



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

Date: November 18, 2014

To: Council Member Lisa Goodman, Chair, Community Development &
Regulatory Services Committee

Referral to: MCDA Board of Commissioners

Subject: A Public Hearing and Request for Preliminary and Final Approval of up to \$5,000,000 in 501(c)(3) Bank Qualified Bank Direct Tax-exempt Minneapolis Community Development Agency Revenue Bonds for Catholic Eldercare and affiliates. A request for Host Approval for the issuance of additional Bank Qualified Bank Direct Revenue Bonds by the City of Lauderdale and the City of Mounds View for the proposed project by Catholic Eldercare and affiliates.

Recommendation: City Council Recommendation: Adopt the attached Resolution, giving Preliminary and Final Approval to the issuance of up to \$5,000,000 in Tax-exempt 501(c)(3) Bank Qualified Bank Direct Minneapolis Community Development Agency Revenue Bonds, Series 2014 for Catholic Eldercare and affiliates. Adopt the attached Resolution authorizing Host Approval for the issuance of Bank Qualified Bank Direct Revenue Bonds by the City of Lauderdale and the City of Mounds View for Catholic Eldercare and affiliates.

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 \$5,000,000 in Tax-exempt 501(c)(3) Bank Qualified Bank Direct Revenue Bonds, Series 2014, for Catholic Eldercare and affiliates.

Previous Directives:

The City Council, acting as the MCDA Board, approved Series 2002 Nursing Home Bonds, \$4.8 million outstanding, and Series 2002 Hedwig's Assisted Living Bonds, \$5.1 million outstanding, located at 900 2nd Street NE and 2919 Randolph Street NE and has approved

additional Bank Qualified Bank Direct Revenue Bonds for Catholic Eldercare Community Services Corporation at 1101 Main Street NE.

Prepared by: Charles Curtis

Approved by: Charles T. Lutz, Deputy Director CPED _____

Catherine A. Polasky, Director, Economic Development _____

Presenters in Committee: Charles Curtis, 612-673-5069

Reviews

- Permanent Review Committee (PRC): NA

Financial Impact

- Other financial impact: The issuance of revenue bonds for Catholic Eldercare and affiliates will generate revenue bond administrative fees of approximately \$12,500 a year for the City of Minneapolis. However, the refinancing of the two Series 2002 Revenue Bonds will reduce administrative fees by approximately \$24,750 a year.

Community Impact

- Neighborhood Notification: St. Anthony West Neighborhood has been notified.
- City Goals: The proposed project will promote Living Well in the City and contribute to the City's hub of economic activity.
- Sustainability Targets: NA
- Comprehensive Plan: In compliance, an existing facility that will be enlarged.
- Zoning Code: In compliance, an existing facility.
- Living Wage/Business Subsidy Agreement Yes ____ No X
- Job Linkage Yes ____ No X

Supporting Information

Project Location & Description: Transitional Care Unit Construction: 900 2nd Street NE

Catholic Eldercare on Main is a 150 bed licensed skilled nursing facility. Clients that are served by the facility are in need of post-acute care services following a hospital stay. Due to the high occupancy rate at the care center, additional beds are needed for residents in the care center's service area. The proposed project will add 24 additional skilled nursing beds to the facility. The additional 24 beds are not new beds to the State of Minnesota Nursing Home Facilities. Catholic Eldercare on Main has purchased the additional licensed beds from two out state facilities.

The total project will consist of approximately 41,000 square feet of which 15,500 square feet will be the remodeling of existing space and 25,500 square feet will be an addition to the facility. Total cost of the Transitional Care Unit rehabilitation and new construction is \$8.4 million. The proposed project will be designed as a short term stay facility which will allow for private and semi-private room space and expanded physical, occupational and speech therapy areas. The new area of the facility will contain a new adult day care, a bistro for the short term stay units, 12 new units, nursing station, therapy, storage and office space and education space on the third floor.

The proposed project also includes the refinancing of the Series 2002 Nursing Home Bonds, \$4.8 million outstanding, the refinancing of the Series 2002 Hedwig's Assisted Living Bonds, \$5.1 million outstanding, and the refinancing of a Wells Fargo Bank Note, \$700,000 outstanding.

