

RESOLUTION NO. \_\_\_\_\_

Authorizing the issuance and sale of, and providing the form, terms, pledge of revenues, findings, covenants, and directions relating to the Variable Rate Demand Revenue Bonds (University Gateway Project), Series 2009, under Minnesota Statutes, Sections 469.152-469.165, as amended, to be issued to finance the costs of the construction and equipping of an addition to an office building owned by University Gateway Corporation and located on the Minneapolis campus of the University of Minnesota

RESOLVED BY THE CITY COUNCIL OF THE CITY OF MINNEAPOLIS:

SECTION 1. BACKGROUND

1.01. STATUTORY AUTHORIZATION. The City of Minneapolis, Minnesota (the “City”), is a home rule city and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota, and is authorized by Minnesota Statutes, Sections 469.152-469.165, as amended (the “Act”), to issue revenue bonds to finance, in whole or in part, the cost of the acquisition, construction, reconstruction, improvement, betterment, or extension of a “project,” defined in the Act as any properties, real or personal, used or useful in connection with a revenue producing enterprise, for the public purposes expressed in the Act. The City may also issue revenue bonds under the Act to refund, in whole or in part, bonds previously issued by the City under the Act.

1.02. THE CORPORATION AND THE FACILITY. The University of Minnesota Foundation (the “University Foundation”), the University of Minnesota Alumni Association (the “Alumni Association”), and the Minnesota Medical Foundation (the “Medical Foundation”) jointly established the University Gateway Corporation, a Minnesota nonprofit corporation (the “Corporation”) in 1997, and received a determination from the Internal Revenue Service that the Corporation is exempt from federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as amended (the “Code”), as a result of the application of Section 501(c)(3) of the Code. The Corporation was formed for the purpose of developing a six-story office building and related improvements (the “Facility”) to be located on the Minneapolis campus of the University of Minnesota.

1.03. THE SERIES 1997 BONDS. The costs of the construction and development of the Facility were financed by the City through the issuance of its: (i) Revenue Bonds (University Gateway Project), Series 1997-A (the “Series 1997-A Bonds”), in the original aggregate principal amount of \$25,000,000; and (ii) Variable Rate Demand Revenue Bonds (University Gateway Project), Series 1997-B (the “Series 1997-B Bonds”), in the original aggregate principal amount of \$15,000,000 (the Series 1997-A Bonds and the Series 1997-B Bonds are hereinafter referred to collectively as the “Series 1997 Bonds”). The Series 1997 Bonds were issued pursuant to Resolution No. 97R-358, adopted by the City Council of the City and approved by the Mayor of

the City on November 21, 1997, and pursuant to an Indenture of Trust, dated as of December 1, 1997 (the “Indenture”), between the City and U.S. Bank National Association (formerly known as First Trust National Association), as trustee (the “Trustee”). The proceeds derived from the sale of the Series 1997 Bonds were loaned to the Corporation pursuant to the terms of a Loan Agreement, dated as of December 1, 1997 (the “Loan Agreement”), between the City and the Corporation. The Corporation applied the proceeds of the loan to the development and construction of the Facility.

1.04. SECURITY FOR THE SERIES 1997 BONDS. The obligations of the Corporation pursuant to the terms of the Loan Agreement are secured by a Mortgage and Security Agreement, dated as of December 1, 1997 (the “Mortgage”), between the Corporation, as mortgagor, and the City, as mortgagee, and an Assignment of Leases and Rents, dated as of December 1, 1997 (the “Assignment of Leases and Rents”), between the Corporation, as assignor, and the City, as assignee. The interests of the City in the Mortgage and the Assignment of Leases and Rents were assigned to the Trustee and University of Minnesota Foundation, a Minnesota nonprofit corporation (the “Guarantor”) pursuant to the terms of an Assignment of Mortgage and Security Agreement, dated as of December 1, 1997 (the “Assignment of Mortgage”). The Series 1997 Bonds were also secured by a Guaranty Agreement, dated as of December 1, 1997 (the “Guaranty”), executed by the Guarantor for the benefit of the Trustee and a predecessor to Wells Fargo Bank, National Association, a national banking association (the “Bank”).

