

1 [Issuance and Sale of Revenue Bonds – 2235 Third Street Apartments.]

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3 **Resolution approving the issuance and sale of tax-exempt bonds by the Association of**
4 **Bay Area Governments (ABAG) Finance Authority For Nonprofit Corporations in an**
5 **aggregate principal amount not to exceed \$50,000,000 for financing the acquisition,**
6 **construction and rehabilitation of 2235 Third Street Apartments, subject to the policies**
7 **for such approvals adopted by the Board of Supervisors in Ordinance No. 36-07.**

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9 WHEREAS, ABAG Finance Authority For Nonprofit Corporations (the "Authority"),
10 proposes to issue multifamily housing revenue bonds (the "Bonds") in an amount not to
11 exceed \$50,000,000 and to lend the proceeds thereof to Martin McNerney Properties, LLC or
12 any successor thereto, (the "Borrower"), to be used for the acquisition, construction and
13 rehabilitation by Borrower of a 200-unit apartment project to be known as 2235 Third Street
14 Apartments (the "Project") to be located at 2235 Third Street in the City and County of San
15 Francisco, California (the "City"), all to be owned and operated by the Borrower or an entity
16 related thereto or a partner thereof; and,

17 WHEREAS, The issuance and delivery of the Bonds shall be subject to the approval of
18 and execution by the Authority of all financing documents relating thereto to which the
19 Authority is a party and subject to the sale of the Bonds by the Authority; and,

20 WHEREAS, The issuance and delivery of the Bonds as tax-exempt obligations shall
21 also be subject to the approval of the California Debt Limit Allocation Committee ("CDLAC");
22 and,

23 WHEREAS, The Project is located wholly within the City and County of San Francisco
24 (the "City"); and,

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1 WHEREAS, The interest on the Bonds may qualify for tax exemption under Section
2 103 of the Internal Revenue Code of 1986, as amended (the "Code") only if the Bonds are
3 approved in accordance with Section 147(f) of the Code; and,

4 WHEREAS, the Board of Supervisors of the City (the "Board") is the elected legislative
5 body of the City and is the applicable elected representative required to approve the issue
6 within the meaning of Section 147(f) of the Code; and,

7 WHEREAS, the Authority has requested the Board to approve the issuance and sale of
8 the Bonds in order to satisfy the public approval requirements of Section 147(f) of the Code;
9 and,

10 WHEREAS, On May 25, 2009, the Borrower caused a notice to appear in the *San*
11 *Francisco Chronicle*, which is a newspaper of general circulation in the City, stating that a
12 public hearing with respect to the issuance of the Bonds would be held by the Mayor's Office
13 of Housing on June 8, 2009; and,

14 WHEREAS, The Mayor's Office of Housing will hold the public hearing described
15 above on June 8, 2009, and an opportunity will be provided for citizens to comment on the
16 issuance and sale of the Bonds and the plan of financing for the Project; and,

17 WHEREAS, In Ordinance No. 36-07 (the "TEFRA Policy Ordinance"), the Board
18 adopted a set of policies relating to the approval of bonds under Section 147(f) of the Code,
19 also known as a "TEFRA Approval"; and,

20 WHEREAS, City staff has engaged the Issuer and the Borrower in negotiations
21 regarding the satisfaction of the requirements of the TEFRA Policy Ordinance for purposes of
22 this resolution; and,

23 WHEREAS, If and when the Bonds are issued, the Issuer and the Borrower have
24 agreed that the Bond documents will require the Project to meet certain affordability
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1 requirements for at least 55 years, irrespective of the final maturity date of the Bonds,
2 including (i) a provision that annual rent increases for affordable units will be limited to the
3 percentage change in area median income for such years as such amount is determined by
4 HUD. In the event that HUD does not make such a determination such amount shall be
5 determined by the Mayor's Office of Housing; and,

6 WHEREAS, As required by the TEFRA Policy Ordinance, if and when the Bonds are
7 issued, the Bond regulatory agreement will require the Borrower to comply with the following
8 City policies: Local Disadvantaged Business Enterprise Subcontracting and Jobs Program;
9 Non-Discrimination in Contracts and Equal Benefits Policy; Minimum Compensation Policy;
10 Health Care Accountability Policy; and Prevailing Wage Policy (collectively, the "City
11 Contracting Requirements"); and,

12 WHEREAS, The City is charged with monitoring compliance with and enforcing such
13 City Contracting Requirements, and is aware of its responsibility in this regard; and,

14 WHEREAS, A description of the expected ownership and management structure of the
15 Project after issuance in the form required by the TEFRA Policy Ordinance is on file with the
16 Clerk of the Board of Supervisors in File No. 090750, which is hereby declared to be a part of
17 this resolution as if set forth fully herein; and,

18 WHEREAS, The Borrower has agreed to reimburse the City for staff time relating to
19 this Resolution and the satisfaction of the agreements set forth in this Resolution; and,

20 WHEREAS, As reflected in the letter on file with the Clerk of the Board of Supervisors
21 in File No. 090750, which is hereby declared to be a part of this resolution as if set forth fully
22 herein, the Director of the Mayor's Office of Housing recommends passage of this Resolution;
23 now, therefore, be it

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1 RESOLVED, That this Board hereby finds and declares the above recitals are true and
2 correct; and, be it

3 FURTHER RESOLVED, This Board of Supervisors, as the applicable elected
4 representative of the governmental unit having jurisdiction over the area in which the Project
5 is located, hereby approves the issuance of the Bonds for purposes of Section 147(f) of the
6 Code; and, be it

7 FURTHER RESOLVED, That the approval of the issuance and sale of the Bonds by
8 the Authority is neither an approval of the underlying credit issues of the proposed Project nor
9 an approval of the financial structure of the Bonds; and, be it

10 FURTHER RESOLVED, That the Bonds shall not constitute a debt or obligation of the
11 City and the payment of the principal, prepayment premium, if any, and purchase price of and
12 interest on the Bonds shall be solely the responsibility of Borrower; and, be it

13 FURTHER RESOLVED, The adoption of this Resolution shall not obligate (i) the City to
14 provide financing to the Borrower for the acquisition, rehabilitation and development of the
15 Project or to issue the Bonds for purposes of such financing; or (ii) the City, or any department
16 of the City, to approve any application or request for, or take any other action in connection
17 with, any environmental, General Plan, zoning or any other permit or other action necessary
18 for the acquisition, rehabilitation, development or operation of the Project; and, be it

19 FURTHER RESOLVED, That in accordance with the TEFRA Policy Ordinance this
20 approval is conditioned on the incorporation of the agreements by the Borrower referenced in
21 the recitals of this resolution, including but not limited to the satisfaction of the City Contracting
22 Policies, in the Bond regulatory agreement recorded against the property; and, be it

23 FURTHER RESOLVED, That this Resolution shall take effect immediately upon its
24 adoption.

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1 APPROVED AS TO FORM:

2 DENNIS J. HERRERA
3 City Attorney

4 By: _____
5 MARK BLAKE
6 Deputy City Attorney

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