

RESOLUTION NO. R2021-077

CITY OF SHAKOPEE, MINNESOTA

**RESOLUTION CONSENTING TO THE ISSUANCE OF REVENUE BONDS BY
THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY AND APPROVING
A COOPERATION AGREEMENT**

BE IT RESOLVED by the City Council of the City of Shakopee, Minnesota, as follows:

Section 1. Definitions. The capitalized terms used in this resolution have the meanings assigned below:

2021 Bonds: means DEDA's revenue bonds, proposed to be issued in one or more series in an aggregate maximum principal amount of \$150,000,000.

Authorized Officers: means the Mayor and Clerk of the City.

Bond Counsel to DEDA: means Fryberger, Buchanan, Smith & Frederick, P.A.

Benedictine: means Benedictine Health System d/b/a Benedictine, as obligated group agent for the obligated group currently comprised of St. Gertrude's Health Center, City of Lakes Care Center, Steeple Pointe Senior Living Community and Benedictine Care Centers, and the sole corporate member of the Owner/Operator.

City: means the City of Shakopee, Minnesota.

City Council: means the governing body of the City.

Cooperation Agreement: means the Cooperation Agreement between DEDA and the City relating to the exercise of joint powers under the Housing Program.

DEDA: means the Duluth Economic Development Authority, Minnesota.

Housing Program: means the Housing Program for Multifamily Housing Developments attached as Exhibit A.

Host Municipalities: means the Cities of Ada, Byron, Crookston, Hastings, Minneapolis, New Brighton, Osseo, Owatonna, Red Wing, Rochester and Shakopee, Minnesota, DEDA and the Port Authority of Winona.

Owners/Operators: means St. Gertrude's Health Center, City of Lakes Care Center, Steeple Pointe Senior Living Community and Benedictine Care Centers, affiliates of Benedictine.

Prior Bonds: means the City's Health Care and Housing Facilities Revenue Refunding Notes (Benedictine Health System Obligated Group) Series 2013A and Series 2013B.

Prior Bonds Issuer: means the City.

Project: means constructing, improving, renovating, furnishing and equipping senior housing and health care facilities located at 625 Central Avenue, Osseo, Minnesota, 1850 Sarazin Street, Shakopee, Minnesota, and 618 East 17th Street, Minneapolis, Minnesota, by the Owners/Operators.

Section 2. General Recitals.

A. The Prior Bonds Issuer previously issued the Prior Bonds to finance or refinance, as applicable, the Project.

B. The Project is owned and operated by the Owners/Operators as senior living facilities.

C. Through its operation of the Project, the Owners/Operators provide health care and senior housing services available to residents within the jurisdiction of the City and in the surrounding area.

D. We have been informed by Bond Counsel to DEDA that Benedictine has requested that DEDA issue the 2021 Bonds to refund the Prior Bonds and other outstanding obligations incurred by affiliates of Benedictine with respect to senior living facilities located in the jurisdictions of the Host Municipalities.

E. Bond Counsel to DEDA has informed the City that (i) Minnesota Statutes, Section 469.155, subdivision 12 provides that DEDA may issue the 2021 Bonds to refund the Prior Bonds only with the consent of the Prior Bonds Issuer, which is the City; and (ii) since the Project is located within its jurisdiction, Minnesota Statutes, Section 471.656, subdivision 2(2) requires the City Council to consent by resolution to the issuance by DEDA of any portion of the 2021 Bonds allocable to financing or refinancing the Project.

F. The City has previously approved a Housing Program for the Project.

G. In order to permit DEDA to rely on the Housing Program in conjunction with the issuance of the 2021 Bonds, DEDA has requested that the City enter into the Cooperation Agreement.

Section 3. Consent. The City consents to the refunding of the Prior Bonds by DEDA, waives any notice of redemption required to be provided to the City, agrees that all documents for the refunding of the Prior Bonds, including any notices and termination documents, may be given and executed without further consent, action or execution by the City and authorizes Benedictine and its officers and agents to take all actions and execute all documents for the refunding and redemption of the Prior Bonds, including any required notices and termination documents. The City consents to the issuance by DEDA of the 2021 Bonds to finance and/or refinance the Project.

Section 4. Affirmation of the Housing Program. The Housing Program is affirmed and ratified and may be relied upon by DEDA in the issuance of the 2021 Bonds.

Section 5. Approval; Execution and Delivery.

A. The Cooperation Agreement is made a part of this Resolution and is approved in substantially the form on file with the Authorized Officers. The Authorized Officers are authorized and directed to execute and deliver the Cooperation Agreement in substantially the form on file with the Authorized Officers.

B. The execution by the Authorized Officers of the Cooperation Agreement is conclusive evidence of its approval in accordance with the terms of this Resolution.

