

1 [Multifamily Housing Revenue Note - 681 Florida Street - Not to Exceed \$50,000,000]

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3 **Resolution authorizing the execution and delivery of a multifamily housing revenue**
4 **note in one or more series in an aggregate principal amount not to exceed \$50,000,000**
5 **for the purpose of providing financing for the construction of a 130-unit multifamily**
6 **rental housing project known as “681 Florida Street;” approving the form of and**
7 **authorizing the execution of a funding loan agreement; providing the terms and**
8 **conditions of the loan from the funding lender to the City, and the execution and**
9 **delivery of the note; approving the form of and authorizing the execution of a project**
10 **loan agreement providing the terms and conditions of the loan from the City to the**
11 **borrower; approving the form of and authorizing the execution of a regulatory**
12 **agreement and declaration of restrictive covenants; authorizing the collection of**
13 **certain fees; approving modifications, changes, and additions to the documents;**
14 **ratifying and approving any action heretofore taken in connection with the back-to-**
15 **back loans, the note and the project; granting general authority to City officials to take**
16 **actions necessary to implement this Resolution, as defined herein; and related matters,**
17 **as defined herein.**

18

19 WHEREAS, The Board of Supervisors (the “Board”) of the City and County of San
20 Francisco (the “City”) desires to provide for the financing of a portion of the costs of the
21 construction by 681 Florida Housing Associates, L.P., a California limited partnership (the
22 “Borrower”), of a 130-unit (including one manager’s unit) residential rental development
23 project located at 681 Florida Street, in San Francisco, California, known as “681 Florida
24 Street” (the “Project”), to provide housing for persons and families of moderate, low and very-

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1 low income (as such terms are defined by the City) through the execution and delivery of a
2 multifamily housing revenue note in one or more series (collectively, the “Note”); and

3 WHEREAS, The City is authorized to execute and deliver revenue notes for such
4 purpose pursuant to the Charter of the City, Article I of Chapter 43 of the Administrative Code
5 of the City and, to the extent applicable, Chapter 7 of Part 5 of Division 31 (commencing with
6 Section 52075) of the Health and Safety Code of the State of California (“Health and Safety
7 Code”), as now in effect and as it may from time to time hereafter be amended or
8 supplemented (collectively, the “Act”); and

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

12 WHEREAS, The Board is the elected legislative body of the City and is the applicable
13 elected representative authorized to approve the execution and delivery of the Note within the
14 meaning of Section 147(f) of the Code; and

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

16 WHEREAS, The Mayor’s Office of Housing and Community Development (“MOHCD”)
17 held a duly noticed public hearing on October 29, 2019, at which hearing an opportunity was
18 provided for persons to comment on the Project and the execution and delivery of the Note;
19 and

20 WHEREAS, The Board on November 19, 2019, adopted Resolution No. 521-19
21 approving the execution and delivery of the Note for the purposes of Section 147(f) of the
22 Internal Revenue Code of 1986, as amended, in an amount not to exceed \$55,972,5000; and

23 WHEREAS, On April 14, 2020, the California Debt Limit Allocation Committee
24 (“CDLAC”) in its Resolution No. 20-098, allocated an amount not to exceed \$50,000,000 in
25 qualified private activity bond allocation to the Project; and

1 WHEREAS, There has been prepared and presented to the Board for consideration at
2 this meeting the documentation required for the execution and delivery of the Note, and such
3 documentation is on file with the Clerk of the Board of Supervisors (the “Clerk of the Board”);
4 and

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

8 WHEREAS, The Board finds that public interest and necessity require that the City at
9 this time make arrangements for the funding loan, the project loan, and the execution and
10 delivery of the Note; and

11 WHEREAS, The Note will be a limited obligation of the City, the sole source of
12 payment of which shall be payments made by the Borrower under the Project Loan
13 Agreement (hereinafter defined), together with investment income, if any, of certain funds and
14 accounts held under the Funding Loan Agreement (hereinafter defined); and

15 WHEREAS, The City has engaged Kutak Rock LLP and Curls Bartling P.C. as co-
16 special counsel with respect to the Note (“Co-Special Counsel”); and

17 WHEREAS, Wells Fargo Bank, National Association (or an affiliate thereof) (the
18 “Funding Lender”) has expressed its intention to make the funding loan, to be evidenced by
19 the Note, to the City; now, therefore, be it

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

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

24 Section 2. Approval of Execution and Delivery of Note. In accordance with the Act,
25 the Funding Loan Agreement and the Project Loan Agreement, the City is hereby authorized

1 to execute and deliver a note or notes in one or more series designated as “City and County
2 of San Francisco, California Multifamily Housing Revenue Note (681 Florida Street
3 Apartments) Series 2020I” or such additional or other designation as may be necessary or
4 appropriate to distinguish such series from every other series of bonds or notes, in an
5 aggregate principal amount not to exceed \$50,000,000, with an interest rate not to exceed
6 twelve percent (12%) per annum for the Note, and which shall have a final maturity date of not
7 later than forty (40) years from the date of execution and delivery of the Note. The Note shall
8 be in the form set forth in and otherwise in accordance with the Funding Loan Agreement and
9 shall be executed by the manual or facsimile signature of the Mayor of the City (the “Mayor”).