1.05. THE FACILITY. The development and construction of the Facility has been completed. The Facility, designated the McNamara Alumni Center — University of Minnesota Gateway, contains approximately 230,000 square feet of interior space and houses the offices for the University Foundation, the Alumni Association, and the Medical Foundation. The Facility serves as an alumni/visitor center for the University of Minnesota and a portion of the office space of the Facility is leased to the University of Minnesota. The Facility is located at 200 Oak Street S.E. in Minneapolis, Minnesota 55455-2010. The Facility is owned and operated by the Corporation.

1.06. THE IMPROVEMENTS. In 2002, the Corporation elected to construct additional enhancements to the Facility and to construct a plaza adjacent to the Facility to be donated to the University of Minnesota (collectively, the “Improvements”). The Corporation requested that the City assist the Corporation in financing the costs of the Improvements through the issuance of additional bonds pursuant to the terms of the Indenture and, pursuant to an amendment to the Loan Agreement, through a loan of the proceeds of the additional bonds to the Corporation.

1.07. THE SERIES 2002 BONDS. The costs of the construction and development of the Improvements were financed by the City through the issuance of its Variable Rate Demand Revenue Bonds (University Gateway Project), Series 2002 (the “Series 2002 Bonds”), in an original aggregate principal amount of \$7,350,000. The Series 2002 Bonds were issued as parity obligations with the Series 1997 Bonds pursuant to Resolution No. 2002R-163, adopted by the City Council of the City on May 17, 2002, and approved by the Mayor of the City on May 20, 2002, and pursuant to the terms and conditions of a First Supplement to Indenture of Trust, dated as of June 1, 2002 (the “First Supplemental Indenture”), between the City and the Trustee. The proceeds derived from the sale of the Series 2002 Bonds were loaned to the Corporation under the terms of a First Amendment to Loan Agreement, dated as of June 1, 2002 (the “First Amendment to Loan Agreement”), between the City and the Corporation.

1.08. SECURITY FOR THE SERIES 2002 BONDS. The obligations of the Corporation pursuant to the terms of the First Amendment to Loan Agreement are secured by the Mortgage, as amended by a First Supplement to Mortgage and Security Agreement, dated as of June 1, 2002 (the "First Supplemental Mortgage"), between the Corporation and the Trustee and Guarantor, and the Assignment of Leases and Rents, as amended by a First Amendment to Assignment of Leases and Rents, dated as of June 1, 2002 (the "First Amendment to Assignment"), between the Corporation and the Trustee and Guarantor. The loan repayments required to be made by the Corporation under the terms of the First Amendment to Loan Agreement, were assigned to the Trustee under the terms of the First Supplemental Indenture. The payment of the principal of, premium, if any, and interest on the Series 2002 Bonds are also secured by the Guaranty, as amended by the terms of a First Amendment to Guaranty Agreement, dated as of June 1, 2002 (the "First Amendment to Guaranty"), executed by the Guarantor and delivered to the Trustee.

1.09. THE SERIES 2006 BONDS. At the request of the Corporation, the City issued its Revenue Refunding Bonds (University Gateway Project), Series 2006 (the "Series 2006 Bonds"), in an original aggregate principal amount of \$22,700,000, on April 12, 2006. The Series 2006 Bonds were issued as parity obligations with the Series 1997 Bonds and the Series 2002 Bonds pursuant to the terms and conditions of a Second Supplement to Indenture of Trust, dated as of April 1, 2006 (the "Second Supplemental Indenture"), between the City and the Trustee. The proceeds derived from the sale of the Series 2006 Bonds were loaned to the Corporation under the terms of a Second Amendment to Loan Agreement, dated as of April 1, 2006 (the "Second Amendment to Loan Agreement"), between the City and the Corporation. The Corporation directed the application of the proceeds of the loan made pursuant to the Second Amendment to Loan Agreement (the "Loan") to the payment, redemption, and prepayment of the outstanding principal amount of the Series 1997-A Bonds.

