

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

Date: November 27, 2007

To: Council Member Lisa Goodman, Community Development Committee

Referral to: MCDA Board of Commissioners

Subject: A Public Hearing and Request for Preliminary and Final Approval of up to \$7.2 million in 501(c)(3) Bank Qualified Bank Direct Tax-exempt Minneapolis Community Development Agency Revenue Bonds for the Catholic Eldercare Project.

Recommendation: City Council Recommendation: Adopt the attached Resolution, giving Preliminary and Final Approval to the issuance of up to \$7.2 million in Tax-exempt 501(c)(3) Bank Qualified Bank Direct Minneapolis Community Development Agency Revenue Bonds, for the Catholic Eldercare Project.

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 \$7.2 million in Tax-exempt 501(c)(3) Bank Qualified Bank Direct Revenue Bonds, for the Catholic Eldercare Project.

Previous Directives: In 1982 the City issued \$5.2 million in revenue bonds to construct the original 150-bed nursing home facility at 817 Main Street N.E. In 1989 revenue bonds of \$6.44 million to refund the 1982 bonds. In 1994 issued \$5.6 million to fund expansion of the nursing home and the construction of the Main Street Lodge assisted living facility at 909 Main Street N.E. In 2002 issued \$9.58 million in revenue bonds to refund all the prior outstanding bonds.

Prepared by: Bob Lind, Business Finance, 673-5068
Approved by: Charles T. Lutz, Deputy Director CPED _____
Presenters in Committee: Bob Lind

Reviews

- Permanent Review Committee (PRC): Approval _N.A._ Date _____

Financial Impact

- Other financial impact: The issuance of revenue bonds for the Catholic Eldercare project will generate revenue bond administrative fees of approximately \$18,000 a year that are used to support the small business assistance programs of the City of Minneapolis.

Community Impact

- Neighborhood Notification: The St. Anthony West Neighborhood Organization has been notified of this project.
- City Goals: The project enhances the City's Goal of Connected Communities of providing housing alternatives where residents can live within their communities close to the amenities they desire.
- Sustainability Targets: N.A.
- Comprehensive Plan: This project complies with the policies of the Minneapolis Plan.
- Zoning Code: The facilities at 817 Main Street N.E. are zoned R5/Multiple Family District and 1101 Main Street N.E. is zoned C2/Neighborhood Corridor Commercial District.
- Living Wage/Business Subsidy Agreement Yes ____ No X All conduit revenue bonds allocated under State Statute 474A, refunding bonds and 501(c)(3) bonds are exempt from the State Act. City bond financing is not subject to the City's local Ordinance if the intent of the bond financing is not to create jobs.
- Job Linkage Yes ____ No X

Supporting Information:

In 1980 Catholic Eldercare was established to offer elders of all faiths a high quality of life and compassionate care, to address a growing need for elder services in Northeast Minneapolis.

In 1982 the City issued \$5.2 million in Tax-exempt Nursing Home Revenue Bonds for the construction of the original 150-bed skilled care nursing home at 817 Main Street N.E. Since 1982, the City has assisted Catholic Eldercare with an additional four revenue bond issues to provide additional improvements, renovations and refunding financing.

At this time, Catholic Eldercare is requesting City approval of a revenue bond request to finance the following:

1. refinance the temporary financing for the remodeling and equipping of an existing nursing home facility, Catholic Eldercare on Main, located at 817 Main Street N.E. The nursing home facility was renovated in 2007 included kitchenette remodeling, main dining room remodeling, new lobby and atrium and a number of other improvements and upgrades to enhance the living space for the residents.
2. finance the acquisition of 40 condo units of an existing housing facility at Crescent Trace Condominiums and 56 garage spaces located at 1101 Main Street N.E., as a senior independent living facility to be operated by the Catholic Eldercare Community Services Corporation.

In addition to the above two projects, Catholic Eldercare also owns and operates the Main Street Lodge an assisted-living facility at 909 Main Street N.E. and the RiverVillage an assisted-living residence that opened in 2004 at 2919 - 2921 Randolph Street N.E. The RiverVillage East is a 72-unit assisted-living with 25 of the units subsidized for low-income residents and RiverVillage North is a 35-unit subsidized independent living apartment facility for low-income residents.

Type of Financing:

It is anticipated that the bank qualified bank direct tax-exempt revenue bonds will be purchased directly by Northeast Bank.

