

1 [Multifamily Housing Revenue Obligations - 2175 Market Street Apartments]

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3 **Resolution authorizing the execution/issuance, sale and delivery of a multifamily**  
4 **mortgage revenue note and subordinate multifamily housing revenue bonds in an**  
5 **aggregate principal amount not to exceed \$30,000,000 (together, the "Obligations") for**  
6 **the purpose of providing financing for the acquisition and construction of a 88-unit**  
7 **multifamily residential rental housing development known as the 2175 Market Street**  
8 **Apartments; approving the form of and authorizing the execution of a funding loan**  
9 **agreement and borrower loan agreement providing the terms and conditions of the**  
10 **note and authorizing the execution and delivery thereof; approving the form of and**  
11 **authorizing the execution of a subordinate trust indenture providing the terms and**  
12 **conditions of the subordinate bonds; approving the form of and authorizing the**  
13 **execution of a subordinate loan agreement relating to the subordinate bonds;**  
14 **approving the form of and authorizing the execution of a regulatory agreement and**  
15 **declaration of restrictive covenants; authorizing the collection of certain fees; ratifying**  
16 **and approving any action heretofore taken in connection with the Obligations and the**  
17 **project; approving modifications, changes and additions to the documents; granting**  
18 **general authority to City officials to take actions necessary to implement this**  
19 **resolution; and ratifying and approving any action heretofore taken in connection with**  
20 **the Obligations and the project.**

21  
22 WHEREAS, The Board of Supervisors of the City and County of San Francisco (the  
23 "Board") desires to provide for a portion of the costs of the acquisition and construction by FC  
24 2175 Market, LP, a Delaware limited partnership (the "Borrower"), of a 88-unit multifamily  
25 residential rental housing development located at 2175 Market Street, San Francisco,

1 California known as the 2175 Market Street Apartments (the "Project"), to provide housing for  
2 persons and families of very low income through the execution of a multifamily mortgage  
3 revenue note and the issuance of multifamily housing revenue bonds; and,

4 WHEREAS, The City and County of San Francisco (the "City") is authorized to issue  
5 revenue obligations to provide financing for multifamily rental housing pursuant to the Charter  
6 of the City, Article I of Chapter 43 of the Administrative Code of the City and, to the extent  
7 applicable, Chapter 7 of Part 5 of Division 31 (commencing with Section 52075) of the Health  
8 and Safety Code of the State of California ("Health and Safety Code"), as now in effect and as  
9 it may from time to time hereafter be amended or supplemented (collectively, the "Act"); and,

10 WHEREAS, The interest on the Obligations (hereinafter defined) may qualify for tax  
11 exemption under Section 103 of the Internal Revenue Code of 1986, as amended, (the  
12 "Code"), only if the issuance of the Obligations are approved in accordance with Section  
13 147(f) of the Code; and,

14 WHEREAS, This Board is the elected legislative body of the City and is one of the  
15 applicable elected representatives required to approve the issuance of the Obligations within  
16 the meaning of Section 147(f) of the Code; and,

17 WHEREAS, **On September 18, 2012, this Board, in Resolution No. 334-12,**  
18 approved the issuance of the Obligations for the purposes of Section 147(f) of the Code; and,

19 WHEREAS, There has been prepared and presented to the Board for consideration at  
20 this meeting the documentation required for the execution and delivery of the Note  
21 (hereinafter defined), and delivery of the Subordinate Bonds (hereinafter defined) and such  
22 documentation is on file with the Clerk of the Board of Supervisors (the "Clerk of the Board");  
23 and,

1           WHEREAS, It appears that each of the documents which is now before this Board is  
2 substantially in appropriate form and is an appropriate instrument to be executed and  
3 delivered for the purposes intended; and,

4           WHEREAS, The Board finds that the public interest and necessity require that the City  
5 at this time make arrangements for the execution and delivery of the Obligations;

6           Whereas, the Note and the Subordinate Bonds are limited obligations of the City, the  
7 sole source of repayment for which shall be payments made by the Borrower under: (a) with  
8 respect to the Note, the Borrower Loan Agreement (hereinafter defined), together with  
9 investment income on certain funds and accounts held under the Funding Loan Agreement,  
10 and (b) with respect to the Subordinate Bonds, the Subordinate Loan Agreement (hereinafter  
11 defined).

