



**Request for City Council Committee Action
From the Department of Community Planning & Economic Development**

Date: November 7, 2005

To: Council Member Lisa Goodman, Community Development Committee

Prepared by: Bob Lind, Business Finance, Phone 612-673-5068
Presenter in Committee: Bob Lind

Approved by: Chuck Lutz, Deputy CPED Director _____

Subject: A Public Hearing and Request for Preliminary and Final Approval of up to \$13 million in Enterprise Zone Tax-exempt Revenue Bonds for Sheraton Investment Fund, LLC and up to \$16 million in Enterprise Zone Tax-exempt Revenue Bonds for Midtown Investment, LLC

RECOMMENDATION: The CPED Director recommends that the City Council adopt the two attached Resolutions giving Preliminary and Final Approval to the issuance of up to \$13 million in Enterprise Zone Tax-exempt Revenue Bonds for the Sheraton Hotel Project by Sheraton Investment Fund, LLC and up to \$16 million in Enterprise Zone Tax-exempt Revenue Bonds for the Parking Ramp Project by Midtown Investment, LLC

Previous Directives: The Midtown Exchange project has been before the City Council many times for various parts of the project's approval and financing. At this time Ryan Companies is requesting the issuance of EZ Revenue Bonds to provide permanent take-out financing for the interim construction financing used to construct the hotel and parking ramp.

Financial Impact (Check those that apply)

- No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Other financial impact (Explain): The issuance of revenue bonds for these two Midtown Exchange projects will generate revenue bond administrative fees of approximately \$60,000 a year that are used to support the small business assistance programs of the City of Minneapolis.

___ Request provided to the Budget Office when provided to the Committee
Coordinator

Community Impact (Summarize below)

Ward: The Midtown Exchange project is located in Wards 6 & 8.

Neighborhood Notification: The Midtown Phillips Neighborhood Association has been notified.

City Goals: The projects are consistent with the City goals of maximizing economic development within the City by focusing on its physical and human assets; preserving and enhancing historic environment and promoting public and private partnerships to support families and communities.

Comprehensive Plan: These facilities comply with the Minneapolis Plan.

Zoning Code: The two facilities are in compliance with City zoning codes.

Living Wage/Job Linkage: The hotel project has an existing Job Linkage Agreement and recently held a very successful job fair through the Workforce Center. Ryan Companies has a Redevelopment Contract for the overall Midtown Exchange Project that deals with job goals and diversity.

Background/Supporting Information

PROJECT LOCATION & DESCRIPTION:

The Sheraton Hotel project located at 2901 Chicago Ave. S. and the parking ramp project on the east side of the former Sears tower between 10th and 11th Avenue South. Sheraton Investment Fund, LLC proposes to finance the acquisition, construction, and equipping of the five-story, 136-room Sheraton Hotel with the issuance of up to \$13 million in Enterprise Zone (EZ) Tax-exempt Revenue Bonds. Midtown Investment, LLC proposes to finance the acquisition, construction, and equipping of a parking ramp of about 1,437 parking spaces with the issuance of up to \$16 million in EZ Tax-exempt Revenue Bonds.

TYPE OF FINANCING:

The issuance of the two EZ Tax-exempt Revenue Bonds will be used to refinance the interim construction financing on the Sheraton Hotel and the Parking Ramp. It is anticipated that both Bonds will be privately placed with U.S. Bank.

PRESENT EMPLOYMENT:

None. Both are new projects.

NEW EMPLOYMENT:

The hotel is expected to create 70 jobs, of which 35% must be held by Minneapolis residents that live in the area of the EZ Zone. The recent Job Fair held on September 26 & 27, 2005 attracted almost 900 people.

ANNUAL TAX INCREASE:

Pending review by the City Assessor.

AFFIRMATIVE ACTION COMPLIANCE:

Affirmative Action Plans are currently on file with the City.

CITY IRB POLICIES:

Job Component

Minimum standard of one (1) job per 1,000 square feet of building area.

Midtown Exchange Projects: 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.

Midtown Exchange Projects: In compliance.

Development Standards

Compliance with the Land Use Plan of the City's Comprehensive Plan.

Midtown Exchange Projects: 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.

