

## RESOLUTION 14D-35

### RESOLUTION APPROVING THE ISSUANCE AND SALE OF A HEALTH CARE FACILITIES REVENUE NOTE, SERIES 2014 (BENEDICTINE HEALTH CENTER PROJECT), AND AUTHORIZING THE EXECUTION OF DOCUMENTS RELATING THERETO

BE IT RESOLVED, by the governing body (the "Board of Commissioners") of the Duluth Economic Development Authority (the "Issuer"), as follows:

- Section 1. Definitions. The terms used herein, unless the context hereof requires otherwise, have the following meanings, and any other terms defined in the Loan Agreement (hereinafter defined) have the same meanings when used herein as assigned to them in the Loan Agreement unless the context or use thereof indicates another or differing meaning or intent:
- a. Act: collectively, Minnesota Statutes, Sections 469.152 through 469.165, as amended.
  - b. Assignment Agreement: the Assignment Agreement to be entered into between the Issuer, the HRA, the Borrower and the Purchaser, pursuant to which the Issuer pledges and grants a security interest in all of its rights, title and interest in the Loan Agreement (except for certain rights of the Issuer to payment, indemnification and enforcement) to the Purchaser.
  - c. Authorized Officers: the President and Secretary of the Issuer.
  - d. Bond Counsel: the law firm of Fryberger, Buchanan, Smith & Frederick, P.A. or any other firm of nationally-recognized bond counsel.
  - e. Borrower: Benedictine Health Center, being (as represented to the Issuer) a Minnesota nonprofit corporation and organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, the corporate offices of which are located at 935 Kenwood Avenue, Duluth, Minnesota.
  - f. Board of Commissioners: the governing body of the Issuer.
  - g. Code: the Internal Revenue Code of 1986, as amended.
  - h. County: St. Louis County, Minnesota.
  - i. DEED: the Minnesota Department of Employment and Economic Development.
  - j. Disbursing Agreement: the Disbursing Agreement to be entered into between the Borrower, the Purchaser and First American Title Company, Inc., d/b/a Consolidated Title & Abstract Company.

- k. Documents: the Loan Agreement, the Assignment Agreement, the Mortgage, the Parity Agreement, the Disbursing Agreement and any other documents required for the issuance of the Note.
- l. Executive Director: the Executive Director of the Issuer.
- m. Existing Facility: the skilled nursing facility located at 935 Kenwood Avenue in Duluth, Minnesota.
- n. HRA: the Housing and Redevelopment Authority of Duluth, a public body corporate and politic of the State
- o. Issuer: the Duluth Economic Development Authority, a public body corporate and politic and political subdivision of the State.
- p. Issuer Documents: collectively, the Loan Agreement and the Assignment Agreement.
- q. Loan Agreement: the Loan Agreement to be entered into between the Issuer, the HRA and the Borrower and acknowledged by the Purchaser, pursuant to which the Borrower agrees to repay the loan made thereunder in specified amounts and at specified times sufficient to pay in full when due the principal of, premium, if any, and interest on the Note.
- r. Mortgage: the Leasehold Mortgage Agreement from the Borrower to the Purchaser, pursuant to which the Borrower will secure its obligations with respect to the Note under the Loan Agreement, including the payment of amounts due under the Loan Agreement, by granting to the Purchaser a parity mortgage interest in the property described therein.
- s. Note: the Issuer's Health Care Facilities Revenue Note, Series 2014 (Benedictine Health Center Project) authorized hereunder, whether one or more.
- t. Parity Agreement: the Amended and Restated Parity Agreement to be entered into between the Purchaser, U.S. Bank, National Association and the Borrower.
- u. Project: (i) constructing and equipping an approximately 4,000 square foot therapy addition to the Existing Facility; (ii) renovations to the Existing Facility to provide for a 30-room rehabilitation care wing, a 14-room secured memory care wing, improved access and relocated community area and upgrades to ventilation, temperature control and air quality equipment; and (iii) constructing related site improvements.
- v. Purchaser: National Bank of Commerce, a national banking association, with an office located in Duluth, Minnesota, its successors and assigns.

- w. Registrar: bond registrar and transfer agent for the Note.
- x. State: the State of Minnesota.

Section 2. Legal Authorization. The Issuer is a public body corporate and politic and political subdivision in the County, organized and existing under the laws of the State and is authorized under the Act to initiate the Project, and to issue and sell the Note for the purpose, in the manner and upon the terms and conditions set forth in the Act and in this Resolution; provided, however, that the Issuer has relied without independent investigation on written representations and opinions of the Borrower, its consultants and Bond Counsel that the Project qualifies as a "project" within the meaning of the Act.

Section 3. Recitals.

