

OFFICE USE ONLY		Return SIGNED Documents to BND
Borrower:	ESSENTIAL LIVING INC	
Program Option:	Flex PACE for Affordable Housing	
Community Participation:	Community Buydown	

**ESSENTIAL LIVING INC**  
**Document Instruction Sheet**

Enclosed are the Flex PACE for Affordable Housing documents for the loan approved on **August 2, 2021**.

Please do the following:

- 1.) Obtain the appropriate signatures on all documents,
- 2.) Provide copies of all documents to the borrower, and
- 3.) Forward copies of all documents to BND.

The documents included in this packet are:

1. **Exhibit A – Buydown Payment Schedule**
  - Please contact BND if loan amount, interest rate or term reflected do not match the promissory note. NOTE: Payment amounts are governed by promissory note. Payment amounts listed on Exhibit A are for illustrative purposes only.
2. **Addendum to the Promissory Note:**
  - Signed by ESSENTIAL LIVING INC and FIRST WESTERN BANK & TRUST.
3. **Interest Buydown Agreement:**
  - Signed by CITY OF MINOT and ESSENTIAL LIVING INC.
4. **Opinion of Counsel: Exhibit B (attached to the interest buydown agreement)**
  - Signed by CITY OF MINOT's legal counsel.
5. **Escrow Agreement:**
  - CITY OF MINOT must sign this and return a copy to BND along with a check for the Community's share of the buydown. BND needs the community's portion of the buydown at least 30 days prior to the first payment date.
6. **Community PACE Interest Buydown Authorization:**
  - Signed by CITY OF MINOT.
9. **Affordable Housing Addendum:**
  - This is to be completed and signed by CITY OF MINOT and ESSENTIAL LIVING INC.

If you have any questions in reference to these forms, please let us know.

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## ADDENDUM TO PROMISSORY NOTE PACE PROGRAM

FIRST WESTERN BANK & TRUST ("Originating Lender") has extended credit to **ESSENTIAL LIVING INC** (individually and collectively "Borrower") pursuant to a promissory note, dated \_\_\_\_\_ as amended from time to time ("Note"). This Addendum contains terms and conditions with respect to the rights and obligations of the Originating Lender and the Borrower concerning the participation of the Loan in the Bank of North Dakota ("BND") PACE Program. Except as specifically provided herein, all terms and conditions of the Note (as modified by any previous written agreements) remain in full force and effect, without waiver or modification, and are hereby ratified and confirmed as valid and enforceable in all respects.

### I. DEFINITIONS

- A. Defined Terms. Capitalized terms used in this Addendum and not otherwise defined shall have the meanings given to them in the Note and Related Documents. As used in this Addendum, the following terms have the following meanings (terms defined in the singular to have the same meaning when used in the plural and vice versa):

Affiliate means any Person (1) which directly or indirectly controls, or is controlled by, or is under common control with the Community or Originating Lender; (2) which directly or indirectly beneficially owns or holds five (5%) or more of any class of voting stock of the Community or the Originating Lender; or (3) five percent (5%) or more of the voting stock of which is directly or indirectly beneficially owned or held by the Community or the Originating Lender. The term control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

Borrowing Rate means the interest rate to be paid by the Borrower as set forth on the payment schedule labeled Exhibit A. If the terms of the Note provide for a variable or adjustable rate structure, the Borrowing Rate may vary over the term of the Note, but in no event will it be less than 1.00%.

BND Buydown Amount - means the portion of the Interest Buydown Amount to be paid by BND as set forth on the attached payment schedule labeled Exhibit A.

Buydown Documents – means the Interest Buydown Agreement, the Escrow Agreement and any related documents, attachments or schedules incorporated therein.

Community means **CITY OF MINOT**.

Community Buydown Amount - means the portion of the Interest Buydown Amount to be paid by the Community and set forth on the attached payment schedule labeled Exhibit A.

Community In-Kind Commitment Amount - means the amount of "in-kind" commitment made by the Community, if any, to match the BND Buydown Amount to be paid by BND as provided by the PACE Program. The "in-kind" Community Commitment Amount is provided by the Community in lieu of its cash portion of the Interest Buydown Amount; and is a contribution towards total costs of the Borrower's project in a form acceptable to BND. The payment schedule labeled Exhibit A specifies the Community commitment amount, if any.

Default means any of the following events:

- (a) A failure by the Borrower to make any payment of principal or interest on the Note when due and payable.

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- (b) Any representation made by the Borrower for the purpose of qualifying for the PACE Programs shall prove to have been incorrect in any material respect on or as of the date of the representation.
- (c) The relocation of the business which is the subject of the Note and Loan without prior approval of the Community or BND.
- (d) Any event of default in the Note or Related Documents.

Escrow Agent means Bank of North Dakota acting through its Trust Department.

Escrow Agreement – means Agreement by which the payments to disburse the Interest Buydown Amount is to be administered by the Escrow Agent.

Flex PACE Program – means the program option within the PACE Program which provides an interest buydown to a borrower who does not meet the State's legal definition of a primary sector business but does meet other needs as determined appropriate by the Community.

Flex PACE Affordable Housing Program – means the program option within the PACE Program which provides an interest buydown to a borrower for the permanent financing of affordable multi-family housing units within the Community.

Interest Buydown Amount – means the actual amount to be paid by the Escrow Agent on behalf of the Borrower over the life of the Note to buy down the Yield Rate to the Borrowing Rate as set forth in the payment schedule labeled Exhibit A

The Interest Buydown Amount includes the BND Buydown Amount and the Community Buydown Amount unless all or any portion of the Community's cash portion is made in the form of an "in-kind" Community In-Kind Commitment Amount then the Interest Buydown Amount may only consist of the BND Buydown Amount. The Interest Buydown Amount shall not exceed the Interest Buydown Amount per the payment schedule labeled Exhibit A.

