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**Title:** Resolution Authorizing the Issuance and Sale of Conduit Health Care Facility Revenue Notes for the Cerenity - Marian of St. Paul Project, Located at 200 Earl Street, under Minnesota Statutes, Sections 469.152 through 469.1655 and Approving Related Documents, District 4, Ward 7

**Sponsors:** Jane L. Prince

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**Attachments:** 1. Board Report, 2. Map, 3. District 4 Profile

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11/8/2017	1	Housing & Redevelopment Authority	Adopted	Pass

Resolution Authorizing the Issuance and Sale of Conduit Health Care Facility Revenue Notes for the Cerenity - Marian of St. Paul Project, Located at 200 Earl Street, under Minnesota Statutes, Sections 469.152 through 469.1655 and Approving Related Documents, District 4, Ward 7

WHEREAS,

(a) The purpose of Minnesota Statutes, Sections 469.152 to 469.1655 (the "Act"), as found and determined by the legislature, is, among other things, to promote the welfare of the state by the provision of necessary health care facilities, so that adequate health care services are available to residents of the state at reasonable cost;

(b) The Board of Commissioners (the "Board") of the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota (the "HRA") has received from Cerenity - Marian of St. Paul, LLC, a Minnesota limited liability company (the "Borrower"), a Minnesota nonprofit corporation organized under the laws of the State of Minnesota, a proposal that the HRA assist in financing certain health care facilities hereinafter described through the issuance of a revenue note, in one or more series (as further defined below, the "Notes") pursuant to the Act;

(c) The HRA desires to facilitate the selective development of the community, retain and improve the tax base and help to provide the range of services and employment opportunities required by the population, including health care services and facilities; and the Project described below will assist the HRA in achieving those objectives and will enhance the image and reputation of the community;

(d) The Borrower has proposed that the HRA issue the Notes to (i) finance renovations to the existing facility located at 200 Earl Street in the City of Saint Paul, Minnesota (the "City") to increase the number of private nursing beds to approximately 78 and reduce the number of assisted living units to approximately 30; (ii) finance interest during the construction period; and (iii) pay the costs of issuing the Notes (collectively, the "Project"). The Project is owned and operated by the Borrower;

(e) The HRA has been advised by representatives of the Borrower that conventional,

commercial financing for 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 operating the facilities would be significantly reduced;

(f) Based on representations of the Borrower, no public official of the HRA or the City 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;

(g) the Board of Commissioners conducted a public hearing on this same date with respect to financing the Project and issuing of the Notes, following duly published notice pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), and regulations promulgated thereunder;

(h) the Project will further the proposed policies of the Act, and the findings made in the preliminary resolution of the HRA adopted on October 11, 2017 with respect to the Project are hereby ratified, affirmed and approved; and

NOW THEREFORE BE IT RESOLVED by the Board of Commissioners of the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota, as follows:

**SECTION 1. LEGAL AUTHORIZATION AND FINDINGS.**

1.1 Findings. The HRA hereby finds, determines and declares as follows:

(a) The HRA is a body corporate and politic and a political subdivision of the State of Minnesota and is authorized under the Act to assist the revenue producing project herein referred to, and to issue and sell the Health Care Facility Revenue Notes (Cerenity - Marian of St. Paul Project), Series 2017, in one or more series (the "Notes") for the purpose, in the manner and upon the terms and conditions set forth in the Act and in this Resolution.

(b) The issuance and sale of the Notes by the HRA, pursuant to the Act, is in the best interest of the HRA, and the HRA hereby determines to issue the Notes and to sell the Notes to Premier Bank, Piper Jaffray Lending LLC, or another financial institution selected by the Borrower (the "Lead Lender"), as provided herein. The HRA will loan the proceeds of the Notes (the "Loan") to the Borrower in order to finance the Project.

(c) The Notes are to be issued under the terms of this resolution and a Servicing Agreement, to be dated on or after November 1, 2017 (the "Servicing Agreement"), by and among the HRA, Premier Bank, Piper Jaffray Lending LLC, or another financial institution selected by the Borrower, as servicer (the "Servicer") and the Lead Lender. It is further proposed that the Lead Lender will sell undivided interests in and to the Notes to one or more institutional lenders pursuant to one or more participation agreements which shall be evidenced by one or more certificates of participation (the "Participants").

(d) The proceeds derived from the sale of the Notes are to be loaned by the HRA to the Borrower pursuant to the terms of a Loan Agreement, to be dated on or after November 1, 2017 (the "Loan Agreement"), among the HRA, the Borrower, the Lead Lender and the Servicer. Proceeds of the Notes, and other funds of the Borrower, will be applied by the Borrower to finance the Project. Pursuant to a Loan Agreement, the Borrower will agree to repay the Loan in specified amounts and at specified times sufficient to pay in full when due the principal of, premium, if any, and interest on the Notes. In addition, the Loan Agreement contains provisions relating to the construction, maintenance and operation of the Project, indemnification, insurance, and other agreements and covenants which are required or permitted by the Act and which the HRA and the Lead Lender deem necessary or desirable for the financing of the Project.