Midtown Exchange Projects: N.A.

Restaurant/Bank

IRB financing is allowed for a restaurant or a bank if it is built or rehabilitated in an 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.

Midtown Exchange Projects: N.A.

Tax-exempt Institution

Refinancing is permitted when new jobs are created or when a significant number of jobs is preserved; any interest cost savings must directly reduce patient costs.

Midtown Exchange Projects: N.A.

IRB CAP:

The project is not subject to the volume cap in that Enterprise Zone (EZ) Bonds are exempt from the State's limit on tax-exempt bond financing. The projects do not need an allocation from the State's bonding authority.

BOND COUNSEL:

Kenndy & Graven

UNDERWRITER:

U.S. Bank

REFERRED TO (NAME OF) COMMITTEE:
DATE:

RESOLUTION of the CITY OF MINNEAPOLIS

Approving and authorizing the issuance by the City of Minneapolis of its Revenue Note (Sheraton Investment Fund, LLC), Series 2005, under Minnesota Statutes, Section 469.152-469.1651, as amended, to finance a project for the benefit of Sheraton Investment Fund, LLC and Midtown Exchange Hotel LLC; approving the form and authorizing the execution and delivery of related documents; and providing for the security, rights, and remedies of the owner of the note.

Resolved by the City Council of the City of Minneapolis:

Section 1. Background

1.01. Under the Minnesota Municipal Industrial Development Act, Minnesota Statutes, Sections 469.152 through 469.165, as amended (the “Act”), each municipality and redevelopment agency of the State of Minnesota (as defined in the Act), including the City of Minneapolis, Minnesota (the “City”), is authorized to issue revenue obligations to finance improvements to land and buildings and capital equipment for the benefit of a revenue producing enterprise to be owned by a contracting party (as defined in the Act).

1.02 The City has proposed to issue a revenue obligation to be designated the Revenue Note (Sheraton Investment Fund, LLC), Series 2005 (the “Note”), and loan the proceeds derived from the sale of the Note to Sheraton Investment Fund, LLC, a Minnesota limited liability company (the “Borrower”). The Borrower will loan the proceeds of the Note directly or indirectly to Midtown Exchange Hotel, Limited Liability Company, a Minnesota limited liability company (the “Company”), to finance the acquisition, construction, and equipping of a five-story, 136-room hotel to be located at 2901 Chicago Avenue South in the City (the “Project”). The Project will be owned by the Company.

1.03 The Note is proposed to be sold to a single financial institution (the “Lender”) and the proceeds derived from the sale of the Note are proposed to be loaned to the Borrower pursuant to the terms of a Loan Agreement, dated as of December 1, 2005 (the “Loan Agreement”), between the City and the Borrower. The payment of the principal of, premium, if any, and interest on the Note will be secured by: (i) the revenues derived from the Loan Agreement to be assigned to the Lender pursuant to the terms of Assignment of Loan Agreement, dated as of December 1, 2005 (the “Assignment”), from the City to the Lender; and (ii) such other security as may be required from the Borrower by the Lender.

Section 2. Issuance of the Note

2.01 For the purposes set forth above, there is hereby authorized the issuance, sale, and delivery of the Note in the principal amount not to exceed \$13,000,000. The Note shall bear interest, shall be numbered, shall be dated, shall mature, shall be subject to redemption prior to maturity, shall be in such form, and shall have such other terms, details, and provisions as are prescribed in the form of the Note now on file with the City and in the form of the Loan Agreement now on file with the City. The Finance Officer is hereby authorized to execute and deliver the Note on behalf of the City in the manner authorized by the Charter of the City. The City hereby authorizes the Note to be issued as a “tax-exempt bond” the interest on which is not includable in gross income for federal and State of Minnesota income tax purposes.

All of the provisions of the Note, 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 Note 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 reductions in the principal amount of the Note, the determination of the initial interest rate on the Note, the provisions for adjustment of the interest rate on the Note, and changes to the terms of redemption of the Note) as the Finance Officer of the City (the “Finance Officer”), in his discretion shall determine. The execution of the Note with the manual or facsimile signature of the Finance Officer and the delivery of the Note by the City shall be conclusive evidence of such determination.

