Request for MCDA Board of Commissioners Action from the Department of Community Planning & Economic Development - CPED

Date: July 27, 2010

To: Council Member Lisa Goodman, Community Development Committee

Referral to: MCDA Board of Commissioners

Subject: Minneapolis Economic Recovery Strategy: A Public Hearing and Request for Preliminary and Final Approval of up to $1.2 Million in Bank Qualified Bank Direct Tax-Exempt 501(c)(3) Minneapolis Community Development Agency Revenue Bonds for the Cedar Riverside People's Center Project.

Recommendation: City Council Recommendation: Adopt the attached Resolution, giving Preliminary and Final Approval to the issuance of up to $1,200,000 in Bank Qualified Bank Direct Tax-Exempt 501(c)(3) Minneapolis Community Development Agency Revenue Bonds, Series 2010, for the Cedar Riverside People's Center Project.

MCDA Board Recommendation: Forward this report to the Minneapolis Community Development Agency Board of Commissioners for their approval and adoption of the attached Resolution giving Preliminary and Final Approval of up to $1,200,000 in Bank Qualified Bank Direct Tax-Exempt 501(c)(3) Minneapolis Community Development Agency Revenue Bonds, Series 2010, for the Cedar Riverside People's Center Project.

Previous Directives: On January 27th, 2006, Minneapolis City Council (Resolution 2006R-021) and MCDA Board of Commissioners (Resolution 2006-2945) approved the issuance of up to $600,000 in Bank Qualified Tax-Exempt Revenue Bonds for the renovation of the non-profit's headquarters located at 425 20th Avenue South, Minneapolis.

Prepared by: Jessica Green, Business Finance (612) 673-5232
Approved by: Charles T. Lutz, Deputy Director CPED ________________
Catherine A. Polasky, Director, Economic Development ________________
Presenter in Committee: Jessica Green

Reviews
- Permanent Review Committee (PRC): Approval N.A

Financial Impact
- Other financial impact: The issuance of revenue bonds for the Cedar Riverside People's Center project will generate revenue bond administrative fees of approximately $3,000 per year that are used to support the small business assistance programs of the City of Minneapolis.

Community Impact

- Neighborhood Notification: The Longfellow Neighborhood representatives have been notified of this project.
- City Goals: This project supports the City's goal of Livable Communities and Healthy Lives.
- Sustainability Targets: N.A.
- Comprehensive Plan: This project is in compliance with the policies of the Minneapolis Plan.
- Zoning Code: The project is in compliance.
- Living Wage/Business Subsidy Agreement Yes ____ No __X__ All conduit revenue bonds allocated under State Statute Chapter 474A, refunding bonds and 501(c)(3) bonds are exempt from the State Act. City bond financing is not subject to the City's local Ordinance if the intent of the bond financing is not to create jobs.
- Job Linkage Yes ____ No __X__

Supporting Information

Project Location & Description:

Cedar Riverside People's Center (CRPC) is a 501(C)(3) non-profit organization that operates People's Center Health Services (PCHS), a community health center that is dedicated to providing affordable, high quality medical care through a full range of primary and ancillary care programs as well as behavioral health services. While PCHS's services are available to all, their programs are actively promoted to people living and working in Cedar Riverside and neighboring communities.

At this time, CRPC requesting approval of up to $1,200,000 in Bank Qualified, Bank Direct Tax-Exempt 501(c)(3) MCDA Revenue Bonds for the purchase of an existing dental clinic (Family Dental Care of South Minneapolis, P.A.) located at 3152 Minnehaha Avenue, Minneapolis. At this time, PCHS is only able to offer dental assessments and referrals. With the acquisition of the dental clinic, PCHS will be able to provide complete dental care services to their patients.

Type of Financing:

Industrial Development Bonds (commonly known as IDBs or tax-exempt revenue bonds) have been used by the City of Minneapolis since 1972 to finance the capital needs of many small companies and organizations. In 2002, the City developed a financing program to provide cost-effective tax-exempt financing for small 501(c)(3) nonprofit organizations. Tax-exempt revenue bonds have often not been a practical financing option for small organizations in the past due to the high cost of borrowing. Providing a streamlined application and documentation process has resulted in lower borrowing costs for non-profits.

