

**LAND USE RESTRICTION AGREEMENT
FOR LOW INCOME HOUSING TAX CREDITS**

THIS LAND USE RESTRICTION AGREEMENT ("LURA"), made this ____ day of November, 2024, is by and between **Essential Living, Inc.** ("Owner"), a nonprofit corporation, whose mailing address is 724 24th Ave SW, Minot ND 58701 and its successors and assigns, and the **City of Minot**, whose mailing address is P.O. Box 5006, Minot, North Dakota, 58702-5006, as the administrator of the Community Development Block Grant (CDBG) Funds awarded to the City of Minot as part of the National Disaster Resiliency (NDR) Competition in 2016.

Owner hereby grants the City of Minot, together with any successor to its rights, duties, and obligations, this LURA, as a condition precedent to the Owner being permitted to participate in the use of National Disaster Resiliency (NDR) funds to provide the community with long-term Affordable Housing as described in the sub-recipient agreement by and between the City of Minot and **Essential Living, Inc.** dated August 21, 2017 ("Subrecipient Agreement").

WHEREAS:

- A. Owner is the owner in fee simple of land and improvements used as a multifamily rental housing project referred to as **Essential Townhomes** ("Project"), located in Ward County, North Dakota, more particularly described on Exhibit A ("Land"). Exhibit A is by this reference made a part hereof as though fully set forth herein; and
- B. The Owner applied for NDR funds, which were provided under the provisions of the Subrecipient Agreement, and
- C. The Minot City Council at their regularly meeting on November 18, 2024, moved to grant the approval of this LURA for the Owner, and at their regularly scheduled meeting on December 16, 2024, moved to approve this agreement and authorized the Mayor to sign the same; and
- D. Owner, under this LURA, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Project and the Land, for the Affordability Period stated herein and binding upon all subsequent owners of the Project and the Land for such Affordability Period, and are not merely personal covenants of the Owner. Therefore, in consideration of the premises, and of the promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Owner, Owner declares, covenants and agrees as follows:

SECTION 1 - DEFINITIONS

Affordable Housing includes property eligible for or receiving assistance through a local, state, or federal affordable housing program and in which rent and household income restrictions apply, and which is owned by non-profit entities organized for the purpose of providing affordable housing. Affordable Housing is limited to residential rental properties owned by or with a controlling ownership or management interest in an organization organized and operated exclusively for exempt purposes set forth in section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)].

Area Median Income ("AMI") refers to the maximum household income limits as published by the United States Department of Housing and Urban Development and is based on the actual number of persons residing in the household.

Affordability Period is the number of years from the Project completion date as determined by City of Minot, which the Project is subject to this LURA. Owner, at this place, confirms that the term of the Affordability Period shall commence on the Project Completion Date (October 2022) and shall end on the 1st business day following the completion of the Project's twentieth (20th) full fiscal year following Project completion (November 2042).

Project Completion Date is defined to be upon issuance of the Certificate of Occupancy for the final livable structure within the Project, certificate of substantial completion by an independent third-party architect or other evidence of completion deemed acceptable to the City of Minot.

SECTION 2- RECORDING AND FILING THESE COVENANTS WHICH RUN WITH THE LAND

Upon execution and delivery of this LURA, Owner shall cause this LURA and any amendments hereto to be forthwith recorded with the County Recorder in Ward County, North Dakota, and shall pay all fees and charges incurred in connection therewith.

Owner intends, declares and covenants, on behalf of Owner and all future owners and operators of the Project during the Affordability Period, that this LURA and the covenants and restrictions set forth herein which regulate and restrict the use, occupancy and transfer of the Project and the Land shall be and are covenants running with the Project and Land, encumbering the Project and Land for the Affordability Period hereof, binding upon the Owner's successors in title and all subsequent owners and operators of the Project and the Land, and are not merely personal covenants of the Owner, and shall bind the Owner, and the benefit shall inure to the City of Minot and any past, present or prospective tenants of the Project, and the City of Minot respective successors and assigns during the Affordability Period hereof. The Owner agrees that any and all requirements of the laws of the State of North Dakota to be satisfied in order for the provisions of this LURA to constitute deed restrictions and covenants running with the land shall be deemed to have been satisfied in full, and that any requirements or privileges of estate are intended to be satisfied, or in the alternative, that an equitable servitude has been created to ensure that these restrictions run with the land. For the Affordability Period hereof, each and every contract, deed or other instrument hereinafter executed, encumbering or conveying the Project or any portion thereof shall expressly provide that such agreement is subject to this LURA, provided however, that covenants contained herein shall survive and be effective regardless of whether such document provides that such instrument is subject to this LURA.