1.10. SECURITY FOR THE SERIES 2006 BONDS. The repayment of the loan made pursuant to the terms of the Second Amendment to Loan Agreement and the payment of the principal and purchase price of, premium, if any, and interest on the Series 2006 Bonds are secured by the Mortgage and First Supplemental Mortgage, as amended by a Second Supplement to Mortgage and Security Agreement, dated as of April 1, 2006 (the "Second Supplemental Mortgage"), between the Corporation and the Trustee and Guarantor, and by the Assignment of Leases and Rents and the First Amendment to Assignment, as amended by a Second Amendment to Assignment of Leases and Rents, dated as of April 1, 2006 (the "Second Amendment to Assignment"), between the Corporation and the Trustee and Guarantor. The loan repayments required to be made by the Corporation under the terms of the Second Amendment to Loan Agreement, were assigned to the Trustee under the terms of the Second Supplemental Indenture. The payment of the principal of, premium, if any, and interest on the Series 2006 Bonds were secured under the terms of the Guaranty and the First Amendment to Guaranty, as amended by a Second Amendment to Guaranty Agreement, dated as of April 1, 2006 (the "Second Amendment to Guaranty"), executed by the Guarantor and delivered to the Trustee.

1.11. THE ADDITION. The Corporation has elected to construct an addition of approximately 31,000 square feet (the "Addition") to the Facility. The Addition will be owned and operated by the Corporation. The Addition will be comprised of four stories and a basement and will include approximately 15,000 additional square feet of office space, a new large meeting room, and a new kitchen/food-service space that has been designed to operate as an additional meeting space after food-service hours. The existing food-service space in the Facility is proposed to be converted to breakout space for the meeting center and can be combined with the

other meeting spaces to accommodate larger groups. The Addition includes a new entrance to the Facility and the Addition (the "Building"), and a four-story atrium. The new entrance and new corridor connection to the north entry to the Building will enable the event center to accommodate two major events at the same time. The kitchen and food-service staging areas of the Building are being renovated to better serve the higher-than-anticipated number of events in the Facility as well as serving the Addition. The Corporation has requested that the City assist the Corporation in financing the costs of the Addition through the issuance of additional bonds pursuant to the terms of the Indenture and, pursuant to an amendment to the Loan Agreement, through a loan of the proceeds of the additional bonds to the Corporation.

1.12. **THE SERIES 2009 BONDS.** The Corporation has requested that the City issue its Variable Rate Demand Revenue Bonds (University Gateway Project), Series 2009 (the "Series 2009 Bonds" or the "Bonds"), in an original aggregate principal amount not to exceed \$12,500,000. The Series 2009 Bonds are to be issued as parity obligations with the Series 1997-B Bonds, the Series 2002 Bonds, and the Series 2006 Bonds pursuant to the terms and conditions of a Third Supplement to Indenture of Trust, to be dated on or after October 1, 2009 (the "Third Supplemental Indenture"), between the City and the Trustee. The Series 2009 Bonds are proposed to be sold pursuant to the terms of a Bond Purchase Agreement (the "Purchase Agreement") between the City, the Corporation, and RBC Capital Markets and Wells Fargo Brokerage Services, LLC (collectively, the "Underwriters"). The proceeds derived from the sale of the Series 2009 Bonds will be loaned to the Corporation under the terms of a Third Amendment to Loan Agreement, to be dated on or after October 1, 2009 (the "Third Amendment to Loan Agreement"), between the City and the Corporation. The Corporation will direct the application of the proceeds of the loan made pursuant to the Third Amendment to Loan Agreement (the "Loan") to finance the construction and equipping of the Addition and related costs referred to in Section 1.11 hereof. A portion of the Loan will also be applied to the payment of a portion of the costs of issuing the Series 2009 Bonds. The Indenture, as supplemented by the First Supplemental Indenture, the Second Supplemental Indenture, and the Third Supplemental Indenture, is hereinafter referred to as the "Amended Indenture." The Loan Agreement, as amended by the First Amendment to Loan Agreement, the Second Amendment to Loan Agreement, and the Third Amendment to Loan Agreement is hereinafter referred to as the "Amended Loan Agreement."