Within the existing federal tax code, there is the ability to issue bank qualified debt that local lenders can purchase and take advantage of the partial tax deductions on the interest earnings. With bank qualified status, banks are allowed to deduct 80% of their "carrying costs" associated with buying tax-exempt bonds. Banks get the dual benefit of tax-exemption and deductibility of carrying costs. This translates into lower borrowing costs for the nonprofit organizations that work with the City on the issuance of bank qualified debt. Bank qualified revenue bonds are underwritten and collateralized just like any conventional bank loan, but the interest rate to the borrower is lower due to the tax-exempt status.

The City of Minneapolis has had a Bank Qualified Revenue Bond Program since 2002, and since then the City has assisted almost 40 small nonprofit organizations in gaining access to capital. From 2002-2008, the City has been limited to the annual $10 million limitation of bank qualified bond authority. However, the American Recovery and Reinvestment Act of 2009 (ARRA) increased this limit from $10 million a year to $30 million; and the limit now applies to the individual borrower instead of the issuer (City) in the case of conduit bonds for nonprofit organizations for 2009 and 2010. This provision in the ARRA greatly expands our availability of the bank qualified revenue bond program for nonprofits, but only for projects that close prior to December 31, 2010.

It is anticipated that the proposed MCDA Revenue Bonds will be underwritten and purchased by Venture Bank.

Sources of Funds:		Uses of Funds:	
MCDA Bonds	$1,200,000	Dental Clinic Acquisition	$1,350,000
Equity Contribution	150,000		
Total:	$1,350,000		$ 1,350,000

Present Employment: CRPC has approximately 45 full and part time employees.

New Employment: CRPC will retain all positions; it is anticipated that 1 new full time Position will be created as a result of the project.

Assessor's Estimate Annual Tax Increase: Tax-exempt facility.

Affirmative Action Compliance: CRPC currently has an affirmative action plan on file with the City.

CITY IRB POLICIES:

Job Component	Minimum standard of one (1) job per 1,000 square feet of building area. CRPC: In compliance.
Property Improvements	No more than 25% of the bond proceeds may be used for land and acquisition. If purchasing an existing building, an amount equal to at least 15% of the acquisition cost must be spent on rehabilitation expenditures. CRPC: In compliance.
Development Standards	Compliance with the Land Use Plan of the City's Comprehensive Plan. CRPC: In compliance.
Equipment Financing	Limited to companies that create or preserve a significant number of jobs, and the equipment financed must be sufficiently secured. No more than 10% of the bond proceeds may be used to finance movable equipment not constituting a fixture. CRPC: N.A.
Restaurant/Bank	IRB financing is allowed for a restaurant or a bank if it is built or rehabilitated in a CPED Redevelopment Area. No more than 25% of the bond proceeds can be used to finance retail food and beverage establishments, automobile dealerships or

	recreation or entertainment facilities.
	CRPC: N.A.
Tax-exempt Institution	Refinancing is permitted when new jobs are created or when a significant number of jobs are preserved; any interest cost savings must directly reduce patient costs.
	CRPC: In compliance. All jobs will be preserved.
<u>IRB CAP:</u>	The project is not subject to the volume cap, in that the project is exempt from income tax under Internal Revenue Code Section 501(c)(3) for its exempt purposes and is classified thereunder as a non-profit organization.
<u>BOND COUNSEL:</u>	Fryberger, Buchanan, Smith & Frederick
<u>UNDERWRITER:</u>	Venture Bank

Resolution

of the

City of Minneapolis

Giving preliminary and final approval to and authorizing the financing of a project on behalf of Cedar-Riverside Peoples Center and authorizing the issuance of revenue notes of the Minneapolis Community Development Agency therefor.

Whereas, pursuant to Laws of Minnesota 1980, Chapter 595, as amended (“Chapter 595”), the City Council of the City of Minneapolis, Minnesota (the “City”) established the Minneapolis Community Development Agency (the “Agency”) and granted certain powers and duties to the Agency; and

Whereas, pursuant to such granted powers, the Agency has been authorized to issue revenue obligations for various purposes; and

Whereas, it has been proposed that the Agency issue revenue notes on behalf of Cedar-Riverside Peoples Center (the “Company”) in the aggregate amount of up to $1,200,000 (the “Bonds”), for a project consisting of the acquisition of an existing dental clinic including all real and personal property located at 3152 Minnehaha Avenue in Minneapolis, Minnesota to be owned by the Company, which provides oral health care to low income individuals and families; and