12           WHEREAS, The City has engaged Orrick, Herrington & Sutcliffe LLP and Curlls Bartling  
13 P.C., as co-obligation counsel with respect to the Obligations ("Co-Obligation Counsel"); and,

14           WHEREAS, Citibank, N.A., a national banking association, has expressed its intention  
15 to purchase, or cause an affiliate to purchase, the Note authorized hereby;

16           WHEREAS, FC Cactus Residential Development Fund, LLC has expressed its  
17 intention to purchase, or cause a qualified affiliate to purchase the Subordinate Bonds  
18 authorized hereby; now, therefore be it

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

21           Section 1. Approval of Recitals. The Board hereby finds and declares that the above  
22 recitals are true and correct.

23           Section 2. Approval of Execution and Delivery of Note. In accordance with the Act and  
24 the Funding Loan Agreement (hereinafter defined), the City is hereby authorized to execute  
25 and deliver a revenue note of the City, which note comprises a Governmental Lender Note

1 under the Funding Loan Agreement, such note to be designated as "City and County of San  
2 Francisco Multifamily Housing Revenue Note (2175 Market Street Apartments), 2013 Series  
3 D-1," or such other designation as may be necessary or appropriate to distinguish such Note  
4 from any other bonds or notes of the City, in a principal amount not to exceed Thirty Million  
5 Dollars (\$30,000,000.00) (the "Note"), with an interest rate not to exceed twelve percent  
6 (12%) per annum for the Note, and which shall have a final maturity date not later than August  
7 1, 2050. Notwithstanding the preceding sentence, at no time shall the outstanding aggregate  
8 amount of the Note and the Subordinate Bonds exceed Thirty Million Dollars  
9 (\$30,000,000.00). The Note shall be in the form set forth in and otherwise in accordance with  
10 the Funding Loan Agreement (defined below), and shall be executed by the manual or  
11 facsimile signature of the Mayor of the City (the "Mayor") and attested by the manual or  
12 facsimile signature of the Clerk of the Board.

13 Section 3. Approval of Funding Loan Agreement. The Funding Loan Agreement (the  
14 "Funding Loan Agreement"), by and among the City, Citibank, N.A., as funding lender (the  
15 "Funding Lender") and U.S. Bank National Association, as fiscal agent, in the form presented  
16 to the Board, a copy of which is on file with the Clerk of the Board, is hereby approved. Each  
17 of the Mayor, the Director of the Mayor's Office of Housing, the Housing Development Director  
18 of the Mayor's Office of Housing or any Authorized Governmental Lender Representative (as  
19 such term is defined in the Funding Loan Agreement) (collectively, the "Authorized  
20 Representatives" and each, an "Authorized Representative") is hereby authorized to execute  
21 the Funding Loan Agreement, approved as to form by the City Attorney of the City (the "City  
22 Attorney"), in substantially said form, together with such additions thereto and changes therein  
23 as the City Attorney and Co-Obligation Counsel may approve or recommend in accordance  
24 with Section 10 hereof.

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1           Section 4. Approval of Borrower Loan Agreement. The Borrower Loan Agreement (the  
2 "Borrower Loan Agreement"), by and between the City and the Borrower, in the form  
3 presented to the Board, a copy of which is on file with the Clerk of the Board, is hereby  
4 approved. Each Authorized Representative is hereby authorized to execute the Borrower  
5 Loan Agreement, approved as to form by the City Attorney, in substantially said form, together  
6 with such additions thereto and changes therein as the City Attorney and Co-Obligation  
7 Counsel may approve or recommend in accordance with Section 10 hereof.

8           Section 5. Approval of Issuance and Delivery of Subordinate Bonds. In accordance  
9 with the Act and the Subordinate Indenture (hereinafter defined), the City is hereby authorized  
10 to issue and deliver revenue bonds of the City, such bonds to be issued in one series, [which  
11 may have two or more subseries,] and designated as "City and County of San Francisco  
12 Subordinate Multifamily Housing Revenue Bonds (2175 Market Street Apartments), 2013  
13 Series D-2," or such other designation as may be necessary or appropriate to distinguish such  
14 series from every other series of bonds, in an aggregate principal amount not to exceed  
15 \$4,000,000 (the "Subordinate Bonds"), with an interest rate not to exceed twelve percent  
16 (12%) per annum for the Subordinate Bonds, and which shall have a final maturity date no  
17 later than August 1, 2050. The Subordinate Bonds shall be in the form set forth in and  
18 otherwise in accordance with the Subordinate Indenture, and shall be executed by the manual  
19 or facsimile signature of the Mayor of the City (the "Mayor") and attested by the manual or  
20 facsimile signature of the Clerk of the Board.