1.13. **SECURITY FOR THE SERIES 2009 BONDS.** The repayment of the Loan and the payment of the principal and purchase price of, premium, if any, and interest on the Series 2009 Bonds are to be secured by the Mortgage, First Supplemental Mortgage, and Second Supplemental Mortgage, as amended by a Third Supplement to Mortgage and Security Agreement, to be dated on or after October 1, 2009 (the "Third Supplemental Mortgage"), between the Corporation and the Trustee and Guarantor, and by the Assignment of Leases and Rents, the First Amendment to Assignment, and Second Amendment to Assignment, as amended by a Third Amendment to Assignment of Leases and Rents, to be dated on or after October 1, 2009 (the "Third Amendment to Assignment"), between the Corporation and the Trustee and Guarantor. The loan repayments required to be made by the Corporation under the terms of the Third Amendment to Loan Agreement, will be assigned to the Trustee under the terms of the Third Supplemental Indenture. The payment of the principal of, premium, if any, and interest on the Series 2009 Bonds will also be secured under the terms of the Guaranty, the First Amendment to Guaranty, and the Second Amendment to Guaranty, as amended by a Third Amendment to Guaranty Agreement, to be dated on or after October 1, 2009 (the "Third Amendment to Guaranty"), to be executed by the Guarantor and delivered to the Trustee. The Mortgage, as amended by the First Supplemental Mortgage, the Second Supplemental Mortgage,

and the Third Supplemental Mortgage, is hereinafter referred to as the “Amended Mortgage.” The Assignment of Leases and Rents, as amended by the First Amendment to Assignment, the Second Amendment to Assignment, and the Third Amendment to Assignment, is hereinafter referred to as the “Amended Assignment.” The Guaranty, as amended by the First Amendment to Guaranty, the Second Amendment to Guaranty, and the Third Amendment to Guaranty, is hereinafter referred to as the “Amended Guaranty.”

1.14. LIQUIDITY FACILITY FOR THE SERIES 1997-B BONDS AND SERIES 2002 BONDS. The Series 1997-B Bonds and the Series 2002 Bonds were issued as variable-rate obligations each of which is required to be purchased from the holder upon seven days notice. In order to ensure the holders that the Series 1997-B Bonds are purchased upon demand of the holders, the Bank, the Corporation, and the Guarantor entered into a Standby Bond Purchase Agreement, dated as of December 1, 1997 (the “Standby Purchase Agreement”). In order to ensure the holders that the Series 2002 Bonds are purchased upon demand of the holders, the Bank, the Corporation, and the Guarantor entered into a First Amendment to Standby Bond Purchase Agreement, dated as of June 1, 2002, between the Bank, the Corporation, and the Guarantor (the “First Amendment to Standby Purchase Agreement”). Under the terms of the Standby Purchase Agreement, as amended by the First Amendment to Standby Purchase Agreement, the Bank is obligated, under certain conditions, to purchase any Series 1997-B Bond or Series 2002 Bond which has been tendered for purchase but which cannot be remarketed prior to the purchase date.

1.15. LIQUIDITY FACILITY FOR THE SERIES 2009 BONDS. The Series 2009 Bonds are also proposed to be issued as variable-rate obligations each of which is required to be purchased from the holder upon seven days notice. In order to ensure that the Series 2009 Bonds will be purchased upon demand of the holders, the Bank, the Corporation, and the Guarantor will enter into a Second Amendment to Standby Bond Purchase Agreement, dated on or after October 1, 2009 (the “Second Amendment to Standby Purchase Agreement”). The Standby Purchase Agreement, as amended by the First Amendment to Standby Purchase Agreement and as amended by the Second Amendment to Standby Purchase Agreement is hereinafter referred to as the “Amended Standby Purchase Agreement.” Under the terms of the Amended Standby Purchase Agreement, the Bank will be obligated, under certain conditions, to purchase any Series 2009 Bond which has been tendered for purchase and which cannot be remarketed prior to the purchase date. The remarketing of Series 2009 Bonds that are required to be purchased will be undertaken pursuant to the provisions of a Second Amendment to Remarketing Agreement, dated on or after October 1, 2009 (the “Amended Remarketing Agreement”), between the City, the Trustee, the Corporation, and the Underwriters.

1.16. DOCUMENTS. Forms of the following documents have been submitted to the City and are now on file with the City: (i) the Third Amendment to Loan Agreement; (ii) the Third Supplemental Indenture; (iii) the Third Supplemental Mortgage; (iv) the Third Amendment to Assignment; (v) the Third Amendment to Guaranty; and (vi) the Purchase Agreement; (vii) the Second Amendment to Standby Purchase Agreement; and (viii) the Second Amendment to Remarketing Agreement.