Whereas, the Agency expects to give final approval to the issuance of the Bonds by a resolution to be adopted on the date hereof; and

Whereas, the Bonds shall bear interest at an initial interest rate expected to not exceed 8.00% per annum, shall have a final maturity date not later than December 31, 2049, and shall have such other terms as required or permitted by the Agency’s resolution, which terms are to be incorporated herein by reference;

Now, Therefore, Be It Resolved by The City Council of The City of Minneapolis:

That the City Council hereby gives preliminary and final approval to the issuance by the Agency of the Bonds in an aggregate principal amount of up to $1,200,000 with respect to the project described above.

That the Bonds are hereby designated as “Program Bonds” and are determined to be within the “Economic Development Program” and the “Program,” all as defined in Resolution 88R-021 of the City adopted January 29, 1988, and as amended by Resolution 97R-402 of the City adopted December 12, 1997.

RESOLUTION
of the
MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY

Relating to the Minneapolis Community Development Agency Revenue Notes (Cedar-Riverside Peoples Center Project), Series 2010; authorizing the issuance thereof pursuant to Minnesota Statutes, Section 469.152 to 469.1651, as amended.

BE IT RESOLVED, by the governing body (the "Board of Commissioners") of the Minneapolis Community Development Agency, Hennepin County, Minnesota (the "Issuer"), as follows:

Section 1. Definitions. The terms used herein, unless the context hereof requires otherwise, have the following meanings, and any other terms defined in the Loan Agreement (hereinafter defined) have the same meanings when used herein as assigned to them in the Loan Agreement unless the context or use thereof indicates another or differing meaning or intent:

a. Act: Minnesota Statutes, Sections 469.152 through 469.165, as amended.

b. Borrower: Cedar-Riverside Peoples Center being (as represented to the Issuer), a Minnesota nonprofit corporation and organization described in Section 501(c)(3) of the Code, the corporate offices of which are located at 425 20th Avenue South, Minneapolis, Minnesota 55454.

c. Bond Counsel: the law firm of Fryberger, Buchanan, Smith & Frederick, P.A. or any other firm of nationally-recognized Bond Counsel.

d. City: the City of Minneapolis, Minnesota, a municipal corporation and political subdivision.

e. Code: the Internal Revenue Code of 1986, as amended.

f. Board of Commissioners: the governing body of the Issuer.

g. County: Hennepin County, Minnesota.

h. Documents: the Loan Agreements, the Mortgages, the Pledge Agreements and other documents required for the issuance of the Notes.

i. DEED: the Minnesota Department of Employment and Economic Development.

j. Issuer: the Minneapolis Community Development Agency, Hennepin County, an independent development and redevelopment agency, corporate and politic, and governmental subdivision organized and existing under the laws of the State.

k. Issuer Documents: collectively, the Loan Agreements and the Pledge Agreements.

l. Lenders: collectively, the Series A Lender and the Series B Lender.

m. Loan Agreements: collectively, the Series A Loan Agreement and the Series B Loan Agreement.

n. Mortgages: collectively, the Series A Mortgage and the Series B Mortgage.

o. Notes: collectively, the Series A Note and the Series B Note.

p. Pledge Agreements: collectively, the Series A Pledge Agreement and the Series B Pledge Agreement.

q. Project: acquisition of an existing dental clinic including all real and personal property located at 3152 Minnehaha Avenue in Minneapolis, Minnesota.

r. Registrar: the bond registrar and transfer agent for the Notes.

s. Series A Lender: the registered holder of the Series A Note.

t. Series A Loan Agreement: the Series A Loan Agreement to be entered into between the Issuer and the Borrower, pursuant to which the Borrower agrees to repay the loan made thereunder in specified amounts and at specified times sufficient to pay in full when due the principal of, premium, if any, and interest on the Series A Note.

u. Series A Mortgage: the Mortgage, Security Agreement, Fixture Financing Statement and Assignment of Leases and Rents from the Borrower to the Series A Lender, pursuant to which the Borrower will secure its obligations with respect to the Series A Note under the Series A Loan Agreement, including the payment of amounts due under the Series A Loan Agreement, by granting to the Series A Lender a first mortgage interest in the property described therein.