Section 6. Authorization to Staff. The Authorized Officers and other officers of the City (individually or with one or more other officers of the City or their designees) are authorized and directed to (a) provide a certified copy of this resolution to DEDA or its representatives, along with all proceedings and records of the City relating to the subject matter of this resolution, and any other affidavits and certificates required by DEDA to show the facts relating to the City respecting the subject matter of this resolution, as the facts appear from the books and records in the City's custody and control or as otherwise known to them; and (b) in connection with the Project, the issuance of the 2021 Bonds and the refunding of the Prior Bonds, and on any future date in connection with the 2021 Bonds, take any other action, including holding hearings, or execute other documents, including approvals, consents and certificates, required or deemed appropriate on the request of DEDA or its agents for performance of the City in connection with the subject matter of this resolution.

Adopted May 4, 2021.

Mayor

ATTEST:

City Clerk

EXHIBIT A

HOUSING PROGRAM FOR MULTIFAMILY HOUSING DEVELOPMENTS

ST. GERTRUDE'S HEALTH CENTER STEEPLE POINTE SENIOR LIVING COMMUNITY

City of Shakopee

Section A. The Projects, the City, and the Bonds. Pursuant to the Constitution and laws of the State of Minnesota, particularly Minnesota Statutes, Chapter 462C, as amended (the "Housing Act"), cities and other political subdivisions of the State of Minnesota are authorized to carry out the public purposes described therein and contemplated thereby in the financing or refinancing of multifamily housing developments by issuing revenue bonds or obligations to defray, in whole or in part, the development costs of a multifamily housing development, and by entering into any agreements made in connection therewith and by pledging any such agreements as security for the payment of the principal of and interest on any such revenue bonds or obligations.

A multifamily housing development financed or refinanced under the Housing Act may consist of a multifamily housing development combined with a new or existing health care facility if: (i) the multifamily housing development is designed and intended to be used for rental occupancy; (ii) the multifamily housing development is designed and intended to be used primarily by elderly or physically handicapped persons; and (iii) nursing, medical, personal care, and other health-related, assisted-living services are available to the residents on a 24-hour basis in the multifamily housing development.

Cities and other political subdivisions of the State of Minnesota are authorized to issue obligations to finance the acquisition or improvement of real property located outside of the corporate boundaries of such cities or other political subdivisions if the property or properties constituting a single project is located in a city and the governing body of such city consents, by resolution, to the issuance of obligations by the other cities or other political subdivisions.

St. Gertrude's Health Center, a Minnesota nonprofit corporation ("St. Gertrude's"), and Steeple Pointe Senior Living Community, a Minnesota nonprofit corporation ("Steeple Pointe"), have requested the participation of the City of Shakopee, Minnesota (the "City") in the refinancing certain of the existing senior housing facilities owned and operated by St. Gertrude's and Steeple Pointe. St. Gertrude's owns and operates The Gardens at St. Gertrude's, an assisted living facility connected to the St. Gertrude's Health and Rehabilitation Center located at 1850 Sarazin Street in the City (the "Shakopee Project"), the construction and equipping of which was originally financed with the proceeds of revenue obligations issued by the City of Osseo, Minnesota (the "City of Osseo") in 1997 pursuant to the Housing Act. Steeple Pointe owns and operates Benedictine Senior Living at Steeple Pointe, which includes multifamily townhomes and other multifamily housing facilities designated as senior rental housing located at 625 Central Avenue in the City of Osseo (the "Osseo Project"), the acquisition, improvement, and construction of which was originally financed with the proceeds of revenue obligations issued by the City of Osseo in 2003 pursuant to the Housing Act.

The City is authorized and empowered, pursuant to the Housing Act, with the consent and authorization of the City of Osseo, to carry out the public purposes described in the Housing Act to refinance, in whole or in part, the Osseo Project located in the City of Osseo and the Shakopee Project located in the City. At the request of St. Gertrude's, Steeple Pointe, and City of Lakes Care Center, a Minnesota nonprofit corporation ("City of Lakes"), the City, the City of Osseo, and the City of Minneapolis (the "City of Minneapolis") propose to enter into a Cooperative Agreement, dated on or

after August 1, 2013 (the "Cooperative Agreement"), pursuant to the provisions and conditions of Minnesota Statutes, Sections 471.59 and 471.656, as amended. Under the terms of the Cooperative Agreement, the City of Osseo will consent to the issuance of revenue bonds or obligations by the City to refinance the Osseo Project, and the City of Minneapolis will consent to the issuance of the same revenue bonds or obligations by the City to refinance a long-term care facility located at 618 East 17th Street in the City of Minneapolis (the "Minneapolis Project"), owned and operated by City of Lakes, the acquisition, equipping, and renovation of which was originally financed with the proceeds of revenue obligations issued by the City of Minneapolis in 2004 pursuant to Minnesota Statutes, Sections 469.152 through 469.1655, as amended (the "Industrial Development Act").

