

[Multifamily Housing Revenue Bonds - 1180 Fourth Street Family Housing - Not to Exceed \$50,000,000]

**Resolution declaring the intent of the City and County of San Francisco (City) to reimburse certain expenditures from proceeds of future bonded indebtedness; authorizing the Housing Development Director of the Mayor's Office of Housing (Director) to submit an application and related documents to the California Debt Limit Allocation Committee (CDLAC) to permit the issuance of residential mortgage revenue bonds in an aggregate principal amount not to exceed \$50,000,000 for 1180 Fourth Street Family Housing; authorizing and directing the Director to direct the Controller's Office to hold in trust an amount not to exceed \$100,000 in accordance with CDLAC procedures; authorizing the Director to certify to CDLAC that the City has on deposit the required amount; authorizing the Director to pay an amount equal to such deposit to the State of California if the City fails to issue the residential mortgage revenue bonds; approving, for purposes of the Internal Revenue Code of 1986, as amended, the issuance and sale of residential mortgage revenue bonds by the City in an aggregate principal amount not to exceed \$50,000,000; authorizing and directing the execution of any documents necessary to implement this Resolution; and ratifying and approving any action heretofore taken in connection with the Project (as defined herein) and the Application (as defined herein).**

WHEREAS, The Board of Supervisors of the City and County of San Francisco (the "Board of Supervisors"), after careful study and consideration, has determined that there is a shortage of safe and sanitary housing within the City and County of San Francisco (the "City"), particularly for low and moderate income persons, and that it is in the best interest of the

1 residents of the City and in furtherance of the health, safety, and welfare of the public for the  
2 City to assist in the financing of multi-family rental housing units; and,

3 WHEREAS, Acting under and pursuant to the powers reserved to the City under  
4 Sections 3, 5, and 7 of Article XI of the Constitution of the State of California and Sections  
5 1.101 and 9.107 of the Charter, the City has enacted the City and County of San Francisco  
6 Residential Mortgage Revenue Bond Law (the "City Law"), constituting Article I of Chapter 43  
7 of the San Francisco Administrative Code, in order to establish a procedure for the  
8 authorization, issuance and sale of residential mortgage revenue bonds by the City for the  
9 purpose of providing funds to encourage the availability of adequate housing and home  
10 finance for persons and families of low or moderate income, and to develop viable  
11 communities by providing decent housing, enhanced living environments, and increased  
12 economic opportunities for persons and families of low or moderate income; and,

13 WHEREAS, In addition, pursuant to Division 31 of the Health and Safety Code of the  
14 State of California, and particularly Chapter 7 of Part 5 thereof (the "State Law"), the City is  
15 empowered to issue and sell bonds for the purpose of making mortgage loans or otherwise  
16 providing funds to finance the development of multi-family rental housing including units for  
17 lower income households and very low income households; and,

18 WHEREAS, Mercy Housing California XLIV, a California limited partnership, sponsored  
19 by Mercy Housing Calwest, a California non-profit public benefit corporation ("Mercy"), or  
20 another partnership sponsored by Mercy (in either case, the "Developer"), desires to construct  
21 a 150 unit residential rental housing development located at 1180 Fourth Street currently  
22 identified as 1180 Fourth Street Family Housing (the "Project"); and,

23 WHEREAS, the Developer has requested that the City assist in the financing of the  
24 Project through the issuance of one or more series of tax-exempt mortgage revenue bonds  
25 (the "Bonds"); and,

1           WHEREAS, The City expects that proceeds of the Bonds will be used to pay certain  
2 costs incurred in connection with the Project prior to the date of issuance of the Bonds; and,

3           WHEREAS, The City intends to issue the Bonds in an amount not to exceed  
4 \$50,000,000 and to loan the proceeds of the Bonds to the Developer (the "Loan") to finance  
5 the costs of the Project; and,

6           WHEREAS, The Board of Supervisors has determined that the moneys advanced and  
7 to be advanced to pay certain expenditures of the Project are or will be available only for a  
8 temporary period and it is necessary to reimburse such expenditures with respect to the  
9 Project from the proceeds of the Bonds; and,

10          WHEREAS, Section 1.150-2 of the United States Treasury Regulations requires that  
11 the Board of Supervisors declare its reasonable official intent to reimburse prior expenditures  
12 for the Project with proceeds of the Bonds; and,

13          WHEREAS, The interest on the Bonds may qualify for tax exemption under Section  
14 103 of the Internal Revenue Code of 1986, as amended (the "Code"), only if the Bonds are  
15 approved in accordance with Section 147(f) of the Code; and,

16          WHEREAS, The City now wishes to approve the issuance of the Bonds in order to  
17 satisfy the public approval requirements of Section 147(f) of the Code; and,

18          WHEREAS, The Project is located wholly within the City; and,

19          WHEREAS, On August 22, 2011, the City caused a notice stating that a public hearing  
20 with respect to the issuance of the Bonds would be held by the Mayor's Office of Housing on  
21 September 6, 2011, to appear in The San Francisco Examiner, which is a newspaper of  
22 general circulation in the City; and,