v. Series A Note: the Issuer's Revenue Note (Cedar-Riverside Peoples Center Project), Series 2010A.

w. Series A Pledge Agreement: the Series A Pledge Agreement to be entered into among the Issuer, the Borrower and the Series Lender, pursuant to which the Issuer pledges and grants a security interest in all of its rights, title, and interest in the Series A Loan Agreement (except for the Unassigned Issuer's Rights) to the Series A Lender.

x. Series B Lender: the registered holder of the Series B Note.

y. Series B Loan Agreement: the Series B Loan Agreement to be entered into between the Issuer and the Borrower, pursuant to which the Borrower agrees to repay the loan made thereunder in specified amounts and at specified times sufficient to pay in full when due the principal of, premium, if any, and interest on the Series B Note.

z. Series B Mortgage: the Mortgage, Security Agreement, Fixture Financing Statement and Assignment of Leases and Rents from the Borrower to the Series B Lender, pursuant to which the Borrower will secure its obligations with respect to the Series B Note under the Series B Loan Agreement, including the payment of amounts due under the Series B Loan Agreement, by granting to the Series B Lender a first mortgage interest in the property described therein.

aa. Series B Note: the Issuer's Revenue Note (Cedar-Riverside Peoples Center Project), Series 2010B

bb. Series B Pledge Agreement: the Series B Pledge Agreement to be entered into among the Issuer, the Borrower and the Series Lender, pursuant to which the Issuer pledges and grants a security interest in all of its rights, title, and interest in the Series B Loan Agreement (except for the Unassigned Issuer's Rights) to the Series B Lender.

cc. State: the State of Minnesota.

Section 2. Recitals.

a. The Borrower has proposed issuance of revenue obligations, in two series, in an amount not to exceed $1,200,000 (the "Notes") to finance the Project owned and operated by the Borrower and paying costs associated with the financing.

b. The Issuer has been advised by representatives of the Borrower that: (i) conventional financing to pay the capital cost of the Project is available only on a limited basis and at such high costs of borrowing that the economic feasibility of operating the Project would be significantly reduced; (ii) on the basis of information submitted to the Borrower and their discussions with representatives of area financial institutions and potential buyers of tax-exempt bonds, the Notes could be issued and sold upon favorable rates and terms to finance the Project; and (iii) the Project would not be undertaken in its present form but for the availability of financing under the Act.

c. A notice of public hearing was published in *Finance & Commerce* and the *Star Tribune*, the Issuer's official newspapers and newspapers of general circulation, calling a public hearing on the proposed issuance of the Notes and the proposal to undertake and finance the Project.

d. The Issuer has, after due notice and publication thereof, on July 27, 2010, held a public hearing on the Project and the financing thereof, and persons in attendance wishing to speak on the Project and financing thereof were given an opportunity to do so at the hearing.

e. Drafts of the following documents have been submitted to this Board of Commissioners and are or will be on file in the office of the Clerk:

   i. the Loan Agreements;

   ii. the Pledge Agreements;

   iii. the Mortgages; and

   iv. the form of the Notes.

Section 3. Findings. It is hereby found, determined, and declared as follows:

a. The welfare of the State and the Issuer requires the provision of health services, including oral health services to low income individuals and families so that such services are available to residents of the State and other residents of the Issuer at reasonable cost.

b. The Issuer desires to facilitate the selective development of the community and help to provide the range of services and employment opportunities required by the population. The Project will assist the Issuer in achieving those objectives; and enhance the image and reputation of the community.

c. On the basis of information made available to the Board of Commissioners by the Borrower it appears, and the Board of Commissioners hereby finds, that: (1) the Project constitutes properties, real and personal, used or useful in connection with a revenue producing enterprise; (2) the Project furthers the legislative purposes of the Act; (3) the Project would not be undertaken but for the availability of financing under the Act and the willingness of the Issuer to furnish such financing; and (4) the effect of the Project, if undertaken, will be to: (i) encourage the development of economically sound industry and commerce, (ii) assist in the prevention of the emergence of blighted and marginal land, (iii) help prevent chronic unemployment, provide the range of service and employment opportunities required by the population, (v) help prevent the movement of talented and educated persons out of the State and to areas within the State where their services may not be as effectively used, and (vi) promote more intensive development and appropriate use of land within the Issuer.