In accordance with the requirements of Section 462C.04 of the Housing Act, as a condition to the issuance of revenue bonds or obligations under the Housing Act to refinance the Shakopee Project and the Osseo Project (together, the "Projects"), a housing program must be prepared and approved with respect to the Projects and the revenue bonds or obligations proposed to be issued to refinance the Projects, and the housing program must be submitted to the Metropolitan Council for review and comment. In accordance with the requirements of Section 462C.04, subdivision 2, of the Housing Act, the City must: (i) establish a date for a public hearing with respect to the housing program and the proposal to issue revenue bonds or obligations pursuant to the terms of the housing program; (ii) publish a notice of a public hearing in a newspaper of general circulation in the City at least fifteen (15) days prior to the date established by the City for the public hearing; and (iii) conduct the public hearing with respect to the housing program and the proposal of the City to issue revenue bonds or obligations pursuant to the terms of the housing program and the Housing Act to refinance the Projects.

This Housing Program for a Multifamily Housing Developments (the "Housing Program") is proposed to be undertaken in accordance with the terms of the Housing Act by the City at the request of St. Gertrude's with respect to the Shakopee Project and Steeple Pointe with respect to the Osseo Project. The representations herein are based entirely on representations or other information provided to the City by or on behalf of St. Gertrude's and Steeple Pointe. The City has not independently investigated the accuracy of the representations of either party.

The total cost of refinancing the Projects will be approximately \$18,525,000. The revenue bonds or obligations proposed to be issued by the City under the Housing Act (the "Notes") are expected to be issued in three series in the aggregate principal amount of approximately \$19,595,000. The City will conduct a public hearing with respect to the proposed issuance of the Notes by the City to refinance the Projects. The Notes are expected to be issued on or after October 1, 2013. The proceeds derived from the sale of the Notes are proposed to be loaned to St. Gertrude's, Steeple Pointe, and City of Lakes (collectively, the "Obligated Group") under a loan agreement and the proceeds of the loan will be applied, in part, to the refinancing of (i) the Shakopee Project through the redemption and prepayment of the Tax Exempt Loan Participation Note (St. Gertrude's Health Center Project), Series 2004 (the "Series 2004 Osseo Note"), issued by the City of Osseo on September 28, 2004, in the original aggregate principal amount of \$3,900,000; and (ii) the Osseo Project through the redemption and prepayment of the Tax Exempt Loan Participation Note (St. Gertrude's/Steeple Pointe Project), Series 2003 (the "Series 2003 Osseo Note"), issued by the City of Osseo on September 26, 2003, in the original aggregate principal amount of \$9,995,000. The proceeds of the loan will also be applied to pay the costs of issuing the Notes, refinance the Minneapolis Project, and refinance other skilled nursing facilities owned and operated by St. Gertrude's and originally financed with the proceeds of revenue obligations issued by the City pursuant to the Industrial Development Act. St. Gertrude's, Steeple Pointe, and City of Lakes will agree to make loan repayments under the terms of such loan agreement in amounts sufficient to pay the principal of, premium, if any, and interest on the Notes when due. The estimated cost of refinancing the

Projects may change between the date of approval of this Housing Program and the date of issuance of the Notes.

Prior to the issuance of the Notes, the City Council of the City of Minneapolis and the City Council of the City of Osseo will consider resolutions approving the issuance of the Notes by the City to refinance the Shakopee Project, the Osseo Project and the Minneapolis Project.

In determining to undertake the refinancing of the Projects, the City and the City of Osseo have considered the information available, including information concerning the population, housing stock and economic climate of the City and the City of Osseo, and the City and the City of Osseo have determined that the issuance of the Notes by the City and the refinancing of the Projects are in the best interests of the public health, safety, and welfare of the people of the City and the City of Osseo.

Section B. Housing Program. The City Council of the City of Osseo adopted a housing program with respect to the Osseo Project on July 14, 1997 (the "Osseo Project Housing Program"). The City Council of the City of Osseo and the City Council of the City of Shakopee adopted a joint housing program with respect to the Shakopee Project on March 22, 2004 (the "Shakopee Project Housing Program").

The City is amending and restating the Shakopee Project Housing Program to assist in refinancing the Shakopee Project at a cost and upon such other terms and conditions as may be determined by the City in accordance with the Housing Act. The City is also establishing this Housing Program to assist in refinancing the Osseo Project at a cost and upon such other terms and conditions as may be determined by the City in accordance with the Housing Act.