The Interest Buydown Amount has been based upon the Yield Rate at the time of closing, unless otherwise agreed to in writing by the Originating Lender, BND, and the Borrower. The Interest Buydown Amount shall not vary, and subject to the terms and conditions of the PACE Program it shall be paid on the basis of a set stream of payments as defined under the column entitled Interest Buydown as listed in the payment schedule labeled Exhibit A.

Interest Rate Reduction - means each scheduled payment to be paid by Escrow Agent from Escrow Account as set forth in the payment schedule labeled Exhibit A.

Loan - The extension of credit between the Originating Lender and the Borrower evidenced by the Note.

Note may refer to a promissory note, credit agreement, loan agreement, or any other document that states the terms of the indebtedness between the Originating Lender and the Borrower.

PACE Program - means the "Partnership in Assisting Community Expansion Program" as established by N.D.C.C. Ch. 6-09.14 and includes loans approved under PACE Program options for PACE, Flex PACE or Flex PACE for Affordable Housing.

Payment Schedule means Exhibit A which may be updated and supplemented from time to time by BND.

Person means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, or other entity of whatever nature.

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Primary Sector Business has the meaning set forth in North Dakota Century Code Section 1-01-49 and must be certified by the Department of Commerce.

Related Documents - means all supporting documents related to the Loan.

Yield Rate - means the interest rate on the Note which, at any point in time when there is a default, may include the default rate as that term is defined in the Note.

## II. INTEREST REDUCTION PAYMENT BY ESCROW AGENT

Escrow Agent will, on each scheduled loan payment date during the term of the Loan, use moneys in the Escrow account to make an Interest Rate Reduction payment on behalf of the Borrower to the Originating Lender in the amount shown on the payment schedule labeled Exhibit A attached hereto.

## III. AFFIRMATIVE REPRESENTATIONS

So long as the Note is participating in the PACE Program:

- A. The Borrower has not nor will it ever make directly or indirectly a loan, grant or gift to the Originating Lender, Community, or their Affiliates, which will be used to secure, promote or otherwise influence the Originating Lender or the Community's ability or desire to make available Loan funds under the PACE Program.
- B. The Borrower shall comply with all of the terms, conditions and reporting requirement of the PACE Program.

## IV. TERMS OF THE INTEREST RATE BUYDOWN

- A. Default. In the Event of a Default, the Escrow Agent will discontinue the Interest Rate Reduction payments and the Note will accrue interest at the Yield Rate.
- B. Late or Partial Payments by the Borrower. If the Borrower makes a late payment or a partial payment, the Interest Rate Reduction payment will not be made and the interest rate from the period of the due date of the payment until the payment is received in full will be the Yield Rate, including any default rate provided for in the Note. If the late or partial payments are paid by the Borrower, Escrow Agent will resume making Interest Rate Reduction Payments on the next scheduled payment date, unless otherwise agreed to by BND.
- C. Prepayments and Adjustment to Payment Schedule. In the event the Borrower makes a prepayment under the terms of the Note, BND may re-amortize the payment schedule labeled Exhibit A but such re-amortization shall not be effective unless received in writing by Originating Lender fifteen (15) days prior to the next payment due date under the Note. Any replacement payment schedule labeled Exhibit A received by Originating Lender shall replace the existing payment schedule with no further action or consent required by Borrower.
- D. Partial Payment or Termination by the Community. In the event the Community makes a payment to the Escrow Agent which results in insufficient funding of the Community Buydown Amount or terminates its participation in PACE for the loan to the Borrower, the Community shall provide notice in writing to the Borrower, the Originating Lender and BND no less than fifteen (15) days prior to the next scheduled payment due date under the Note.

Upon receipt of notice from the Community and until such time as the deficiency is cured, the following shall occur:

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- The Escrow Agent shall discontinue to make Interest Rate Reduction payments.
- To the extent the Interest Buydown Amount paid by the Escrow Agreement does not reduce the interest expense to the interest expense calculated at the Borrowing Rate then the Borrower shall remit the difference to Originating Lender.
- The Borrower shall be responsible for the entire interest payment at the Yield Rate effective on the date of the next scheduled payment. From that point forward, this Addendum shall have no force or effect and any of the rights and obligations created herein shall be terminated and the Note and Related Documents, without regard to this Addendum or the Buydown Documents, shall govern the relationship between the Originating Lender and the Borrower.

E. Termination of PACE Program: In the event that funding under the PACE Program is terminated for any reason, this Agreement shall have no force or effect and any obligation of BND, the Community and the Escrow Agent to pay the Interest Buydown Amount shall cease.

ESSENTIAL LIVING INC.

By: 

Title: \_\_\_\_\_

FIRST WESTERN BANK & TRUST

By: 

Title: V.P. + BUSINESS BANKING MGR

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## INTEREST BUYDOWN AGREEMENT PACE PROGRAM

This Interest Buydown Agreement is made between **CITY OF MINOT** (the "Community"), and the **Bank of North Dakota** ("BND") acting on behalf of the PACE Program ("PACE") for the purpose of a buydown on the interest for the loan (the "Loan") received by **ESSENTIAL LIVING INC** (the "Borrower") from **FIRST WESTERN BANK & TRUST** (the "Originating Lender") dated \_\_\_\_\_. The attached payment schedule labeled Exhibit A details the Loan amount and terms and may be modified from time to time. The Borrower, Community, and BND agree as follows:

### ARTICLE I

#### DEFINITIONS

Section 1.01. Defined Terms. Capitalized terms used in this Agreement and not otherwise defined shall have the meanings given to them in the Note and Related Documents. As used in this Agreement, the following terms have the following meanings (terms defined in the singular to have the same meaning when used in the plural and vice versa):

Addendum to the Promissory Note – means the Addendum to the Promissory Note entered into by the Borrower and Originating Lender. The addendum to the Promissory Note addresses specific terms and conditions with respect to the Borrower's participation of their Loan in PACE Program offered by BND.