The total proposed project is estimated to be \$19 million. The financing funds will include Tax-exempt Bank Qualified Bank Direct Revenue Bonds from the following sources:

Minneapolis Community Development Agency - \$5,000,000

City of Lauderdale - \$10,000,000

City of Mounds View - \$4,000,000

The bonds will be purchased by a consortium of banks that will have Northeast Bank as the lead bank.

Type of Financing: Tax-exempt 501 (c)3 Bank Qualified Bank Direct Revenue Bonds

Sources:	Minneapolis Community Development Agency	\$ 5,000,000
	City of Lauderdale	\$10,000,000
	City of Mounds View	<u>\$ 4,000,000</u>
	Total	\$19,000,000

Uses:	Refinancing of City of Minneapolis Series 2002 Bonds	
	Nursing Home Bonds	\$ 4,800,000
	Refinancing of City of Minneapolis Series 2002 Bonds	
	Hedwig's Assisted Living Bonds	\$ 5,100,000
	Refinancing of Wells Fargo Bank Note	\$ 700,000
	Construction of Transitional Care Unit	<u>\$ 8,400,000</u>
	Total	\$19,000,000

Present Employment: 340

New Employment: Estimated 25 FTE's

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

Affirmative Action Compliance:

In Process. An Affirmative Action plan will be completed prior to the bond closing.

CITY IRB POLICIES:

Job Component

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

Catholic Eldercare: 501(c)3 corporation

The proposed project does not have job creation as its main purpose.

Property Improvements

For private activity IRBs consisting of industrial/manufacturing projects, 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. This IRB policy does not apply to nonprofit organizations issuing 501 (c)(3) tax-exempt revenue bonds.

Catholic Eldercare – does not apply

Development Standards

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

Catholic Eldercare – in compliance.

Existing facility

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.

Catholic Eldercare - NA

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.

Catholic Eldercare - NA

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.

Catholic Eldercare – 340 existing jobs

- 25 new jobs

Savings will reduce patient costs

IRB CAP:

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.

BOND COUNSEL:

Kennedy & Graven

UNDERWRITER:

Piper Jaffray will serve as the Structuring Advisor. The bonds will be purchased directly by financial institutions. Northeast Bank will be the lead bank.

RESOLUTION

Of the

City of Minneapolis

Giving preliminary and final approval to and authorizing the financing of a project on behalf of Catholic Eldercare, authorizing the issuance of a revenue note of the Minneapolis Community Development Agency, consenting to the issuance of revenue notes by the City of Lauderdale and the City of Mounds View, and approving the execution of a cooperative agreement

Whereas, pursuant to Laws of Minnesota 1980, Chapter 595, as amended, the City Council of the City of Minneapolis (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, Catholic Eldercare, a Minnesota nonprofit corporation, and its affiliates (the "Borrower") has requested the participation of the Agency, the City of Lauderdale, Minnesota (the "City of Lauderdale"), and the City of Mounds View, Minnesota (the "City of Mounds View") in undertaking the Project (hereinafter defined) through the issuance of a revenue note of the Agency (the "Agency Note") in a principal amount not to exceed \$5,000,000, a revenue note of the City of Lauderdale (the "Lauderdale Note") in a principal amount not to exceed \$10,000,000, and a revenue note of the City of Mounds View (the "Mounds View Note") in a principal amount not to exceed \$4,000,000; and

Whereas, the Borrower has proposed to apply the proceeds of the Agency Note, the Lauderdale Note, and the Mounds View Note (collectively, the "Notes") to (i) finance the acquisition, construction, and equipping of a transitional care unit consisting of the addition of 24 skilled nursing beds to the existing 150-bed skilled nursing facility (the "TCU Facility") located at 900 2nd Street NE in the City; (ii) fund capitalized interest during construction of the TCU Facility; (iii) refund the outstanding Variable Rate Demand Multifamily Housing Revenue Bonds (St. Hedwig's Assisted Living Project), Series 2002 (the "2002 Assisted Living Bonds"), issued by the City on December 23, 2002, in the original aggregate principal amount of \$7,570,000; (iv) refund the outstanding Variable Rate Demand Nursing Home Revenue Refunding Bonds (Catholic Eldercare Project), Series 2002 (the "2002 Nursing Home Bonds"), issued by the City on December 23, 2002, in the original aggregate principal amount of \$9,580,000; (v) fund required reserves for the Notes, if any; and (vi) pay the costs of issuing the Notes (collectively, the "Project"); and