## SECTION 2. ISSUANCE OF BONDS

2.01. FINDINGS. The City Council hereby finds, determines, and declares that:

(a) The issuance and sale of the Series 2009 Bonds, the execution and delivery by the City of the Third Amendment to Loan Agreement, the Third Supplemental Indenture, the Purchase Agreement, and the Second Amendment to Remarketing Agreement, and the performance of all covenants and agreements of the City contained in the Third Amendment to Loan Agreement, the Third Supplemental Indenture, the Purchase Agreement, and the Second Amendment to Remarketing Agreement are undertaken pursuant to the Act.

(b) The Addition furthers the purposes stated in Section 469.152 of the Act and constitutes a “project,” as defined in Section 469.153, subdivision 2(b), of the Act.

(c) The loan repayments to be made by the Corporation under the Third Amendment to Loan Agreement are fixed to produce revenue sufficient to provide for the prompt payment of the principal of, premium, if any, and interest on the Series 2009 Bonds issued under the Third Supplemental Indenture when due, and the Amended Loan Agreement and the Amended Indenture also provide that the Corporation is required to pay all expenses of the operation and maintenance of the Facility, the Addition, and the Improvements (the “Corporation Facilities”), 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 Corporation Facilities and payable during the term of the Amended Loan Agreement and the Amended Indenture.

(d) The Series 2009 Bonds and the interest thereon are not general or moral obligations of the City or a debt of the City within the meaning of any constitutional or statutory limitation. The Series 2009 Bonds and the interest thereon are limited obligations of the City, payable solely from the Trust Estate pledged therefor under the Amended Indenture, including, without limitation, its interest in payments received under the Amended Loan Agreement. No holder of any Series 2009 Bonds shall ever have the right to compel any exercise by the City of its taxing powers to pay any of the Series 2009 Bonds or the interest or premium thereon, or to enforce payment thereof against any property of the City except the interests of the City in the Amended Loan Agreement, assigned to the Trustee under the Amended Indenture. The Series 2009 Bonds shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the City, except the interests of the City in the Amended Loan Agreement. The Series 2009 Bonds shall recite that the Series 2009 Bonds are issued pursuant to the Act, and that the Series 2009 Bonds, including interest and premium, if any, thereon, are payable solely from the revenues and assets pledged to the payment thereof.

2.02. ISSUANCE OF THE SERIES 2009 BONDS. The City hereby authorizes the issuance of the Series 2009 Bonds, in the principal amount, in the form, and upon the specific terms and conditions set forth in the Third Supplemental Indenture and pursuant to the general terms and conditions of the Indenture. The Series 2009 Bonds shall be delivered to the Trustee for authentication and delivery to the Underwriters. All of the provisions of the Series 2009 Bonds (as prescribed in the Third Supplemental Indenture, in the form now on file with the City, with the amendments referenced herein), when executed as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Series 2009 Bonds shall be substantially in the form on file with the City, which is hereby approved, with

such necessary and appropriate variations, omissions, and insertions (including changes to the aggregate principal amount of the Series 2009 Bonds, the principal amounts of each maturity of the Series 2009 Bonds, the maturity dates, the interest rate for each maturity, optional and mandatory redemption terms, mandatory sinking fund payment schedules, and other terms and provisions of the Bonds) as the Finance Officer of the City (the "Finance Officer"), in his discretion, shall determine. The aggregate principal amount of the Series 2009 Bonds, the principal amount of Series 2009 Bonds, the method for determining the interest rates on the Series 2009 Bonds, the maturity date of the Series 2009 Bonds, the date of the documents referenced in this resolution and the Series 2009 Bonds, and the terms of redemption of the Series 2009 Bonds may be established or modified with the approval of the City. The execution and delivery of the Series 2009 Bonds shall be conclusive evidence that the City has approved such terms as subsequently established or modified. The offer of the Underwriters to purchase the Series 2009 Bonds as provided in the Purchase Agreement at the price established under the terms of the Purchase Agreement plus accrued interest (if any) to the date of delivery at the interest rate or rates specified in the Third Supplemental Indenture is hereby accepted. The execution of the Bonds with the manual or facsimile signature of the Finance Officer and the delivery of the Bonds by the City shall be conclusive evidence of such determination. The Finance Officer is hereby authorized to execute and deliver any agreements with any depository institution, including any representation letter or amendment to any existing representation letter, to provide for the registration of the Series 2009 Bonds in book-entry form. The City hereby authorizes the Series 2009 Bonds to be issued as "tax-exempt bonds" the interest on which is not includable in gross income for federal and State of Minnesota income tax purposes.