Section 4. The Notes.

a. In order to provide for the financing of the Project, the Issuer approves the issuance of the Series A Note in an original principal amount of not to exceed $790,000, at an initial interest rate of not to exceed 6.00% per annum, subject to adjustment as to be provided in the Series A Note, and upon the terms and conditions hereafter specified and specified in the Series A Note. The Issuer will loan the proceeds of the Series A Note to the Borrower in order to finance the Project.

b. In order to provide for the financing of the Project, the Issuer approves the issuance of the Series B Note in an original principal amount of not to exceed $410,000, at an initial interest rate of not to exceed 8.00% per annum, subject to adjustment as to be provided in the Series B Note, and upon the terms and conditions hereafter specified and specified in the Series B Note. The Issuer will loan the proceeds of the Series B Note to the Borrower in order to finance the Project.

c. The Loan Repayments to be made by the Borrower under the Loan Agreements are fixed to produce revenue sufficient to provide for the prompt payment of principal of, premium, if any, and interest on the Notes when due, and the Loan Agreements also provide that the Borrower is required to pay all expenses of the operation and maintenance of the Project, including, but without limitation, adequate insurance thereon and insurance against all liability for injury to persons or property arising from the operation thereof, and all lawfully imposed taxes and special assessments levied upon or with respect to the Project and payable during the term of the Loan Agreements.

d. The Notes are approved with such appropriate variations, omissions and insertions as are permitted or required by this Resolution, and in accordance with the further provisions hereof as may be necessary and appropriate and approved by Counsel to the Issuer, Bond Counsel and the Borrower prior to the execution thereof; and shall mature in the years and amounts, be subject to redemption, and bear interest at the rate as therein specified, subject to adjustment as therein specified.

Section 5. Approval of Issuer Documents. The Issuer Documents are approved with such appropriate variations, omissions and insertions as are permitted or required by this Resolution, and in accordance with the further provisions hereof as may be necessary and appropriate and approved by Counsel to the Issuer, Bond Counsel and the Borrower prior to the execution thereof.

Section 6. Execution of Notes and Documents.

a. The Executive Director (or Deputy Executive Director) and the Finance Officer (or Assistant Finance Officer) are designated and authorized to act on behalf or the Issuer for purposes of the issuance of the Notes and execution of the Notes and the Issuer Documents (the "Authorized Officers"). Any one of the Authorized Officers is authorized and directed to execute, acknowledge, and deliver the Issuer Documents and the Notes on behalf of the Issuer with such changes, insertions, and omissions therein as the Issuer's attorney may hereafter deem appropriate, such execution by an Authorized Officer to be conclusive evidence of approval of such documents in accordance with the terms hereof.

b. Any one of the Authorized Officers and any other officer of the Issuer are authorized and directed to execute and deliver all other documents which may be required under the terms of the Issuer Documents or the Notes or by Bond Counsel, and to take such other action as may be required or deemed appropriate for the performance of the duties imposed thereby to carry out the purposes thereof.

c. Any one of the Authorized Officers and any other officer of the Issuer are authorized to furnish certified copies of this Resolution and all proceedings and records of the Issuer relating to the Notes and the Issuer Documents, and such other affidavits and certificates as may be required to show the facts relating to the Issuer respecting the Notes and the Issuer Documents, as such facts appear from the books and records in the officers' custody and control or as otherwise known to them; and all such certified copies, certificates, and affidavits, including any heretofore furnished, shall constitute representations of the Issuer as to the truth of all statements contained therein.

Section 7. Absent or Disabled Officers.

a. If for any reason any one of the Authorized Officers or any other officer, employee, or agent of the Issuer authorized to execute certificates, instruments, or other written documents on behalf of the Issuer shall for any reason cease to be an officer, employee, or agent of the Issuer after the execution by such person of any certificate, instrument, or other written document, such fact shall not affect the validity or enforceability of such certificate, instrument, or other written document.

b. If for any reason any one of the Authorized Officers or any other officer, employee, or agent of the Issuer authorized to execute certificates, instruments, or other written documents on behalf of the Issuer shall be unavailable to execute such certificates, instruments, or other written documents for any reason, such certificates, instruments, or other written documents may be executed by a deputy or assistant to such officer, or by such other officer of the Issuer as in the opinion of the Issuer's attorney is authorized to sign such document and do all things and execute all instruments and documents required to be done or executed by such officers, with full force and effect, which executions or acts shall be valid and binding on the Issuer.