Whereas, the proceeds of the 2002 Assisted Living Bonds were used by Catholic Eldercare Community Services Corporation II, a Minnesota nonprofit corporation and an affiliate of the Borrower, to finance the acquisition, construction, and equipping of a 71-unit assisted living facility located at 2919 Randolph Street NE (commonly known as RiverVillage East) in the City; and the proceeds of the 2002 Nursing Home Bonds were used by the Borrower to (i) refinance the acquisition, construction, and equipping of the 150-bed skilled nursing facility located at 900 2nd Street NE (commonly known as Catholic Eldercare on Main) in the City (the "Skilled Nursing Facility"); and (ii) refinance the acquisition, construction, and equipping of a 51-unit assisted living multifamily rental housing facility located at 909 Main Street NE (commonly known as MainStreet Lodge) in the City; and

Whereas, the facilities to be financed and refinanced with the proceeds of the Notes (the "Facilities") will be owned and operated by the Borrower and its affiliates; and

Whereas, the City, the City of Lauderdale, and the City of Mounds View are all authorized by Minnesota Statutes, Chapter 462C, as amended (the "Housing Act"), and Minnesota Statutes, Sections 469.152 through 469.1655, as amended (the "Industrial Development Act"), to issue the Notes to finance the Project and are therefore proposing to enter into a Cooperative Agreement, to be dated on or after December 1, 2014 (the "Cooperative Agreement"), pursuant to which the City, as host city, will consent to the issuance of the Lauderdale Note and the Mounds View Note and the financing and refinancing of the Facilities by the City of Lauderdale and the City of Mounds View, all in accordance with Minnesota Statutes, Sections 471.59 and 471.656, as amended; and

Whereas, prior to the issuance of the Lauderdale Note and the Mounds View Note by the City of Lauderdale and the City of Mounds View, respectively, the City Council of the City must conduct a public hearing on the Project and the issuance of the Lauderdale Note and the Mounds View Note pursuant to the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder (the "Code"), the Housing Act, and the Industrial Development Act; and

Whereas, a notice of public hearing (the "Public Notice") was published at least fifteen (15) days before the regularly scheduled meeting of the Community Development & Regulatory Services Committee of the Minneapolis City Council in *Finance and Commerce*, the official newspaper, and the *Star Tribune*, a newspaper circulating generally in the City, with respect to the required public hearing under Section 147(f) of the Code, the Housing Act, and the Industrial Development Act; and

Whereas, on November 18, 2014, the Community Development & Regulatory Services Committee of the Minneapolis City Council and the Operating Committee of the Agency's Board of Commissioners jointly conducted a public hearing at which a reasonable opportunity was provided for interested individuals to express their views, both orally and in writing, regarding the approval of the Project and the issuance of the Bonds by the Agency and the provision of host approval by the City for the issuance of the Lauderdale Note and the Mounds View Note; and

Whereas, on the date hereof, the Board of Commissioners of the Agency intends to adopt a resolution (the "Note Resolution") giving approval to the financing of the Project and the issuance of the Agency Note in the aggregate principal amount not to exceed \$5,000,000, the proceeds of which will be loaned to the Borrower for the purposes of refunding a portion of the outstanding Series 2002 Assisted Living Bonds and the Series 2002 Nursing Home Bonds, funding required reserves for the Agency Note, if any, and paying the costs of issuing the Agency Note; and

Now, therefore, be it resolved by the City Council of the City of Minneapolis:

That the terms of the Note Resolution are incorporated herein by reference.