(e) The loan repayments required to be made by the Borrower under the terms of the Loan

Agreement will be assigned to the Servicer under the terms of the Loan Agreement and the Servicing Agreement

(f) The Notes will be subject to a Bond Compliance Agreement to be dated on or after November 1, 2017 (the "Compliance Agreement") to be entered into between the HRA and the Borrower.

(g) The Notes may be disbursed pursuant to a Disbursing Agreement to be dated on or after November 1, 2017 (the "Disbursing Agreement") by and among the Servicer, Borrower and a title insurance company.

(h) The obligations of the Borrower under the Loan Agreement and payment of amounts due under the Notes will be secured by certain security instruments required by the Lead Lender and in forms authorized by the Borrower to be executed by or on behalf of the Borrower in favor of the Lead Lender which may include: (i) a Combination Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Financing Statement, to be dated on or after November 1, 2017 (the "Mortgage") from the Borrower, as mortgagor, to the Lead Lender, as mortgagee; (ii) one or more collateral assignments of the contracts between the Borrower and the architect and contractor with respect to the Project; (iii) one or more security agreements and indemnity agreements; (iv) one or more guaranty agreements including without limitation a Guaranty Agreement, to be dated on or after November 1, 2017 (the "Guaranty"), from Cerenity Senior Care, a Minnesota nonprofit corporation and the sole member of the Borrower (the "Guarantor"), to the Lead Lender to guarantee completion of the Project and payment of a portion of the principal of and the interest on the Notes; and (v) other security documents that are intended to ensure timely payment of the loan and the Notes (collectively, the "Security Documents").

(i) The Notes will be special, limited obligations of the HRA. The Notes shall not be payable from or a charge upon any funds other than the revenues pledged to the payment thereof, nor shall the HRA or the City be subject to any liability thereon. No holder of any Note shall ever have the right to compel any exercise of the taxing power of the HRA or the City to pay the Notes or the interest thereon, nor to enforce payment thereof against any property of the HRA or the City. The Notes shall not constitute a debt of the HRA or the City within the meaning of any constitutional, charter or statutory limitation.

(j) It is desirable, feasible and consistent with the objects and purposes of the Act to issue the Notes, for the purpose of financing the costs of the Project.

(k) This Board, by action taken on October 11, 2017, gave preliminary approval to the Project. Application to the Commissioner of the Department of Employment and Economic Development of the State of Minnesota for approval of the Project as tending to further the purposes and policies of the Act has been made. The Notes shall not be sold to the Purchaser unless and until such approval is obtained.

## **SECTION 2. THE NOTES.**

2.1 The Notes. For the purposes set forth above, there is hereby authorized the issuance, sale and delivery of the Notes in the maximum aggregate principal amount of \$18,000,000. The Notes shall be designated, shall be numbered, shall be dated, shall mature, shall be subject to redemption prior to maturity, shall be in such forms, and shall have such other terms, details, and provisions as are prescribed in the Servicing Agreement, in the form now on file with the HRA, with the amendments referenced herein. The actual aggregate amount of the Notes shall be determined by the agreement of the Lead Lender and the Borrower and the Chair or any Commissioner and the Executive Director of the HRA, and the Director of the Office of Financial Services of the City (collectively, the "HRA Officials") as evidenced by their execution of the Notes. The Notes shall bear interest at the rates set forth therein, determined by the Borrower and the Lender; provided that the initial interest rate on the Notes shall not exceed 4.00% per annum. Provided further, such rate shall be subject to adjustment pursuant to the terms as set forth in the Notes, and the Servicing Agreement. The HRA hereby authorizes the Notes to be issued as "tax-exempt bonds" the interest on which is

excludable from gross income for federal and State of Minnesota income tax purposes.

2.2 Execution of Notes. The Notes shall be executed on behalf of the HRA by the signatures of the HRA Officials as evidenced by their execution of the Notes and shall be sealed with the seal of the HRA; provided that the seal may be intentionally omitted as provided by law. In case any HRA Official 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 such officer had remained in office until delivery. In the event of the absence or disability of any of the HRA Officials such officer(s) of the HRA as, in the opinion of the City Attorney, may act in their behalf, shall without further act or authorization of the Board execute and deliver the Notes.

2.3 Disposition of Proceeds of the Notes. Upon delivery of the Notes to the Lead Lender, the Lead Lender shall, on behalf of the HRA, disburse the purchase price thereof for payment of Project costs in accordance with the terms of the Loan Agreement and the Disbursing Agreement.

2.4 Validity of the Notes. Each Note, when executed and delivered, shall contain a recital that it is issued pursuant to the Act, and such recital shall be conclusive evidence of the validity of the Notes and the regularity of the issuance thereof, and that all acts, conditions, and things required by the laws of the State of Minnesota relating to the adoption of this resolution, to the issuance of the Notes, and to the execution of the aforementioned documents to happen, exist, and be performed precedent to the execution of the aforementioned documents have happened, exist, and have been performed as so required by law.