- a. A Notice of Public Hearing was published in the *Duluth News Tribune*, the Issuer's official newspaper, and a newspaper of general circulation, calling a public hearing on the proposed issuance of the Note and the proposal to undertake and finance the Project.
- c. The Issuer has, after due notice and publication thereof, on June 25, 2014, held a public hearing on the Project and the financing thereof, and persons in attendance wishing to speak on the Project and financing thereof, if any, were given an opportunity to do so at the hearing.
- d. Drafts of the Documents have been submitted to the Issuer and are on file in the office of the Executive Director.
- e. The Issuer has been advised by representatives of the Borrower that: (i) conventional financing to pay the capital cost of the Project is available only on a limited basis and at such high costs of borrowing that the economic feasibility of its operations would be significantly reduced; (ii) on the basis of information submitted to the Borrower and their discussions with representatives of area financial institutions and potential buyers of tax-exempt bonds, the Note could be issued and sold upon favorable rates and terms to finance the Project; and (iii) the Project would not be undertaken in its present form but for the availability of financing under the Act.
- f. The Borrower has agreed to pay any and all costs incurred by the Issuer in connection with the issuance of the Note, whether or not such issuance is carried to completion.
- g. The Borrower has represented to the Issuer that no public official of the Issuer has either a direct or indirect financial interest in the Project nor will any public official either directly or indirectly benefit financially from the Project.

Section 4. Findings. On the basis of information made available to the Issuer by the Borrower it appears, and the Issuer finds, that: (1) the Project constitutes personal properties, used or useful in connection with a revenue producing enterprise; (2) the Project furthers the purposes stated in the Act; (3) the Project would not be undertaken but for the availability of financing under the Act and the willingness of the Issuer to furnish such financing; and (4) the effect of the Project, if undertaken, will be to: (i) encourage the development of economically sound industry and commerce, (ii) help prevent chronic unemployment, (iii) provide the range of service and employment opportunities required by the population, (iv) help prevent the movement of talented and educated persons out of the State where their services may not be as effectively used, and (v) provide adequate health care services to residents of the State at a reasonable cost.

Section 5. The Note.

- a. In order to provide for the financing of the Project, the Issuer determines, based on representations of the Borrower, that the offer of the Purchaser to purchase the Note in an original aggregate principal amount of not to exceed \$4,500,000, at the interest rate of not to exceed 5.50% per annum, and upon the terms and conditions hereafter specified and specified in the Note is reasonable and is accepted and the issuance of the Note is approved. The Issuer will loan the proceeds of the Note to the Borrower in order to finance the Project.
- b. The loan repayments to be made by the Borrower under the Loan Agreement are fixed to produce revenue sufficient to provide for the prompt payment of principal of, premium, if any, and interest on the Note when due.
- c. The Note shall be in substantially the form submitted to the Board of Commissioners, with such appropriate variations, omissions and insertions as are permitted or required by this Resolution, and in accordance with the further provisions hereof as may be necessary and appropriate and approved by Bond Counsel and the Borrower prior to the execution thereof; and shall mature in the years and amounts, be subject to redemption and bear interest at the rate as therein specified.
- d. The Note shall be executed on behalf of the Issuer by the signature of its Authorized Officers. The seal of the Issuer may be omitted as allowed by law. In case any officer whose signature shall appear on the Note shall cease to be such officer before the delivery of the Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. In the event of the absence or disability of the Authorized Officers such officer of the Issuer

as may act in their behalf, shall without further act or authorization of the Board of Commissioners execute and deliver the Note.

Section 6. Approval and Execution of Documents.

- a. The Issuer Documents are made a part of this Resolution as though fully set forth herein and are approved in substantially the forms on file with the Board of Commissioners. The Authorized Officers are authorized and directed to execute, acknowledge and deliver the Issuer Documents on behalf of the Issuer with such changes, insertions and omissions therein as the Issuer's attorney may hereafter deem appropriate, such execution by the Authorized Officers to be conclusive evidence of approval of such documents in accordance with the terms hereof.
- b. The Authorized Officers are authorized and directed to execute and deliver all other documents which may be required under the terms of the Issuer Documents or the Note or by Bond Counsel, and to take such other action as may be required or deemed appropriate for the performance of the duties imposed thereby to carry out the purposes thereof.
- c. Copies of all of the documents necessary to the transactions herein described shall be delivered, filed and recorded as provided herein and in the Loan Agreement.

Section 7. Proceedings; Absent or Disabled Officers.

