

RESOLUTION NO. 2009-03-013R

A RESOLUTION AUTHORIZING THE ISSUANCE OF CAPITAL IMPROVEMENT REVENUE BONDS, SERIES 2009 (CUNNINGHAM CHILDREN'S HOME PROJECT), OF THE CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS; AUTHORIZING THE ISSUANCE OF THE BONDS; PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF THE BONDS; AUTHORIZING A LOAN AGREEMENT, A TAX REGULATORY AGREEMENT AND A DISBURSEMENT AGREEMENT APPROPRIATE FOR THE PROTECTION AND DISPOSITION OF SUCH REVENUES AND TO FURTHER SECURE THE BONDS; AND AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE BONDS

WHEREAS, the City of Urbana, Illinois, a political subdivision, body politic and home rule municipality duly organized and validly existing under the laws of the State of Illinois (the "**Issuer**"), including particularly The Industrial Project Revenue Bond Act (65 ILCS 11-741 *et seq.*), as supplemented and amended, including by Section 6 (Powers of Home Rule Units) of Article VII (Local Government) of the Constitution of the State of Illinois, and by the Illinois Bond Replacement Act, the Registered Bond Act, and the Bond Authorization Act (collectively, the "**Enabling Act**"), is authorized and empowered among other things **(a)** to make loans to finance and refinance the acquisition, construction, installation and equipping of qualifying "**industrial projects**" under the Enabling Act, **(b)** to issue and sell its industrial development revenue bonds to provide moneys for such a loan and **(c)** to enact this resolution and execute and deliver the related agreements, documents and instruments hereinafter identified; and

WHEREAS, the Issuer hereby determines that to refinance the acquisition, construction and installation of land, buildings, furniture, fixtures and equipment for a Residential Treatment Center at 1301 North Cunningham Avenue, in Urbana, Illinois (collectively, the "**Project**") will create and preserve jobs and employment opportunities and promote the health and economic welfare in the State of Illinois, and that the Issuer, through the issuance of one or more Capital Improvement Revenue Bonds, Series 2009

(Cunningham Children's Home Project) (including as a single instrument, as the case may be, the "**Bonds**") in not to exceed the aggregate principal amount of \$4,500,000, for refunding certain prior obligations will be acting in the manner consistent with and in furtherance of the provisions of the Enabling Act.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS, as follows:

Section 1. Definitions. All defined terms used herein and those not otherwise defined herein shall have the respective meanings given to them in the Loan Agreement with respect to the Bonds (the "**Agreement**") by and among the Issuer, Cunningham Children's Home (the "**Borrower**"), and Busey Bank (the "**Lender**").

Any reference herein to the Issuer, the City Council, the Mayor, the City Clerk (which term herein shall mean and include a "**deputy**" or "**acting**" City Clerk, as the case may be), the City Comptroller, or to any officers or other members thereof, shall include those which succeed to their functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing their functions.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa, and the terms "**hereof**," "**hereby**," "**hereto**," "**hereunder**," and similar terms, mean this resolution.

Section 2. Determinations of Issuer. The City Council hereby makes certain determinations, as follows: (a) pursuant to the Enabling Act the Project constitutes a qualifying "**industrial project**", and is consistent with the provisions of the Enabling Act; and (b) the Issuer hereby reaffirms its initial intent to finance and refinance the Project; and (c) the Issuer designates the Bonds as "**qualified tax-exempt obligations**" under Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "**Code**"). The

Issuer, after publishing notice of the public hearing on February 28, 2009, held and conducted the public hearing on March 16, 2009, and by this resolution approves and authorizes the issuance of the Bonds.

This shall also constitute **"reimbursement"** action under Section 11.150-2 of the Income Tax Regulations.

Section 3. **Authorization of Bonds.** It is hereby determined to be necessary to, and the Issuer shall, issue, sell and deliver, as provided herein and pursuant to the authority of the Enabling Act, the Bonds for the purpose of refinancing the Project, including authorized costs incidental thereto, all in accordance with the provisions of the Agreement. The Bonds shall each be designated: **"Capital Improvement Revenue Bond, Series 2009 (Cunningham Children's Home Project)"**. The aggregate maximum principal amount of the Bonds to be issued hereunder and under the Agreement is not to exceed \$4,500,000.

