

1 [Issuance and Sale of Revenue Bonds - 2235-3rd Street Apartments - Not to Exceed
2 \$60,000,000]

3 **Resolution approving the issuance and sale of tax-exempt bonds by the Association of**
4 **Bay Area Governments Finance Authority For Nonprofit Corporations in an aggregate**
5 **principal amount not to exceed \$60,000,000 for financing the acquisition, construction**
6 **and rehabilitation of 2235-3rd Street Apartments, subject to the policies for such**
7 **approvals adopted by the Board of Supervisors.**

8 WHEREAS, on November 24, 2009, this Board of Supervisors adopted Resolution No.
9 462-09 to approve the issuance and sale of tax-exempt bonds by the Association of Bay Area
10 Governments for Nonprofit Corporations (the "Authority") in an aggregate principal amount not
11 to exceed \$55,000,000 (the "Original Bond Amount") for financing the acquisition, construction
12 and rehabilitation of up to 200 units known as 2235-3rd Street Apartments (the "Project") by to
13 Martin Mc Nerney Properties, LLC or any successor thereto, (the "Borrower"), and,

14 WHEREAS, The issuance and delivery of the Bonds (as defined below) shall be
15 subject to the approval of and execution by the Authority of all financing documents relating
16 thereto to which the Authority is a party and subject to the sale of the Bonds by the Authority;
17 and,

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

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

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, in Resolution 462-09 the Authority requested and the Board approved on
8 November 24, 2009 the issuance and sale of the Bonds in order to satisfy the public approval
9 requirements of Section 147(f) of the Code: and,

10 WHEREAS, The Borrower has indicated that due to delays an additional \$5,000,000
11 will be required to fully fund the Project and that additional bond allocation will be required for
12 a total aggregate principal amount of not to exceed \$60,000,000 (collectively with the Original
13 Bond Amount, "the Bonds"); and

14 WHEREAS, the public approval requirements of Section 147(f) of the Code require
15 public approval to occur not more than one year prior to the date of issuance of the Bonds;
16 and

17 WHEREAS, the Bonds have not been issued because the Project encountered delays
18 related to closing its financing; and

19 WHEREAS, these delays have been mitigated and the Project is now able to move
20 forward; however, the Bonds are now expected to be issued subsequent to November 24,
21 2010; and

22 WHEREAS, as a result of the delay in the issuance of the Bonds, the public approval
23 requirements of Section 147(f) of the Code must be satisfied once again; and
24
25

1 WHEREAS, On September 18, 2010, the Borrower caused a notice to appear in the
2 *San Francisco Chronicle*, which is a newspaper of general circulation in the City, stating that a
3 public hearing with respect to the issuance of the Bonds would be held by the Mayor's Office
4 of Housing on October 4, 2010; and,

5 WHEREAS, The Mayor's Office of Housing held the public hearing described above on
6 October 4, 2010, and an opportunity was provided for citizens to comment on the issuance
7 and sale of the Bonds and the plan of financing for the Project; and,

8 WHEREAS, In Article IX of Chapter 43 of the Administrative Code (the "TEFRA Policy
9 Ordinance"), the Board adopted a set of policies relating to the approval of bonds under
10 Section 147(f) of the Code, also known as a "TEFRA Approval"; and,

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

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

21 WHEREAS, As required by the TEFRA Policy Ordinance, if and when the Bonds are
22 issued, the Bond regulatory agreement will require the Borrower to comply with the following
23 City policies: Local Disadvantaged Business Enterprise Subcontracting and Jobs Program;
24 Non-Discrimination in Contracts and Equal Benefits Policy; Minimum Compensation Policy;
25

1 Health Care Accountability Policy; and Prevailing Wage Policy (collectively, the "City
2 Contracting Requirements"); and,

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

5 WHEREAS, A description of the expected ownership and management structure of the
6 Project after issuance in the form required by the TEFRA Policy Ordinance is on file with the
7 Clerk of the Board of Supervisors in File No.101281, which is hereby declared to be a part of
8 this resolution as if set forth fully herein; and,

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

11 WHEREAS, As reflected in the letter on file with the Clerk of the Board of Supervisors
12 in File No. 101281, which is hereby declared to be a part of this resolution as if set forth fully
13 herein, the Director of the Mayor's Office of Housing recommends passage of this resolution;
14 now, therefore, be it

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

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

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

1 Project or to issue the Bonds for purposes of such financing; or (ii) the City, or any department
2 of the City, to approve any application or request for, or take any other action in connection
3 with, any environmental, General Plan, zoning or any other permit or other action necessary
4 for the acquisition, rehabilitation, development or operation of the Project; and, be it

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

9 FURTHER RESOLVED, That this resolution shall take effect immediately upon its
10 adoption.

11 APPROVED AS TO FORM:

12 DENNIS J. HERRERA
13 City Attorney

14 By: Kenneth Roux
15 KENNETH ROUX
16 Deputy City Attorney



City and County of San Francisco

Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 101281

Date Passed: October 19, 2010

Resolution approving the issuance and sale of tax-exempt bonds by the Association of Bay Area Governments Finance Authority For Nonprofit Corporations in an aggregate principal amount not to exceed \$60,000,000 for financing the acquisition, construction and rehabilitation of 2235-3rd Street Apartments, subject to the policies for such approvals adopted by the Board of Supervisors.

October 19, 2010 Board of Supervisors - ADOPTED

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi

File No. 101281

I hereby certify that the foregoing Resolution was ADOPTED on 10/19/2010 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor Gavin Newsom

October 22, 2010

Date Approved