

CITY OF SHAKOPEE

RESOLUTION NO.R2018-115

AUTHORIZING THE ISSUANCE OF REVENUE BONDS OF THE CITY OF SHAKOPEE FOR THE BENEFIT OF BENEDICTINE LIVING COMMUNITY OF SHAKOPEE LLC; ADOPTING A HOUSING PROGRAM; AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE REVENUE BONDS AND RELATED DOCUMENTS

WHEREAS, the City of Shakopee, Minnesota (the “City”) is a statutory city and political subdivision duly organized and existing under the Constitution and laws of the State of Minnesota; and

WHEREAS, Minnesota Statutes, Chapter 462C, as amended (the “Act”), authorizes a municipality to carry out the public purposes described in the Act by providing for the issuance of revenue bonds to provide funds to finance multifamily housing developments (including independent living and assisted living and memory care facilities); and

WHEREAS, Benedictine Living Community of Shakopee LLC, a Minnesota limited liability company (the “Company”), the sole member of which is Benedictine Health System, a Minnesota nonprofit corporation (the “Sole Member”), which is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), has proposed that the City issue its revenue obligations (the “Bonds”), in one or more series, as taxable or tax-exempt obligations, in an aggregate principal amount not to exceed \$62,000,000; and

WHEREAS, the Company proposes to use the proceeds of the Bonds to (i) finance the acquisition, construction, and equipping of approximately 116 independent living apartments, 43 assisted living units, and 24 memory care units (the “Project”) to be located on property west of Marystown Road and south of 17<sup>th</sup> Avenue in the City; (ii) fund required reserves; (iii) finance capitalized interest during the construction of the Project; and (iv) pay costs of issuance of the Bonds; and

WHEREAS, in accordance with the Act, the City has prepared a housing program (the “Housing Program”), which authorizes the issuance of the Bonds by the City to provide financing for the Project to be funded by the Bonds, and the Housing Program was submitted to the Metropolitan Council for its review and comment; and

WHEREAS, the Sole Member has represented to the City that it is exempt from federal income taxation under Section 501(a) of the Code as a result of the application of Section 501(c)(3) of the Code; and

WHEREAS, Section 147(f) of the Code, and regulations promulgated thereunder, and Section 462C.04 of the Act require that, prior to the issuance of the Bonds, the City Council must approve the issuance of the Bonds after conducting a public hearing thereon preceded by publication of a notice of public hearing (in the form required by Section 147(f) of the Code and applicable regulations) in a newspaper of general circulation within the City at least fifteen (15) days prior to the public hearing date; and

WHEREAS, a notice of public hearing (the “Public Notice”) was published at least fifteen (15) days before the regularly scheduled meeting of the City Council of the City in the *Shakopee Valley News*,

the official newspaper of and a newspaper of general circulation in the City, with respect to the required public hearing under Section 147(f) of the Code and the Act; and

WHEREAS, on the date hereof, the City Council conducted a duly noticed public hearing at which a reasonable opportunity was provided for interested individuals to express their views, both orally and in writing, on the following issues: (i) approval of the issuance of the Bonds pursuant to the requirements of Section 147(f) of the Code and the regulations promulgated thereunder; and (ii) approval of the Housing Program under Section 462C.03, subdivision 1a of the Act; and

WHEREAS, the Bonds are to be issued by the City pursuant to the Act and an Indenture of Trust (the "Indenture") between the City and U.S. Bank National Association, as trustee (the "Trustee"), and the City will loan the proceeds of the Bonds to the Company pursuant to a Loan Agreement (the "Loan Agreement") between the City and the Company; and

WHEREAS, the principal, premium (if any), and interest on the Bonds (i) shall be payable solely from the revenue pledged therefor; (ii) shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation; (iii) shall not constitute nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers; and (iv) shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the City other than the City's interest in the Loan Agreement; and