The revenue bonds for the Catholic Eldercare project will be underwritten and purchased by Northeast Bank. Northeast Bank had provided a revolving credit line that was used to

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: In compliance.

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: N.A.

Tax-exempt Institution

Refinancing is permitted when new jobs are created or when a significant number of jobs is preserved; any interest cost savings must directly reduce patient costs.

Catholic Eldercare: In compliance.

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:

Briggs & Morgan, P.A.

UNDERWRITER:

Northeast Bank

RESOLUTION
of the
CITY OF MINNEAPOLIS

By _____

Giving preliminary and final approval to and authorizing the financing of a project on behalf of Catholic Eldercare (the "Borrower"), and authorizing the issuance of a revenue note or notes of the Minneapolis Community Development Agency therefor.

WHEREAS, pursuant to Laws of Minnesota 1980, Chapter 595, as amended ("Chapter 595"), the City Council of the City of Minneapolis, Minnesota (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, it has been proposed that the Agency issue a revenue note or notes, in one or more series, in an aggregate amount not to exceed \$7,200,000 (the "Notes") to refinance the remodeling and equipping of the Borrower's existing nursing home facility located at 817 Main Street N.E. in the City (the "Nursing Home") and to finance the acquisition of approximately 40 units of an existing housing facility located in the City of Minneapolis at 1101 Main Street N.E., #202, 203, 207, 301-305, 307-316, 401-403, 406-411, 413, 415, 416, 501-503, 505, 510, 511, 513-516 to be owned and operated by Catholic Eldercare Community Services Corporation, a Minnesota nonprofit corporation, as a senior independent living facility (the "Senior Housing Facility") (collectively the "Project"); and

WHEREAS, the Nursing Home is owned and operated by the Borrower and the Senior Housing Facility will be owned and operated by Catholic Eldercare Community Services Corporation, which are affiliated Minnesota nonprofit corporations; and

WHEREAS, the Agency expects to give final approval to the issuance of the Bond by a resolution to be adopted on the date hereof; and

WHEREAS, the Notes shall bear interest at an adjustable interest rate expected to not exceed 125 basis points plus the Treasury Constant Maturities Index for five year obligations as reported by the Federal Reserve determined on the date of issuance of the Notes and every seven years thereafter, shall have a final maturity date not later than February 1, 2038, and shall have such other terms as required or permitted by the Agency's resolution, which terms are to be incorporated herein by reference;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MINNEAPOLIS:

That the City Council hereby gives preliminary and final approval to the issuance by the Agency of the Notes in an aggregate principal amount not to exceed \$7,200,000 for the purpose of financing the Project.

That the Bond is hereby designated as a "Program Bond" and is determined to be within the "Economic Development Program" and the "Program," all as defined in Resolution 88R-021 of the City

adopted January 29, 1988, and as amended by Resolution 97R-402 of the City adopted December 12, 1997.

RESOLUTION

of the

MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY

By _____

AUTHORIZING THE ISSUANCE AND SALE OF UP TO \$7,200,000 HEALTH CARE AND HOUSING DEVELOPMENT REVENUE NOTES (CATHOLIC ELDERCARE PROJECT), SERIES 2007

RESOLVED by the Board of Commissioners (the "Board") of the Minneapolis Community Development Agency (the "Agency"):

Section 1. Findings. The Board does hereby determine, as follows:

1.1. the Agency has received a proposal from Catholic Eldercare, a Minnesota nonprofit corporation (the "Borrower") that the Agency issue revenue notes to (i) refinance the remodeling and equipping of an existing nursing home facility located at 817 Main Street N.E., Minneapolis which is owned and operated by the Borrower and (ii) finance the acquisition of approximately 40 units of an existing housing facility located in the City of Minneapolis at 1101 Main Street N.E., #202, 203, 207, 301-305, 307-316, 401-403, 406-411, 413, 415, 416, 501-503, 505, 510, 511, 513-516 to be owned and operated by Catholic Eldercare Community Services Corporation, a Minnesota nonprofit corporation, as a senior independent living facility (collectively the "Project"), and to enter into a Loan Agreement with the Borrower (the "Loan Agreement") for the public purposes expressed in the Acts;

1.2. the Agency is authorized under Minnesota Statutes, Section 469.152 to 469.1651, as amended (the "Industrial Development Act") to finance industrial development projects to promote the welfare of the state by providing necessary health care facilities so that adequate health care services are available to residents of the State at reasonable cost;

1.3. Minnesota Statutes, Chapter 462C (the "Housing Program Act" and, together with the Industrial Development Act, the "Acts") confers upon cities, the power to issue revenue bonds to finance a program for the purposes of planning, administering, making or purchasing loans with respect to one or more multifamily housing developments within their boundaries.

