormitories (the "2006 Dormitory Project") will remain outstanding, and will not be retired with the proceeds of bonds issued pursuant to this resolution (the Original 2006 Project excluding the 2006 Dormitory Project is referred to herein as the "2006 Project"); and

WHEREAS, the 2002 Bonds were issued to, in part, finance the renovation, rehabilitation and equipping of the Borrower's main facility at 455 Franklin Street, and an annex adjacent thereto, the acquisition of sets and costumes used in connection with ballet productions performed by the San Francisco Ballet company, all of which are located in the City and County of San Francisco, California (the "2002 Project"); and

WHEREAS, the Borrower has represented that it has operated the facilities acquired, constructed, equipped or furnished as a result of the 2006 Project and the 2002 Project (the "Facilities") as cultural facilities, which operation is consistent with the definition of an economic development facility in the Act and that the Facilities are consistent with any existing local or regional comprehensive plan; and

WHEREAS, for these purposes, the Borrower has requested the Bank to (a) authorize the issuance of one or more series of tax-exempt or taxable obligations in an aggregate principal amount not to exceed \$30,000,000 entitled California Infrastructure and Economic Development Bank Revenue Bonds (San Francisco Ballet Association) Series 2010\_\_ (collectively, the

“Bonds”), (b) provide for the sale of the Bonds, (c) provide for the loan of proceeds of the sale of the Bonds to the Borrower to effect the retirement of the 2008 Bonds and to finance certain costs related to the issuance of the Bonds, (d) provide for the payment of the principal of, premium, if any, and interest on the Bonds with revenues derived from the Borrower’s repayment of that loan, and (e) take and authorize certain other actions in connection with the foregoing; and

WHEREAS, the Borrower has represented that First Republic Bank (the “Purchaser”), has agreed to purchase the total amount of the Bonds pursuant to a private placement agreement by and among the Bank, the Treasurer of the State, the Borrower and the Purchaser; and

WHEREAS, because the Bonds will be sold directly to the Purchaser and held by the Purchaser for its own account, the transaction will not be rated by any rating agency; and

WHEREAS, consistent with the Bank’s policies, the Borrower has represented that (a) the Purchaser will certify that it is a “qualified institutional buyer” within the meaning of Rule 144A promulgated under the Securities Act of 1933, as amended (a “qualified institutional buyer”); (b) the private placement agreement will include “sophisticated investor” representations acceptable to the Bank; (c) the Bonds will be subject to resale limitations that limit the transfer or sale of the Bonds by the Purchaser to other qualified institutional buyers until such time the Bonds are subsequently rated consistent with the rating policy of the Board of Directors of the Bank (the “Board”); and

WHEREAS, the Bank may not issue the Bonds to assist in refinancing the 2002 Project and the 2006 Project (collectively, the “Project”) until the Board makes certain determinations relating to the Project as required by the Act; and

WHEREAS, there are now on file with the Secretary of the Board (the “Secretary”) the following documents:

(a) a proposed form of a loan agreement to be entered into by and between the Bank and the Borrower, providing for the loan of the proceeds of the Bonds to the Borrower;

(b) a proposed form of an indenture to be entered into between the Bank and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), providing for the authorization and issuance of the Bonds to be dated the date of delivery thereof;

(c) a proposed form of a private placement agreement to be entered into by and among the Bank, the Treasurer of the State and the Purchaser, and approved by the Borrower, providing for the sale of the Bonds; and

(d) a proposed form of a tax agreement between the Bank and the Borrower, concerning the exclusion of interest on the Bonds from gross income for federal income tax purposes.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the California Infrastructure and Economic Development Bank as follows:

**Section 1.** The above recitals are true and correct.

**Section 2.** Pursuant to Sections 63046 and 63047 of the Act, and based upon the representations of the Borrower, the Board hereby finds and determines as follows:

- a. The Project is within in the State.
- b. The Borrower is capable of meeting its payment obligations under the loan agreement as approved by this resolution, which finding is based in particular on the Borrower’s ability to satisfy the requirements imposed by the Purchaser.
- c. The Borrower is capable of meeting the other obligations incurred by the Borrower under the agreements approved by this resolution.
- d. The payments to be made by the Borrower to the Bank under the loan agreement as approved by this resolution are adequate to pay the current expenses of the Bank in connection with the financing and to make all the payments on the Bonds.
- e. The proposed financing is appropriate for the Project.
- f. The Facilities are consistent with any existing local or regional comprehensive plan.