2.02 The Note shall be a special revenue obligation of the City the proceeds of which shall be disbursed pursuant to the Loan Agreement, and the principal, premium, and interest on which shall be payable by the City solely from the revenues derived by the City from the Loan Agreement, assigned to the Lender pursuant to the Assignment, and from other security provided by the Borrower and the Company to the Lender or any subsequent holder of the Note. The Note is not a general or moral obligation of the City, is not secured by any assets or property of the City (other than the interests of the City in the Loan Agreement), and is not secured by the faith and credit or taxing powers of the City.

2.03 The City hereby authorizes and directs the Finance Officer to execute and deliver the Loan Agreement and the Assignment in the forms now on file with the City. All of the provisions of the Loan Agreement and the Assignment 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 Loan Agreement and the Assignment shall be substantially in the forms now on file with the City, which are hereby approved, with such necessary and appropriate variations, omissions, and insertions as the Finance Officer in his discretion shall determine. The execution of the Loan Agreement and the Assignment with the manual or facsimile signature of the Finance Officer and the delivery of the Loan Agreement and the Assignment by the City shall be conclusive evidence of such determination.

2.04 The Finance Officer and the staff of Community Planning and Economic Development are hereby authorized to assist in the preparation of an application to the Minnesota Department of Employment and Economic Development for approval of the Project, as required by Section 469.154 of the Act, and to take all actions necessary and appropriate to obtain such approval. The Note may not be issued until all public hearings and other actions that are a condition to such approval have been completed and until the approval of the Commissioner of the Minnesota Department of Employment and Economic Development has been obtained.

2.05 The Finance Office shall execute and deliver, on behalf of the City, such instruments, certificates, and documents as are necessary or appropriate in connection with the issuance, sale, and delivery of the Note, including the City certificate relating to arbitrage, rebate, and other tax matters, an Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038, and all other instruments, certificates, and documents which are requested by the Borrower or the Lender to be executed and delivered by the City in connection with the issuance, sale, and delivery of the Note and which the Finance Officer, the City Attorney, and Kennedy & Graven, Chartered, as bond counsel, deem necessary or appropriate. The City hereby authorizes Kennedy & Graven, Chartered, as bond counsel of the City, to prepare, execute, and deliver its approving legal opinion with respect to the Note.

2.06 The City hereby authorizes the Borrower and the Company to provide such security for payment of the obligations of the Borrower under the Loan Agreement and for payment of the debt service on the Note, including a mortgage, assignment of leases and rents, security agreement, or other instruments, as may agreed upon by the Borrower, the Company, and the Lender, and the City hereby approves the execution and delivery of such security.

Section 3. Miscellaneous Provisions

3.01 All covenants, stipulations, obligations, and agreements of the City contained in this resolution and the aforementioned documents shall be deemed to be the covenants, stipulations, obligations, and agreements of the City to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations, and agreements shall be binding upon the City. Except as otherwise provided in this resolution, all rights, powers, and privileges conferred and duties and liabilities imposed upon the City by the provisions of this resolution or of the aforementioned documents shall be exercised or performed by the City or by the Finance Officer, or such other officers, employees, and agents thereof as may be required or authorized by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation, or agreement herein contained or contained in the aforementioned documents shall be deemed to be a covenant, stipulation, obligation, or agreement of any member of the City Council of the City, the Finance Officer, or any officer, agent, or employee of the City in that person's individual capacity, and neither the City Council, the Finance Officer, nor any officer or employee executing or delivering the Note shall be liable personally on the Note or be subject to any personal liability or accountability by reason of the issuance thereof.

No provision, covenant, or agreement contained in the aforementioned documents, the Note, or in any other document relating to the Note, and no obligation therein or herein imposed upon the City or the breach thereof, shall constitute or give rise to any pecuniary liability of the City or any charge upon its general credit or taxing powers. In making the agreements, provisions, covenants, and representations set forth in such documents, the City has not obligated itself to pay or remit any funds or revenues, other than funds and revenues derived from the Loan Agreement which are to be applied to the payment of the Note, as provided therein and in the Loan Agreement.