10 Section 3. Approval of Funding Loan Agreement. The Funding Loan Agreement
11 (the “Funding Loan Agreement”) in the form presented to the Board, a copy of which is on file
12 with the Clerk of the Board, is hereby approved. The Funding Loan Agreement shall be
13 entered into by and among the City, the Funding Lender, and U.S Bank National Association
14 as fiscal agent (the “Fiscal Agent”). Each of the Mayor, the Director (the “Director”) of
15 MOHCD, the Housing Development Director of MOHCD, and any other Authorized Officer (as
16 such term is defined in the Funding Loan Agreement), acting individually or collectively (each,
17 an “Authorized City Representative”) is hereby authorized to execute the Funding Loan
18 Agreement, approved as to form by the City Attorney of the City (the “City Attorney”), in
19 substantially said form, together with such additions thereto and changes therein as the City
20 Attorney and Co-Special Counsel may approve or recommend in accordance with Section 7
21 hereof.

22 Section 4. Approval of Project Loan Agreement. The Project Loan Agreement (the
23 “Project Loan Agreement”) by and among the City, the Fiscal Agent, and the Borrower in the
24 form presented to the Board, a copy of which is on file with the Clerk of the Board, is hereby
25 approved. Each Authorized City Representative is hereby authorized to execute the Project

1 Loan Agreement, approved as to form by the City Attorney, in substantially said form, together
2 with such additions thereto and changes therein as the City Attorney and Co-Special Counsel
3 may approve or recommend in accordance with Section 7 hereof.

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

13 Section 6. Issuer Fees. The City, acting through MOHCD, shall charge a fee for the
14 administrative costs associated with executing and delivering the Note in an amount not to
15 exceed one-quarter of one percent (0.25%) of the maximum aggregate principal amount of
16 the Note (the “Issuance Fee”). Such Issuance Fee shall be payable at funding loan closing
17 and may be contingent on the execution and delivery of the Note. The City shall also charge
18 an annual fee for monitoring compliance by the Borrower with certain provisions of the
19 Regulatory Agreement in an amount not to exceed one-eighth of one percent (0.125%) of the
20 maximum outstanding aggregate principal amount of the Note, but no less than \$2,500
21 annually, from completion of construction through the term of the Regulatory Agreement (the
22 “Annual Fee”). The Annual Fee due during the construction period shall be payable upon
23 execution and delivery of the Note. The Board hereby authorizes MOHCD to charge and
24 collect the fees described in this section. Notwithstanding the foregoing provisions of this
25 Section, MOHCD is authorized to charge an Issuance Fee or Annual Fee, or both, that is or

1 are lower than or that are collected on a different schedule than the fees prescribed in this
2 Section 6, if upon the advice of Co-Special Counsel, lower fees are necessary or advisable to
3 ensure that the Note does not become an “arbitrage bond” within the meaning of Section 148
4 of the Code, or to ensure that interest on the Note does not become includable in gross
5 income for federal income tax purposes under Section 103 of the Code.

6 Section 7. Modifications, Changes, and Additions. Any Authorized City
7 Representative executing the City Documents, in consultation with the City Attorney and Co-
8 Special Counsel, is hereby authorized to approve and make such modifications, amendments,
9 changes or additions to the City Documents as may be necessary or advisable, provided that
10 such modification does not: (i) authorize an aggregate principal amount of the Note in excess
11 of \$50,000,000; (ii) provide for a final maturity of the Note later than forty (40) years from the
12 date of execution and delivery thereof; or (iii) provide for the Note to bear interest at a rate in
13 excess of twelve percent (12%) per annum. The approval of any modification, addition or
14 change to any of the aforementioned documents shall be evidenced conclusively by the
15 execution and delivery of the document in question by an Authorized City Representative or a
16 designee thereof.

17 Section 8. Ratification. All actions heretofore taken by the officers and agents of the
18 City with respect to the funding loan and the execution and delivery of the Note consistent
19 with the purposes of this Resolution and the City Documents are hereby approved, confirmed,
20 and ratified.

21 Section 9. General Authority. The proper officers of the City (including the
22 Authorized City Representatives or designees thereof) are hereby authorized and directed, for
23 and in the name and on behalf of the City, to do any and all things and take any and all
24 actions and execute and deliver any and all certificates (including, but not limited to, tax
25 certificates), agreements (including agreements to provide adequate or additional security or

1 indemnities as required by lenders to consummate the financing), and other documents and
2 amendments, including but not limited to those documents described in the City Documents,
3 which they, or any of them, may deem necessary or advisable in order to consummate the
4 lawful execution and delivery of the Note and to effectuate the purposes thereof and of the
5 City Documents in consultation with the City Attorney. Any such actions are solely intended to
6 further the purposes of this Resolution, and are subject in all respects to the terms of this
7 Resolution. No such actions shall increase the risk to the City or require the City to spend any
8 resources not otherwise contemplated herein. Final versions of such documents (showing
9 marked changes, if any) shall be provided to the Clerk of the Board for inclusion in the official
10 file within thirty (30) days of execution by all parties.

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

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

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

20 By: /s/ HEIDI GEWERTZ
21 Heidi Gewertz
22 Deputy City Attorney
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