Agreement - means this Interest Buydown Agreement, as amended, supplemented, or modified from time to time.

Affiliate - means any Person (1) which directly or indirectly controls, or is controlled by, or is under common control with the Originating Lender or Borrower; (2) which directly or indirectly beneficially owns or holds five (5%) or more of any class of voting stock of the Originating Lender or Borrower; or (3) five percent (5%) or more of the voting stock of which is directly or indirectly beneficially owned or held by the Originating Lender or Borrower. The term control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

BND Buydown Amount - means the portion of the Interest Buydown Amount to be paid by BND as set forth on the attached payment schedule labeled Exhibit A.

Borrowing Rate - means the interest rate to be paid by the Borrower as set forth on the payment schedule labeled Exhibit A. If the terms of the Note provide for a variable or adjustable rate structure, the Borrowing Rate may vary over the term of the Note, but in no event will it be less than 1.00%.

Business Day - means any day other than a Saturday, Sunday, or other day on which commercial banks in North Dakota are authorized or required to close under the laws of the State of North Dakota, unless otherwise provided for in the Note.

Buydown Documents means this Agreement, the Escrow Agreement and any related documents, attachments or schedules incorporated therein.

Community Buydown Amount - means the portion of the Interest Buydown Amount to be paid by the Community and set forth on the attached payment schedule labeled Exhibit A.

Community In-kind Commitment Amount - means the amount of "in-kind" commitment made by the Community, if any, to match the BND Buydown Amount to be paid by BND as provided by the PACE Program. The "in-kind" Community Commitment Amount is provided by the Community in lieu of its cash portion of the Interest Buydown Amount; and is a contribution towards total costs of the Borrower's project in a form acceptable to BND. The payment schedule labeled Exhibit A specifies the Community commitment amount, if any.

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Escrow Agent – means Bank of North Dakota acting through its Trust Department.

Escrow Agreement – means Agreement by which the payments to disburse the Interest Buydown Amount is to be administered by the Escrow Agent.

Flex PACE Program – means the program option within the PACE Program which provides an interest buydown to borrowers that do not meet the states definition of a primary sector business, but does meet other needs as determined appropriate by the Community.

Flex PACE Affordable Housing Program – means the program option within the PACE Program which provides an interest buydown to borrowers for the permanent financing of new affordable multi-family housing units within the Community.

Interest Buydown Amount – means the actual amount to be paid by the Escrow Agent on behalf of the Borrower over the life of the Note to buy down the Yield Rate to the Borrowing Rate as set forth in the payment schedule labeled Exhibit A.

The Interest Buydown Amount includes the BND Buydown Amount and the Community Buydown Amount unless all or any portion of the Community's cash portion is made in the form of an "in-kind" Community Commitment Amount, then the Interest Buydown Amount may only consist of the BND Buydown Amount. The Interest Buydown Amount shall not exceed the Interest Buydown Amount per the payment schedule labeled Exhibit A.

The Interest Buydown Amount has been based upon the Yield Rate at the time of closing, unless otherwise agreed to in writing by the Originating Lender, BND, and the Borrower. The Interest Buydown Amount shall not vary, and subject to the terms and conditions of the PACE Program it shall be paid on the basis of a set stream of payments as defined under the column entitled INTEREST EXPENSE DIFF. DUE TO BUYDOWN as listed on the payment schedule labeled Exhibit A.

Interest Rate Reduction - means each scheduled payment to be paid by Escrow Agent from Escrow Account as set forth in the payment schedule labeled Exhibit A.

Investment – Total costs of equipment, real estate and/or improvements to real property associated with the PACE loan request.

Note - may refer to a promissory note, credit agreement, loan agreement, or any other document that states the terms of the indebtedness between the Originating Lender and the Borrower.

PACE Program – means the "Partnership in Assisting Community Expansion Program" and includes loans approved under PACE Program options for PACE, Flex PACE or Flex PACE for Affordable Housing.

Participation Agreement – means the agreement between the Originating Lender and BND in connection with the Loan.

Payment Schedule - means Exhibit A which may be updated and supplemented from time to time by BND.

Person - means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, or other entity of whatever nature.

Related Documents - means all supporting documents related to the Loan.

Yield Rate - means the interest rate on the Note which, at any point in time when there is a default, may include the default rate as that term is defined in the Note.

## ARTICLE II

### TERMS OF THE INTEREST RATE BUYDOWN

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SECTION 2.01. Interest Buydown Amount. BND and the Community agree on the terms and conditions set forth in this Agreement to buy down the interest from the Yield Rate to the Borrowing Rate for the Loan.