3.02 Except as herein otherwise expressly provided, nothing in this resolution or in the aforementioned documents expressed or implied, is intended or shall be construed to confer upon any person or firm, other than the City, the Borrower, and the Lender or any other holder of the Note issued under the provisions of this resolution, any right, remedy, or claim, legal or equitable, under and by reason of this resolution or any provisions hereof, this resolution, the aforementioned documents, and all of their provisions being intended to be and being for the sole and exclusive benefit of the City, the Borrower, the Lender, and any other holder from time to time of the Note issued under the provisions of this resolution.

3.03 In case any one or more of the provisions of this resolution, other than the provisions contained in Section 2.02 hereof, or of the aforementioned documents, or of the Note 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 Note, but this resolution, the aforementioned documents, and the Note shall be construed and endorsed as if such illegal or invalid provisions had not been contained therein.

3.04 The Note, when executed and delivered, shall contain a recital that it is issued pursuant to the Act, and such recital shall be conclusive evidence of the validity of the Note and the regularity of the issuance thereof, and that 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 Note, and to the execution of the aforementioned documents to happen, exist, and be performed precedent to the execution of the aforementioned documents have happened, exist, and have been performed as so required by law.

3.05 The officers of the City, bond counsel and other attorneys, and other agents or employees of the City are hereby authorized to do all acts and things required of them by or in connection with this resolution, the aforementioned documents, and the Note for the full, punctual, and complete performance of all the terms, covenants, and agreements contained in the Note, the aforementioned documents, and this resolution. In the event that for any reason the Finance Officer is unable to carry out the execution of any of the documents or other acts provided herein, any person delegated the authority by the Finance Officer to execute documents in the absence or incapacity of the Finance Officer is hereby authorized to act in the capacity of the Finance Officer and undertake such execution or acts on behalf of the City with full force and effect, which execution or acts shall be valid and binding on the City.

3.06 The Borrower will pay the administrative fees of the City as set forth in the Loan Agreement and pay, or upon demand, reimburse the City for payment of, any and all costs and expenses paid or incurred by the City in connection with the Project and the issuance of the Note, whether or not the Note is issued.

3.07 The United States Department of the Treasury has promulgated Treasury Regulations, Section 1.150-2 (the "Regulation"), governing the use of the proceeds of a tax-exempt obligation, all or a portion of which is to be used to reimburse the City or a borrower from the City for project expenditures paid prior to the date of issuance of such tax-exempt obligation. The Regulation requires that the City adopt a statement of official intent to reimburse an original expenditure not later than sixty (60) days after payment of the original expenditure. The Regulation also generally requires that the tax-exempt obligation be issued and the reimbursement allocation made from the proceeds of the tax-exempt obligation within eighteen (18) months after the later of: (i) the date the expenditure is paid; or (ii) the date the project is placed in service or abandoned, but in no event more than three (3) years after the date the expenditure is paid. The Regulation generally permits reimbursement of capital expenditures and costs of issuance of the tax-exempt obligation. A portion of the costs of the Project may be paid by the Borrower and the Company prior to the date of issuance of the Note. The City reasonably expects to reimburse the Borrower and the Company for such expenditures from the proceeds of the Note after the date of issuance of the Note. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Note, or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulation and also qualifying expenditures under the Act.

3.08 The Note is hereby designated as a "Program Bond" and is determined to be within the "Economic Development Program" and the "Program," as all defined in Resolution 88R-021 of the City of Minneapolis adopted January 29, 1988, as amended by Resolution 97R-402 of the City of Minneapolis adopted December 12, 1997.

3.09 This resolution shall take effect and be in force from and after its approval and publication. Immediate publication of this resolution is hereby authorized.

