

1 [Multifamily Housing Revenue Note - Bernal Gateway 2 LP - Not to Exceed \$23,500,000]

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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 \$23,500,000**
5 **for the purpose of providing financing for the construction of a 55-unit multifamily**
6 **rental housing project known as “Bernal Gateway Apartments;” approving the form of**
7 **and 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, as defined herein; and granting general authority**
16 **to City officials to take actions necessary to implement this Resolution; and related**
17 **matters, as defined herein.**

18
19 WHEREAS, The Board of Supervisors of the City and County of San Francisco (the
20 “Board”) desires to provide for the financing of a portion of the costs of the construction by
21 Bernal Gateway 2 LP, a California limited partnership (the “Borrower”), of a 55-unit residential
22 rental development project located at 3101 Mission Street and 141 and 143 Precita Avenue,
23 known as “Bernal Gateway Apartments” (the “Project”), to provide housing for persons and
24 families of low income through the issuance of a multifamily housing revenue note (the
25 “Note”); and

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

7 WHEREAS, On January 16, 2019, the California Debt Limit Allocation Committee
8 (“CDLAC”) in its Resolution No. 19-016, allocated an amount not to exceed \$23,500,000 in
9 qualified private activity bonds to the Project; and

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

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

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

16 WHEREAS, On June 27, 2019, the City caused a notice stating that a public hearing
17 with respect to the issuance of the Note would be held by the Mayor’s Office of Housing and
18 Community Development on July 8, 2019, published in the Notices section of the Mayor’s
19 Office of Housing and Community Development website (at <https://sfmohcd.org/notices-0>);
20 and

21 WHEREAS, The Mayor’s Office of Housing and Community Development held the
22 public hearing described above on July 8, 2019, and an opportunity was provided for persons
23 to comment on the issuance of the Note and the Project; and

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

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

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

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

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

18 WHEREAS, The City has engaged Squire Patton Boggs (US) LLP and Amira Jackmon,
19 Attorney at Law, as co-special counsel with respect to the Note (“Co-Special Counsel”); and

20 WHEREAS, Capital One, N.A. (or an affiliate thereof) (the “Funding Lender”) has
21 expressed its intention to make the funding loan, to be evidenced by the Note, to the City;
22 now, therefore, be it

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

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

3 Section 2. Approval of Execution and Delivery of Note. The Board of Supervisors
4 adopts this Resolution for purposes of establishing compliance with the requirements of
5 Section 1.150-2 of the United States Treasury Regulations. In accordance with the Act and
6 the Funding Loan Agreement, the City is hereby authorized to execute and deliver a note or
7 notes in one or more series designated as “City and County of San Francisco Multifamily
8 Housing Revenue Note (Bernal Gateway Apartments), Series 2019G” with such additional or
9 other designation as may be necessary or appropriate to distinguish such series from every
10 other series of bonds or notes, in an aggregate principal amount not to exceed \$23,500,000
11 (the “Note”), with an interest rate not to exceed 12% per annum for the Note, and which shall
12 have a final maturity date not later than 40 years from the date of execution and delivery of
13 the Note. The Note shall be in the form set forth in and otherwise in accordance with the
14 Funding Loan Agreement and shall be executed by the manual or facsimile signature of the
15 Mayor of the City (the “Mayor”).

16 Section 3. Approval of Funding Loan Agreement. The Funding Loan Agreement
17 (the “Funding Loan Agreement”) in the form presented to the Board, a copy of which is on file
18 with the Clerk of the Board, is hereby approved. The Funding Loan Agreement shall be
19 entered into by and among the City, the Funding Lender and U.S. Bank National Association
20 (the “Fiscal Agent”). Each of the Mayor, the Director (the “Director”) of the Mayor’s Office of
21 Housing and Community Development (“MOHCD”), the Deputy Director of Housing of
22 MOHCD, and any other Authorized Governmental Lender Representative (as such term is
23 defined in the Funding Loan Agreement), acting individually or collectively (each, an
24 “Authorized City Representative”) is hereby authorized to execute the Funding Loan
25 Agreement, approved as to form by the City Attorney of the City (the “City Attorney”), in

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

4 Section 4. Approval of Project Loan Agreement. The Project Loan Agreement (the
5 “Project Loan Agreement”) by and among the City, the Fiscal Agent and the Borrower and the
6 Assignment of Deed of Trust and Loan Documents, from the City to the Funding Lender (the
7 “Assignment”), in the forms presented to the Board, copies of which are on file with the Clerk
8 of the Board, are hereby approved. Each Authorized City Representative is hereby
9 authorized to execute the Project Loan Agreement and the Assignment in substantially said
10 form, together with such additions thereto and changes therein as the City Attorney and Co-
11 Special Counsel may approve or recommend in accordance with Section 7 hereof.

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

21 Section 6. Issuer Fees. The City, acting through MOHCD, shall charge a fee for the
22 administrative costs associated with executing and delivering the Note in an amount not to
23 exceed 0.25% of the aggregate principal amount of the Note. Such fee shall be payable at
24 funding loan closing and may be contingent on the funding loan closing. The City shall also
25 charge an annual fee for monitoring the restricted units in the Project in an amount not to

1 exceed 0.125% of the outstanding aggregate principal amount of the Note, but no less than
2 \$2,500 annually, from completion of construction through the term of the Regulatory
3 Agreement. The annual monitoring fee due during the construction period shall be payable at
4 funding loan closing. The Board hereby authorizes MOHCD to charge and collect the fees
5 described in this section.

6 Section 7. Modifications, Changes, Additions. Any Authorized City Representative
7 executing the City Documents, in consultation with the City Attorney and Co-Special Counsel,
8 is hereby authorized to approve and make such modifications, changes or additions to the
9 City Documents as may be necessary or advisable, provided that such modification does not
10 authorize an aggregate principal amount of the Note in excess of \$23,500,000, provide for a
11 final maturity of the Note later than 40 years, or provide for the Note to bear interest at a rate
12 in excess of 12% per annum. The approval of any modification, addition or change to any of
13 the aforementioned documents shall be evidenced conclusively by the execution and delivery
14 of the document in question.

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

18 Section 9. General Authority. The proper officers of the City are hereby authorized
19 and directed, for and in the name and on behalf of the City, to do any and all things and take
20 any and all actions and execute and deliver any and all certificates, agreements (including
21 such agreements to provide adequate or additional security or indemnities as required by
22 lenders to consummate the financing) and other documents, including but not limited to those
23 documents described in the City Documents, which they, or any of them, may deem
24 necessary or advisable in order to consummate the lawful execution and delivery of the Note
25 and to effectuate the purposes thereof and of the City Documents. Any such actions are

1 solely intended to further the purposes of this Resolution, and are subject in all respects to the
2 terms of the Resolution. No such actions shall increase the risk to the City or require the City
3 to spend any resources not otherwise granted herein. Final versions of such documents shall
4 be provided to the Clerk of the Board for inclusion in the official file within 30 days of execution
5 by all parties.

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

9 Section 11. This Resolution shall take effect from and after its adoption by the Board
10 and approval by the Mayor.

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12 APPROVED AS TO FORM:
13 DENNIS J. HERRERA
14 City Attorney

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17 By: _____

18 Kenneth D. Roux
19 Deputy City Attorney
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