

1 RESOLUTION NO. RES-08-0028

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3 A RESOLUTION OF THE CITY COUNCIL OF THE  
4 CITY OF LONG BEACH AUTHORIZING THE ISSUANCE OF  
5 SPECIAL TAX BONDS FOR COMMUNITY FACILITIES  
6 DISTRICT NO. 5 (LONG BEACH TOWNE CENTER) OF THE  
7 CITY OF LONG BEACH, AND APPROVING OTHER  
8 RELATED DOCUMENTS AND ACTIONS  
9

10 WHEREAS, this City Council has conducted proceedings under and  
11 pursuant to the provisions of the Long Beach Special Tax Financing Improvement Law,  
12 Long Beach Municipal Code Section 3.52.511 et seq. (the "Law"), to form Community  
13 Facilities District No. 5 (Long Beach Towne Center) of the City of Long Beach (the  
14 "District"), to authorize the levy of special taxes upon the land within the District, and to  
15 issue bonds secured by the special taxes the proceeds of which were to be used to  
16 finance certain public improvements (the "Facilities"); and

17 WHEREAS, pursuant to the Law, on May 4, 2000, the City issued  
18 \$15,385,000 principal amount of special tax bonds for the District (the "Prior Bonds") to  
19 finance the Facilities; and

20 WHEREAS, this City Council recently has conducted proceedings under the  
21 Law to authorize the District to fund additional public improvements (the "Additional  
22 Facilities") and the District is now fully authorized to finance the costs of the Additional  
23 Facilities; and

24 WHEREAS, this City Council has determined that, due to favorable interest  
25 rates, it is in the best interests of the City and the District that the Prior Bonds be  
26 refunded, and that funds be raised by the District to finance the Additional Facilities; and

27 WHEREAS, there have been submitted to this City Council certain  
28 documents providing for the issuance of bonds of the City for the District (the "Bonds")

1 and the use of the proceeds of the Bonds to refund the Prior Bonds and to finance the  
2 Additional Facilities and this City Council, with the aid of City staff, has reviewed said  
3 documents and found them to be in proper order; and

4 WHEREAS, on December 21, 1999, this City Council adopted Resolution  
5 No. C-27626 approving Local Goals and Policies for Community Facilities Districts  
6 Related to Commercial Development (the "Goals and Policies"); and

7 WHEREAS, the proposed Bond financing program approved by this  
8 Resolution is consistent with the Goals and Policies; and

9 WHEREAS, following the adoption of this Resolution, all conditions, things  
10 and acts required to exist, to have happened and to have been performed precedent to  
11 and in the issuance of the Bonds as contemplated by the Law, this Resolution and the  
12 documents referred to herein exist, will have happened and will have been performed in  
13 due time, form and manner as required by the laws of the State of California, including  
14 the Law;

15 NOW, THEREFORE, the City Council of the City of Long Beach resolves as  
16 follows:

17 Section 1. Pursuant to the Law, this Resolution and the Fiscal Agent  
18 Agreement (hereafter defined), special tax bonds of the City for the District (herein  
19 referred to as the "Bonds", and to be designated as "Community Facilities District No. 5  
20 (Long Beach Towne Center) of the City of Long Beach 2008 Special Tax Bonds"), in an  
21 aggregate principal amount not to exceed \$15,000,000, are hereby authorized to be  
22 issued and sold as provided below. The Bonds shall be executed in the form set forth in  
23 and otherwise as provided in the Fiscal Agent Agreement.

24 In connection with the authorization, sale and issuance of the Bonds, the  
25 City Council hereby makes the following determinations: (a) pursuant to the Goals and  
26 Policies, (i) the appraisal, dated January 25, 2008 of Stephen G. White, MAI, of the  
27 leasehold interest in the land in the District subject to the levy of special taxes to repay  
28 the Bonds has been prepared in a manner consistent with the Goals and Policies and

1 satisfactory leasehold value to lien ratios exist, and (ii) the structure of the proposed  
2 financing is consistent with the applicable sections of the Goals and Policies; (b) the  
3 proposed financing satisfies the requirements of a minimum 3:1 value to lien ratio  
4 required by the Goals and Policies; and (c) the sale of the Bonds at a negotiated sale as  
5 contemplated by the Purchase Contract (defined below) will result in a lower overall cost.