2.5 Ownership of Notes. In accordance with the policy of the HRA, the Lead Lender, if it will be a holder of any Notes or interests therein, and each Participant will be required to execute and deliver an investor letter or certification to the HRA, confirming that the Lead Lender, if applicable, or such Participant is either (a) a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (the “1933 Act”), that purchases a Note or a participation therein for its own account or for the account of a qualified institutional buyer, or (b) an “accredited investor” as defined in Regulation D promulgated under the 1933 Act, that purchases a Note or a participation therein for its own account and without registration under state or other securities laws, pursuant to an exemption for such issuance.

2.1 Limitation on Note Transfers. Each Note or a participation therein will be issued to a “qualified institutional buyer” and without registration under state or other securities laws, pursuant to an exemption for such issuance; and accordingly the Notes and participations therein may not be assigned or transferred in whole or part, except to another “accredited investor” or “qualified institutional buyer”. The HRA will require, as a precondition to any transfer, that the transferee provide to the HRA an investor letter or certification in a form satisfactory to the HRA and other evidence satisfactory to the HRA that the transferee is a financial institution or other accredited investor under the securities laws.

### **SECTION 3. MISCELLANEOUS.**

3.1 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 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.

3.2 Authentication of Transcript. The officers of the HRA 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 HRA as to

the correctness of all statements contained therein.

3.3 Authorization to Execute Agreements. The proposed forms of the Notes, the Loan Agreement, the Compliance Agreement, the Disbursing Agreement, the Servicing Agreement, the Security Documents (collectively, and together with such other documents as Bond Counsel considers appropriate in connection with the issuance of the Notes, the "Financing Documents") are hereby approved in substantially the forms on file with the HRA, 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. The HRA Officials are authorized to execute the Notes, the Loan Agreement, the Servicing Agreement, the Compliance Agreement and any other Financing Documents to which the HRA is a party and such other documents as Bond Counsel considers appropriate in connection with the issuance of the Notes, in the name of and on behalf of the HRA. In the event of the absence or disability of any of the HRA Officials, such officer(s) of the HRA as, in the opinion of the City Attorney for the HRA, may act on 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 HRA herein authorized shall be conclusive evidence of the approval of such documents in accordance with the terms hereof.

3.4 Future Amendments. The authority to approve, execute and deliver future amendments to the Financing Documents entered into by the HRA in connection with the issuance of the Notes and any consents required under the Financing Documents is hereby delegated to the Executive Director of the HRA, subject to the following conditions: (a) such amendments or consents do not require the consent of the holder of the Notes or such consent has been obtained; (b) such amendments or consents do not materially adversely affect the interests of the HRA; (c) such amendments or consents do not contravene or violate any policy of the HRA, and (d) such amendments or consents are acceptable in form and substance to the counsel retained by the HRA to review such amendments. The authorization hereby given shall be further construed as authorization for the execution and delivery of such certificates and related items as may be required to demonstrate compliance with the agreements being amended and the terms of this Resolution. The execution of any instrument by the Executive Director shall be conclusive evidence of the approval of such instruments in accordance with the terms hereof. In the absence of the Executive Director any instrument authorized by this paragraph to be executed and delivered may be executed by the officer of the HRA or the City authorized to act in his or her place and stead.

3.5 Governmental Program. The HRA has established a governmental program of acquiring purpose investments for qualified 501(c)(3) organizations' projects. The governmental program is one in which the following requirements of §1.148-1(b) of the federal regulations relating to tax-exempt obligations shall be met:

- (a) the program involves the origination or acquisition of purpose investments;
- (b) at least 95% of the cost of the purpose investments acquired under the program represents one or more loans to a substantial number of persons representing the general public, states or political subdivisions, 501(c)(3) organizations, persons who provide housing and related facilities, or any combination of the foregoing;
- (c) at least 95% of the receipts from the purpose investments are used to pay principal, interest, or redemption prices on issues that financed the program, to pay or reimburse administrative costs of those issues or of the program, to pay or reimburse anticipated future losses directly related to the program, to finance additional purpose investments for the same general purposes of the program, or to redeem and retire governmental obligations at the next earliest possible date of redemption;
- (d) the program documents prohibit any obligor on a purpose investment financed by the

program or any related party to that obligor from purchasing bonds of an issue that finances the program in an amount related to the amount of the purpose investment acquired from that obligor; and

(e) the HRA shall not waive the right to treat the investment as a program investment.

3.6 Costs; Indemnification by Borrower. The Borrower has agreed and it is hereby determined that any and all costs incurred by the HRA in connection with financing the Project will be paid by the Borrower whether or not the Notes are issued and whether or not the Project is carried to completion. It is understood and agreed that the Borrower shall indemnify the HRA against all liabilities, losses, damages, costs and expenses (including attorney's fees and expenses incurred by the HRA) arising with respect to the Project, the Financing Documents, or the Notes, as further provided in the Loan Agreement. In addition, the Borrower shall pay the administrative fee of the HRA as provided in the Loan Agreement.

3.7 Headings; Terms. Paragraph headings in this resolution are for convenience of reference only and are not a part hereof, and shall not limit or define the meaning of any provision hereof. Capitalized terms used, but not defined, herein shall have the meanings given them in, or pursuant to, the Financing Documents.