- a. The Authorized Officers and other officers and members of the Board of Commissioners are authorized to furnish certified copies of this Resolution and all proceedings and records of the Issuer relating to the Note, and such other affidavits and certificates as may be required to show the facts relating to the Issuer respecting the Note, as such facts appear from the books and records in the officers' custody and control or as otherwise known to them; and all such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations of the Issuer as to the truth of all statements contained therein.
- b. If for any reason the Authorized Officers, any officer, members of the Board of Commissioners, employee or agent of the Issuer authorized to execute certificates, instruments or other written documents on behalf of the Issuer shall for any reason cease to be an officer, employee or agent of the Issuer after the execution by such person of any certificate, instrument or other written document, such fact shall not affect the validity or enforceability of such certificate, instrument or other written document.
- c. If for any reason the Authorized Officers, any officer, member of the Issuer, employee or agent of the Issuer authorized to execute certificates, instruments or other written documents on behalf of the Issuer shall be unavailable to execute such certificates, instruments or other written

documents for any reason, such certificates, instruments or other written documents may be executed by a deputy or assistant to such officer, or by such other officer of the Issuer as in the opinion of the Issuer's attorney is authorized to sign such document and do all things and execute all instruments and documents required to be done or executed by such officers, with full force and effect, which executions or acts shall be valid and binding on the Issuer.

Section 8. Registration.

- a. Registered Form. The Note shall be issued only in fully registered form. The Note shall be numbered R-1 and upward in denominations specified by the Purchaser.
- b. Registration, Transfer and Exchange. The Issuer appoints the Executive Director as Registrar. The effect of registration and the rights and duties of the Issuer with respect thereto are as follows:
  - i. *Register.* The Registrar must keep a bond register for the Note in which the Registrar provides for the registration of ownership of the Note and the registration of transfers and exchanges of the Note.
  - ii. *Transfer of Note.* Subject to the provisions of clause x of this subsection, upon surrender for transfer of a Note duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar will authenticate and deliver, in the name of the designated transferee, one new note in an aggregate principal amount equal to the then outstanding principal amount of the Note so surrendered and of like maturity, as requested by the transferor. The Registrar may, however, close the books for registration of any transfer after the 15<sup>th</sup> day of the month preceding each interest payment date and until such interest payment date.
  - iii. *Issuance of New Note.* Subject to the provisions of clause x of this subsection, the Issuer shall, at the request and expense of the Purchaser, issue a new note in aggregate outstanding principal amount equal to that of the Note surrendered, and of like tenor except as to number, principal amount and the amount of the monthly installments payable thereunder, and registered in the name of the Purchaser or such transferee as may be designated by the Purchaser.
  - iv. *Exchange of Note.* When a Note is surrendered by the registered owner for exchange the Registrar will authenticate and deliver one new note in an aggregate principal amount equal to the then

- outstanding principal amount of the Note surrendered and of like maturity, as requested in writing by the registered owner or the owner's attorney.
- v. *Cancellation.* A Note surrendered upon any transfer or exchange will be promptly canceled by the Registrar and thereafter disposed of as directed by the Issuer.
  - vi. *Improper or Unauthorized Transfer.* When a Note is presented to the Registrar for transfer, the Registrar may refuse to transfer the Note so presented until the Registrar is satisfied that the endorsement on the Note or separate instrument of transfer is valid and genuine and that the requested transfer is legally authorized. The Registrar will incur no liability for the refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.
  - vii. *Persons Deemed Owners.* The Issuer and the Registrar may treat the person in whose name a Note is registered in the bond register as the absolute owner of the Note, whether the Note is overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on the Note and for all other purposes, and payment so made to a registered owner or upon the owner's order will be valid and effectual to satisfy and discharge the liability upon the Note to the extent of the sum or sums so paid.
  - viii. *Taxes, Fees and Charges.* For a transfer or exchange of a Note, the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to the transfer or exchange.
  - ix. *Mutilated, Lost, Stolen or Destroyed Note.* If a Note becomes mutilated or is destroyed, stolen or lost, the Registrar will deliver a new Note of like amount, number, maturity date, redemption privilege and tenor in exchange and in substitution for and upon cancellation of the mutilated Note or in lieu of or in substitution for any Note destroyed, stolen or lost, upon the payment of the reasonable expenses and charges of the Registrar and Issuer in connection therewith; and, in the case of a Note destroyed, stolen or lost, upon filing with the Registrar of evidence satisfactory to the Registrar that the Note was destroyed, stolen or lost, and of the ownership thereof, and upon furnishing to the Registrar and Issuer of an appropriate bond or indemnity in form, substance and amount satisfactory to it and as provided by law, in which both the Issuer and the Registrar must be named as obligees. A Note so surrendered to the Registrar will be canceled by the Registrar. If

the mutilated, destroyed, stolen or lost Note has already matured or been called for redemption in accordance with its terms it is not necessary to issue a new Note prior to payment.

- x. *Limitation on Transfers.* The Note has been issued without registration under state or other securities laws, pursuant to an exemption for such issuance; and accordingly a Note may not be assigned or transferred in whole or part, nor may a participation interest in a Note be given pursuant to any participation agreement, except in accordance with an applicable exemption from such registration requirements. In no event may any participation interest in a Note be in an initial principal amount of less than \$100,000.