1. Interest Payments. BND and the Community shall make Interest Buydown Amount payments to the Escrow Agent as provided for in the attached payment schedule labeled Exhibit A.
2. Method of Payment. BND and the Community shall make each payment to the Escrow Agent as provided by the Buydown Documents no later than the date when due as defined by the Note in lawful money of the United States in immediately available funds unless otherwise expressly provided for. Whenever any payment to be made under the Buydown Documents shall be stated to be due on a Saturday, Sunday, or a public holiday, or the equivalent for banks generally under the laws of the State of North Dakota, the payment shall be made on the next succeeding Business Day.
3. Disbursement of the Interest Buydown Amount. The Escrow Agent shall disburse the Interest Buydown Amount to the Originating Lender in the amounts as set out and described in the payment schedule labeled Exhibit A subject to the Note.
4. Default by the Borrower. In the event of a default by the Borrower, as defined in the Note, or a Default as defined in the Addendum to Promissory Note Pace Program given for the Note, the Escrow Agent shall discontinue any payments required under the Buydown Documents until such time as the Default is cured.
5. Late or Partial Payments by the Borrower. If the Borrower makes a late payment or a partial payment, the Interest Rate Reduction payment will not be made and the interest rate from the period of the payment date of the payment until the payment is received will be the Yield Rate, including any default rate provided for in the Note. If the late or partial payments are paid by the Borrower, Escrow Agent will resume making Interest Buydown Amount on the next scheduled payment date, unless otherwise agreed to by BND.
6. Prepayments and Adjustment to Payment Schedule. In the event the Borrower makes a prepayment under the terms of the Note, BND may re-amortize the payment schedule labeled Exhibit A but such re-amortization shall not be effective unless received in writing by the Originating Lender fifteen (15) days prior to the next payment due date under Note. Any replacement payment schedule labeled Exhibit A received by Originating Lender shall replace the existing payment schedule with no further action or consent required by Borrower.
7. Partial Payment or Termination by the Community. In the event the Community makes a payment to the Escrow Agent which results in insufficient funding of the Community Buydown Amount or terminates its participation in PACE for the loan to the Borrower, the Community shall provide notice in writing to the Borrower, the Originating Lender and BND no less than fifteen (15) days prior to the next scheduled payment due date under the Note.

Upon receipt of notice from the Community and until such time as the deficiency is cured, the following shall occur:

- The Escrow Agent shall discontinue to make Interest Rate Reduction payments.
- To the extent the Interest Buydown Amount paid by the Escrow Agreement does not reduce the interest expense to the interest expense calculated at the Borrowing Rate then the Borrower shall remit the difference to Originating Lender.
- The Borrower shall be responsible for the entire interest payment at the Yield Rate effective on the date of the next scheduled payment. From that point forward, this Addendum shall have no force or effect and any of the rights and obligations created herein shall be terminated and the Note and Related Documents, without regard to this Addendum or the Buydown Documents, shall govern the relationship between the Originating Lender and the Borrower.



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8. Termination of PACE Program. In the event that funding under the PACE Program is terminated for any reason, this Agreement shall have no force or effect and any obligation of BND, the Community and the Escrow Agent to pay the Interest Buydown Amount shall cease.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

SECTION 3.01. The Community represents and warrants to the Borrower and BND that:

1. Good Standing, and Due Qualification. The Community is in good standing under the laws of the State of North Dakota. The execution, delivery, and performance of this Agreement by the Community has been duly authorized by all necessary Persons.
2. Other Agreements. The Community is not a party to any indenture, loan, or credit agreement, or to any lease or other agreement or instrument, or subject to any charter or corporate restriction which could have a material adverse effect on the business, properties, assets, operations, or conditions, financial or otherwise, of the Borrower, Originating Lender or their Affiliates, or the ability of the Borrower, Originating Lender or their Affiliates to carry out the Borrower's and the Originating Lender's obligations under the Note and Related Documents. The Community and the Community's Affiliates are not in default in any respect in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument material to the performance of the Note and Related Documents.
3. Sufficient Funds. The Community has or will make available sufficient funds to finance the Community Buydown Amount or Community In-kind Commitment Amount. This includes pledging revenue producing mechanisms which the Community is statutorily authorized to pledge or impose. Revenue producing mechanisms include but are not limited to any bond or mill levy or other tax which may be pledged or imposed for the purpose of economic development.
4. Source of Funds. The Community Buydown Amount or Community In-kind Commitment Amount does not nor will it ever be derived directly or indirectly from a loan, grant or gift from the Borrower or the Borrower's Affiliate or a contribution from Originating Lender or Originating Lender's Affiliate which is greater than the Originating Lender or its Affiliate would normally contribute to the Community's economic development efforts. The Community Buydown Amount may be in the form of a loan. Interest may begin to accrue, however, no repayment of principal or interest on the Community loan may commence until the PACE interest buydown amount has been fully expended.
5. Litigation. There is no pending or threatened action or proceeding against or affecting the Community before any court, governmental agency, or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the ability of the Community to perform its obligation under the Note and Related Documents to which it is a party.
6. No Defaults on Outstanding Judgments or Orders. The Community has satisfied all judgments, and is not in default with respect to any judgment, writ, injunction, decree, rule, or regulation or any court, arbitrator, or federal, state, municipal, or other governmental authority, commission, board, bureau, agency, or instrumentality, domestic or foreign, which materially adversely affects the ability of the Community to perform its obligation under the Note and Related Documents to which it is a party.

### ARTICLE IV

#### AFFIRMATIVE COVENANTS

SECTION 4.01. Notice of Adverse Actions. So long as the Loan remains unpaid, all parties to this Agreement shall promptly after the commencement thereof, provide all parties notice of all actions, suits, and

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proceedings before any court or governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, affecting the parties which could have a material adverse effect on the Community's ability to perform under the Note and Related Documents.

SECTION 4.02. Obligation to Resolve Disputes. It is the intent of all parties to this Agreement that conflicts or potential conflicts and circumstances or situations which arise which are not considered herein, be resolved at the most informal level possible and to the mutual benefit of each party to the extent possible.