The Notes will be secured by the loan repayments to be made by the Obligated Group under the terms of the loan agreement. The obligations of the Obligated Group to make the loan repayments under the loan agreement may be secured by a mortgage lien on the land and buildings comprising, in part, the Projects, by a pledge of the leases and rents to be derived from the Projects, by a security interest in the fixtures and equipment financed as a part of the Projects, or such security as may be required by the owner of the Notes. If agreed to by the owner of the Notes and the Obligated Group, the loan repayments may also be secured by one or more guaranty agreements of the Obligated Group or related parties. In the event the revenues and other security pledged to the payment of the loan repayments are not sufficient to pay the principal of, premium, if any, and interest on the Notes when due, the owner of the Notes will bear the loss.

The Notes will not constitute a general or moral obligation of the City or the City of Osseo, will not be secured by the taxing powers of the City or the City of Osseo, will not be secured by any property of the City of Osseo, and will not be secured by any property of the City except the interests of the City in the loan agreement. The Notes will be a special, limited obligation of the City.

Section C. Local Contributions to the Housing Program. The issuance of tax-exempt obligations for the Projects is expected to allow the City to refinance the Projects at a lower interest cost than is otherwise available. The City believes the reduced financing cost will enhance the feasibility of the Projects and result in lower rental rates for use of the Projects than might otherwise be charged.

Section D. Standards and Requirements Relating to the Refinancing of the Projects Pursuant to the Housing Program. The following standards and requirements shall apply with respect to the operation of the Projects:

(1) Substantially all of the proceeds of the Notes will be applied to the refinancing of the Projects, the payment of the costs of issuance of the Notes, and the refinancing of the Minneapolis Project financed under the terms of the Industrial Development Act. The resolutions authorizing the issuance of the Notes and the loan agreement pursuant to which the proceeds of the Notes are to be loaned to the Obligated Group will include certain covenants to be made by the City and the Obligated Group regarding the use of proceeds, and by the Obligated Group regarding the character and use of the Projects.

(2) The Obligated Group will covenant that it will not arbitrarily reject an application from a proposed tenant because of race, color, creed, religion, national origin, sex, marital status, or status with regard to public assistance or disability.

(3) The dwelling units of the Projects will be occupied by, or held for occupancy by, elderly persons.

(4) The Projects are intended to be a "multifamily housing development" as defined in Section 462C.02 of the Housing Act.

The Obligated Group will enter into agreements requiring compliance throughout the term of the Notes (or for such longer period as may be required by law) with the requirements of state law. The Projects are consistent with the City's plan for housing development. The Obligated Group will be required to operate the Projects in accordance with state and local anti-discrimination laws and ordinances.

Section E. Severability. The provisions of this Housing Program are severable, and if any of its provisions, sentences, clauses, or paragraphs shall be held unconstitutional, contrary to statute, exceeding the authority of the City, or otherwise illegal or inoperative by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

Section F. Amendment. While the Notes are outstanding, the City shall not amend this Housing Program to the detriment of the holders of such obligation. The City may amend this Housing Program, to the extent authorized by law and the contractual obligations of the City to the extent the City deems such amendment to be in the best interests of the City, the Projects, and the owners of the Notes.

Section G. State Ceiling. A portion of the Notes shall be issued as "qualified 501(c)(3) bonds" pursuant to Section 145 of the Internal Revenue Code of 1986, as amended, the interest on which is not includable in gross income for federal income tax purposes and which is not includable in taxable net income for individuals, estates, and trusts for State of Minnesota income tax purposes (subject to certain qualifications). None of the state ceiling for private activity bonds is required to be allocated to the Notes.

**EXTRACT OF MINUTES OF A REGULAR MEETING OF THE
CITY OF SHAKOPEE, MINNESOTA**

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Shakopee, Minnesota (the "City"), was held by telephone or electronic means on May 4, 2021, at 7:00 p.m.

The City previously found and determined that an in-person meeting or a meeting conducted under Minnesota Statutes, Section 13D.02 is not practical or prudent because of the continuing health risks posed by the health pandemic resulting from COVID-19 and the peacetime emergency declared by the Governor of Minnesota under Executive Order 20-01 as extended by Executive Order 21-19.

The following members were present: _____

and the following members were absent: _____

MOTION: Member _____ moved to adopt Resolution No. _____, entitled "Resolution Consenting to the Issuance of Revenue Bonds by the Duluth Economic Development Authority and Approving a Cooperation Agreement."

SECOND: Member _____

RESULT: On a roll call vote the motion was carried.

Ayes: _____

Nays: _____

Not Voting: _____

Absent: _____