Section 8. Registration.

a. *Registered Form.* Each Note shall be issued only in fully registered form. Each Note shall be numbered R-1 in a denomination equal to the principal amount thereof.

b. *Registration, Transfer and Exchange*. The Issuer appoints the Finance Officer as Registrar. The effect of registration and the rights and duties of the Issuer with respect thereto are as follows:

i. *Register*. The Registrar must keep a bond register for the Notes in which the Registrar provides for the registration of ownership of the Notes and the registration of transfers and exchanges of the Notes.

ii. *Transfer of Note*. Subject to the provisions of clause x of this subsection, upon surrender for transfer of a Note duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar will authenticate and deliver, in the name of the designated transferee, one new note in an aggregate principal amount equal to the then outstanding principal amount of the Note so surrendered and of like maturity, as requested by the transferor. The Registrar may, however, close the books for registration of any transfer after the 15th day of the month preceding each interest payment date and until such interest payment date.

iii. *Issuance of New Notes*. Subject to the provisions of clause x of this subsection, the Issuer shall, at the request and expense of the Lender, issue new notes in aggregate outstanding principal amount equal to that of the Notes surrendered, and of like tenor except as to number, principal amount, and, if applicable, the amount of the monthly installments payable thereunder, and registered in the name of the Lender or such transferee as may be designated by the Lender.

iv. *Exchange of Note*. When a Note is surrendered by the registered owner for exchange the Registrar will authenticate and deliver one new note in an aggregate principal amount equal to the then outstanding principal amount of the Note surrendered and of like maturity, as requested in writing by the registered owner or the owner's attorney.

v. *Cancellation*. A Note surrendered upon any transfer or exchange will be promptly canceled by the Registrar and thereafter disposed of as directed by the Issuer.

vi. *Improper or Unauthorized Transfer*. When a Note is presented to the Registrar for transfer, the Registrar may refuse to transfer the Note so presented until the Registrar is satisfied that the endorsement on the Note or separate instrument of transfer is valid and genuine and that the requested transfer is legally authorized. The Registrar will incur no liability for the refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

vii. *Persons Deemed Owners*. The Issuer and the Registrar may treat the person in whose name a Note is registered in the bond register as the absolute owner of such Note, whether such Note is overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Note and for all other purposes, and payment so made to a registered owner or upon the owner's order will be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid.

viii. *Taxes, Fees and Charges*. For a transfer or exchange of a Note, the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to the transfer or exchange.

ix. *Mutilated, Lost, Stolen or Destroyed Note*. If a Note becomes mutilated or is destroyed, stolen or lost, the Registrar will deliver a new Note of like amount, number, maturity date, redemption privilege and tenor in exchange and in substitution for and upon cancellation of the mutilated Note or in lieu of or in substitution for any Note destroyed, stolen or lost, upon the payment of the reasonable expenses and charges of the Registrar and Issuer in connection therewith; and, in the case of a Note destroyed, stolen or lost, upon filing with the Registrar of evidence satisfactory to the Registrar that the Note was destroyed, stolen or lost, and of the ownership thereof, and upon furnishing to the Registrar and Issuer of an appropriate bond or indemnity in form, substance and amount satisfactory to it and as provided by law, in which both the Issuer and the Registrar must be named as obligees. A Note so surrendered to the Registrar will be canceled by the Registrar. If the mutilated, destroyed, stolen or lost Note has already matured or been called for redemption in accordance with its terms it is not necessary to issue a new Note prior to payment.

x. *Limitation on Transfers*. The Notes have been issued without registration under state or other securities laws, pursuant to an exemption for such issuance; and accordingly a Note may not be assigned or transferred in whole or part, nor may a participation interest in a Note be given pursuant to any participation agreement, except in accordance with an applicable exemption from such registration requirements. In no event may any participation interest in a Note be in an initial principal amount of less than $100,000.