WHEREAS, the Loan Agreement requires the Company to make payments thereunder in amounts and at times sufficient to pay the principal of, premium (if any), and interest on the Bonds when due, and the loan repayments required to be made by the Company to the City under the terms of the Loan Agreement will be assigned by the City to the Trustee to secure the payment of the principal of, premium (if any), and interest on the Bonds; and

WHEREAS, to secure its obligations under the Loan Agreement, the Company will provide a mortgage lien on and a secured interest in certain of its property to the Trustee pursuant to a Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents (the "Mortgage") by the Company in favor of the Trustee; and

WHEREAS, to further secure its obligations under the Loan Agreement, the Company will cause the Sole Member to provide a guaranty to the Trustee pursuant to a Guaranty Agreement (the "Guaranty"), subject to certain terms of reduction and release;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHAKOPEE, MINNESOTA, AS FOLLOWS:

1. The Housing Program, in the form substantially on file with the City, is hereby approved.
2. The City acknowledges, finds, determines, and declares that the issuance of the Bonds is authorized by the Act and is consistent with the purposes of the Act and that the issuance of the Bonds, and the other actions of the City 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 Bonds, the City's purpose is and the effect thereof will be to promote the public welfare of the City and its residents by providing multifamily housing developments for senior residents of the City and health care services for seniors who are unable to live independently and otherwise furthering the purposes and policies of the Act.
3. For the purposes set forth above, there is hereby authorized the issuance, sale, and delivery of the Bonds in the aggregate principal amount not to exceed \$62,000,000. The Bonds 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 Indenture, in substantially the form now on file with the City.

4. All of the provisions of the Bonds, 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 Bonds shall be substantially in the form on file with the City, which is hereby approved, with such necessary and appropriate variations, omissions, and insertions (including changes to the principal amount of the Bonds, the determination of the interest rates on the Bonds, and changes to the terms of redemption of the Bonds) as the Mayor and the City Administrator of the City (the "Mayor" and "City Administrator," respectively), in their discretion, shall determine. The execution of the Bonds with the manual or facsimile signatures of the Mayor and the City Administrator and the delivery of the Bonds by the City shall be conclusive evidence of such determination.

5. The Bonds shall be special, limited obligations of the City payable solely from the revenues provided by the Company pursuant to the Loan Agreement and other funds pledged pursuant to the Indenture and shall be issued in an aggregate principal amount not to exceed \$62,000,000. The City Council of the City hereby authorizes and directs the Mayor and the City Administrator to execute and deliver the Indenture to the Trustee, hereby authorizes and directs the execution of the Bonds in accordance with the terms of the Indenture, and hereby provides that the Indenture shall provide the terms and conditions, covenants, rights, obligations, duties, and agreements of the owners of the Bonds, the City and the Trustee as set forth therein.

6. All of the provisions of the Indenture, when executed as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Indenture shall be substantially in the form on file with the City, which is hereby approved, with such necessary and appropriate variations, omissions, and insertions as do not materially change the substance thereof, or as the Mayor and the City Administrator, in their discretion, shall determine, and the execution thereof by the Mayor and the City Administrator shall be conclusive evidence of such determination.

7. The Mayor and the City Administrator are hereby authorized and directed to execute and deliver the Loan Agreement and the Bond Purchase Agreement (the "Bond Purchase Agreement") between the City, the Company, and Piper Jaffray & Co. (the "Underwriter"). All of the provisions of the Loan Agreement and the Bond Purchase 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 and the Bond Purchase Agreement shall be substantially in the forms on file with the City which are hereby approved, with such omissions and insertions as do not materially change the substance thereof, or as the Mayor and the City Administrator, in their discretion, shall determine, and the execution thereof by the Mayor and the City Administrator shall be conclusive evidence of such determination.