Certified as an official action of the City Council:

RECORD OF COUNCIL VOTE (X INDICATES VOTE)													
COUNCIL MEMBER	AYE	NAY	NOT VOTING	ABSENT	VOTE TO OVERRIDE	VOTE TO SUSTAIN	COUNCIL MEMBER	AYE	NAY	NOT VOTING	ABSENT	VOTE TO OVERRIDE	VOTE TO SUSTAIN
President Ostrow							Goodman						
							Lilligren						
Zerby							Schiff						
Samuels							Niziolek						
Johnson							Benson						
Johnson Lee							Colvin Roy						
Zimmermann							Lane						

PASSED _____
 APPROVED VETOED _____
DATE

APPROVED NOT

ATTEST _____
CITY CLERK

MAYOR DATE

REFERRED TO (NAME OF COMMITTEE):
DATE:

RESOLUTION of the CITY OF MINNEAPOLIS

Approving and authorizing the issuance by the City of Minneapolis of its Revenue Note (Midtown Investment, LLC), Series 2005, under Minnesota Statutes, Section 469.152-469.1651, as amended, to finance a project for the benefit of Midtown Investment, LLC and Midtown Exchange Commons LLC or Midtown Exchange Parking LLC; approving the form and authorizing the execution and delivery of related documents; and providing for the security, rights, and remedies of the owner of the note.

Resolved by the City Council of the City of Minneapolis:

Section 1. Background

1.01. Under the Minnesota Municipal Industrial Development Act, Minnesota Statutes, Sections 469.152 through 469.165, as amended (the “Act”), each municipality and redevelopment agency of the State of Minnesota (as defined in the Act), including the City of Minneapolis, Minnesota (the “City”), is authorized to issue revenue obligations to finance improvements to land and buildings and capital equipment for the benefit of a revenue producing enterprise to be owned by a contracting party (as defined in the Act).

1.02 The City has proposed to issue a revenue obligation to be designated the Revenue Note (Midtown Investment, LLC), Series 2005 (the “Note”), and loan the proceeds derived from the sale of the Note to Midtown Investment, LLC, a Minnesota limited liability company (the “Borrower”). The Borrower will loan the proceeds of the Note directly or indirectly to Midtown Exchange Commons LLC, a Minnesota limited liability company, or Midtown Exchange Parking LLC, a Minnesota limited liability company, or other limited liability company of which Midtown Exchange Commons LLC is the sole member (the “Company”), to finance the acquisition, construction, and equipping of a parking ramp of approximately 1,437 parking spaces to be located on a block bordered by Lake Street to the south, 10th Avenue South to the west, and 11th Avenue South to the east in the City (the “Project”). The Project will be owned by the Company.

1.03 The Note is proposed to be sold to a single financial institution (the “Lender”) and the proceeds derived from the sale of the Note are proposed to be loaned to the Borrower pursuant to the terms of a Loan Agreement, dated as of December 1, 2005 (the “Loan Agreement”), between the City and the Borrower. The payment of the principal of, premium, if any, and interest on the Note will be secured by: (i) the revenues derived from the Loan

Agreement to be assigned to the Lender pursuant to the terms of Assignment of Loan Agreement, dated as of December 1, 2005 (the "Assignment"), from the City to the Lender; and (ii) such other security as may be required from the Borrower by the Lender.

Section 2. Issuance of the Note

2.01 For the purposes set forth above, there is hereby authorized the issuance, sale, and delivery of the Note in the principal amount not to exceed \$16,000,000. The Note shall bear interest, shall be numbered, shall be dated, shall mature, shall be subject to redemption prior to maturity, shall be in such form, and shall have such other terms, details, and provisions as are prescribed in the form of the Note now on file with the City and in the form of the Loan Agreement now on file with the City. The Finance Officer is hereby authorized to execute and deliver the Note on behalf of the City in the manner authorized by the Charter of the City. The City hereby authorizes the Note to be issued as a "tax-exempt bond" the interest on which is not includable in gross income for federal and State of Minnesota income tax purposes.

All of the provisions of the Note, 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 Note 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 reductions in the principal amount of the Note, the determination of the initial interest rate on the Note, the provisions for adjustment of the interest rate on the Note, and changes to the terms of redemption of the Note) as the Finance Officer of the City (the "Finance Officer"), in his discretion shall determine. The execution of the Note with the manual or facsimile signature of the Finance Officer and the delivery of the Note by the City shall be conclusive evidence of such determination.