6 For purposes of Section 3.52.5621 of the Law, the City Council hereby  
7 determines that the total net interest cost to the maturity on the portion of the Bonds  
8 allocable to the refunding of the Prior Bonds plus the principal of such portion of the  
9 Bonds will not exceed the total net interest cost to maturity on the Prior Bonds to be  
10 refunded plus the principal amount of the Prior Bonds to be refunded. For purposes of  
11 Section 3.52.5622 of the Law, (i) it is anticipated that the refunding of the Prior Bonds will  
12 occur on March 31, 2008, (ii) the date, denominations, maturity dates, places of payment  
13 and form of the Bonds shall be as set forth in the Fiscal Agent Agreement, (iii) the  
14 minimum rate of interest to be paid on the Bonds shall be one percent (1%) with the  
15 actual rate or rates to be set forth in the Fiscal Agent Agreement as executed, (iv) the  
16 place of payment for the Prior Bonds shall be as set forth in the Prior Fiscal Agent  
17 Agreement; and (v) the form of the Bonds shall be as set forth in the Fiscal Agent  
18 Agreement. For purposes of Section 3.52.5625 of the Law, the City Council hereby finds  
19 that the special taxes to be levied in the District to pay the debt service on the portion of  
20 the Bonds allocable to the financing of the Additional Facilities will not be greater than  
21 any reduction in special taxes levied in the District that would otherwise have occurred  
22 from the refunding of the Prior Bonds, so that, effectively, the savings achieved through  
23 the refunding of the Prior Bonds is being used in accordance with Section 3.52.5625 of  
24 the Law.

25 Section 2. The fiscal agent agreement (the "Fiscal Agent Agreement")  
26 with respect to the Bonds, in the form on file in the City Attorney's office, is hereby  
27 approved. The City Manager, Director of Financial Management or City Treasurer (each  
28 being a "Designated Officer" and, collectively, the "Designated Officers"), each acting

1 alone, are hereby authorized to execute and deliver the Fiscal Agent Agreement in said  
2 form, together with such additions thereto or changes therein as are approved by the  
3 Designated Officer executing such document upon consultation with the City Attorney  
4 and Bond Counsel, the approval of such additions or changes to be conclusively  
5 evidenced by the execution and delivery of the Fiscal Agent Agreement by a Designated  
6 Officer. The date, manner of payment, interest rate or rates, interest payment dates,  
7 denominations, form, registration privileges, manner of execution, place of payment,  
8 terms of redemption and other terms of the Bonds shall be as provided in the Fiscal  
9 Agent Agreement as finally executed.

10           Section 3. The City Council hereby approves the refunding of the Prior  
11 Bonds with proceeds of the Bonds and other funds of the District available for such  
12 purpose, in accordance with the provisions of the Fiscal Agent Agreement and the  
13 Escrow Agreement between the City and the fiscal agent for the Prior Bonds, as escrow  
14 bank (the "Escrow Agreement"). The City Council hereby approves the Escrow  
15 Agreement in the form on file in the City Attorney's office. The Designated Officers, each  
16 acting alone, are hereby authorized to execute and deliver the Escrow Agreement in said  
17 form, with such additions thereto or changes therein as are deemed necessary, desirable  
18 or appropriate by the Designated Officer executing such document upon consultation with  
19 the City Attorney and Bond Counsel, the approval of such changes to be conclusively  
20 evidenced by the execution and delivery by a Designated Officer of the Escrow  
21 Agreement.

22           Section 4. The bond purchase agreement for the Bonds (the "Purchase  
23 Contract") between the City and E.J. De La Rosa & Co., Inc. and UBS Securities LLC  
24 (collectively, the "Underwriter"), in the form on file in the City Attorney's office, is hereby  
25 approved. The Designated Officers, each acting alone, are hereby authorized to accept  
26 the offer of the Underwriter to purchase the Bonds contained in the Purchase Contract  
27 (provided that the aggregate principal amount of the Bonds sold thereby is not in excess  
28 of \$15,000,000, the net interest cost of the Bonds is not in excess of 6.50%, and the

1 Underwriters' discount is not in excess of 2.50% of the aggregate principal amount of the  
2 Bonds), and to execute and deliver the Purchase Contract in said form, with such  
3 additions thereto or changes therein as are recommended or approved by the  
4 Designated Officer executing such document upon consultation with the City Attorney  
5 and Bond Counsel, the approval of such additions or changes to be conclusively  
6 evidenced by the execution and delivery of the Purchase Contract by a Designated  
7 Officer. The firm of E.J. De La Rosa & Co., Inc. is hereby designated as lead underwriter  
8 for the Bonds, and the firm of UBS Securities LLC is hereby designated as co-underwriter  
9 for the Bonds, and any prior designation of underwriter for the Bonds is hereby revoked.