8. The Bonds shall be revenue obligations of the City the proceeds of which shall be disbursed pursuant to the Indenture, the Loan Agreement, and a Disbursing Agreement between the Borrower, the Trustee, and a disbursing agent named therein, and the principal, premium, if any, and interest on the Bonds shall be payable solely from the proceeds of the Bonds, the revenues derived from the Loan Agreement, the revenues and assets pledged and assigned under the terms of the Mortgage, proceeds derived from the Guaranty, and the other sources set forth in the Indenture. The Trustee is hereby authorized and directed to accept the Guaranty from the Sole Member and any additional instruments, documents, or other security provided by the Company or, at its direction, to secure the obligations of the Company under the Loan Agreement and Mortgage or to secure the Bonds.

9. The Trustee is hereby appointed as paying agent and bond registrar for the Bonds.

10. The Mayor, the City Administrator, and the Finance Director are hereby authorized to execute and deliver, on behalf of the City, such other documents as are necessary or appropriate in connection with the issuance, sale, and delivery of the Bonds, including one or more certificates of the City, an endorsement to the Company's Tax Certificate, an Information Return for Tax-Exempt Private Activity Bond Issues, IRS Form 8038 (Rev. April 2011), and all other documents and certificates as shall be necessary and appropriate in connection with the issuance, sale, and delivery of the Bonds. The City hereby approves the execution and delivery by the Trustee of the Indenture and all other instruments, certificates, and documents prepared in conjunction with the issuance of the Bonds that require execution by the Trustee. 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 Bonds.

11. The City hereby authorizes the Company to provide such security for payment of its obligations under the Loan Agreement and for payment of the Bonds, including but not limited to the Mortgage, the Guaranty, or any other security agreed upon by the Company and the Trustee, and the City hereby approves the execution and delivery of such security.

12. All covenants, stipulations, obligations, and agreements of the City contained herein and in 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 herein, all rights, powers, and privileges conferred and duties and liabilities imposed upon the City or the City Council by the provisions of this resolution or of the aforementioned documents shall be exercised or performed by the City or by such members of the City Council, or such officers, board, body or agency 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, or any officer, agent or employee of the City in that person's individual capacity, and neither the City Council of the City nor any officer or employee executing the Bonds shall be liable personally on the Bonds 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 Bonds or in any other document relating to the Bonds, 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, the Mortgage, and the Guaranty, which are to be applied to the payment of the Bonds, as provided therein and in the Indenture.

13. Except as herein otherwise expressly provided, nothing herein 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 City or any holder of the Bonds 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 and any holder from time to time of the Bonds issued under the provisions of this resolution.

14. In case any one or more of the provisions of this resolution, other than the provisions contained in the first sentence of Section 5 hereof, or of the aforementioned documents, or of the Bonds issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this resolution, or of the aforementioned documents, or of the Bonds, but this resolution, the aforementioned documents, and the Bonds shall be construed and endorsed as if such illegal or invalid provisions had not been contained therein.

15. The Bonds, when executed and delivered, shall contain a recital that they are issued pursuant to the Act, and such recital shall be conclusive evidence of the validity of the Bonds 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 Bonds, 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.

16. The officers of the City, bond counsel, other attorneys, engineers, 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 Bonds for the full, punctual, and complete performance of all the terms, covenants, and agreements contained in the Bonds, the aforementioned documents and this resolution. In the event that for any reason the Mayor of the City is unable to carry out the execution of any of the documents or other acts provided herein, any other member of the City Council shall be authorized to act in the capacity of Mayor 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. If for any reason the City Administrator is unable to execute and deliver the documents referred to in this resolution, such documents may be executed by a member of the City Council, with the same force and effect as if such documents were executed and delivered by the City Administrator.

17. The City understands that the Company will pay directly to the City any and all costs paid or incurred by the City in connection with the transactions authorized herein, whether or not the Bonds are issued. The City further understands that the Company will pay to the City its administrative fee for the issuance of conduit debt.

18. This resolution shall be in full force and effect from and after its passage.

Approved by the City Council of the City of Shakopee this 18<sup>th</sup> day of September, 2018.

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Mayor

ATTEST:

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City Clerk