Resolution No. 4446

RESOLUTION OF THE
PORT AUTHORITY OF THE CITY OF SAINT PAUL

WHEREAS:

1. It has been proposed that the Port Authority of the City of Saint Paul (the "Port Authority") issue its tax-exempt revenue note in substantially the form attached hereto as Exhibit A (the "Note") in an aggregate principal amount not to exceed $2,000,000 and that the proceeds of such Note be loaned to The Arc Greater Twin Cities, a Minnesota 501(c)(3) corporation ("Arc"), for its use in financing the acquisition of land and a 22,138 square foot facility located at 14232 Burnhaven Drive in the City of Burnsville, Minnesota (the "Project"), which Project will be owned and operated by Arc to provide revenues and financial support for programs and services benefitting people with intellectual and developmental disabilities in the Twin Cities area and the State of Minnesota, including a significant number located in Saint Paul, Minnesota.

2. The City of Burnsville, to facilitate the financing of the Project for the benefit of Arc, will consider this issue at a public hearing to be held on December 4, 2012, at which time the City of Burnsville will consider entering into a Joint Powers Agreement with the Port Authority (the "Joint Powers Agreement") whereby the City of Burnsville will authorize and consent to the issuance of the Note on the terms set forth therein.

3. The Note will be issued and secured by the terms of a Loan Agreement (the "Loan Agreement") between the Port Authority and Arc, and sold to Bremer Bank, N.A. (the "Lender"). Arc will agree to repay the Note 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. The Port Authority's interest in the Loan Agreement (except for the Port Authority's right to receive payment of certain fees and expenses as well as its right to indemnification) will be assigned to the Lender pursuant to a Pledge Agreement between the Port Authority and the Lender. In addition, the Loan Agreement and related documents will contain provisions relating to the maintenance and operation of the Project, indemnification, insurance and other agreements and covenants which are required or permitted by the Act and which the Port Authority, Arc and the Lender deem necessary or desirable for the financing of the Project.

4. The Note will be additionally secured by a Mortgage, Security Agreement, Fixture Financing Statement and Assignment of Leases and Rents (collectively the "Mortgage") given by Arc in favor of the Lender.

5. The Port Authority has been advised by Arc that the economic feasibility of operating the Project would be significantly reduced without the proposed revenue

note financing, and that it has been acting to date in anticipation of the availability of tax exempt financing for the Project.

6. The Port Authority desires to: promote the general welfare of City of Saint Paul and the east metro community; enhance the image and reputation of City of Saint Paul and east metro community; provide programs and services benefitting people with intellectual and developmental disabilities located in the metro area, including significant numbers in City of Saint Paul and east metro community.

7. The Port Authority's Credit Committee has given its approval to the proposed issuance of the Note.

8. Pursuant to the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended, and pursuant to a notice published by the Port Authority not less than 15 days prior to the public hearing, a public hearing was held on November 27, 2012 on the issuance of the Note, at which public hearing all persons were given an opportunity to speak. In addition, City of Burnsville will hold a public hearing on December 4, 2012 on the issuance of the Note by the Port Authority.

9. The Note and the interest thereon shall be payable solely from the revenue pledged therefor and the Note shall not constitute a debt of the Port Authority within the meaning of any constitutional or statutory limitation of indebtedness, nor shall the Note constitute nor give rise to a pecuniary liability of the Port Authority, the City of Saint Paul or the City of Burnsville or a charge against their general credit or taxing powers and shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the Port Authority, the City of Saint Paul or the City of Burnsville, other than revenues from the Project pledged to the payment of the Note.

10. It is intended that interest on the Note be excluded from gross income of the holders thereof for federal income tax purposes and that the Note be designated as "bank qualified" for purposes of Section 265 of the Internal Revenue Code.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE PORT AUTHORITY OF THE CITY OF SAINT PAUL, AS FOLLOWS:

I. General Authorization

A. On the basis of information available to the Port Authority it appears, and the Port Authority hereby finds, that: the Project constitutes properties, used or useful in connection with one or more revenue producing enterprises engaged in any business within the meaning of the Minnesota Statutes, Chapter 469 (the "Act"); the Project furthers the purposes stated in the Act; and it is in the best interests of the port district and the people of the City of Saint Paul, Minnesota and in furtherance of the general plan of development to assist Arc in financing the Project.

