

MEMORANDUM

TO Governing Body of the Cass County, North Dakota

FRO Ballard Spahr LLP

M

DATE December 8, 2022

RE Cass County, North Dakota (the “Issuer”) Revenue Refunding Note (Pioneer House Assisted Living, Inc.), Series 2014 issued to Bremer Bank, National Association, as lender

In 2014, the Issuer issued the above-referenced tax-exempt conduit revenue note (the “Note”), which is a special, limited obligation of the Issuer. The full, faith and credit and taxing power of the Issuer *are not* pledged to the payment of the Note. The Issuer loaned the proceeds of the Note to Pioneer House Assisted Living, Inc., a Minnesota nonprofit corporation (the “Conduit Borrower”), to finance the Conduit Borrower’s project. The Note is payable solely from the revenues of the Conduit Borrower. Bremer Bank, National Association (the “Lender”) is the 100% holder of the Note and has been the holder of the Note since its date of original issue. The current interest rate for the Note is based on a formula, part of which is a swap index rate that is derived off of the London Inter-Bank Offered Rate (LIBOR) administered by the ICE Benchmark Administration (“IBA”). In November 2020, the IBA announced that it will cease publication of US Dollar denominated LIBOR settings on June 30, 2023. The interest rate on the Note is subject to adjustment on certain dates in the future based upon the formula in the Note and with LIBOR being phased-out the interest rate on the Note will not be able to be adjusted with certainty in the future if an amendment is not made to the Note to account for the phasing-out of LIBOR.

In anticipation of the discontinuance of LIBOR, the Lender and the Conduit Borrower have elected to adjust the formula for resetting the interest rate of the Note with a new index and spread that closely approximates (is reasonably equivalent to) the current reset formula in the Note. The new interest rate index will be an index published by The Federal Home Loan Bank of Des Moines and the spread to the index will be adjusted to approximate the current formula in the Note. Both the Lender and the Conduit Borrower have agreed to the new formula for interest rate adjustments in the Note.

To account for this change, the Lender, the Conduit Borrower and the Issuer will enter into a technical amendment to the Note in the form of an Allonge to Promissory Note (the “Allonge”), amending the Note and the associated financing documents to evidence the new interest rate adjustment formula for the Note. In connection with the amendments, Ballard Spahr LLP will deliver a bond counsel opinion letter that the execution and delivery of the Allonge will not, in and of itself, adversely affect the exclusion of interest on the Note from gross income for federal income tax purposes.

Included with this memorandum is a form of a resolution to be considered by the governing body of the Issuer at its regularly scheduled meeting on December 19, 2022 that authorizes the appropriate Issuer officials to enter into the Allonge and any other documents or certificates necessary for the required amendment to the Note as a result of the phase out of LIBOR. In addition, the following are on file with the governing body of the Issuer:

1. Draft form of the Allonge;

2. Draft form of Bond Counsel No Adverse Change Opinion Letter.

As is typical of conduit revenue bonds and notes (also referred to as “private activity bonds”), the Issuer does not have any obligation to make any payments on the Note, and the Lender cannot require the City to levy a tax or appropriate funds if revenues are insufficient to pay interest or principal on the Note. The Note is now, and will remain, payable only from sources of payment pledged by the Conduit Borrower for loan repayment. The interest rate modification described in this memorandum will not have any effect on the Issuer’s credit rating or ability to seek bank qualification on any upcoming planned financings.

Sincerely,

Ballard Spahr LLP

RESOLUTION #2022-07

Authorizing an alternate interest rate index to replace a LIBOR based interest rate index for a conduit revenue obligation previously issued by the Cass County, North Dakota.

WHEREAS, the Cass County, North Dakota (the “Issuer”) previously issued its conduit Revenue Refunding Note (Pioneer House Assisted Living, Inc.), Series 2014 (the “Note”) and loaned the proceeds thereof to Pioneer House Assisted Living, Inc. (the “Borrower”); and

WHEREAS, Bremer Bank, National Association (the “Lender”), is the 100% holder of the Note and has been the holder of the Note since its date of original issue; and

WHEREAS, the interest rate on the Note is subject to adjustment on certain dates in the future and currently utilizes an index that is based on transactions using the London Interbank Offered Rate (LIBOR) administered by the ICE Benchmark Administration (“IBA”); and

WHEREAS, in November 2020, the IBA announced that it will cease publication of US Dollar denominated LIBOR settings on June 30, 2023; and