That the City Council hereby gives preliminary and final approval to the issuance of the Agency Note by the Agency in the aggregate principal amount not to exceed \$5,000,000.

That the Agency Note is hereby designated a "Program Bond" and is determined to be within the "Program," 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.

That the Finance Officer of the City or his authorized delegate is hereby authorized and directed to execute the Cooperative Agreement, and when executed and delivered as authorized herein, the Cooperative 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 Cooperative 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 forms and as the officers of the City, in their discretion, shall determine; provided that the execution thereof by the officers of the City shall be conclusive evidence of such determination.

That 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.

RESOLUTION

Of the

MPLS COMMUNITY DEVELOPMENT AGENCY

AUTHORIZING THE ISSUANCE, SALE, AND DELIVERY OF A REVENUE NOTE; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE REVENUE NOTE AND RELATED DOCUMENTS; PROVIDING FOR THE SECURITY, RIGHTS, AND REMEDIES WITH RESPECT TO THE REVENUE NOTE; AND GRANTING APPROVAL FOR CERTAIN OTHER ACTIONS WITH RESPECT THERETO

Be It Resolved by the Board of Commissioners (the "Board") of the Minneapolis Community Development Agency (the "MCDA") as follows:

1. AUTHORIZATION. The MCDA is authorized by Chapter 422 of the Minneapolis Code of Ordinances and Minnesota Statutes, Sections 469.152 through 469.1655, as amended (the "Industrial Development Act"), to issue revenue obligations to finance or refinance, in whole or in part, the cost of the acquisition, construction, reconstruction, improvement, betterment, or extension of a "project," defined in the Industrial Development Act, in part, as any properties, real or personal, used or useful in connection with a revenue producing enterprise. The MCDA is also authorized by Minnesota Statutes, Chapter 462C, as amended (the "Housing Act"), to issue revenue obligations to finance or refinance multifamily housing developments (including nursing and assisted living facilities).

2. THE MCDA NOTE. Catholic Eldercare, a Minnesota nonprofit corporation, or any of its affiliates (the "Borrower"), has requested that the MCDA issue its Healthcare and Housing Facilities Revenue Refunding Note (Catholic Eldercare Project), Series 2014B (the "MCDA Note"), in the aggregate principal amount not to exceed \$5,000,000, and loan the proceeds derived from the sale thereof (the "Loan") to the Borrower pursuant to the terms of a Loan Agreement, to be dated on or after December 1, 2014 (the "Loan Agreement"), between the MCDA and the Borrower. The MCDA Note is proposed to be purchased by Northeast Bank, a Minnesota banking and insurance corporation (the "Lender").

3. THE PROJECT. The Borrower has proposed to use the proceeds of the MCDA Note, along with the proceeds of a revenue note (the "Lauderdale Note") proposed to be issued by the City of Lauderdale, Minnesota (the "City of Lauderdale") in an aggregate principal amount not to exceed \$10,000,000 and a revenue note (the "Mounds View Note") proposed to be issued by the City of Mounds View, Minnesota (the "City of Mounds View") in an aggregate principal amount not to exceed \$4,000,000, to (i) finance the acquisition, construction, and equipping of a transitional care unit consisting of the addition of 24 skilled

nursing beds to the existing 150-bed skilled nursing facility (the "TCU Facility") located at 900 2nd Street NE in the City of Minneapolis (the "City"); (ii) fund capitalized interest on the MCDA Note, the Lauderdale Note, and the Mounds View Note (collectively, the "Notes") during construction of the TCU Facility; (iii) refund the outstanding Variable Rate Demand Multifamily Housing Revenue Bonds (St. Hedwig's Assisted Living Project), Series 2002 (the "2002 Assisted Living Bonds"), issued by the City on December 23, 2002, in the original aggregate principal amount of \$7,570,000; (iv) refund the outstanding Variable Rate Demand Nursing Home Revenue Refunding Bonds (Catholic Eldercare Project), Series 2002 (the "2002 Nursing Home Bonds"), issued by the City on December 23, 2002, in the original aggregate principal amount of \$9,580,000; (v) fund required reserves for the Notes, if any; and (vi) pay the costs of issuing the Notes (collectively, the "Project").