SECTION 4.03. Program Requirements. So long as the Note is participating in the PACE Program:

1. Job Creation: - Job creation is not necessarily a requirement of the Flex PACE or Flex PACE for Affordable Housing Programs, but will be tracked for informational purposes. The Borrower will show evidence of the level of employment created and maintained in North Dakota for the duration of this Agreement. At the request of the BND, the Borrower shall complete a recipient report to verify employment levels, and such other evidence as BND may request from the Borrower.
2. Donations, Gifts or Loans. The Borrower has not nor will it ever make directly or indirectly a loan, grant or gift to the Originating Lender, Community, or their Affiliates, which will be used to secure, promote or otherwise influence, the Originating Lender's or Community's ability or desire to make available Loan funds under the PACE Program.
4. Verification of Affordable: The Community, local housing authority, or other designated local government agency will verify the number of affordable multi-family housing units.

The Borrower shall provide to the Community, local housing authority, or other designated local government agency, on an annual basis, evidence of rental concessions made as part of the Borrower's application and approval under the Flex PACE Affordable Housing Program. The evidence provided shall be in a form and substance satisfactory to the Community, local housing authority, or other local government agency.

The Community, local housing authority, or other designated local government agency shall certify to BND annually the number of affordable multi-family housing units. The Borrower must have created and maintain one affordable housing unit in North Dakota for the duration of this Agreement for every \$25,000 of BND Buydown Amount provided.

## ARTICLE V

### CONDITIONS PRECEDENT

SECTION 5.01. Condition Precedent to this Agreement. The obligation of BND under this Agreement is subject to the condition precedent that BND shall have received on or before the day of the Loan each of the following, in form and substance satisfactory to BND and its counsel:

1. Evidence of all Corporate Action by the Community. BND may request certified copies of all corporate action taken by the Community, including resolutions of its Board of Directors, or certified copies of the official minutes of the appropriate governing body, or the equivalent thereof, authorizing the execution, delivery, and performance of the Buydown Documents to which it is a party and each other document to be delivered pursuant to this Agreement.
2. Opinion of Counsel for the Community. A favorable opinion of counsel for the Community in substantially the form of Exhibit B and as to such other matters as BND may reasonably request. Exhibit B shall also certify the names and true signatures of the officers of the Community authorized to sign the Buydown Documents to which it is a party and each other document to be delivered by the Community under this Agreement.
3. Buydown Documents as required by the PACE Program from all parties to this Agreement.

SECTION 5.02. Notification to Originating Lender. Upon satisfaction of the conditions, BND shall notify

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the Originating Lender in writing that all conditions have been satisfied for the Loan's participation in the PACE Program.

## ARTICLE VI

### MISCELLANEOUS

**SECTION 6.01. Amendments, Etc.** No amendment, modification, termination, or waiver of any provision, nor consent to any departure from this Agreement, shall in any event be effective unless such is in writing and signed by BND and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

**SECTION 6.02. Notices, Etc.** All notices and other communications provided for under this Agreement shall be in writing and shall be effective upon the earlier of (a) when actually delivered, (b) when deposited with a nationally recognized overnight courier or (c) if mailed, when deposited in the United State mail, as first class, certified or registered mail postage prepaid, directed to the applicable party at the address specified below, except that notices to BND pursuant to the provisions of Article II shall not be effective until received by BND.

Community:	CITY OF MINOT PO BOX 5006 MINOT, ND 58702-5006
BND:	BANK OF NORTH DAKOTA PO BOX 5509 BISMARCK, ND 58506-5509 Attention: Commercial Loan Department
Borrower:	ESSENTIAL LIVING INC 400 10TH ST SE MINOT ND 58701-4908

Any party may change its address for notices by giving formal written notice to the other parties and specifying that the purpose of the notice is to change the party's address.

**SECTION 6.03. No Waiver; Remedies.** No failure on BND's part to exercise, and no delay in exercising, any right, power, or remedy under any Buydown Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right under any Buydown Documents preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in the Buydown Documents are cumulative and not exclusive of any remedies provided by law.

**SECTION. 6.04. Successors and Assigns.** This Agreement may not be assigned or transferred by either party without the prior consent of BND.

**SECTION 6.05. Costs, Expenses, and Attorney Fees.** The Community and BND agree to indemnify each other for reasonable fees and out-of-pocket expenses, including attorney fees, in connection with the enforcement of any portion of this Agreement.

**SECTION 6.06. Indemnification for Misrepresentation.** The Community and BND agree to indemnify each other for any and all loss, payment and additional expense resulting from any misrepresentation or breach of warranty made herein, including any expense and legal fees that might be incurred because of any such misrepresentation or breach of warranty.

**SECTION 6.07. Disclosure of Information.** The Community hereby consents to the disclosure of all financial, business, and other information about the Community which BND may possess at any time to other lenders participating in the Loan.

**SECTION 6.08. Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of North Dakota.

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Program Option:	Flex PACE for Affordable Housing	
Community Participation:	Community Buydown	

SECTION 6.09. Severability of Provisions. Any provision of any Buydown Document which is prohibited, unenforceable, or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability, or lack of authorization without invalidating the remaining provisions of the Buydown Documents or affecting the validity, enforceability, or legality of such provision in any other jurisdiction.

SECTION 6.10. Headings. Article and Section headings in the Buydown Documents are included for the convenience of reference only and shall not constitute a part of the applicable Buydown Documents for any other purpose.

SECTION 6.11. Third Party Beneficiary. The parties acknowledge that the Borrower is an intended third party beneficiary of this agreement and, to the extent that funds are available and no determination has been made by a court of competent jurisdiction that this agreement is unenforceable, is entitled to enforce the agreement as provided by N.D.C.C. § 9-02-04.