B. For the purpose of financing the Project, and paying certain costs of issuance and other expenses in connection with the issuance of the Note, and provided that the Project and its financing receive approval by the Department of Employment and Economic Development ("DEED"), the Port Authority hereby authorizes the issuance, sale and delivery of the Note in an aggregate principal amount not to exceed $2,000,000 to the Lender. The Note shall be in such principal amount, bear interest at such rate, mature, and be subject to prepayment prior to maturity as shall be determined by the President and the Chief Financial Officer of the Port Authority and Bond Counsel.

C. Neither the Note, nor the interest thereon, shall constitute an indebtedness of the Port Authority, the City of Saint Paul or the City of Burnsville within the meaning of any constitutional or statutory debt limitation; nor shall it constitute or give rise to a pecuniary liability of the Port Authority, the City of Saint Paul or the City of Burnsville or a charge against their general taxing powers and neither the full faith and credit nor the general taxing powers of the Port Authority, the City of Saint Paul or the City of Burnsville is pledged to the payment of the Note or interest thereon.

D. The President and Chief Financial Officer of the Port Authority are authorized to review and approve all documents in connection with the sale, issuance and delivery of the Note, including without limitation, the following:

1. the Joint Powers Agreement;

2. the Loan Agreement;

3. the form of the Note;

4. a Pledge Agreement (the "Pledge Agreement") to be entered into between the Port Authority and Lender, pursuant to which the Port Authority will pledge, assign and grant a security interest in all of its right, title and interest in the Loan Agreement to the Lender (except for certain rights of indemnification and to reimbursement for certain costs and expenses); and

5. the Mortgage pursuant to which Arc will secure payment of amounts due under the Loan Agreement and Note by granting to the Lender a mortgage, security interest, and assignment of rents in the property described therein.

(collectively, the "Documents").

E. It is hereby found, determined and declared that:

1. The issuance and sale of the Note, the execution and delivery by the Port Authority of the Documents, as applicable, and the performance of all covenants and agreements of the Port Authority contained in the Documents, as applicable, and of all other acts and things required under the Constitution and

laws of the State of Minnesota to make the Documents and the Note valid and binding obligations of the Port Authority in accordance with their terms, are authorized by the Act;

2. It is desirable that the Note be issued by the Port Authority upon the general terms set forth in the Documents, as applicable;

3. Under the provisions of and as provided in the Documents, the Note is not to be payable from or a charge upon any funds other than the revenues pledged to the payment thereof; no holder of the Note shall ever have the right to compel any exercise by the Port Authority, the City of Saint Paul or the City of Burnsville of its taxing powers to pay the Note or the interest or premium thereon, or to enforce payment thereof against any property of the Port Authority, the City of Saint Paul or the City of Burnsville except the interests of the Port Authority which have been pledged to the payment thereof by the Documents; the Note shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the Port Authority, the City of Saint Paul or the City of Burnsville except the interests of the Port Authority which have been pledged to the payment thereof by the Documents; the Note shall recite that it is payable, including interest thereon, solely from the revenues pledged to the payment thereof; and the Note shall not constitute a debt of the Port Authority, the City of Saint Paul or the City of Burnsville within the meaning of any constitutional or statutory limitation.

F. Upon approval of the Documents and exhibits by the President and Chief Financial Officer, the President and Chief Financial Officer of the Port Authority, or such other officer as may be appropriate in the absence of either the President and Chief Financial Officer, are hereby authorized to execute the Documents (to the extent the Port Authority is a party thereto) in the forms approved, and any other documents and certificates which in the opinion of Port Authority management and Bond Counsel are necessary to the transaction herein described. The execution of any instrument by the appropriate officer or officers of the Port Authority herein authorized shall be conclusive evidence of the approval of such documents in accordance with the terms hereof. The execution of any documents necessary for the transaction herein described by individuals who were at the time of execution thereof the authorized officers of the Port Authority shall bind the Port Authority, notwithstanding that such individuals or any of them has ceased to hold such office or offices prior to the authentication and delivery of the Note. Copies of all of the documents necessary to the transaction described shall be delivered, filed and recorded as provided herein and in the Loan Agreement and the Mortgage.

G. The President and other officers of the Port Authority are authorized and directed to prepare and furnish to the Lender and Bond Counsel certified copies of proceedings and records of the Port Authority relating to the issuance of the Note and other transactions herein contemplated, and such other affidavits and certificates as may be required to show the facts relating to the legality of the Note and the other transactions herein contemplated 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 Port Authority as to the truth of all statements contained therein.

H. Approval by the President and Chief Financial Officer of the various Documents referred to above includes approval of, among other things:

1. the final principal amount of the Note, provided that such principal amount shall not exceed $2,000,000;

2. the interest rate or rates to be borne by the Note provided that the maximum annual interest rate shall be ____%;

3. the establishment of the maturity and prepayment provisions to be applicable to the Note provided that the final maturity of the Note shall not be later than 2027; and

4. such related instruments as may be required to satisfy the conditions of the Lender.