Section 4. **Terms and Execution of the Bonds.** The Bonds shall be issued in the form and denomination, shall mature and bear interest, shall be numbered, dated and payable as provided in the Agreement. The Bonds shall be amortized over not to exceed a 35-year period and mature or come due at the times, in the manner and with the effect and have such terms, bear interest at the applicable rate or rates per annum (subject to any rate limitation under applicable law), fixed or variable, and be subject to mandatory and optional redemption and put options, all to be as provided in the Agreement. The City Council hereby authorizes the rate or rates in effect from time to time on the Bonds in the manner and pursuant to the provisions of the Agreement. The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signatures of the Mayor and City Clerk, under the Issuer's seal (or a facsimile thereof). In case any officer whose signature or a facsimile thereof shall appear on the Bonds shall cease to be such officer before the issuance or delivery of the Bonds, such signature or facsimile thereof shall

nevertheless be valid and sufficient for all purposes, the same as if the officer had remained in office until after that time.

The form of the Bonds as set forth in the Agreement, subject to appropriate insertions and revisions unique to such series and in order to comply with the provisions of the Agreement and the Enabling Act, is hereby approved, and when the same shall be executed on behalf of the Issuer by the appropriate officers thereof in the manner contemplated hereby and by the Agreement, in an aggregate principal amount of not to exceed \$4,500,000, shall represent the approved form of the Bonds of the Issuer.

Section 5. **Sale of the Bonds.** The Bonds are being sold through a private placement, as arranged by the Borrower, pursuant to the Agreement, to Busey Bank (with authorization for participants or co-purchasers or alternate or other purchasers consistent with applicable securities laws) at the purchase price set forth, and on the terms and conditions described, in the Agreement. The appropriate officers of the Issuer are authorized and directed to make on behalf of the Issuer the necessary arrangements to establish the date, location, procedure and conditions for the delivery of the Bonds to the Lender, and to take all steps necessary to effect due execution and delivery to the Lender of the Bonds (or typewritten bonds delivered in lieu of a definitive Bonds, as the case may be) under the terms of this resolution, and the Agreement. It is hereby determined that the price for and the terms of the Bonds, and the sale thereof, all as provided in the Agreement, are in the best interests of the Issuer.

Section 6. **Arbitrage Provisions.** The Bonds will be restricted, or caused to be restricted, and the proceeds of the Bonds used, in such manner and to such extent, as may be necessary, after taking into account reasonable expectations at the time the Bonds are delivered to the Lender, so that they will not constitute arbitrage bonds under Section 148 of the Code. The Mayor, City Clerk, City Comptroller or any other officer having responsibility with

respect to the issuance of the Bonds, is authorized and directed, alone or in conjunction with the Borrower or any officer, employee, consultant or agent of the Borrower, to deliver a certificate for inclusion in the transcript of proceedings for the Bonds, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to Section 148 of the Code and regulations thereunder. In its performance of these covenants, and other covenants of the Issuer pertaining to federal income tax laws, the Issuer may rely upon the written advice of nationally recognized bond counsel.

Section 7. Authorization of Agreement, Tax Regulatory Agreement, Disbursement Agreement and Related Documents to be Executed by the Issuer. In order to better secure the payment of the principal of, premium, if any, and interest on the Bonds as the same shall become due and payable, the Mayor, City Clerk, City Comptroller or other officers, under the Issuer's seal, as the case may be, are authorized and directed to execute, acknowledge and deliver in the name and on behalf of the Issuer, the Agreement, the Tax Regulatory Agreement and the Disbursement Agreement in substantially the forms submitted to the Issuer at the meeting of the City Council at which this resolution is adopted, which are hereby approved, with such changes therein not inconsistent with this resolution and not substantially adverse to the Issuer, as may be permitted by the Enabling Act and approved by the officers executing the same on behalf of the Issuer. The approval of such changes by such officers, and provided that they are not substantially adverse to the Issuer, shall be conclusively evidenced by the execution of such Agreement, Tax Regulatory Agreement and Disbursement Agreement by such officers.

The Issuer has not confirmed, and assumes no responsibility for, the accuracy, sufficiency or fairness of any representations, statements, reports, financial information, offering or disclosure documents or other

information submitted to the Lender relating to the Bonds, the Project, the Borrower or the history, businesses, properties, organization, management, financial condition, market area or any other matter relating to the Borrower or the Project.

The Mayor, City Clerk, City Comptroller and other appropriate officers of the Issuer are each hereby separately authorized to take any and all actions and to execute such financing statements, assignments, certificates and other instruments that may be necessary or appropriate in the opinion of Bond Counsel, in order to effect the issuance of and security for the Bonds and the intent of this resolution and the Agreement. The City Clerk, or other appropriate officer of the Issuer, shall certify a true transcript of all proceedings had with respect to the issuance of the Bonds, along with such information from the records of the Issuer as is necessary to determine the regularity and validity of the issuance of the Bonds.

