

RESOLUTION NUMBER R- 300482

ADOPTED ON MAY 24 2005

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO ACTING AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 3 (LIBERTY STATION) AUTHORIZING THE ISSUANCE OF ITS SPECIAL TAX BONDS SERIES A OF 2005 IN A PRINCIPAL AMOUNT NOT TO EXCEED \$16,000,000 AND APPROVING CERTAIN DOCUMENTS AND TAKING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City Council of the City of San Diego, located in San Diego County, California [hereinafter sometimes referred to as the legislative body of the District], has heretofore undertaken proceedings and declared the necessity of Community Facilities District No. 3 (Liberty Station) [District] to issue bonds pursuant to the terms and provisions of the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, Part 1, Division 2, Title 5 of the Government Code of the State of California [Act]; and

WHEREAS, pursuant to Resolution Nos. R 296710 and R 296742 [Resolutions] adopted by the legislative body of the District on June 25, 2002, certain propositions to authorize the levy of a special tax and the issuance of bonded indebtedness were submitted to the qualified electors within each of Improvement Area No. 1 and Improvement Area No. 2 in the District, and were approved by more than two-thirds of the votes cast at the election held within each Improvement Area on June 25, 2002; and

WHEREAS, based upon the Resolutions and the election, the District is now authorized to issue bonds in one or more series, pursuant to the Act, in an aggregate principal amount not to exceed \$30,000,000; and

WHEREAS, the legislative body of the District desires to issue a first series of bonds at this time under the Act to finance certain public facilities which the District is authorized to finance; and

WHEREAS, the District desires to accomplish the financing of certain public facilities through the issuance of bonds in an aggregate principal amount not to exceed \$16,000,000 designated as the "Community Facilities District No. 3 (Liberty Station) Special Tax Bonds Series A of 2005" [Bonds]; and

WHEREAS, in order to effect the issuance of the Bonds, the legislative body of the District desires to approve the forms of and authorize the execution and delivery of a Bond Indenture and a Private Placement Agreement, the forms of which are on file with the City Clerk as Document Numbers 300482-1 and 300482-2, respectively; and

WHEREAS, on the basis of certain information set forth in the City Manager's Report regarding the proposed issuance of the Bonds, the legislative body of the District has determined in accordance with Government Code section 53360.4 that a negotiated sale of the Bonds to Qualified Institutional Buyers (as defined in the Bond Indenture) through Stone & Youngberg, LLC and E.J. De La Rosa & Co., Inc., as placement agents [Placement Agents], in accordance with the terms of the Private Placement Agreement to be entered into by the District and the Placement Agents [Private Placement Agreement] will result in a lower overall cost to the District than a sale of the Bonds on sealed proposals to the highest bidder as described in Government Code section 53360; and

WHEREAS, as a condition of purchasing Bonds, each Qualified Institutional Buyer will be required to execute and deliver an Investor Letter in the form attached to the Bond Indenture pursuant to which each Qualified Institutional Buyer will represent that it has made its own

inquiry and analysis with respect to the Bonds and acknowledge that none of the District, the City of San Diego or the Redevelopment Agency of the City of San Diego has prepared or reviewed any offering document for the Bonds; and

WHEREAS, the legislative body of the District has determined that it is prudent in the management of its fiscal affairs to issue the Bonds; and

WHEREAS, the assessed value of the real property in the District subject to the special tax to pay debt service on the Bonds is more than four times the principal amount of the Bonds and the principal amount of all other bonds outstanding that are secured by a special tax levied pursuant to the Act or a special assessment levied on property within the District, which assessed value exceeds the minimum value required by the Act for the issuance of the Bonds; and

WHEREAS, Council Policy No. 800 03 of the City of San Diego [City] requires that, where the value-to-lien ratio of a lot or lots is less than 3 to 1, credit enhancements must be provided to the satisfaction of the City; and

WHEREAS, given that the assessed value-to-lien ratios of certain lots in the District are currently less than 3 to 1, the legislative body of the District desires to provide that the Bonds will be issued only following the certification of an Authorized Officer (as defined in Paragraph 3 below) that the value-to-lien provisions of Council Policy No. 800 03 have been satisfied; for all properties in the District upon which special taxes are expected to be levied to repay the Bonds; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego acting as the legislative body of Community Facilities District No. 3 (Liberty Station), as follows:

1. That each of the above recitals is true and correct and is adopted by the legislative body of the District.

2. That the District is authorized pursuant to the Act to issue the Bonds for the purpose of financing public facilities which the District is authorized to finance.