2.03. DESIGNATION AS PROGRAM BONDS. The Series 2009 Bonds are hereby designated "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 1997R-402 of the City adopted December 12, 1997.

2.04. THIRD SUPPLEMENTAL INDENTURE. The Finance Officer is hereby authorized and directed to execute the Third Supplemental Indenture and to deliver the Third Supplemental Indenture to the Trustee. The Third Supplemental Indenture shall provide the terms and conditions, covenants, rights, obligations, duties, and agreements of the bondholders, the City, and the Trustee as set forth therein. All of the provisions of the Third Supplemental Indenture, when executed as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Third Supplemental Indenture shall be substantially in the form on file with the City on the date hereof, and is hereby approved with such necessary and appropriate variations, omissions, and insertions as are not materially inconsistent with such form and as the Finance Officer, in his discretion, shall determine; provided that the execution and delivery thereof by the Finance Officer shall be conclusive evidence of such determination.

2.05. THIRD AMENDMENT TO LOAN AGREEMENT. The Finance Officer is hereby authorized and directed to execute the Third Amendment to Loan Agreement and to deliver the Third Amendment to Loan Agreement to the Corporation, and when executed and delivered as authorized herein, the Third Amendment to Loan Agreement shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Third Amendment to Loan Agreement shall be substantially in the form on file with the City on the date hereof,

which is hereby approved, with such necessary variations, omissions, and insertions as are not materially inconsistent with such form and as the Finance Officer, in his discretion, shall determine; provided that the execution thereof by the Finance Officer shall be conclusive evidence of such determination.

2.06. PURCHASE AGREEMENT. The offer of the Underwriters to purchase the Series 2009 Bonds as provided in the Purchase Agreement at the price established under the terms of the Purchase Agreement plus accrued interest (if any) to the date of delivery at the interest rate or rates specified in the Third Supplemental Indenture is hereby accepted. The Finance Officer is hereby authorized and directed to accept and execute the Purchase Agreement and the Second Amendment to Remarketing Agreement. All of the provisions of the Purchase Agreement and the Second Amendment to Remarketing Agreement, when executed and delivered as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Purchase Agreement and the Second Amendment to Remarketing Agreement, shall be substantially in the forms on file with the City on the date hereof, and are hereby approved, with such necessary and appropriate variations, omissions, and insertions as are not materially inconsistent with such forms and as the Finance Officer, in his discretion, shall determine; provided that the execution thereof by the Finance Officer shall be conclusive evidence of such determination.

2.07. APPROVAL OF DOCUMENTS. The Third Supplemental Mortgage, the Third Amendment to Assignment, the Third Amendment to Guaranty, the Purchase Agreement, the Second Amendment to Standby Purchase Agreement, and the Second Amendment to Remarketing Agreement are hereby approved in substantially the forms on file with the City on the date hereof. The terms of the Third Supplemental Mortgage, the Third Amendment to Assignment, the Third Amendment to Guaranty, the Purchase Agreement, the Second Amendment to Standby Purchase Agreement, and the Second Amendment to Remarketing Agreement may be modified with the approval of the Finance Officer.

2.08. DISCLOSURE DOCUMENTS. The City consents to the distribution of a Preliminary Official Statement (if deemed necessary or appropriate by the Corporation) and an Official Statement (collectively, the "Disclosure Documents") prepared with respect to the issuance of the Series 2009 Bonds. The Disclosure Documents shall recite that the City has not participated in the preparation of the Disclosure Documents nor made any independent investigation of the information contained in the Disclosure Documents, and the City takes no responsibility for the sufficiency, accuracy, or completeness of such information. The City hereby approves the execution and delivery of a Continuing Disclosure Agreement or a Third Amendment to Continuing Disclosure Agreement, to be dated on or after October 1, 2009 (the "Continuing Disclosure Agreement"), between the Corporation, the Guarantor, and the Trustee, pursuant to which the Corporation and the Guarantor agree to meet certain continuing disclosure obligations imposed by Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the "Rule"). The Corporation, the Guarantor, and the Trustee shall acknowledge in the Continuing Disclosure Agreement that the City has undertaken no responsibilities with respect to any reports, notices, or disclosures required under the Continuing Disclosure Agreement or the Rule.

