

1 [Multifamily Housing Revenue Bonds - 53 Colton Street - Not to Exceed \$33,520,000]

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3 **Resolution authorizing the issuance, sale and delivery of multifamily housing revenue**
4 **bonds in one or more series in an aggregate principal amount not to exceed**
5 **\$33,520,000 for the purpose of providing financing for the acquisition and construction**
6 **of a 96-unit multifamily rental housing project located at 53 Colton Street; approving**
7 **the form of and authorizing the execution of an indenture of trust providing the terms**
8 **and conditions of the bonds; approving the form of and authorizing the execution of a**
9 **regulatory agreement and declaration of restrictive covenants; approving the form of**
10 **and authorizing the execution of a loan agreement; authorizing the collection of certain**
11 **fees; approving modifications, changes, and additions to the documents; ratifying and**
12 **approving any action heretofore taken in connection with the bonds and the project, as**
13 **defined herein; granting general authority to City officials to take actions necessary to**
14 **implement this Resolution, as defined herein; and related matters, as defined herein.**

15

16 WHEREAS, The Board of Supervisors of the City and County of San Francisco (the
17 "Board") desires to provide for the financing of a portion of the costs of the acquisition and
18 construction by 53 Colton, L.P., a California limited partnership (the "Borrower"), of a 96-unit
19 residential rental development project located at 53 Colton Street, in San Francisco,
20 California, known as "53 Colton" (the "Project"), to provide housing for persons of low and
21 very-low income through the issuance of multifamily housing revenue bonds in one or more
22 series which may be taxable or tax-exempt (collectively, the "Bond"); and

23 WHEREAS, The City and County of San Francisco (the "City") is authorized to issue
24 revenue bonds for such purpose pursuant to the Charter of the City, Article I of Chapter 43 of
25 the Administrative Code of the City and, to the extent applicable, Chapter 7 of Part 5 of

1 Division 31 (commencing with Section 52075) of the Health and Safety Code of the State of
2 California (“Health and Safety Code”), as now in effect and as it may from time to time
3 hereafter be amended or supplemented (collectively, the “Act”); and

4 WHEREAS, The interest on the Bond may qualify for tax exemption under Section 103
5 of the Internal Revenue Code of 1986, as amended (the “Code”), only if the Bond is approved
6 in accordance with Section 147(f) of the Code; and

7 WHEREAS, The Board is the elected legislative body of the City and is the applicable
8 elected representative authorized to approve the issuance of the Bond within the meaning of
9 Section 147(f) of the Code; and

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

11 WHEREAS, The Mayor’s Office of Housing and Community Development (“MOHCD”)
12 held a duly noticed public hearing on November 8, 2019, at which hearing an opportunity was
13 provided for persons to comment on the Project and the issuance of the Bond; and

14 WHEREAS, The Board on December 10, 2019, adopted Resolution No. 538-19
15 approving the issuance of the Bond for the purposes of Section 147(f) of the Internal Revenue
16 Code of 1986, as amended, in an amount not to exceed \$38,700,000; and

17 WHEREAS, On April 14, 2020, the California Debt Limit Allocation Committee
18 (“CDLAC”) in its Resolution No. 20-079, allocated an amount not to exceed \$29,520,000 (the
19 “Allocation Amount”) in qualified private activity volume cap to the Project; and

20 WHEREAS, There has been prepared and presented to the Board for consideration at
21 this meeting the documentation required for the issuance of the Bond, 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 final form and is an appropriate instrument to be executed and delivered for
3 the purposes intended; and

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

6 WHEREAS, The Bond will be a limited obligation of the City, the sole source of
7 repayment of which shall be payments made by the Borrower under the Loan Agreement
8 (hereinafter defined), together with investment income, if any, of certain funds and accounts
9 held under the Indenture (hereinafter defined); and

10 WHEREAS, The City has engaged Kutak Rock LLP and Amira Jackmon, Attorney at
11 Law, as co-bond counsel with respect to the Bond (“Co-Bond Counsel”); and

12 WHEREAS, Merchants Bank of Indiana (or an affiliate thereof) has expressed its
13 intention to purchase the Bond authorized hereby; now, therefore, be it

14 RESOLVED, By this Board of Supervisors of the City and County of San Francisco as
15 follows:

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

18 Section 2. Approval of Issuance of Bonds. This Board of Supervisors, as the
19 applicable elected representative of the governmental unit having jurisdiction over the area in
20 which the Project is located, hereby approves the issuance of the Bond for purposes of
21 Section 147(f) of the Code. In accordance with the Act and the Indenture (hereinafter
22 defined), the City is hereby authorized to issue and deliver revenue bonds of the City, such
23 bonds to be issued in one or more series or subseries, and designated as “City and County of
24 San Francisco, California Multifamily Housing Revenue Bonds (53 Colton Apartments)
25 Series 2020H-1” and “City and County of San Francisco, California Multifamily Housing

1 Revenue Bonds (53 Colton Apartments) Taxable Series 2020H-2” or such additional or other
2 designation as may be necessary or appropriate to distinguish such series from every other
3 series of bonds or notes, in an aggregate principal amount not to exceed \$33,520,000,
4 provided that any tax-exempt portion of the Bond shall not exceed the Allocation Amount, with
5 an interest rate not to exceed twelve percent (12%) per annum for the Bond, and which shall
6 have a final maturity date of not later than forty (40) years from the date of issuance of the
7 Bond. The Bond shall be in the form set forth in and otherwise in accordance with the
8 Indenture and shall be executed by the manual or facsimile signature of the Mayor of the City
9 (the “Mayor”).