The proceeds of the 2002 Assisted Living Bonds were used by Catholic Eldercare Community Services Corporation II, a Minnesota nonprofit corporation and an affiliate of the Borrower, to finance the acquisition, construction, and equipping of a 71-unit assisted living facility located at 2919 Randolph Street NE (commonly known as RiverVillage East) in the City (the "Assisted Living Facility"). The proceeds of the 2002 Nursing Home Bonds were used by the Borrower to (i) refinance the acquisition, construction, and equipping of the 150-bed skilled nursing facility located at 900 2nd Street NE (commonly known as Catholic Eldercare on Main) in the City (the "Skilled Nursing Facility"); and (ii) refinance the acquisition, construction, and equipping of a 51-unit assisted living multifamily rental housing facility located at 909 Main Street NE (commonly known as MainStreet Lodge) in the City (the "Assisted Living Housing Facility").

The facilities financed and refinanced with the proceeds of the Notes (the "Facilities") will be owned and operated by the Borrower and its affiliates.

4. PUBLIC HEARING. Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), and regulations promulgated thereunder, the Industrial Development Act, and the Housing Act require that prior to the issuance of the MCDA Note, the Board shall approve the MCDA Note after conducting a public hearing thereon. On November 18, 2014, the Community Development & Regulatory Services Committee of the Minneapolis City Council and the Operating Committee of the MCDA Board jointly conducted a public hearing, in part, on the Project and the issuance of the MCDA Note. Notice of the hearing (the "Public Notice") was published as required by Section 469.154, subdivision 4 of the Industrial Development Act, Section 462C.04, subdivision 2 of the Housing Act, and Section 147(f) of the Code. The Public Notice provided a general, functional description of the Project, as well as the maximum aggregate principal amount of the obligations to be issued for the purposes referenced therein, the identity of the initial owner, operator, or manager of the Facilities, and the location of the Facilities. The Public Notice was published in *Finance and Commerce*, the official newspaper, and the *Star Tribune*, a newspaper circulating generally in the City, on November 1, 2014, a date at least fifteen (15) days before a meeting of the Community Development & Regulatory Services Committee of the Minneapolis City Council on November 18, 2014. At the public hearing, a reasonable opportunity was provided for interested individuals to express their views, both orally and in writing, on the Project and the proposed issuance of the MCDA Note.

6. OBLIGATIONS OF THE MCDA AND THE CITY. The Board acknowledges, finds, determines, and declares that the issuance of the MCDA Note is authorized by the Industrial

Development Act and the Housing Act and is consistent with the purposes thereof and that the issuance of the MCDA Note, and the other actions of the MCDA under the Loan Agreement and this resolution, constitute a public purpose and are in the interests of the City. In authorizing the issuance of the MCDA Note to finance the Project, the MCDA's and the City's purpose is, and the effect thereof will be, to further the purposes and policies of the Industrial Development Act and the Housing Act. The MCDA Note will be issued pursuant to this resolution, and the MCDA Note and the interest on the MCDA Note: (i) shall be payable solely from the revenues pledged therefor under the Loan Agreement; (ii) shall not constitute a debt of the MCDA or the City within the meaning of any constitutional or statutory limitation; (iii) shall not constitute nor give rise to a pecuniary liability of the MCDA or the City or a charge against its general credit or taxing powers; (iv) shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the MCDA or the City other than the MCDA's interest in the Loan Agreement; and (v) shall not constitute a general or moral obligation of the MCDA or the City.