2.02 The Note shall be a special revenue obligation of the City the proceeds of which shall be disbursed pursuant to the Loan Agreement, and the principal, premium, and interest on which shall be payable by the City solely from the revenues derived by the City from the Loan Agreement, assigned to the Lender pursuant to the Assignment, and from other security provided by the Borrower and the Company to the Lender or any subsequent holder of the Note. The Note is not a general or moral obligation of the City, is not secured by any assets or property of the City (other than the interests of the City in the Loan Agreement), and is not secured by the faith and credit or taxing powers of the City.

2.03 The City hereby authorizes and directs the Finance Officer to execute and deliver the Loan Agreement and the Assignment in the forms now on file with the City. All of the provisions of the Loan Agreement and the Assignment 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 Loan Agreement and the Assignment shall be substantially in the forms now on file with the City, which are hereby approved, with such necessary and appropriate variations, omissions, and insertions as the Finance Officer in his discretion shall determine. The execution of the Loan Agreement and the Assignment with the manual or facsimile signature of the

Finance Officer and the delivery of the Loan Agreement and the Assignment by the City shall be conclusive evidence of such determination.

2.04 The Finance Officer and the staff of Community Planning and Economic Development are hereby authorized to assist in the preparation of an application to the Minnesota Department of Employment and Economic Development for approval of the Project, as required by Section 469.154 of the Act, and to take all actions necessary and appropriate to obtain such approval. The Note may not be issued until all public hearings and other actions that are a condition to such approval have been completed and until the approval of the Commissioner of the Minnesota Department of Employment and Economic Development has been obtained.

2.05 The Finance Office shall execute and deliver, on behalf of the City, such instruments, certificates, and documents as are necessary or appropriate in connection with the issuance, sale, and delivery of the Note, including the City certificate relating to arbitrage, rebate, and other tax matters, an Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038, and all other instruments, certificates, and documents which are requested by the Borrower or the Lender to be executed and delivered by the City in connection with the issuance, sale, and delivery of the Note and which the Finance Officer, the City Attorney, and Kennedy & Graven, Chartered, as bond counsel, deem necessary or appropriate. The City hereby authorizes Kennedy & Graven, Chartered, as bond counsel of the City, to prepare, execute, and deliver its approving legal opinion with respect to the Note.

2.06 The City hereby authorizes the Borrower and the Company to provide such security for payment of the obligations of the Borrower under the Loan Agreement and for payment of the debt service on the Note, including a mortgage, assignment of leases and rents, security agreement, or other instruments, as may agreed upon by the Borrower, the Company, and the Lender, and the City hereby approves the execution and delivery of such security.

Section 3. Miscellaneous Provisions

3.01 All covenants, stipulations, obligations, and agreements of the City contained in this resolution and the aforementioned documents shall be deemed to be the covenants, stipulations, obligations, and agreements of the City to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations, and agreements shall be binding upon the City. Except as otherwise provided in this resolution, all rights, powers, and privileges conferred and duties and liabilities imposed upon the City by the provisions of this resolution or of the aforementioned documents shall be exercised or performed by the City or by the Finance Officer, or such other officers, employees, and agents thereof as may be required or authorized by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation, or agreement herein contained or contained in the aforementioned documents shall be deemed to be a covenant, stipulation, obligation, or agreement of any member of the City Council of the City, the Finance Officer, or any officer, agent, or employee of the City in that person's individual capacity, and neither the City Council, the Finance Officer, nor any officer or employee executing or delivering the Note shall be liable

personally on the Note or be subject to any personal liability or accountability by reason of the issuance thereof.

No provision, covenant, or agreement contained in the aforementioned documents, the Note, or in any other document relating to the Note, and no obligation therein or herein imposed upon the City or the breach thereof, shall constitute or give rise to any pecuniary liability of the City or any charge upon its general credit or taxing powers. In making the agreements, provisions, covenants, and representations set forth in such documents, the City has not obligated itself to pay or remit any funds or revenues, other than funds and revenues derived from the Loan Agreement which are to be applied to the payment of the Note, as provided therein and in the Loan Agreement.

3.02 Except as herein otherwise expressly provided, nothing in this resolution or in the aforementioned documents expressed or implied, is intended or shall be construed to confer upon any person or firm, other than the City, the Borrower, and the Lender or any other holder of the Note issued under the provisions of this resolution, any right, remedy, or claim, legal or equitable, under and by reason of this resolution or any provisions hereof, this resolution, the aforementioned documents, and all of their provisions being intended to be and being for the sole and exclusive benefit of the City, the Borrower, the Lender, and any other holder from time to time of the Note issued under the provisions of this resolution.