1.4. as required by the Acts and Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") and the Acts, the Community Development Committee of the Minneapolis City Council on November 27, 2007, held a public hearing on the issuance of one or more revenue notes to finance the Project and the adoption of a Housing Program for the Project.

1.5. it is desirable, feasible and consistent with the objects and purposes of the Acts to issue its Health Care and Housing Revenue Note, Series 2007 (Catholic Eldercare Project) (the "Series 2007 Note") and the Health Care and Housing Revenue Note, Series 2008 (Catholic Eldercare Project) (the "Series 2008 Note" and together with the Series 2007 Note, the "Notes"), in an aggregate principal amount of no more than \$7,200,000 to finance the Project; and

1.6. the Notes and the interest accruing thereon do not constitute an indebtedness of the Agency or the City within the meaning of any constitutional or statutory limitation and do not

constitute or give rise to a pecuniary liability or a charge against the general credit or taxing powers of the Agency or the City and neither the full faith and credit nor the taxing powers of the Agency or the City are pledged for the payment of the Notes or interest thereon.

Section 2. The Notes.

2.1. **Authorized Amount and Form of Notes.** The Notes issued pursuant to this Resolution shall be in substantially the form set forth on Exhibit A to the Loan Agreement, with such appropriate variations, omissions and insertions as are permitted or required by this Resolution, and in accordance with the further provisions hereof; and the total principal amount of the Notes that may be outstanding hereunder is expressly limited to \$7,200,000 unless duplicate Notes are issued pursuant to Section 2.7.

2.2. **The Notes.** The Notes shall be dated as of the date of delivery, shall be payable at the times and in the manner, shall bear interest at an adjustable interest rate expected to not exceed 125 basis points plus the Treasury Constant Maturities Index for five year obligations as reported by the Federal Reserve determined on the date of issuance of the Notes and every seven years thereafter during a term of 30 years, and shall be subject to such other terms and conditions as are set forth therein.

2.3. **Execution.** The Notes shall be executed on behalf of the Agency by the signature of the Executive Director and the Finance Officer and registered by the Finance Officer. In case any officer whose signature shall appear on the Notes shall cease to be such officer before the delivery of the Notes, such signature shall nevertheless be valid and sufficient for all purposes, the same as if it had remained in office until delivery. In the event of the absence or disability of the Executive Director or Finance Officer such officer of the Agency as, in the opinion of the City Attorney, may act in his behalf, shall without further act or authorization of the Board execute and deliver the Notes.

2.4. **Delivery of Notes.** Before delivery of the Notes there shall be filed with the Purchaser of the Notes (except to the extent waived by the Purchaser) the following items:

- (a) an executed copy of each of the following documents:
 - (1) the Loan Agreement;
 - (2) the Pledge Agreement between the Agency and the Purchaser (the "Pledge Agreement");
 - (3) the Mortgage, Security Agreement, Assignment of Leases and Rents, and Fixture Financing Statement from the Borrower to the Purchaser;
 - (4) such other security and disbursing agreements as required by the Purchaser.
- (b) an opinion of Counsel for the Borrower as prescribed by Bond Counsel;
- (c) the opinion of Bond Counsel as to the validity and tax exempt status of the Notes; and
- (d) such other documents and opinions as Bond Counsel may reasonably require for purposes of rendering its opinion required in subsection (c) above or that the purchasers may reasonably require for the closing.

2.5. **Disposition of Notes Proceeds.** Upon delivery of the Notes, the purchase price paid will be used together with other funds available to pay costs of issuance of the Notes and refinancing and financing of the Project.

2.6. **Registration of Transfer.** The Agency will cause to be kept at the office of the Finance Officer a Note Register in which, subject to such reasonable regulations as it may prescribe, the Agency shall provide for the registration of transfers of ownership of the Notes. The Notes shall be initially registered in the name of the original purchaser and shall be transferable upon the Note Register by the holder in person or by an agent duly authorized in writing, upon surrender of a Note together with a written instrument of transfer satisfactory to the Finance Officer, duly executed by the holder or its duly authorized agent. Upon such transfer the City Finance Officer shall note the date of registration and the name and address of the new holder in the Note Register and in the registration blank appearing on the Notes.