10 Section 5. The official statement relating to the Bonds (the "Official  
11 Statement"), in the form on file in the City Attorney's office, is hereby approved. The  
12 Designated Officers each acting alone, are hereby authorized to execute the Official  
13 Statement in said form, with such additions thereto or changes therein as are  
14 recommended or approved by the Designated Officer executing such document upon  
15 consultation with the City Attorney and Bond Counsel, the approval of such additions or  
16 changes to be conclusively evidenced by the execution and delivery of said Official  
17 Statement by a Designated Officer. The Underwriter is hereby authorized to distribute  
18 copies of the Official Statement to persons who may be interested in the purchase of the  
19 Bonds and is directed to deliver such copies to all actual purchasers of the Bonds.  
20 Distribution of a preliminary official statement relating to the Bonds is hereby approved  
21 and authorized.

22 The Director of Financial Management and the City Treasurer, each acting  
23 alone, are hereby authorized to execute a certificate or certificates to the effect that the  
24 Official Statement and such preliminary official statement were deemed "final" as of their  
25 respective dates for purposes of Rule 15c2-12 of the Securities Exchange Act of 1934, as  
26 amended, and each are authorized to so deem such statements final.

27 Section 6. The Bonds, when executed by a Designated Officer, each of  
28 whom are hereby authorized to so execute the Bonds, shall be delivered to the Fiscal

1 Agent for authentication. The Fiscal Agent is hereby requested and directed to  
2 authenticate the Bonds by executing the Fiscal Agent's certificate of authentication and  
3 registration appearing thereon, and to deliver the Bonds, when duly executed and  
4 authenticated, to the Underwriter in accordance with written instructions executed on  
5 behalf of the City by the Director of Financial Management or the City Treasurer, which  
6 instructions each such officer is hereby authorized to execute and deliver to the Fiscal  
7 Agent. Such instructions shall provide for the delivery of the Bonds to the Underwriter  
8 upon payment of the purchase price therefore as specified in the Purchase Contract.

9 Section 7. The Continuing Disclosure Agreement of the City and the  
10 Rent Credit Agreement ("Rent Agreement"), in the respective forms on file in the City  
11 Attorney's office, are hereby approved. The Designated Officers, each acting alone, are  
12 hereby authorized to execute and deliver the Continuing Disclosure Agreement of the  
13 City and the Rent Agreement in said forms, with such additions thereto or changes  
14 therein as are deemed necessary, desirable or appropriate by the Designated Officer  
15 executing such documents upon consultation with the City Attorney and Bond Counsel,  
16 the approval of such changes to be conclusively evidenced by the execution and delivery  
17 by a Designated Officer of the Continuing Disclosure Agreement of the City and the Rent  
18 Agreement.

19 Section 8. The City hereby covenants, for the benefit of the Bondowners,  
20 to commence and diligently pursue to completion any foreclosure action regarding  
21 delinquent installments of any amount levied as a special tax for the payment of interest  
22 or principal of the Bonds, said foreclosure action to be commenced and pursued as more  
23 completely set forth in the Fiscal Agent Agreement.

24 Section 9. All actions heretofore taken by the officers and agents of the  
25 City with respect to the establishment of the District, the authorization for the District to  
26 finance the Additional Facilities, the sale and issuance of the Bonds and the refunding of  
27 the Prior Bonds are hereby approved, confirmed and ratified, and the proper officers of  
28 the City, including the Designated Officers, are hereby authorized and directed to do any

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1 and all things and take any and all actions and execute any and all certificates,  
2 agreements and other documents, which they, or any of them, may deem necessary or  
3 advisable in order to consummate the lawful issuance and delivery of the Bonds and the  
4 refunding of the Prior Bonds in accordance with this Resolution and the Fiscal Agent  
5 Agreement, and any certificate, agreement, and other document described in the  
6 documents herein approved.

7 Section 10. This resolution shall take effect immediately upon its adoption  
8 by the City Council, and the City Clerk shall certify the vote adopting this resolution.

9 I hereby certify that the foregoing resolution was adopted by the City  
10 Council of the City of Long Beach at its meeting of March 11, 2008, by the  
11 following vote:

12 Ayes: Councilmembers: S. Lowenthal, DeLong, O'Donnell,  
13 Schipske, Gabelich.

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15  
16 Noes: Councilmembers: None.

17  
18 Absent: Councilmembers: B. Lowenthal, Andrews, Reyes Uranga,  
19 Lerch.

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22 \_\_\_\_\_  
23 City Clerk

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28 HAM:fl  
2/7/08; rev. 3/6/08  
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