**Section 3.** Based on the information provided and representations made by the Borrower, the Board hereby finds and determines that the Project demonstrates clear evidence of a defined public benefit to the community in which the facilities are located by reducing the financial risks inherent in the structure of the 2008 Bonds, which in turn will permit the Borrower to continue to provide cultural enrichment to the community.

**Section 4.** The Bank authorizes and approves the loan of the proceeds of the Bonds to the Borrower in order to refinance costs of the Project pursuant to the terms and provisions of a loan agreement as approved by this resolution. The proposed form of loan agreement on file with the Secretary is hereby approved, and the Executive Director of the Bank (the “Executive Director”), the Chair of the Board, or the Chair’s designee, each acting alone, is hereby authorized and directed, for and on behalf and in the name of the Bank, to execute, acknowledge and deliver a loan agreement to the Borrower, in substantially said form, with such insertions and changes therein as may be necessary or appropriate to cause the same to carry out the intent of this resolution and as the officer or official executing the same, with the advice of the Bank’s counsel, may require or approve, such requirement or approval to be conclusively evidenced by the execution and delivery thereof (as so executed, the “Loan Agreement”). The Secretary is authorized to attest to the Bank’s execution of the Loan Agreement.

**Section 5.** The proposed form of indenture of trust on file with the Secretary is hereby approved, and the Executive Director, the Chair of the Board, or the Chair’s designee, each acting alone, is hereby authorized and directed, for and on behalf and in the name of the Bank, to execute, acknowledge and deliver an indenture of trust to the Trustee in substantially said form, with such insertions and changes therein (including without limitation the particular designation for each series of Bonds issued under the indenture of trust) as may be necessary or appropriate to cause the same to carry out the intent of this resolution and as the officer or official executing the same, with the advice of the Bank’s counsel, may require or approve, such requirement or approval to be conclusively evidenced by the execution and delivery thereof (as so executed, the “Indenture”). The Indenture shall limit the transfer or sale of the Bonds by the

Purchaser to other subsequent purchasers to qualified institutional buyers until such time the Bonds are rated consistent with the Board's rating policy. The Secretary is authorized to attest to the Bank's execution of the Indenture.

**Section 6.** The proposed form of private placement agreement on file with the Secretary is hereby approved, and the Executive Director, the Chair of the Board, or the Chair's designee, each acting alone, is hereby authorized and directed, for and on behalf and in the name of the Bank, to execute and deliver to the Purchaser, the Treasurer of the State and the Borrower a private placement agreement in substantially said form, with such insertions and changes therein as may be necessary or appropriate to cause the same to carry out the intent of this resolution and as the officer or official executing the same, with the advice of the Bank's counsel, may require or approve, such requirement or approval to be conclusively evidenced by the execution and delivery thereof. Such private placement agreement shall contain a certification by the Purchaser that it is a "qualified institutional buyer" within the meaning of Rule 144A promulgated under the Securities Act of 1933, as amended and such other "sophisticated investor" representations as are acceptable to the Bank's counsel and shall limit the transfer or sale of the Bonds by the Purchaser to other subsequent purchasers to qualified institutional buyers until such time the Bonds are subsequently rated consistent with the Board's rating policy. The Treasurer, as agent for sale of the Bank's bonds, is hereby requested to sell the Bonds at negotiated sale, at such prices and at such initial interest rates as he may determine in accordance with the Indenture. Notwithstanding Section 63074(d) of the Act to the contrary, the private sale of the Bonds may take place at any time within one hundred eighty (180) days of the adoption of this resolution or at such later date approved by the Executive Director which is not later than the date three hundred sixty (360) days of the adoption of this resolution.

**Section 7.** The proposed form of tax agreement on file with the Secretary is hereby approved and the Executive Director, the Chair of the Board or the Chair's designee, each acting alone, is hereby authorized and directed, for an in the name and on behalf of the Bank, to execute and deliver to the Borrower and counsel to the Bank a tax agreement in substantially said form,

with such changes and insertions therein as may be necessary to cause the same to carry out the intent of this resolution and as the officer or official executing the same, with the advice of the Bank's counsel, may require or approve, such requirement or approval to be conclusively evidenced by the execution and delivery thereof.