Section 9. General Covenants.

a. *Payment of Principal and Interest*. The principal of and interest on the Notes are payable solely from and secured by revenues and proceeds derived from the Notes and the Documents, which revenues and proceeds are specifically pledged to the payment thereof in the manner and to the extent specified herein and in the Notes and the Documents; and nothing in the Notes or in this Resolution shall be considered as assigning, pledging or otherwise encumbering any other funds or assets of the Issuer.

b. *Agreements Binding*. All agreements, covenants, and obligations of the Issuer contained in this Resolution and in the above-referenced documents shall be deemed to be the agreements, covenants, and obligations of the Issuer to the full extent authorized or permitted by law, and all such agreements, covenants, and obligations shall be binding on the Issuer and enforceable in accordance with their terms. No agreement, covenant, or obligation contained in this Resolution or in the above-referenced documents shall be deemed to be an agreement, covenant, or obligation of any member of the Board of Commissioners, or of any officer, employee, or agent of the Issuer in that person's individual capacity. Neither the members of the Board of Commissioners, nor any officer executing the Notes, shall be liable personally on the Notes or be subject to any personal liability or accountability by reason of the issuance of the Notes.

c. *Rights Conferred*. Nothing in this Resolution or in the above-referenced documents is intended or shall be construed to confer upon any person (other than as provided in the Notes, the Documents and the other agreements, instruments, and documents hereby approved) any right, remedy, or claim, legal or equitable, under and by reason of this Resolution or any provision of this Resolution.

d. *Nature of Security*.

i. The Notes will be special limited obligations of the Issuer.

ii. Notwithstanding anything contained in the Notes or the Documents or any other document referred to herein to the contrary, under the provisions of the Act the Notes may not be payable from or be a charge upon any funds of the Issuer other than the revenues and proceeds pledged to the payment thereof, nor shall the Issuer be subject to any liability thereon, nor shall the Notes otherwise contribute or give rise to a pecuniary liability of the Issuer or any of the Issuer's officers, employees and agents. Accordingly, the Notes shall not be payable from or charged upon any funds other than the revenues pledged to the payment thereof, nor shall the Issuer be subject to any liability thereon.

iii. No holder of the Notes shall ever have the right to compel any exercise of the taxing power of the Issuer to pay the Notes or the interest thereon, or to enforce payment thereof against any property of the Issuer other than the revenues pledged under the Pledge Agreements; and the Notes shall not constitute a charge, lien or encumbrance, legal or equitable, upon any funds, assets or property of the Issuer, other than revenues under the Loan Agreements; and the Notes shall not constitute a debt of the Issuer within the meaning of any constitutional or statutory limitation of indebtedness. The Notes will not constitute an indebtedness, a pecuniary liability, a moral or general obligation or a loan of the credit of the Issuer or a charge, lien or encumbrance, legal or equitable, against the Issuer's property (other than revenues under the Loan Agreements, general credit or taxing powers.

Section 10. Offering and Disclosure Materials. The Issuer has not participated in the preparation of or reviewed any offering or disclosure materials with respect to the offer and sale of the Notes and the Issuer makes no representations or warranties regarding the necessity, sufficiency, accuracy, fairness, completeness or adequacy of any disclosure with respect to such offer and sale.

Section 11. Conditions Precedent.

a. Notwithstanding anything in this Resolution to the contrary, the approvals and authorizations given herein are specifically subject to and contingent upon the following:

i. receipt of approval of the Project by DEED;

ii. approval of the issuance of the Notes by the governing body of the City; and

iii. approval of the Issuer Documents by Counsel to the Issuer.

b. The officers and employees of the Issuer or their designees are authorized and directed to submit the proposal for the Project to DEED requesting approval, and other officers, employees and agents of the Issuer are hereby authorized to provide DEED with such information as it may require.

Section 12. Authorization to Borrower. The Borrower is authorized to select the Series A Lender and the Series B Lender in its discretion; provided that the holding of a Note by each such Lender shall be in full compliance with applicable State and federal securities laws.

Section 13. Severability. If any provision of this Resolution shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions of any constitution or statute or rule or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or paragraphs in this Resolution contained shall not affect the remaining portions of this Resolution or any part thereof.

Section 14. Governmental Program. The Notes are designated as "Program Bonds" and are determined to be within the "Economic Development Program" and the "Program," all as defined in Resolution 88R-021 of the City adopted on January 29, 1988 as amended by Resolution 97R-402 of the City adopted on December 12, 1997.

Section 15. Effective Date. This Resolution shall take effect and be in force from and after its approval and publication.