Section 8. Covenants of Issuer. In addition to other covenants of the Issuer in this resolution, the Issuer further covenants and agrees as follows:

(a) Payment of Principal, Premium and Interest. The Issuer will, solely from the special and limited sources described herein or in the Agreement, and not otherwise, pay or cause to be paid the principal of, premium, if any, and interest on the Bonds on the dates, at the places, in the manner and with the effect provided herein, in the Agreement and Disbursement Agreement and in the Bonds.

(b) Performance of Covenants, Authority and Actions. The Issuer will at all times observe and perform all agreements, covenants, undertakings, stipulations and provisions contained in the Bonds, Tax Regulatory Agreement and Disbursement Agreement and Agreement, and in all proceedings of the Issuer pertaining to the Bonds. The Issuer warrants and covenants that it is, and upon delivery of the Bonds will be, duly authorized by the laws of the

State of Illinois, including particularly and without limitation the Enabling Act, to issue the Bonds and to execute the Agreement, the Tax Regulatory Agreement and the Disbursement Agreement, and all other documents to be executed by it, to provide for the security for payment of the principal of, premium, if any, and interest on the Bonds in the manner and to the extent herein and in the Agreement set forth; that all actions on its part for the issuance of the Bonds and execution and delivery of the Agreement, the Tax Regulatory Agreement, the Disbursement Agreement and all other documents to be executed by it in connection with the issuance of the Bonds, have been or will be duly and effectively taken; and that the Bonds will be the valid and enforceable special and limited obligations of the Issuer according to the terms thereof. Each provision of this resolution, the Agreement, the Tax Regulatory Agreement, the Disbursement Agreement and the Bonds, and all other documents to be executed by the Issuer in connection with the issuance of the Bonds, is binding upon each officer of the Issuer as may from time to time have the authority under law to take such actions as may be necessary to perform all or any part of the duty required by such provision; and each duty of the Issuer and of its officers and employees undertaken pursuant to such proceedings for the Bonds is established as a duty of the Issuer and of each such officer and employee having authority to perform such duty.

Section 9. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this resolution, or in the Bonds, or in the Agreement, the Tax Regulatory Agreement or the Disbursement Agreement, or under any judgment which maybe obtained against the Issuer or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be had against the Mayor, City Clerk, City Comptroller, any member of the City Council or any other officer of the Issuer as such, past, present, or future, either directly or through the

Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to any owner of the Bonds, or otherwise, of any sum that may be due and unpaid by the Issuer upon any of the Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or to the Issuer or any receiver thereof, or for or to the owner or any holder of any Bonds, or otherwise, of any sum that may remain due and unpaid upon the Bonds, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of the Agreement, the Tax Regulatory Agreement, the Disbursement Agreement, the issuance of the Bonds, and related documents and instruments.

Section 10. No Debt or Tax Pledge. Anything in this resolution, the Agreement, the Bonds or any other agreement or instrument to the contrary notwithstanding, neither this resolution, the Bonds, the Agreement, the Tax Regulatory Agreement nor the Disbursement Agreement shall represent or constitute a debt or pledge of the faith and credit of the taxing power of the Issuer or the State of Illinois or other political subdivision thereof: and the Bonds shall contain therein a statement to that effect.

Section 11. Severability. If any section, paragraph or provision of this resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this resolution.

Section 12. Open Meetings. The City Council hereby finds and determines that all actions relative to the adoption of this resolution were taken in open meetings of the City Council, and that all deliberations of the City Council and of its committees, if any, which resulted in formal action, were

in meetings open to the public and otherwise in full compliance with applicable law, including the Open Meetings Act (5 ILCS 120/1 et seq.).

Section 13. Compliance with IRC Section 147(f). For purposes of complying with Section 147(t) of the Code, the City Council hereby approve the issuance of the Bonds up to the maximum aggregate principal amount of \$4,500,000 to be loaned to the Borrower for financing and refinancing the Project.

Section 14. Effective Date. This resolution shall take effect and be in force immediately upon its adoption and approval. Pursuant to the Issuer's home rule power and authority, this resolution shall be effective upon adoption.

PASSED by the City Council this 6th day of March, 2009.



Phyllis D. Clark
Phyllis D. Clark, City Clerk
Robert Clark
Deputy Clerk

APPROVED by the Mayor this 27th day of March, 2009.

Laurel Lunt Prussing
Laurel Lunt Prussing, Mayor