2.7. **Mutilated, Lost or Destroyed Notes.** In case any Note issued hereunder shall become mutilated or be destroyed or lost, the Agency shall, if not then prohibited by law, cause to be executed and delivered, a new Note of like outstanding principal amount, number and tenor in exchange and substitution for and upon cancellation of such mutilated Note, or in lieu of and in substitution for such Note destroyed or lost, upon the holder's paying the reasonable expenses and charges of the Agency in connection therewith, and in the case of a Note destroyed or lost, the filing with the Agency of evidence satisfactory to the Agency with indemnity satisfactory to it. If the mutilated, destroyed or lost Note has already matured or been called for redemption in accordance with its terms it shall not be necessary to issue a new Note prior to payment.

2.8. **Ownership of Notes.** The Agency may deem and treat the person in whose name the Notes are last registered in the Note Register and by notation on the Notes whether or not such Notes shall be overdue, as the absolute owner of such Notes for the purpose of receiving payment of or on account of the principal balance, redemption price or interest and for all other purposes whatsoever, and the Agency shall not be affected by any notice to the contrary.

2.9. **Limitation on Notes Transfers.** The Notes have been issued without registration under state or other securities laws, pursuant to an exemption for such issuance; and accordingly the Notes may not be assigned or transferred in whole or part, nor may a participation interest in the Notes be given pursuant to any participation agreement, except in accordance with an applicable exemption from such registration requirements.

2.10. **Issuance of New Notes.** Subject to the provisions of Section 2.9, the Agency shall, at the request and expense of a holder, issue new Notes, in an aggregate outstanding principal amount equal to that of the Notes 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 holder or such transferee as may be designated by the holder.

2.11. **Designation as a "Program Bond."** The Notes are hereby designated as a "Program Bond" and is determined to be within the "Economic Development Program" and the "Program," all as defined in Resolution 88R-021 of the City adopted January 29, 1988, and as amended by Resolution 97R-402 of the City adopted August 12, 1997.

Section 3. General Covenants.

3.1. **Payment of Principal and Interest.** The Agency covenants that it will promptly pay or cause to be paid the principal of and interest on the Notes at the place, on the dates, solely from the source and in the manner provided herein and in the Notes. The principal and interest are payable solely from and secured by revenues and proceeds derived from the Loan Agreement, the Pledge Agreement, and the Mortgage (the "Security Documents"), which revenues and proceeds are hereby specifically pledged to the payment thereof in the manner and to the extent specified in the Notes and the Security Documents; and nothing in the Notes or in

this Resolution shall be considered as assigning, pledging or otherwise encumbering any other funds or assets of the Agency or the City.

3.2. **Performance of and Authority for Covenants.** The Agency covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Resolution, in the Notes and in all proceedings of the Board pertaining thereto. The Agency agrees to enforce all covenants and obligations of the Borrower under the Loan Agreement, upon request of the holders of the Notes and being indemnified to the satisfaction of the Agency for all expenses and claims arising therefrom, and to perform all covenants and other provisions pertaining to the Agency contained in the Notes and the Loan Agreement and subject to Sections 4 and 5.

3.3. **Nature of Security.** Notwithstanding anything contained in the Notes, the Security Documents or any other document referred to in Section 2.4 to the contrary, under the provisions of the Acts, the Notes may not be payable from or be a charge upon any funds of the Agency or the City other than the revenues and proceeds pledged to the payment thereof, nor shall the Agency or the City be subject to any liability thereon, nor shall the Notes otherwise contribute or give rise to a pecuniary liability of the Agency or the City or, to the extent permitted by law, any of the Agency or the City's officers, employees and agents. No holder of the Notes shall ever have the right to compel any exercise of the taxing power of the Agency or the City to pay the Notes or the interest thereon, or to enforce payment thereof against any property of the Agency or the City other than the revenues pledged under the Pledge Agreement; and the Notes shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the Agency or the City; and the Notes shall not constitute a debt of the Agency or the City within the meaning of any constitutional or statutory limitation; but nothing in the Acts impairs the rights of the holders of the Notes to enforce the covenants made for the security thereof as provided in this Resolution, the Loan Agreement and the Pledge Agreement, and in the Acts, and by authority of the Acts the Agency has made the covenants and agreements herein for the benefit of the purchasers; provided that in any event, the agreement of the Agency to perform or enforce the covenants and other provisions contained in the Notes, the Loan Agreement and the Pledge Agreement shall be subject at all times to the availability of revenues under the Loan Agreement sufficient to pay all costs of such performance or the enforcement thereof, and neither the Agency nor the City shall be subject to any personal or pecuniary liability thereon.