Section 9. General Covenants.

- a. *Payment of Principal and Interest.* The principal of and interest on the Note are payable solely from and secured by revenues and proceeds derived from the Issuer Documents, which revenues and proceeds are specifically pledged to the payment thereof in the manner and to the extent specified herein and in the Note and the Documents; and nothing in the Note or in this Resolution shall be considered as assigning, pledging or otherwise encumbering any other funds or assets of the Issuer.
- b. *Limitation of Liability.* No agreement, covenant, or obligation contained in this Resolution or in the above-referenced documents shall be deemed to be an agreement, covenant or obligation of any member of the Board of Commissioners, or of any officer, employee or agent of the Issuer in that person's individual capacity. Neither the members of the Board of Commissioners, nor any officers executing the Note, shall be liable personally on the Note or be subject to any personal liability or accountability by reason of the issuance of the Note.
- c. *Nature of Security.*
  - i. The Note will be a special limited obligation of the Issuer.
  - ii. Notwithstanding anything contained in the Note or the Documents or any other document referred to herein to the contrary, under the provisions of the Act the Note may not be payable from or be a charge upon any funds of the Issuer other than the revenues and proceeds pledged to the payment thereof, nor shall the Issuer be subject to any liability thereon, nor shall the Note otherwise contribute or give rise to a pecuniary liability of the Issuer or any of its officers, employees and agents. Accordingly, the Note shall not be payable from or charged upon any funds other than the revenues pledged to the payment thereof, nor shall the Issuer be subject to any liability thereon.

- iii. No holder of the Note shall ever have the right to compel any exercise of the taxing power of the Issuer to pay the Note or the interest thereon, or to enforce payment thereof against any property of the Issuer, other than the revenues pledged under the Assignment Agreement; and the Note shall not constitute a charge, lien or encumbrance, legal or equitable, upon any funds, assets or property of the Issuer, other than revenues under the Loan Agreement; and the Note shall not constitute a debt of the Issuer within the meaning of any constitutional or statutory limitation of indebtedness. The Note will not constitute or give rise to an indebtedness, a pecuniary liability, a moral or general obligation or a loan of the credit of the Issuer or a charge, lien or encumbrance, legal or equitable, against the Issuer's property (other than revenues under the Loan Agreement), general credit or taxing powers and neither the full faith and credit nor the taxing powers of the Issuer are pledged for the payment of the Note or interest thereon.

Section 10. Offering and Disclosure Materials. The Issuer has not participated in the preparation of or reviewed any offering or disclosure materials with respect to the offer and sale of the Note and the Issuer makes no representations or warranties regarding the necessity, sufficiency, accuracy, fairness, completeness or adequacy of any disclosure with respect to such offer and sale.

Section 11. Subject to DEED Approval.

- a. Notwithstanding anything in this Resolution to the contrary, delivery of the Note is subject to and contingent upon the receipt of approval of the Project by DEED.
- b. The Executive Director, or his designee, is authorized and directed to submit the proposal for the Project to DEED requesting approval, and other officers, employees and agents of the Issuer are authorized to provide DEED with such information as it may require.

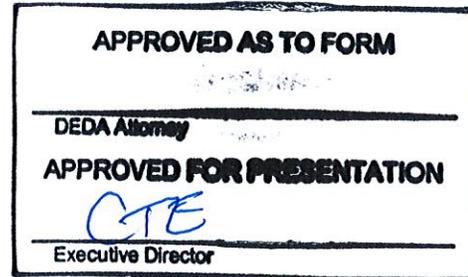
Section 12. Severability. If any provision of this Resolution shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions of any constitution or statute or rule or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or paragraphs in this Resolution

contained shall not affect the remaining portions of this Resolution or any part thereof.

Approved by the Duluth Economic Development Authority this 25th day of June, 2014.

ATTEST:

\_\_\_\_\_  
Executive Director



STATEMENT OF PURPOSE: This resolution authorizes the issuance, subject to approval by DEED, of DEDA's Health Care Facilities Revenue Note, Series 2014, for the benefit of Benedictine Health Center ("BHC"). BHC is the borrower referred to in this resolution and provides skilled nursing and housing services to senior and handicapped persons. BHC will use the proceeds of the Note to (i) construct and equip an approximately 4,000 square foot therapy addition to the skilled nursing facility located at 935 Kenwood Avenue (the "Existing Facility"); (ii) renovate the Existing Facility to provide for a 30-room rehabilitation care wing, a 14-room secured memory care wing, improved access and relocated community area and upgrades to ventilation, temperature control and air quality equipment; and (iii) construct related site improvements. National Bank of Commerce has agreed to purchase the Note. This resolution also makes the findings required by Minnesota law authorizing the issuance of the Note. A copy of this resolution is submitted to DEED in conjunction with the request for DEED's approval of the financing of the Project.