Resolution approving the issuance and sale of tax-exempt bonds by the Association of Bay Area Governments (ABAG) Finance Authority For Nonprofit Corporations in a revised aggregate principal amount not to exceed $55,000,000 for financing the acquisition, construction and rehabilitation of 2235 Third Street Apartments, subject to the policies for such approvals adopted by the Board of Supervisors in Ordinance No. 36-07.

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

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

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

WHEREAS, ABAG Finance Authority For Nonprofit Corporations (the "Authority"), proposes to issue multifamily housing revenue bonds (the "Bonds") in the revised amount not to exceed $55,000,000 and to lend the proceeds thereof to the Borrower or any successor thereto (the "Borrower"), to be used for the acquisition, construction and rehabilitation by 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,
WHEREAS, The Mayor's Office of Housing will hold the public hearing described above on November 24, 2009, and an opportunity will be provided for citizens to comment on the issuance and sale of the Bonds and the plan of financing for the Project; and,

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

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

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

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

WHEREAS, As required by the TEFRA Policy Ordinance, if and when the Bonds are issued, the Bond regulatory agreement will require the Borrower to comply with the following City policies: Local Disadvantaged Business Enterprise Subcontracting and Jobs Program; Non-Discrimination in Contracts and Equal Benefits Policy; Minimum Compensation Policy; Health Care Accountability Policy; and Prevailing Wage Policy (collectively, the "City Contracting Requirements"); and,
WHEREAS, The City is charged with monitoring compliance with and enforcing such
City Contracting Requirements, and is aware of its responsibility in this regard; and,

WHEREAS, A description of the expected ownership and management structure of the
Project after issuance in the form required by the TEFRA Policy Ordinance is on file with the
Clerk of the Board of Supervisors in File No. 091338, which is hereby declared to
be a part of this resolution as if set forth fully herein; and,

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

WHEREAS, As reflected in the letter on file with the Clerk of the Board of Supervisors
in File No. 091338, which is hereby declared to be a part of this resolution as if set
forth fully herein, the Director of the Mayor's Office of Housing recommends passage of this
Resolution; now, therefore, be it

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

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

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

FURTHER RESOLVED, That the Bonds shall not constitute a debt or obligation of the
City and the payment of the principal, prepayment premium, if any, and purchase price of and
interest on the Bonds shall be solely the responsibility of Borrower; and, be it
FURTHER RESOLVED, The adoption of this Resolution shall not obligate (i) the City to provide financing to the Borrower for the acquisition, rehabilitation and development of the Project or to issue the Bonds for purposes of such financing; or (ii) the City, or any department of the City, to approve any application or request for, or take any other action in connection with, any environmental, General Plan, zoning or any other permit or other action necessary for the acquisition, rehabilitation, development or operation of the Project; and, be it

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

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

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By:

MARK D. BLAKE
Deputy City Attorney
Resolution approving the issuance and sale of tax-exempt bonds by the Association of Bay Area Governments (ABAG) Finance Authority For Nonprofit Corporations in a revised aggregate principal amount not to exceed $55,000,000 for financing the acquisition, construction and rehabilitation of 2235 Third Street Apartments, subject to the policies for such approvals adopted by the Board of Supervisors in Ordinance No. 36-07.

November 24, 2009 Board of Supervisors - ADOPTED
Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi

I hereby certify that the foregoing Resolution was ADOPTED on 11/24/2009 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor Gavin Newsom

Date 11-27-09