2.09. CERTIFICATIONS OF THE CITY. The Finance Officer and other officers, employees, and agents of the City are hereby authorized and directed to prepare and furnish to bond counsel, the Underwriters, and the Trustee certified copies of all proceedings and records of

the City relating to the issuance of the Series 2009 Bonds, and such other affidavits and certificates as may be required to show the facts relating to the Series 2009 Bonds 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 City as to the truth of all statements contained herein. Such officers, employees, and agents are hereby authorized to execute and deliver, on behalf of the City, all other certificates, instruments, and other written documents that may be requested by bond counsel, the Underwriters, the Trustee, or other persons or entities in conjunction with the issuance of the Series 2009 Bonds. Without imposing any limitation on the scope of the preceding sentence, such officers, employees, and agents are specifically authorized to execute and deliver one or more financing statements, an arbitrage and rebate certificate, a receipt for the proceeds derived from the sale of the Series 2009 Bonds, an order to the Trustee as to the application of the proceeds of the Series 2009 Bonds, a general certificate of the City, and an Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038 (Rev. September 2007).

### SECTION 3. MISCELLANEOUS

Section 3.01. **AGREEMENTS BINDING.** All agreements, covenants, and obligations of the City contained in this resolution and in the above-referenced documents shall be deemed to be the agreements, covenants, and obligations of the City to the full extent authorized or permitted by law, and all such agreements, covenants, and obligations shall be binding on the City and enforceable in accordance with their respective 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 City Council, the Finance Officer, or of any officer, employee, or agent of the City in that person's individual capacity. Neither the members of the City Council, the Finance Officer, nor any officer or employee of the City executing the Series 2009 Bonds, shall be liable personally on the Series 2009 Bonds or be subject to any personal liability or accountability by reason of the issuance of the Series 2009 Bonds.

3.02. **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 Third Supplemental Indenture 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; this resolution, the Amended Indenture, and all of their provisions being intended to be and being for the sole and exclusive benefit of the City and the Trustee as fiduciary for owners of the Series 2009 Bonds issued under the provisions of this resolution and the Amended Indenture, and the Corporation to the extent expressly provided in the Amended Indenture and the Amended Loan Agreement.

3.03. **VALIDITY.** In case any one or more of the provisions of this resolution, or of the documents mentioned herein, or of the Series 2009 Bonds issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this resolution, or of the aforementioned documents, or of the Series 2009 Bonds, but this resolution, the aforementioned documents, and the Series 2009 Bonds shall be construed and endorsed as if such illegal or invalid provisions had not been contained therein. If for any reason the Finance Officer, or any other officers, employees, or agents of the City authorized to execute certificates, instruments, or other written documents on behalf of the City shall for any reason cease to be an officer, employee, or agent of the City 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. If for any reason the Finance Officer, or any other officers, employees, or agents of the City authorized to execute certificates, instruments, or other written documents on behalf of the City 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 or employee of the City as is authorized to execute such certificates, instruments, or other written documents.

3.04. **REQUIRED ACTIONS.** All acts, conditions, and things required by the laws of the State of Minnesota, relating to the adoption of this resolution, to the issuance of the Series 2009 Bonds, and to the execution of the Third Supplemental Indenture, the Third Amendment to Loan Agreement, and the other documents referred to above, to happen, exist, and be performed precedent to and in the enactment of this resolution, and precedent to the issuance of the Series 2009 Bonds, and precedent to the execution of the Third Supplemental Indenture, the Third Amendment to Loan Agreement, and the other documents referred to above, have happened, exist, and have been performed as so required by law.

3.05. **EFFECTIVE DATE.** This resolution shall take effect and be in force from and after its approval and publication. Pursuant to Chapter 4, Section 9, of the Charter of the City, only the title of this resolution and a summary of this resolution conforming to Minnesota Statutes, Section 331A.01, subdivision 10, shall be published in the official paper of the City.