WHEREAS, the Lender and the Borrower have agreed upon a new index and appropriate spread to replace the LIBOR-based index currently utilized for the Note in order to approximate (be reasonably equivalent to) the current terms of the Note as closely as possible; and

WHEREAS, in order to amend the Note to account for the LIBOR phase-out and the associated loan documents, as necessary, the Issuer must approve such change; and

WHEREAS, the Borrower and the Lender have requested that the Issuer approve the required changes to the Note and the associated loan documents that are necessary as a result of the phase-out of LIBOR and the Borrower and the Lender have represented that (i) they are not changing any other terms of the Note, and (ii) an amendment to designate an alternate interest rate index is required to evidence such required changes; and

WHEREAS, the Borrower and the Lender have provided to the Issuer the following documents:

- (i) a memorandum from Ballard Spahr LLP, bond counsel, regarding the proposed amendments to the Note; and
- (ii) a draft form of an Allonge to Promissory Note (the “Allonge”) between the Issuer, the Borrower and the Lender which amends the Note; and

WHEREAS, the Allonge, the Note, and any documents required by the Borrower, the Lender, or Ballard Spahr LLP as bond counsel in connection with the amendments described above are hereinafter referred to as the “Amendment Documents”; and

WHEREAS, the Note at all times shall continue to be a special, limited obligation of the Issuer payable solely from the revenues of the Borrower and the full, faith and credit and the taxing power of the Issuer are not and shall not be pledged to the repayment of the Note; and

WHEREAS, in connection with the amendments, Ballard Spahr LLP will deliver a bond counsel opinion letter that the execution and delivery of the Allonge will not, in and of itself, adversely affect the exclusion of interest on the Note from gross income for federal income tax purposes.

Now, Therefore, Be It Resolved by the County Commission:

1. The forms of the Amendment Documents are hereby approved in substantially the form on file with the Issuer with such appropriate variations, omissions and insertions as are necessary and appropriate.
2. The Amendment Documents to which the Issuer is a party shall be executed on behalf of the Issuer by the signatures of its Chairperson and County Auditor, or their proper designees (collectively, the "Issuer Officials"). In case any officer whose signature shall appear on the Amendment Documents shall cease to be such officer before the delivery of the Amendment Documents, 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 inability of any of the Issuer Officials, any such officer(s) of the Issuer may act in their behalf without further act or authorization of this governing body.
3. The Borrower shall be the party responsible for paying all of the costs associated with the execution and delivery of the Amendment Documents.
4. All other actions of the Issuer previously authorizing the issuance of the Note shall continue to be in full force and effect.
5. This resolution shall be in full force and effect from and after its passage.

Adopted by the Board of County Commissioners of Cass County, North Dakota, this 19th Day of December, 2022.

Approved the 19th Day of December, 2022

By: _____
Its: Commission Chairman

Attest:

By: _____
Its: County Finance Director

ALLONGE TO PROMISSORY NOTE

This Allonge is dated and effective as of December 19, 2022 and is attached to and made a part of that certain Cass County, North Dakota Revenue Refunding Note (Pioneer House Assisted Living, Inc.), Series 2014 issued by Cass County, North Dakota, a county and political subdivision of the State of North Dakota, in the original principal amount of \$3,597,900 in favor of Bremer Bank, National Association, a national banking association (“Note”), the proceeds of which were loaned to Pioneer House Assisted Living, Inc. (the “Borrower”).

Due to the unavailability of the LIBOR Swap Rate (as defined in the Note), which is based on London Interbank Offered Rate (LIBOR) after June 30, 2023, and as contemplated by the terms of the Note in the event of such unavailability, the paragraph titled “Adjusted Interest Rate” and the paragraph immediately following it beginning on page 1 and continuing on page 2 of the Note are hereby deleted and replaced in their entirety with the following:

“Adjusted Interest Rate: The interest rate on this Note was adjusted on the First Interest Rate Adjustment Date to a rate of 2.90%. The interest rate on this Note will adjust on September 1, 2024 (“Interest Rate Adjustment Date”) to a rate (“Adjusted Interest Rate”) determined on such Interest Rate Adjustment Date (or if such date is not a business day, on the next succeeding business day) to be the rate per annum determined by the Purchaser to be equal to sixty-seven percent (67%) of the sum of (i) the 5 Year FHLB (defined below) then in effect plus (ii) [___] basis points, provided, however, that the Adjusted Interest Rate shall not be more than 200 basis points more than the Adjusted Interest Rate immediately prior to the adjustment and shall not exceed 6% per annum and this provision for rate adjustment shall not apply to the Taxable Rate or the Default Rate, as those terms are defined below.