7. **ISSUANCE OF THE MCDA NOTE.** To refund a portion of the outstanding principal amount of the 2002 Assisted Living Bonds and the 2002 Nursing Home Bonds, fund required reserves for the MCDA Note, if any, and pay the costs of issuing the MCDA Note, there is hereby authorized the issuance, sale, and delivery of the MCDA Note in one or more series in the maximum aggregate principal amount of \$5,000,000. The MCDA Note shall bear interest at the rate, shall be designated, shall be numbered, shall be dated, shall mature, shall be in the aggregate principal amount, shall be subject to redemption prior to maturity, shall be in such form, shall be secured and payable from such sources and on such terms, and shall have such other terms, details, and provisions as are prescribed in the MCDA Note, in the form now on file with the City, with the amendments referenced herein. The Board hereby authorizes the MCDA 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. The MCDA Note shall be a special, limited obligation of the MCDA payable solely from the revenues, assets, and other security provided by the Borrower and related parties pursuant to the terms of the Loan Agreement and other documents delivered by the Borrower and related parties to secure the timely payment of the principal of and interest on the MCDA Note. The Board hereby authorizes and directs the Executive Director or Deputy Executive Director of the MCDA and the Finance Officer of the City (together, the "Authorized Officers") to execute the MCDA Note and hereby provides that the MCDA Note shall provide the terms and conditions, covenants, rights, obligations, duties, and agreements of the owners of the MCDA Note and the MCDA as set forth therein.

All of the provisions of the MCDA 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 form of the MCDA Note now on file with the City is hereby approved, with such necessary and appropriate variations, omissions, and insertions as the Authorized Officers, in their discretion, shall determine (including changes to the aggregate principal amount of the MCDA Note (subject to an aggregate principal amount not to exceed \$5,000,000), the stated maturity of the MCDA Note, the interest rate on the MCDA Note, the terms of the security and the sources of payment for the MCDA Note, and the terms of redemption of the MCDA Note). The execution of the MCDA Note with the manual signatures of the Authorized Officers and the delivery of the MCDA Note by the MCDA shall be conclusive evidence of such determination.

8. **THE LOAN AGREEMENT.** The Authorized Officers are hereby authorized and directed to execute and deliver the Loan Agreement. The loan repayments to be made by

the Borrower under the Loan Agreement are to be fixed so as to produce revenues sufficient to pay the principal of, premium, if any, and interest on the MCDA Note when due. All of the provisions of the Loan 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 Loan Agreement shall be substantially in the form on file with the City which is hereby approved, with such omissions and insertions as do not materially change the substance thereof, or as the Authorized Officers, in their discretion, shall determine, and the execution thereof by the Authorized Officers shall be conclusive evidence of such determination.

9. THE ASSIGNMENT. Except for certain reserved rights, the interests of the MCDA in the Loan Agreement will be assigned to the Lender, as the owner of the MCDA Note, pursuant to the terms of a Pledge Agreement, to be dated on or after December 1, 2014 (the "Assignment"), between the MCDA and the Lender. The Assignment shall be substantially in the form on file with the City which is hereby approved, with such omissions and insertions as do not materially change the substance thereof, or as the Authorized Officers, in their discretion, shall determine, and the execution thereof by the Authorized Officers shall be conclusive evidence of such determination. All of the provisions of the Assignment, 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.

10. SECURITY. The Board hereby approves the execution by the Borrower and one or more affiliates and the delivery to the Lender of one or more mortgage documents granting a mortgage lien on certain property of the Borrower or its affiliates, and other security documents that are intended to secure timely payment of the Loan and the MCDA Note. The Board hereby approves the execution and delivery of one or more guaranty agreements pursuant to which the obligations of the Borrower under the Loan Agreement are guaranteed by one or more guarantors. All such security documents shall be substantially in the forms agreed to by the Borrower, the Lender, and the guarantor or guarantors.

11. OTHER DOCUMENTS. The Authorized Officers are hereby authorized to execute and deliver, on behalf of the MCDA, such other documents and certificates as are necessary or appropriate in connection with the issuance, sale, and delivery of the MCDA Note, including various certificates of the MCDA, an Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038, an endorsement to a tax certificate of the Borrower, and similar documents, and all other documents and certificates as the Authorized Officers shall deem to be necessary or appropriate in connection with the issuance, sale, and delivery of the MCDA Note. The Board hereby authorizes Kennedy & Graven, Chartered, acting as Bond Counsel to the MCDA, to prepare, execute, and deliver its approving legal opinion with respect to the MCDA Note.