SECTION 6.12 Document Imaging and Electronic Transactions. All parties hereby acknowledge the receipt of a copy of this Agreement and all other loan documents. BND may, on behalf of parties, create a microfilm or optical disk or other electronic image of this Agreement and any or all of the loan documents. BND may store the electronic image of this Agreement and loan documents in its electronic form and then destroy the paper original as part of BND's normal business practices, with the electronic image deemed to be an original.

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligation hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized, as of the date first above written.

CITY OF MINOT

By: Shawn Sipma

Its: Mayor

BANK OF NORTH DAKOTA

By: Jackie Duke

Jackie Duke

Its: Business Banker

ESSENTIAL LIVING INC

By: [Signature]

Title: \_\_\_\_\_

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Borrower:	ESSENTIAL LIVING INC	
Program Option:	Flex PACE for Affordable Housing	
Community Participation:	Community Buydown	

EXHIBIT "B"  
OPINION OF COUNSEL  
Sept. 21, 2021

I have acted as counsel for CITY OF MINOT in connection with the terms and conditions of the Interest Buydown Agreement for the loan to ESSENTIAL LIVING INC dated September 21, 2021.

In this capacity, I have examined the Promissory Note, the Interest Buydown Agreement, the Escrow Agreement, the schedules and attachments thereto, and such documents, certificates, and other instruments as I have deemed necessary for the purpose of this opinion. Capitalized terms used in this opinion which are defined in the Interest Buydown Agreement shall have the same meanings as in the Interest Buydown Agreement unless defined otherwise.

Based upon the foregoing, it is my opinion that:

1. The Community is a corporation duly organized, existing and in good standing under the laws of North Dakota and is qualified to transact business and is in good standing in North Dakota and, to my knowledge, is not required to be qualified as a foreign corporation in any other jurisdiction.
2. The Community has full power to execute and deliver the Interest Buydown Agreement, the Escrow Agreement and to perform its obligations under the Buydown Documents. As of the date of the Interest Buydown Agreement, the following Officers, Directors and/or Community Officials of the Community authorized to sign the Buydown Documents as follows:

Shaun Sigma  
Name (Printed)

Mayor  
Title

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Title

3. All corporate action by the Community, and all consents and approvals of any persons necessary to the validity of the Buydown Documents has been duly taken, and the Buydown Documents and such other documents do not conflict with any provisions of the charter or bylaws of the Community, or of any applicable laws or any other agreement binding the Community or its property of which I have knowledge.
4. The Interest Buydown Agreement, the Escrow Agreement, the Buydown Documents, and all other documents to be delivered under the Interest Buydown Agreement to be executed by, and each is a valid and binding obligation of, the Community, enforceable in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting creditors' rights generally or by general equitable principals.
5. After appropriate inquiry, I am without any knowledge of any matters contrary to the representations and warranties contained in Article III of the Interest Buydown Agreement.

BY:

Unky RS  
(Signature)

Kelly Hundeshof  
(Typed/Printed Name)

City of Minot  
(Firm Name/Address)

PO Box 5006

Minot ND 58702

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Borrower:	ESSENTIAL LIVING INC	
Program Option:	Flex PACE for Affordable Housing	
Community Participation:	Community Buydown	

## ESCROW AGREEMENT PACE PROGRAM

This Escrow Agreement (the "Agreement") is made between the **BANK OF NORTH DAKOTA** acting on behalf of the PACE program ("BND"), **CITY OF MINOT** (the "Community"), and the **BANK OF NORTH DAKOTA** acting through its Trust Department as Escrow Agent (the "Escrow Agent") for the purpose of receiving and disbursing the Interest Buydown Amount in connection with the loan (the "Loan") made to **ESSENTIAL LIVING INC** (the "Borrower") by **FIRST WESTERN BANK & TRUST** (the "Originating Lender") pursuant to a promissory note dated (the "Note").

BND, the Community and the Escrow Agent hereby agree as follows:

Section 1. Defined Terms. Capitalized terms used in this Agreement and not otherwise defined shall have the meanings given to them in the Interest Buydown Agreement. As used in this Agreement, the following terms have the following meanings (terms defined in the singular to have the same meaning when used in the plural and vice versa):

Agreement - means this Escrow Agreement, as amended, supplemented, or modified from time to time.

Borrowing Rate - means the interest rate to be paid by the Borrower after subtracting the Interest Buydown Amount from the interest expense which will accrue at the initial Yield Rate over the life of the PACE commitment as set forth on the payment schedule labeled Exhibit A. If the terms of the Note provide for a variable or adjustable rate structure, the Borrowing Rate may vary over the term of the Note depending upon the periodic adjustment of the rate index over the term of the Loan, but in no event will it be less than the minimum rate set forth in the Note.

BND Buydown Amount - means the portion of the Interest Buydown Amount to be paid by BND as set forth on the payment schedule labeled Exhibit A.

Buydown Documents - means this Agreement, the Interest Buydown Agreement, Addendum to Promissory Note PACE Program, and any related documents, attachments or schedules incorporated therein.

Community Buydown Amount - means the portion of the Interest Buydown Amount to be paid by the Community and set forth on the attached payment schedule labeled Exhibit A.

Community In-kind Commitment Amount - means the amount of "in-kind" commitment made by the Community, if any, to match the BND Buydown Amount to be paid by BND as provided by the PACE Program. The "in-kind" Community Commitment Amount is provided by the Community in lieu of its cash portion of the Interest Buydown Amount, and is a contribution towards total costs of the Borrower's project in a form acceptable to BND. The payment schedule labeled Exhibit A specifies the Community Commitment Amount, if any.

