

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 a**
5 **revised aggregate principal amount not to exceed \$55,000,000 for financing the**
6 **acquisition, construction and rehabilitation of 2235 Third Street Apartments, subject to**
7 **the policies for such approvals adopted by the Board of Supervisors in Ordinance**
8 **No. 36-07.**

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10 WHEREAS, On June 9, 2009, this Board of Supervisors adopted Resolution No. 233-
11 09 to approve the issuance and sale of tax-exempt bonds by the Association of Bay Area
12 Governments for Nonprofit Corporations in an aggregate principal amount not to exceed
13 \$50,000,000 for financing the acquisition, construction and rehabilitation of 2235 Third Street
14 Apartments (the "Project") by Martin McNerney Properties, LLC (the "Borrower"); and,

15 WHEREAS, The Borrower has indicated that due to the loss of a tax credit equity
16 contribution an additional \$5,000,000 will be required to fully fund the Project and that
17 additional bond allocation will be required; and,

18 WHEREAS, The California Debt Limit Allocation Committee requires that Borrower
19 obtain approval from this Board of Supervisors for the additional bond allocation amount of
20 \$5,000,000; and,

21 WHEREAS, ABAG Finance Authority For Nonprofit Corporations (the "Authority"),
22 proposes to issue multifamily housing revenue bonds (the "Bonds") in the revised amount not
23 to exceed \$55,000,000 and to lend the proceeds thereof to the Borrower or any successor
24 thereto (the "Borrower"), to be used for the acquisition, construction and rehabilitation by
25 Borrower of an up to 200-unit apartment project to be known as 2235 Third Street Apartments

1 (referred to herein as the "Project") to be located at 2235 Third Street in the City and County
2 of San Francisco, California (the "City"), all to be owned and operated by the Borrower or an
3 entity related thereto or a partner thereof; and,

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

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

10 WHEREAS, The Project is located wholly within the City and County of San Francisco;
11 and,

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

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

18 WHEREAS, The Authority has requested the Board to approve the issuance and sale
19 of the Bonds in order to satisfy the public approval requirements of Section 147(f) of the Code;
20 and,

21 WHEREAS, On November 10, 2009, the Borrower caused a notice to appear in the
22 *San Francisco Chronicle*, which is a newspaper of general circulation in the City, stating that a
23 public hearing with respect to the issuance of the Bonds would be held by the Mayor's Office
24 of Housing on November 24, 2009; and,

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1 WHEREAS, The Mayor's Office of Housing will hold the public hearing described
2 above on November 24, 2009, and an opportunity will be provided for citizens to comment on
3 the issuance and sale of the Bonds and the plan of financing for the Project; and,

4 WHEREAS, The Authority requires that the City adopt a resolution approving the
5 issuance and sale of the Bonds; and,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 FURTHER RESOLVED, That this Resolution shall take effect immediately upon its
12 adoption.

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14 APPROVED AS TO FORM:

15 DENNIS J. HERRERA
16 City Attorney

17 By: _____
18 MARK D. BLAKE
19 Deputy City Attorney

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