**Section 8.** The Bank approves the issuance on a taxable or tax-exempt basis of not to exceed \$30,000,000 aggregate principal amount of the Bonds for the refinancing of the Project in accordance with this resolution and the terms of and to be secured by the Indenture. Payment of the principal of, premium, if any, and the interest on, the Bonds shall be made solely from the revenues to be received by the Bank pursuant to the Loan Agreement and the Indenture, and payment of any purchase price of the Bonds upon remarketing shall be payable solely from the proceeds of the remarketing of the Bonds and amounts made available therefore under the Indenture (including amounts made available therefore as a result of draws upon a credit facility provided to secure the Bonds). The Bonds shall not be deemed to constitute a debt or liability of the State of California or of the Bank except, as to the Bank, to the limited extent provided in the Indenture. Neither the full faith and credit nor the taxing power of the State is pledged to the payment of the principal or remarketing purchase price of, or premium, if any, or interest on, the Bonds. The Bonds shall be dated the date of their issuance and shall be paid in lawful money of the United States at the time or times and place or places provided in the Indenture. The Bonds shall be in the form provided in the Indenture, mature on the date or dates provided in the Indenture which shall be not later than thirty (30) years from the date of issuance thereof, be subject to redemption as provided in the Indenture, shall carry the registration privileges provided in the Indenture and shall bear interest at fixed or variable rates to be determined in accordance with the Indenture, which rates shall not to exceed the lesser of 15% per annum or the maximum rate of interest on the Bonds permitted by the laws of the State. While held by the Purchaser or subsequent qualified institutional buyer pursuant to private placement, the Bonds shall be in denominations of \$500,000 or any larger denomination consisting of an integral

multiple of \$5,000, and at any time following the receipt of a rating on the Bonds that meets the Bank's rating requirement policy, as provided in the Indenture.

**Section 9.** The Executive Director, the Chair of the Board, or the Chair's designee, each acting alone, is hereby authorized and directed, for and in the name and on behalf of the Bank, to execute, by manual or facsimile signature, the Bonds in an aggregate principal amount not to exceed the amount authorized hereunder in accordance with the terms of this resolution and the Indenture and in the form set forth in the Indenture.

**Section 10.** The Bonds, when executed as provided in this resolution, shall be delivered to the Trustee for authentication by the Trustee pursuant to the Indenture. The Trustee is hereby requested and directed to authenticate the Bonds by executing the Trustee's certificate of authentication appearing thereon. The Trustee is hereby requested and directed to deliver the Bonds, when duly executed and authenticated, to the Purchaser or may, on the request of the Purchaser, deliver the bonds to The Depository Trust Company, New York, New York (the "Depository"), on behalf of the Purchaser in accordance with written instructions executed on behalf of the Bank by the Executive Director, the Chair of the Board, or the Chair's designee, which instructions each signatory, acting singly, is hereby authorized and directed, for and on behalf and in the name of the Bank, to execute and to deliver to the Trustee. Such instructions shall provide for the delivery of the Bonds to the Depository, on behalf of the Purchaser, upon payment of the purchase price therefor.

**Section 11.** The Executive Director, the Chair of the Board or the Chair's designee, each acting alone, is hereby authorized to execute and deliver any and all certificates and instruments, including without limitation letters of representations, any guarantees relating to the Bonds, and certifications of authority and tax forms required by the Internal Revenue Service in connection with the issuance of the Bonds, if any, which they or counsel to the Bank may deem necessary or advisable to consummate the issuance, sale and delivery of the Bonds and otherwise to effectuate the purpose of this resolution.

**Section 12.** All actions heretofore taken by the officers and employees of the Bank with respect to the approval, issuance and sale of the Bonds are hereby approved, confirmed and ratified. The officers of the Bank and their authorized designees, deputies, agents and counsel are hereby authorized and directed, jointly and severally, to perform their duties and to execute and deliver any and all certificates which they or counsel to the Bank may deem necessary or advisable in order to consummate the issuance, sale and delivery of the Bonds and otherwise to effectuate the purposes of this resolution.

**Section 13.** This resolution shall take effect immediately upon its passage.

PASSED, APPROVED, AND ADOPTED at a meeting of the California Infrastructure and Economic Development Bank on December 14, 2010 by the following vote:

AYES: Berte, Bryant, Lujano, Leonard  
NOES: None  
ABSENT: Rice  
ABSTAIN: None

  
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Stanton C. Hazelroth, Executive Director

Attest:  
  
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Roma Cristia-Plant  
Secretary of the Board of Directors