Escrow Agent - means Bank of North Dakota acting through its Trust Department.

Escrow Agreement - Agreement by which the payments to retire the Interest Buydown Amount is to be administered by the Escrow Agent.

Flex PACE Program - means the program option within the PACE Program which provides an interest buydown to borrowers that do not meet the states definition of a primary sector business but does meet other needs as determined appropriate by the Community.

Flex PACE Affordable Housing Program - means the program option within the PACE Program which provides an interest buydown to borrowers for the permanent financing of affordable multi-family housing units within the Community.

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Program Option:	Flex PACE for Affordable Housing	
Community Participation:	Community Buydown	

Interest Buydown Amount – means the actual amount to be paid by the Escrow Agent on behalf of the Borrower over the life of the Note to buy down the Yield Rate to the Borrowing Rate as set forth in the payment schedule labeled Exhibit A.

The Interest Buydown Amount includes the BND Buydown Amount and the Community Buydown Amount unless all or any portion of the Community's cash portion is made in the form of an "in-kind" Community Commitment Amount, then the Interest Buydown Amount may only consist of the BND Buydown Amount. The Interest Buydown Amount shall not exceed the Interest Buydown Amount per the payment schedule labeled Exhibit A.

The Interest Buydown Amount has been based upon the Yield Rate at the time of closing, unless otherwise agreed to in writing by Originating Lender, BND, and the Borrower. The Interest Buydown Amount shall not vary, and subject to the terms and conditions of the PACE Program it shall be paid on the basis of a set stream of payments as defined under the column entitled INTEREST EXPENSE DIFF. DUE TO BUYDOWN as listed on the payment schedule labeled Exhibit A.

Interest Rate Reduction - means each scheduled payment to be paid by Escrow Agent from Escrow Account as set forth in the payment schedule labeled Exhibit A.

PACE Program – means the "Partnership in Assisting Community Expansion Program" and includes loans approved under PACE Program options for PACE, Flex PACE or Flex PACE for Affordable Housing.

Payment Schedule - means Exhibit A which may be updated and supplemented from time to time by BND.

Yield Rate - means the interest rate on the Note which, at any point in time when there is a default, may include the default rate as that term is defined in the Note.

Section 2. Receipt of Interest Buydown. BND and the Community agree to deliver to the Escrow Agent the amount as set out and described in the payment schedule –labeled Exhibit A in the amounts and on the dates indicated, subject to this Agreement.

Section 3. Disbursement of the Interest Buydown Amount. The Escrow Agent agrees to disburse the Interest Buydown Amount to Originating Lender in the amounts and on the dates as set out and described in the payment schedule labeled Exhibit A, subject to this Agreement.

Section 4. Notice from BND. Upon notice of receipt of Loan payment according to the terms of the Note, notice from BND, the Escrow Agent shall disburse the Interest Buydown Amount to the Originating Lender in the amounts as set out in the payment schedule labeled Exhibit A. If on the date the Loan payment is received by BND, the Escrow Agent has not received all or any part of the Community's share of the Interest Buydown Amount as indicated on the payment schedule labeled Exhibit A, the Escrow Agent shall not disburse either the BND Buydown Amount or and the Community Buydown Amount, to the Originating Lender.

In the event that all parties to this Agreement have consented that the Community will provide a Community In-Kind Commitment Amount in lieu of all or some part of its cash portion of the Interest Buydown Amount, the Escrow Agent shall disburse the Interest Buydown Amount to the Originating Lender in the amounts as set out in the payment schedule labeled Exhibit A.

Section 5. Notice of Suspension of Disbursement of Interest Buydown Amount. Upon notice by BND to the Escrow Agent that payments of the Interest Buydown Amount are to be suspended, the Escrow Agent will not make any further disbursements of the Interest Buydown Amount to the Originating Lender, until the Escrow Agent receives notice from BND, directing the Escrow Agent to resume disbursing the Interest Buydown Amount upon receipt of a notice for payment.

Section 6. Notice of Final Disbursal and Termination. Upon final Interest Rate Reduction disbursement or termination of the Interest Buydown Agreement, the Escrow Agent will disburse any remaining amounts held under this Agreement to the Community and the PACE Fund according to their respective shares of the remaining balance. This Agreement will be considered terminated upon return of funds or final Interest Rate Reduction



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Borrower:	ESSENTIAL LIVING INC	
Program Option:	Flex PACE for Affordable Housing	
Community Participation:	Community Buydown	

disbursement and shall have no further duties or obligations to any party other than, upon request, to provide a final accounting of receipts and disbursements.

Section 7. Duties of Escrow Agent, Reliance on Notices. The Escrow Agent shall not be liable as Escrow Agent except for the performance of such duties as are specifically set out in this Agreement to be performed by the Escrow Agent and the Escrow Agent may conclusively rely, as to the truth of the statements expressed in any notice, in the absence of bad faith on the part of the Escrow Agent, upon notices conforming to the requirements of this Agreement. No provision of this Agreement shall be construed to relieve the Escrow Agent from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that the Escrow Agent shall at all times be protected from liability for any error or judgment made in good faith by a responsible officer or officers unless it shall be proved that the Escrow Agent was negligent in ascertaining the pertinent facts and the Escrow Agent shall at all times be protected with respect to any action taken or omitted to be taken by it in good faith and in accordance with the directions contained in a notice received by the Escrow Agent pursuant to this Agreement. The Escrow Agent shall also be protected when acting in good faith and upon advice of its counsel.