21           Section 6. Subordinate Trust Indenture. The Subordinate Trust Indenture (the  
22 "Subordinate Indenture"), by and between the City and U.S. Bank National Association, as  
23 Trustee, in the form presented to the Board, a copy of which is on file with the Clerk of the  
24 Board, is hereby approved. Each Authorized Representative is hereby authorized to execute  
25 the Subordinate Indenture, approved as to form by the City Attorney in substantially said form,

1 together with such additions thereto and changes therein as the City Attorney and Co-  
2 Obligation Counsel may approve or recommend in accordance with Section 10 thereof.

3 Section 7. Subordinate Loan Agreement. The Subordinate Loan Agreement (the  
4 "Subordinate Loan Agreement") by and among the City, the Trustee and the Borrower, in the  
5 form presented to the Board, a copy of which is on file with the Clerk of the Board, is hereby  
6 approved. Any Authorized Representative is hereby authorized to execute the Subordinate  
7 Loan Agreement, approved as to form by the City Attorney, in substantially said form, together  
8 with such additions thereto and changes therein as the City Attorney and Co-Obligation  
9 Counsel may approve or recommend in accordance with Section 10 hereof.

10 Section 8. Approval of Regulatory Agreement and Declaration of Restrictive  
11 Covenants. The Regulatory Agreement and Declaration of Restrictive Covenants (the  
12 "Regulatory Agreement"), between the City and the Borrower, in the form presented to the  
13 Board, a copy of which is on file with the Clerk of the Board, is hereby approved. Each  
14 Authorized Representative is hereby authorized to execute the Regulatory Agreement,  
15 approved as to form by the City Attorney, in substantially said form, together with such  
16 additions thereto and changes therein as the City Attorney and Co-Obligation Counsel may  
17 approve or recommend in accordance with Section 10 hereof.

18 Section 9. Issuer Fees. The City, acting through the Mayor's Office of Housing, shall  
19 charge a fee for the administrative costs associated with issuing the Obligations in an amount  
20 not to exceed 0.25% of the aggregate principal amount of the Obligations. Such fee shall be  
21 payable at closing and may be contingent on the delivery of the Obligations. The City shall  
22 also charge an annual fee for monitoring the restricted units in an amount not to exceed  
23 0.125% of the outstanding principal amount of the Obligations, but no less than \$2,500  
24 annually, for the term of the Regulatory Agreement. The initial monitoring fee shall be  
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1 payable upon delivery of the Obligations. The Board hereby authorizes the Mayor's Office of  
2 Housing to charge and collect the fees described in this section.

3 Section 10. Modifications, Changes, Additions. Any Authorized Representative  
4 executing the Funding Loan Agreement, the Borrower Loan Agreement, the Subordinate  
5 Indenture, the Subordinate Loan Agreement or the Regulatory Agreement (collectively, the  
6 "City Agreements"), in consultation with the City Attorney and Co-Obligation Counsel, is  
7 hereby authorized to approve and make such modifications, changes or additions to the City  
8 Agreements as may be necessary or advisable, provided that such modification does not  
9 authorize an aggregate principal amount of the Obligations in excess of \$30,000,000 at any  
10 one time, provide for a final maturity on the Obligations later than August 1, 2050, or provide  
11 for the Obligations to bear interest at a rate in excess of twelve percent (12%) per annum. The  
12 approval of any modification, addition or change to any of the aforementioned documents  
13 shall be evidenced conclusively by the execution and delivery of the document in question.

14 Section 11. General Authority. The proper officers of the City are hereby authorized  
15 and directed, for and in the name and on behalf of the City, to do any and all things and take  
16 any and all actions and execute and deliver any and all certificates, agreements and other  
17 documents, including but not limited to those documents described in the City Agreements,  
18 which they, or any of them, may deem necessary or advisable in order to consummate the  
19 lawful execution and delivery of the Note and the lawful issuance and delivery of the  
20 Subordinate Bonds and to effectuate the purposes thereof and of the documents herein  
21 approved in accordance with this Resolution.

22 Section 12. Ratification of Prior Actions. All actions heretofore taken by the officers  
23 and agents of the City with respect to the issuance and delivery of the Obligations are hereby  
24 approved, confirmed and ratified.

1           Section 13. File. All documents referenced herein as being on file with the Clerk of the  
2 Board are located in File No. \_\_\_\_\_, which is hereby declared to be a part of this  
3 Resolution as if set forth fully herein.

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5           APPROVED AS TO FORM:

6           DENNIS J. HERRERA  
7           City Attorney

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9           By: \_\_\_\_\_  
10                 HEIDI GEWERTZ  
                   Deputy City Attorney

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