23          WHEREAS, The Mayor's Office of Housing held the public hearing described above on  
24 September 6, 2011 and an opportunity was provided for persons to comment on the issuance  
25 of the Bonds and the Project; and,

1           WHEREAS, This Board of Supervisors is the elected legislative body of the City and is  
2 the applicable elected representative required to approve the issuance of the Bonds within the  
3 meaning of Section 147(f) of the Code; and,

4           WHEREAS, Section 146 of the Code limits the amount of tax-exempt private activity  
5 bonds, which include qualified mortgage bonds, that may be issued in any calendar year by  
6 entities within a state and authorizes the legislature of each state to provide the method of  
7 allocating authority to issue tax-exempt private activity bonds within the respective state; and,

8           WHEREAS, Chapter 11.8 of Division 1 of Title 2 of the Government Code of the State  
9 of California governs the allocation in the State of California of the state ceiling established by  
10 Section 146 of the Code among governmental units in the State having the authority to issue  
11 tax-exempt private activity bonds; and,

12           WHEREAS, Section 8869.85(b) of the Government Code requires that a local agency  
13 file an application for a portion of the state ceiling with or upon the direction of the California  
14 Debt Allocation Committee (“CDLAC”) prior to the issuance of tax-exempt private activity  
15 bonds, including qualified mortgage bonds; and,

16           WHEREAS, CDLAC procedures require an applicant for a portion of the state ceiling to  
17 certify to CDLAC that applicant has on deposit an amount equal to one-half of one percent  
18 (1/2%) of the amount of allocation requested; now, therefore be it

19           RESOLVED, by the Board of Supervisors of the City and County of San Francisco, as  
20 follows:

21           Section 1. The Board of Supervisors finds and determines that the foregoing recitals  
22 are true and correct.

23           Section 2. The Board of Supervisors adopts this Resolution for purposes of  
24 establishing compliance with the requirements of Section 1.150-2 of the United States  
25 Treasury Regulations. This Resolution does not bind the Board of Supervisors to issue the

1 Bonds, approve the Loan or to make any expenditure, incur any indebtedness or proceed with  
2 the Project.

3 Section 3. The Board of Supervisors hereby declares its official intent under United  
4 States Treasury Regulations Section 1.150-2 to use proceeds of the Bonds to reimburse  
5 expenditures incurred in connection with the Project. The Board of Supervisors hereby further  
6 declares its intent to use such proceeds to reimburse the Developer for actual expenditures  
7 made by the Developer on the Project.

8 Section 4. On the date of the expenditure to be reimbursed, all reimbursable costs of  
9 the Project will be of a type properly chargeable to a capital account under general federal  
10 income tax principles.

11 Section 5. The maximum principal amount of debt expected to be issued for the Project  
12 is \$50,000,000.

13 Section 6. This Board of Supervisors, as the applicable elected representative of the  
14 governmental unit having jurisdiction over the area in which the Project is located, hereby  
15 approves the issuance of the Bonds for purposes of Section 147(f) of the Code.

16 Section 7. This approval of the issuance of the Bonds by the City is neither an approval  
17 of the underlying credit issues of the proposed Project nor an approval of the financial  
18 structure of the Bonds.

19 Section 8. The Board of Supervisors hereby authorizes the Housing Development  
20 Director of the Mayor's Office of Housing (the "Director"), on behalf of the City, to submit an  
21 application (the "Application"), and such other documents as may be required, to CDLAC  
22 pursuant to Government Code Section 8869.85 for an allocation for the Project of a portion of  
23 the state ceiling for private activity bonds in a principal amount not to exceed \$50,000,000.

24 Section 9. An amount equal to \$100,000 ("Deposit") is hereby authorized to be held on  
25 deposit in connection with the Application and the applicable CDLAC procedures, and the

1 Director is authorized to certify to CDLAC that such funds are available; which Deposit shall  
2 consist of a restriction on cash in the Hotel Tax Fund established pursuant to Section 515.01  
3 of Article 7 of the San Francisco Business and Tax Regulations Code (the "Hotel Tax Fund").

4 Section 10. If the City receives a CDLAC allocation and the applicable issuance  
5 requirements are not met, the Mayor's Office of Housing is hereby authorized to cause an  
6 amount not to exceed the Deposit to be paid to the State of California from the Hotel Tax  
7 Fund, if required by CDLAC.

8 Section 11. The officers and employees of the City and the Director are hereby  
9 authorized and directed, jointly and severally, to do any and all things necessary or advisable  
10 to consummate the receipt of an allocation from CDLAC and otherwise effectuate the  
11 purposes of this Resolution, and all actions previously taken by such officers and employees  
12 with respect to the Project, including but not limited to the submission of the application to  
13 CDLAC, are hereby ratified and approved.

14 Section 12. This Resolution shall take effect from and after its adoption by the Board  
15 and approval by the Mayor.

16 APPROVED AS TO FORM:  
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18 DENNIS J. HERRERA  
19 City Attorney

20  
21 By: \_\_\_\_\_  
22 KENNETH DAVID ROUX  
23 Deputy City Attorney  
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