The term “5 Year FHLB” shall mean the interest rate subject to change from time to time based on changes in an independent index which is the 5 Year Federal Home Loan Bank (FHLB) Rate as published by The Federal Home Loan Bank of Des Moines as of the date of determination (the “FHLB Index”). The FHLB Index is not necessarily the lowest rate charged by Purchaser on its loans. If the FHLB Index becomes unavailable during the term of this loan, Purchaser may designate a substitute Index after notifying the Issuer and Borrower. Purchaser will tell the Borrower the current FHLB Index rate upon Borrower’s request. The interest rate change will not occur more often than each five years.”

(signature page to follow)

(signature page to Allonge)

ISSUER:

CASS COUNTY, NORTH DAKOTA

By: _____
Its: Chairperson

By: _____
Its: County Finance Director

(signature page to Allonge)

Agreed to and accepted this ____ day of _____, 2022.

LENDER:

BREMER BANK, NATIONAL ASSOCIATION

By _____
Its _____

(signature page to Allonge)

BORROWER:

PIONEER HOUSE ASSISTED LIVING, INC.

By: _____
Its: _____

1218.49-allonge to Cass County note

_____, 2022

Cass County, North Dakota
Fargo, ND

Bremer Bank, National Association
Minneapolis, MN

Re: \$3,597,900 Revenue Refunding Note (Pioneer House Assisted Living, Inc.), Series 2014

Dear Ladies and Gentlemen:

We are acting as bond counsel in connection with the modification of the above-referenced Note. The Note is owned by Bremer Bank, National Association, a national banking association in Minneapolis, Minnesota (the "Purchaser"). We have been asked to provide this opinion with respect to the execution and delivery of an Allonge to Promissory Note, dated _____, 20__ (the "Allonge"), pursuant to which an interest rate index based on interest rate swap rates is being replaced by an interest rate index based on the Federal Home Loan Bank Rate published by the Federal Home Loan Bank of Des Moines.

In connection with the issuance of the Note, Lindquist & Vennum LLP issued its approving opinion, dated September 9, 2014 (the "Original Opinion"), to the effect that interest on the Note is not includable in gross income for purposes of federal income taxation under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), as enacted and construed on the date of such Original Opinion. In rendering this opinion, we have relied upon the Original Opinion. This opinion is not to be construed as a restatement or "bring-down" of the Original Opinion, which speaks as to the law, facts and circumstances as of its date. We have assumed continued validity of the Original Opinion and have made no investigation and express no opinion as to the tax-exempt status of the interest on the Note.

As to questions of fact material to our opinion, we have relied upon representations of the Issuer and the Purchaser and the certified proceedings of the Issuer without undertaking to verify the same by independent investigation.

We have examined the Note, the Resolution adopted by the Board of Commissioners of Cass County, North Dakota, on December 19, 2022, the Allonge, and such other statutes, documents, opinions, records, and matters of law as we deem necessary for the purpose of our opinion set forth below.

In rendering the opinion expressed herein, we have assumed the accuracy and truthfulness of all matters contained in the records, documents, certificates, and proceedings submitted to us and the genuineness of the signatures appearing on such records, documents, certificates, and proceedings.

Further, we have assumed the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified or photostatic copies and the authenticity of the originals of such documents, and the accuracy of the statements of fact contained in such documents.

Except as expressly set forth herein, we have not otherwise reviewed any actions, omissions or events occurring after the date of issuance of the Note.

Based upon the foregoing, it is our opinion that, as of the date hereof, the execution and delivery of the Allonge will not, in and of itself, adversely affect the exclusion of interest on the Note from gross income for federal income tax purposes.

Please be advised, however, that we have made no investigation and express no opinion as to whether any events have occurred or circumstances have existed (other than the events described above) since the issuance of the Note which could adversely affect the tax-exempt status of the interest thereon. Except as stated above, we express no opinion herein as to any other federal, state or local tax consequences of acquiring, carrying, owning or disposing of the Note. We also express no opinion regarding any change in laws that may have occurred since the date of the Original Opinion.

We are not opining upon any notices, certificates, or other documents delivered in connection with the execution and delivery of the Allonge. This opinion is (i) given as of the date hereof, (ii) limited to matters set forth herein, (iii) rendered solely for the benefit of the addressees hereto, and (iv) may not be relied upon by any others without our express written consent. We assume no obligation to update, revise, or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

Very Truly Yours,