Section 4. **Designation of Qualified Tax-Exempt Obligations for the Series 2007 Note; Issuance Limit.** In order to qualify the Series 2007 Note as a "qualified tax exempt obligations" within the meaning of Section 265(b)(3) of the Code, the Agency hereby makes the following factual statements and representations:

- (a) the Series 2007 Note is issued after August 7, 1986;
- (b) the Series 2007 Note is not a "private activity bond" as defined in Section 141 of the Code;
- (c) the Agency hereby designates the Series 2007 Note as a "qualified tax exempt obligation" for purposes of Section 265(b)(3) of the Code;
- (d) the reasonably anticipated amount of tax exempt obligations (other than private activity bonds, treating qualified 501(c)(3) bonds as not being private activity bonds) which will be issued by the Agency (and all entities treated as one issuer with the Agency, and all subordinate entities whose obligations are treated as issued by the Agency) during the calendar year 2007 will not exceed \$10,000,000;
- (e) not more than \$10,000,000 of obligations issued by the Agency during calendar year 2007 have been designated for purposes of Section 265(b)(3) of the Code; and

(f) the aggregate face amount of the Series 2007 Note does not exceed \$10,000,000.

(g) The Agency shall use its best efforts to comply with any federal procedural requirements which may apply in order to effectuate the designation made by this paragraph.

Section 5. Designation of Qualified Tax-Exempt Obligations for the Series 2008 Note; Issuance Limit. In order to qualify the Series 2008 Note as a "qualified tax exempt obligation" within the meaning of Section 265(b)(3) of the Code, the Agency hereby makes the following factual statements and representations:

(a) the Series 2008 Note is issued after August 7, 1986;

(b) the Series 2008 Note is not a "private activity bond" as defined in Section 141 of the Code;

(c) the Agency hereby designates the Series 2008 Note as a "qualified tax exempt obligations" for purposes of Section 265(b)(3) of the Code;

(d) the reasonably anticipated amount of tax exempt obligations (other than private activity bonds, treating qualified 501(c)(3) bonds as not being private activity bonds) which will be issued by the Agency (and all entities treated as one issuer with the Agency, and all subordinate entities whose obligations are treated as issued by the Agency) during calendar year 2008 will not exceed \$10,000,000;

(e) not more than \$10,000,000 of obligations issued by the Agency during calendar year 2008 will be designated for purposes of Section 265(b)(3) of the Code; and

(f) the aggregate face amount of the Series 2008 Note does not exceed \$10,000,000.

The Agency shall use its best efforts to comply with any federal procedural requirements which may apply in order to effectuate the designation made by this paragraph.

Section 6. Miscellaneous.

6.1. **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.

6.2. **Authentication of Transcript.** The officers of the Agency are directed to furnish to Bond Counsel certified copies of this Resolution and all documents referred to herein, and affidavits or certificates as to all other matters which are reasonably necessary to evidence the validity of the Notes. All such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute recitals of the Agency as to the correctness of all statements contained therein.

6.3. **Authorization to Execute Agreements.** The forms of the proposed Loan Agreement and the Pledge Agreement are hereby approved in substantially the form heretofore presented to the Board, together with such additional details therein as may be necessary and appropriate and such modifications thereof, deletions therefrom and additions thereto as may be necessary and appropriate and approved by Bond Counsel prior to the execution of the documents, and the Executive Director and Finance Officer are authorized to execute, in the name of and on behalf of the Agency, the Loan Agreement and the Pledge Agreement and such other documents as Bond Counsel considers appropriate in connection with the issuance of the Notes. In the event of the absence or disability of the Executive Director or the Finance Officer, such officer of the Agency as, in the opinion of the City Attorney, may act in their behalf, shall without further act or authorization of the Board do all things and execute all instruments and documents required to be done or executed by such absent or disabled officers. The execution of any instrument by the appropriate officer or officers of the Agency herein authorized shall be conclusive evidence of the approval of such documents in accordance with the terms hereof.

6.4. **Housing Program.** The Agency hereby adopts the Housing Program for the Project in accordance with the Housing Program Act.