3. That the issuance of the Bonds in a principal amount not to exceed \$16,000,000 is hereby authorized with the exact principal amount of the Bonds to be determined by the official signing the Private Placement Agreement in accordance with Paragraph 6 below. The legislative body of the District hereby determines that it is prudent in the management of its fiscal affairs to issue the Bonds. The Bonds shall mature on the dates and pay interest at the rates set forth in the Private Placement Agreement to be executed on behalf of the District in accordance with Paragraph 6 hereof. The Bonds shall be governed by the terms and conditions of the Bond Indenture presented at this meeting [Indenture]. The Indenture shall be prepared by Bond Counsel to the District and executed by any one of the City Manager, Deputy City Manager or City Treasurer of the City or the written designee of one of the foregoing [collectively the Authorized Officers] substantially in the form presented at this meeting, with such additions thereto and changes therein as the officer or officers executing the same deem necessary to cure any ambiguity or defect therein if such addition or change does not materially alter the substance or content thereof, to insert the offering price(s), interest rate(s), selling compensation, principal amount per maturity, redemption dates and prices and such other related terms and provisions as limited by Paragraph 6 hereof, or to conform any provisions therein to the Private Placement Agreement. Approval of such changes shall be conclusively evidenced by the execution and delivery of the Indenture by any one of the Authorized Officers. Capitalized terms used in this Resolution which are not defined herein have the meanings ascribed to them in the Indenture.

4. That the Bonds shall be executed on behalf of the District by the manual or facsimile signature of the Mayor and the seal of the District or the City, or a facsimile thereof, may be impressed or imprinted thereon and the signature of the Mayor shall be attested to with the manual or facsimile signature of the City Clerk or Deputy City Clerk. Wells Fargo Bank, National Association is hereby appointed to act as trustee for the Bonds.

5. That the Placement Agents are hereby appointed for purposes of offering the Bonds for sale in accordance with the provisions of the Private Placement Agreement and the Bond Indenture. The form of the Private Placement Agreement presented at this meeting is hereby approved and any one of the Authorized Officers is hereby authorized to execute the Private Placement Agreement, with such additions thereto and changes therein as are necessary to effectuate the transaction contemplated by the terms of this Resolution, including such additions thereto and changes therein relating to dates and numbers as are necessary to conform the Private Placement Agreement to the dates, amounts and interest rates applicable to the Bonds as of the sale date. Approval of such additions and changes shall be conclusively evidenced by the execution and delivery of the Private Placement Agreement; provided, however, that the Private Placement Agreement shall be signed and the Bonds shall be issued only if (1) the Bonds are placed by the Placement Agents with qualified institutional buyers at a true interest cost that does not exceed 8.0% per annum; (2) the fee paid to the Placement Agents (exclusive of original issue discount) does not exceed 1.9% of the principal amount of the Bonds; and (3) an Authorized Officer has certified, in writing, that the requirements of Council Policy No. 800 03 regarding value-to-lien ratios have been satisfied for all properties in the District upon which special taxes are expected to be levied to repay the Bonds either because (a) the value-to-lien ratio for a lot or a group of lots owned by a single owner is above 3 to 1 based on the assessed

values obtained from the County of San Diego Assessor's Office, or (b) as to lots for which the value-to-lien ratio is less than 3 to 1, a letter of credit satisfying the requirements of the First Implementation Agreement between the Redevelopment Agency of the City of San Diego [Agency] and McMillin NTC, LLC [McMillin] has been provided to the Agency by McMillin and will remain in effect as to such lot or lots until such time as an Authorized Officer determines that the value-to-lien ratio for such lot or lots is at least 3 to 1, or that the provisions of such First Implementation Agreement have been satisfied, whichever occurs later. Each of the Authorized Officers is authorized to determine the day on which the Bonds are to be priced in order to attempt to produce the lowest borrowing cost for the District and may reject any terms presented by the Placement Agents if determined not to be in the best interest of the District.

6. That in accordance with the requirements of Section 53345.8 of the Act, the legislative body of the District hereby determines that the value of the real property in the District subject to the special tax to pay debt service on the Bonds is at least three times the principal amount of the Bonds and the principal amount of all other bonds outstanding that are secured by a special tax levied pursuant to the Act or a special assessment levied on property within the District. This determination is based on the full cash value of property within the District as shown on the most recent ad valorem assessment roll for property within the District.

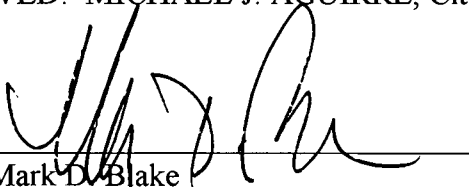
7. That each of the Authorized Officers is authorized to provide for all services necessary to effect the issuance of the Bonds. Such services shall include, but not be limited to, obtaining legal services, trustee services and any other services deemed appropriate by an Authorized Officer. Any one of the Authorized Officers is authorized to pay for the cost of such services, together with other Costs of Issuance (as defined in the Indenture) from Bond proceeds. Without further approval of the legislative body of the District, the total amount disbursed by the

Authorized Officers for Costs of Issuance of the Bonds, exclusive of the Placement Agents' fee, shall not exceed 9.0% of the principal amount of the Bonds.

8. That the Mayor or his designee and the other Authorized Officers responsible for the fiscal affairs of the District are hereby authorized and directed to take any actions and execute and deliver any and all documents as are necessary to accomplish the issuance, sale and delivery of the Bonds in accordance with the provisions of this Resolution and the fulfillment of the purposes of the Bonds as described in the Indenture. Any document authorized herein to be signed by the City Clerk may be signed by a duly appointed Deputy City Clerk.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Mark D. Blake
Deputy City Attorney

MDB:pev
05/05/05
Or. Dept: Fin. Svcs.
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