12. DISCLOSURE DOCUMENTS. Neither the MCDA nor the City has participated in the preparation of an official statement or other disclosure document relating to the offer and sale of the MCDA Note, or will make any independent investigation with respect to the information contained in any such document, and neither the MCDA nor the City assumes any responsibility for the sufficiency, accuracy, or completeness of such information. As a condition to the execution and delivery of the

MCDA Note, the Authorized Officers may require the receipt from the Lender of an investment letter containing such terms, covenants, representations, and warranties as the Authorized Officers, with the advice of the City Attorney and Bond Counsel, shall deem necessary or appropriate from the Lender.

13. SUBSEQUENT AMENDMENTS. On any date subsequent to the date of issuance of the MCDA Note, the Authorized Officers are hereby authorized to execute and deliver any amendments or supplements to any of the documents referred to in this resolution on behalf of the MCDA if, after review by the City Attorney and Bond Counsel, the Authorized Officers determine that the execution and delivery of such amendment or supplement is in the interests of the City. The Authorized Officers may impose any terms or conditions on their execution and delivery of any such amendment or supplement as the Authorized Officers deem appropriate.

14. LIMITATIONS OF LIABILITY. 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, or any officer, agent, or employee of the City or the MCDA in that person's individual capacity, and neither the City Council nor any officer or employee executing the MCDA Note shall be personally liable on the MCDA 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 MCDA Note, or in any other document relating to the MCDA Note, and no obligation therein or herein imposed upon the MCDA or the City or the breach thereof, shall constitute or give rise to a general or moral obligation of the MCDA or the City or any pecuniary liability of the MCDA or 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 MCDA 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 MCDA Note, as provided therein.

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 or corporation, other than the MCDA, and any holder of the MCDA 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 MCDA, the Borrower, and the holders from time to time of the MCDA Note issued under the provisions of this resolution.

15. SEVERABILITY. In case any one or more of the provisions of this resolution, other than the provisions limiting the liability of the City or the MCDA, or of the aforementioned documents, or of the MCDA 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 MCDA Note, but this resolution, the aforementioned documents, and the MCDA Note shall be construed and endorsed as if such illegal or invalid provisions had not been contained therein.

16. VALIDITY OF THE AGENCY NOTE. The MCDA Note, when executed and delivered, shall contain a recital that it is issued pursuant to the Industrial Development Act and the Housing Act, and such recital shall be conclusive evidence of the validity of the

MCDA 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 MCDA 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.

17. **ADDITIONAL ACTIONS.** The officers of the MCDA and the City, the City Attorney, Bond Counsel, other attorneys, engineers, and other agents or employees of the MCDA and 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 MCDA Note, for the full, punctual, and complete performance of all the terms, covenants, and agreements contained in the MCDA Note, the aforementioned documents, and this resolution.

18. **BANK-QUALIFICATION DESIGNATION.** The Board hereby designates the MCDA Note as a "qualified tax-exempt obligation" pursuant to Section 265(b)(3)(B) of the Code. With respect to such designation, the MCDA has represented that it does not anticipate issuing more than \$10,000,000 of tax-exempt obligations (other than obligations described in Section 265(b)(3)(C)(ii) of the Code) in calendar year 2014.

19. **DESIGNATION AS PROGRAM BOND.** The MCDA Note is hereby designated a "Program Bond" and is determined to be within the "Program," 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.

20. **FEES AND INDEMNIFICATION.** The Borrower has agreed to pay the administrative fees of the MCDA in accordance with the policy and procedures of the MCDA. It is hereby determined that any and all costs incurred by the MCDA in connection with the financing of the Project will be paid by the Borrower. It is understood and agreed by the Borrower that the Borrower shall indemnify the MCDA against all liabilities, losses, damages, costs, and expenses (including attorneys' fees and expenses incurred by the MCDA) arising with respect to the Project or the MCDA Note, as provided for and agreed to by and between the Borrower and the MCDA in the Loan Agreement.

21. **EFFECTIVE DATE.** This resolution shall take effect and be in force from and after its approval.