I. The Port Authority acknowledges that the Lender may grant participation interests in the Note to other financial institutions.

II. The Note

J. Before delivery of the Note, there shall be filed with the Lender (except to the extent waived by the Lender) the following items:

(a) an executed copy of each of the following documents:

(1) the Joint Powers Agreement;
(2) the Loan Agreement;
(3) the Pledge Agreement;
(4) the Mortgage;

(b) an opinion of counsel for Arc as prescribed by the Lender and Bond Counsel;

(c) the opinion of Bond Counsel as to the validity and tax-exempt status of the Note;

(d) such other documents and opinions as Bond Counsel may reasonably require for purposes of rendering its opinion required in (c) above or that the Lender may reasonably require for closing.

K. The Port Authority will cause to be kept at the offices of the Port Authority a Note Register in which, subject to such reasonable regulations as it may

prescribe, the Port Authority shall provide for the registration of transfers of ownership of the Note. The Note shall be initially registered in the name of the Lender and shall be transferable upon the Note Register by the Lender in person or by its agent duly authorized in writing, upon surrender of the Note together with a written instrument of transfer satisfactory to the Port Authority, duly executed by the Lender or its duly authorized agent. The Port Authority may require, as a precondition to any transfer, that the transferee provide evidence to the Port Authority that the transferee is a financial institution or other accredited investor under the securities laws. The following form of assignment shall be sufficient for said purpose.

> For value received _____ hereby sells, assigns and transfers unto _____ the attached Note of the Port Authority of the City of Saint Paul, and does hereby irrevocably constitute and appoint _____ attorney to transfer said Note on the Books of said Port Authority, with full power of substitution in the premises. The undersigned certifies that the transfer is made in accordance with Section K of the Resolution authorizing the issuance of the Note.
>
> Dated:_____
>
> _____
>
> Registered Owner

Upon such transfer the Port Authority shall note the date of registration and the name and address of the new Lender in the Note Register and in the registration blank appearing on the Note.

L. In case the Note shall become mutilated or be destroyed or lost, the Port Authority 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 Lender's paying the reasonable expenses and charges of the Port Authority in connection therewith, and in the case of a Note destroyed or lost, the filing with the Port Authority of evidence satisfactory to the Port Authority 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.

M. The Port Authority may deem and treat the person in whose name the Note is last registered in the Note Register and by notation on the Note, whether or not the Note shall be overdue, as the absolute owner of the Note 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 Port Authority shall not be affected by any notice to the contrary.

N. The Note will be issued without being registered under state or other securities laws, pursuant to an exemption for such issuance; and accordingly the Note may not be assigned or transferred in whole or in part, nor may a participation interest in

the Note be given pursuant to any participation agreement, except as an exempt security or as an exempt transaction.

III. Miscellaneous

O. The authority to approve, execute and deliver future amendments to financing documents entered into by the Port Authority in connection with the issuance of the Note and the other transactions herein contemplated, is hereby delegated to the President of the Port Authority, provided that: (a) such amendments do not require the consent of the Lender or if required, such consent has been obtained; (b) such amendments do not materially adversely affect the interests of the Port Authority as the issuer of the Note; (c) such amendments do not contravene or violate any policy of the Port Authority; and (d) such amendments are acceptable in form and substance to Bond Counsel. The execution of any instrument by the President of the Port Authority shall be conclusive evidence of the approval of such instruments in accordance with the terms hereof.

P. No covenant, stipulation, obligation or agreement contained herein or in the Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member of the Board of Commissioners of the Port Authority, or any officer, agent or employee of the Port Authority in that persons individual capacity, and neither the Board of Commissioners nor any officer executing the Note shall be liable personally on the Note or be subject to any personal liability or accountability by reason of the issuance thereof.

Q. 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 contained herein invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or paragraphs contained in this Resolution shall not affect the remaining portions of this Resolution or any part thereof.

R. The Note does qualify as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code.

S. The actions of Port Authority management in causing the publication of the notice of public hearing, and in communicating with the City of Saint Paul and the City of Burnsville as needed with respect to the issuance of the Note, are hereby ratified and confirmed. Port Authority management is further authorized to take such other action as might be required to obtain any other approvals required for the issuance of the Note.

Adopted: November 27, 2012

PORT AUTHORITY OF THE CITY
OF SAINT PAUL

By_____
Its Chair

ATTEST:

By_____
Its Secretary