10 Section 3. Approval of Indenture. The Indenture of Trust (the “Indenture”) in the
11 form presented to the Board, a copy of which is on file with the Clerk of the Board, is hereby
12 approved. The Indenture shall be entered into by and between the City and a trustee to be
13 named therein (the “Trustee”). Each of the Mayor, the Director (the “Director”) of MOHCD, the
14 Housing Development Director of MOHCD, and any other Authorized City Representative (as
15 such term is defined in the Indenture), acting individually or collectively (each, an “Authorized
16 City Representative”) is hereby authorized to execute the Indenture, approved as to form by
17 the City Attorney of the City (the “City Attorney”), in substantially said form, together with such
18 additions thereto and changes therein as the City Attorney and Co-Bond Counsel may
19 approve or recommend in accordance with Section 7 hereof.

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

3 Section 5. Approval of Regulatory Agreement and Declaration of Restrictive
4 Covenants. The Regulatory Agreement and Declaration of Restrictive Covenants (the
5 “Regulatory Agreement” and, together with the Indenture and the Loan Agreement, the “City
6 Documents”), between the City and the Borrower, in the form presented to the Board, a copy
7 of which is on file with the Clerk of the Board, is hereby approved. Each Authorized City
8 Representative is hereby authorized to execute the Regulatory Agreement, approved as to
9 form by the City Attorney, in substantially said form, together with such additions thereto and
10 changes therein as the City Attorney and Co-Bond Counsel may approve or recommend in
11 accordance with Section 7 hereof.

12 Section 6. Issuer Fees. The City, acting through MOHCD, shall charge a fee for the
13 administrative costs associated with issuing the Bond in an amount not to exceed one-quarter
14 of one percent (0.25%) of the maximum aggregate principal amount of the Bond. Such fee
15 shall be payable at Bond closing and may be contingent on the Bond sale. The City shall also
16 charge an annual fee for monitoring compliance by the Borrower with certain provisions of the
17 Regulatory Agreement in an amount not to exceed one-eighth of one percent (0.125%) of the
18 maximum outstanding aggregate principal amount of the Bond, but no less than \$2,500
19 annually, for the term of the Regulatory Agreement. The initial monitoring fee shall be
20 payable at bond closing. The Board hereby authorizes MOHCD to charge and collect the fees
21 described in this section.

22 Section 7. Modifications, Changes, and Additions. Any Authorized City
23 Representative executing the City Documents, in consultation with the City Attorney and
24 Co-Bond Counsel, is hereby authorized to approve and make such modifications,
25 amendments, changes or additions to the City Documents as may be necessary or advisable,

1 provided that such modification does not: (i) authorize an aggregate principal amount of the
2 Bond in excess of \$33,520,000 or an aggregate principal amount of the tax-exempt portion of
3 the Bond in excess of the Allocation Amount; (ii) provide for a final maturity of the Bond later
4 than forty (40) years from the date of issuance thereof; or (iii) provide for the Bond to bear
5 interest at a rate in excess of twelve percent (12%) per annum. The approval of any
6 modification, amendment, addition or change to any of the aforementioned documents shall
7 be evidenced conclusively by the execution and delivery of the document in question by an
8 Authorized City Representative or a designee thereof.

9 Section 8. Ratification. All actions heretofore taken by the officers and agents of the
10 City with respect to the sale and issuance of the Bond consistent with the purposes of this
11 Resolution and the City Documents are hereby approved, confirmed, and ratified.

12 Section 9. General Authority. The proper officers of the City (including the
13 Authorized City Representatives or designees thereof) are hereby authorized and directed, for
14 and in the name and on behalf of the City, to do any and all things and take any and all
15 actions and execute and deliver any and all certificates (including, but not limited to, tax
16 certificates), agreements (including agreements to provide adequate or additional security or
17 indemnities as required by lenders to consummate the financing), and other documents and
18 amendments, including but not limited to those documents described in the City Documents,
19 which they, or any of them, may deem necessary or advisable in order to consummate the
20 lawful issuance and delivery of the Bond and to effectuate the purposes thereof and of the
21 City Documents in consultation with the City Attorney. Any such actions are solely intended to
22 further the purposes of this Resolution, and are subject in all respects to the terms of this
23 Resolution. No such actions shall increase the risk to the City or require the City to spend any
24 resources not otherwise contemplated herein. Final versions of such documents (showing
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1 marked changes, if any) shall be provided to the Clerk of the Board for inclusion in the official
2 file within thirty (30) days of execution by all parties.

3 Section 10. File. All documents referenced herein as being on file with the Clerk of
4 the Board are located in File No. _____, which is hereby declared to be a part of this
5 Resolution as if set forth fully herein.

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7 Section 11. Effectiveness. This Resolution shall take effect from and after its
8 adoption by the Board and approval by the Mayor.

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10 APPROVED AS TO FORM:
11 DENNIS J. HERRERA
12 City Attorney

13 By: /s/ Heidi J. Gewertz
14 Heidi J. Gewertz
15 Deputy City Attorney
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