Section 8. Fees and Costs. The Escrow Agent shall be entitled to receive fees, in such amounts as it may establish from time to time, and to be reimbursed for its costs, including attorney's fees, for the performance of its duties under this Agreement.

Section 9. Notice. All notices, demands and requests to be given or made under this Agreement, if in writing, shall be properly made if sent by United States mail, postage prepaid, and addressed as follows:

Community:	CITY OF MINOT PO BOX 5006 MINOT, ND 58702-5006
BND:	BANK OF NORTH DAKOTA, Agent PO BOX 5509 BISMARCK, ND 58506-5509 Attention: Financial Institutions Market
Escrow Agent:	BANK OF NORTH DAKOTA, Escrow Agent PO BOX 5509 BISMARCK, ND 58506-5509 Attention: Trust Department
Lender:	FIRST WESTERN BANK & TRUST PO BOX 1090 MINOT ND 58702-1090

Any of the above parties may change the address listed for it at any time upon written notice of such change sent by United States mail, postage prepaid, to each of the other parties.

Section 10. Amendments. No amendment, modification, termination, or waiver of any provision, nor consent to any departure from this Agreement shall in any event be effective unless in writing and signed by all parties and then such waiver, consent or amendment shall be effective only in the specific instance and for the specific purpose for which given.

Section 11. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of North Dakota.

Section 12. Severability of Provisions. Any provision of this Agreement which is prohibited or unenforceable by law shall be deemed severable to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement.

Section 13. Headings. Article and Section headings in this Agreement are for the convenience of



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Program Option:	Flex PACE for Affordable Housing	
Community Participation:	Community Buydown	

reference only and shall not constitute a part of this Agreement for any other purpose.

Section 14. No Waiver, Remedies. No failure on the part of the Escrow Agent to exercise, and no delay in exercising, any right, power, or remedy under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in this Agreement are cumulative and are not exclusive of any remedies provided by law.

Section 15. Document Imaging and Electronic Transactions. All parties hereby acknowledge the receipt of a copy of this Agreement and all other loan documents. BND may, on behalf of parties, create a microfilm or optical disk or other electronic image of this Agreement and any or all of the loan documents. BND may store the electronic image of this Agreement and loan documents in its electronic form and then destroy the paper original as part of BND's normal business practices, with the electronic image deemed to be an original.

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligation hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized, as of the date first above written.

**BANK OF NORTH DAKOTA, BND**

Jaqueline Duke  
 Jackie K Duke  
 Title: Business Banker

**CITY OF MINOT**

[Signature]  
 Title: Mayor

**Please select Community's preferred billing option:**

- ☐ One-Time Payment (PV)
- ☐ Annually
- ☐ Semi-Annually
- ☐ Quarterly
- ☐ Monthly

**BANK OF NORTH DAKOTA, Escrow Agent**

Carrie Willits  
 Title: ESCROW OFFICER

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Program Option:	Flex PACE for Affordable Housing	
Community Participation:	Community Buydown	

### COMMUNITY PACE INTEREST BUYDOWN AUTHORIZATION

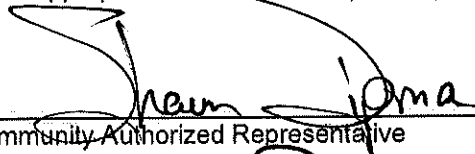
The CITY OF MINOT (the Community) has approved its participation in the PACE Program for a loan to **ESSENTIAL LIVING INC** (the Borrower) and has made the necessary provisions to match the BND Buydown Amount to be paid by Bank of North Dakota (BND) as required by the program.

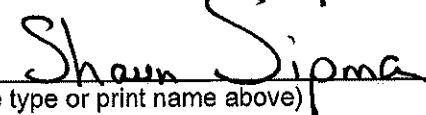
The total PACE benefit to the Borrower and the breakdown to the Community and BND are detailed in the payment schedule labeled Exhibit A.

The Borrower's rate will be bought down approximately 4.00% below the Yield Rate as defined in the Escrow Agreement Pace Program at the time of closing of the Loan to the Borrower, unless otherwise agreed to in writing.

The Community Authorized Representative signing this Authorization represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Authorization and that this Authorization is a valid, legal and binding on the Community and enforceable in accordance with its terms of this Authorization.

The Community shall provide an Opinion of Counsel in a form satisfactory to BND verifying the Community has taken appropriate action and has authority for its participation in the PACE Program.

  
\_\_\_\_\_  
Community Authorized Representative

  
\_\_\_\_\_  
(Please type or print name above)

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Borrower:	ESSENTIAL LIVING INC	
Program Option:	Flex PACE for Affordable Housing	
Community Participation:	Community Buydown	

### Affordable Housing Addendum

August 2, 2021

CITY OF MINOT  
PO BOX 5006  
MINOT, ND 58702-5006

A requirement of the Flex-PACE for Affordable Housing Program is to obtain verification from a local housing authority or local government entity that the rental rates being charged by the borrower below are current market rates. This is to be done upon the time of application and on the anniversary date of the loan closing.

Please complete the remainder of this form for verification purposes:

Borrower Name: ESSENTIAL LIVING INC

Community: CITY OF MINOT

Do you consider the rents being proposed by the borrower affordable?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Bank of North Dakota may require further verification upon request.

To the best of my knowledge the information I have provided is correct and that the borrower rental rates are considered affordable for the purpose of the Flex-PACE program.

Wm ALJG, MHA  
Local Housing Authority/JDA Contact

9-20-21  
Date

[Signature]  
ESSENTIAL LIVING INC

\_\_\_\_\_  
Date

Thank you for completing this agreement and please contact BND if you have any questions.

Sincerely,

Jackie K Duke  
Business Banker