3.03 In case any one or more of the provisions of this resolution, other than the provisions contained in Section 2.02 hereof, or of the aforementioned documents, or of the Note 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 Note, but this resolution, the aforementioned documents, and the Note shall be construed and endorsed as if such illegal or invalid provisions had not been contained therein.

3.04 The Note, when executed and delivered, shall contain a recital that it is issued pursuant to the Act, and such recital shall be conclusive evidence of the validity of the Note and the regularity of the issuance thereof, and that 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 Note, and to the execution of the aforementioned documents to happen, exist, and be performed precedent to the execution of the aforementioned documents have happened, exist, and have been performed as so required by law.

3.05 The officers of the City, bond counsel and other attorneys, and other agents or employees of the City are hereby authorized to do all acts and things required of them by or in connection with this resolution, the aforementioned documents, and the Note for the full, punctual, and complete performance of all the terms, covenants, and agreements contained in the Note, the aforementioned documents, and this resolution. In the event that for any reason the Finance Officer is unable to carry out the execution of any of the documents or other acts provided herein, any person delegated the authority by the Finance Officer to execute documents in the absence or incapacity of the Finance Officer is hereby authorized to act in the capacity of

the Finance Officer and undertake such execution or acts on behalf of the City with full force and effect, which execution or acts shall be valid and binding on the City.

3.06 The Borrower will pay the administrative fees of the City as set forth in the Loan Agreement and pay, or upon demand, reimburse the City for payment of, any and all costs and expenses paid or incurred by the City in connection with the Project and the issuance of the Note, whether or not the Note is issued.

3.07 The United States Department of the Treasury has promulgated Treasury Regulations, Section 1.150-2 (the "Regulation"), governing the use of the proceeds of a tax-exempt obligation, all or a portion of which is to be used to reimburse the City or a borrower from the City for project expenditures paid prior to the date of issuance of such tax-exempt obligation. The Regulation requires that the City adopt a statement of official intent to reimburse an original expenditure not later than sixty (60) days after payment of the original expenditure. The Regulation also generally requires that the tax-exempt obligation be issued and the reimbursement allocation made from the proceeds of the tax-exempt obligation within eighteen (18) months after the later of: (i) the date the expenditure is paid; or (ii) the date the project is placed in service or abandoned, but in no event more than three (3) years after the date the expenditure is paid. The Regulation generally permits reimbursement of capital expenditures and costs of issuance of the tax-exempt obligation. A portion of the costs of the Project may be paid by the Borrower and the Company prior to the date of issuance of the Note. The City reasonably expects to reimburse the Borrower and the Company for such expenditures from the proceeds of the Note after the date of issuance of the Note. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Note, or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulation and also qualifying expenditures under the Act.

3.08 The Note is hereby designated as a "Program Bond" and is determined to be within the "Economic Development Program" and the "Program," as all defined in Resolution 88R-021 of the City of Minneapolis adopted January 29, 1988, as amended by Resolution 97R-402 of the City of Minneapolis adopted December 12, 1997.

3.09 This resolution shall take effect and be in force from and after its approval and publication. Immediate publication of this resolution is hereby authorized.

Certified as an official action of the City Council:

RECORD OF COUNCIL VOTE (X INDICATES VOTE)													
COUNCIL MEMBER	AYE	NAY	NOT VOTING	ABSENT	VOTE TO OVERRIDE	VOTE TO SUSTAIN	COUNCIL MEMBER	AYE	NAY	NOT VOTING	ABSENT	VOTE TO OVERRIDE	VOTE TO SUSTAIN
President Ostrow							Goodman						
							Lilligren						
Zerby							Schiff						
Samuels							Niziolek						
Johnson							Benson						
Johnson Lee							Colvin Roy						
Zimmermann							Lane						

PASSED _____
APPROVED **VETOED**
DATE

APPROVED **NOT**

ATTEST _____
CITY CLERK

MAYOR DATE