SECTION 3 - REPRESENTATIONS, FURTHER COVENANTS AND WARRANTIES OF THE OWNER

The Owner hereby represents covenants and warrants as follows:

- A. The Owner is a nonprofit corporation formed under the laws of the State of North Dakota and is qualified to transact business under the laws of North Dakota. That Owner has

the power and authority to own its properties and assets and to carry on its business as now being conducted, and has the full legal right, power, and authority to execute and deliver this LURA.

- B. There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by the LURA) or would materially adversely affect its financial condition.
- C. The Owner agrees to comply fully with the requirements of the NDR Subrecipient Agreement as it may from time to time be amended or modified.
- D. During the term of this LURA, the Owner covenants, agrees and warrants that each Restricted Unit, as defined in Section 4 of this LURA, is and will remain suitable for occupancy.
- E. Owner agrees to annually certify that the project or portion of the project, as defined in Section 4 of this LURA, is eligible to be exempt from taxation by submitting the Annual Owner Certification form to the North Dakota Housing Finance Agency (NDHFA), by January 31 of each year. See N.D.C.C. § 57-02-08(43).

SECTION 4-TENANT INCOME LIMITS AND RENT LIMITS

City of Minot requires that a certain number of units in the Project be reserved for households at or below specified income levels and that the rents charged for those units ("Restricted Units") be set at or below specified levels. The Owner represents, warrants, and covenants that throughout the Affordability Period hereof and in order to comply with the Subrecipient Agreement, that:

- A. Each of the **Twenty-two (22) units** in the Project must be occupied by tenants with total household income at or below **80%** of the AMI for the county in which the Project is located, as published by the United States Department of Housing and Urban Development. The maximum rent charged for these units shall be the published Fair Market Rents for Ward County as issued by HUD each year. Any utilities are paid directly by the tenant, the maximum rent must be reduced by the applicable utility allowance amount as approved by HUD.
- B. Tenant eligibility for Restricted Units will be determined by the Owner at the time of occupancy and re-examined at least annually. Tenants who no longer qualify under the income restrictions (at the time of annual recertification) can still be considered to be occupying a Restricted Unit until replaced by an income eligible household in a comparable unit. Rents for the over-income household will be limited to applicable rent limits until the replacement unit is occupied.

SECTION 5 -TERMINATION

The Project will remain affordable for not less than the minimum Affordability Period provided in Section 1, without regard to the transfer of ownership, unless otherwise agreed to in writing by both parties.

SECTION 6 - DEFAULT

- A. **Enforcement and Remedies.** If Owner defaults in the performance of any of its obligations under this LURA or breaches any covenant, agreement or restriction set forth herein or in the NDR Loan Documents, and if such default remains uncured for a period of sixty (60) days after notice thereof shall have been given by City of Minot (or for an extended period approved in writing by City of Minot if breach stated in such notice can be corrected but not within such 60 day period, unless Owner does not commence such correction or

commences such correction within such 60 day period but thereafter does not diligently pursue the same to completion within such extended period), City of Minot shall be entitled to apply to any court having jurisdiction of the subject matter for specific performance of the LURA, for an injunction against any violation of the LURA, for the appointment of a receiver to take over and operate the Project in accordance with the terms of this LURA, or for such other relief as may be appropriate, it being acknowledged that the beneficiaries of Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of Owner's default. City of Minot shall be entitled to its reasonable attorneys' fees and costs, including court fees, in any such judicial action in which City of Minot shall prevail, except where prohibited by N.D.C.C. §28- 26-04.

B. Remedies Cumulative. Each right, power and remedy of City of Minot provided for in this LURA, now or hereafter existing at law or in equity by statute, or in the NDR Subrecipient Agreement or other related documents, or otherwise, shall be cumulative and concurrent and shall be in addition to every other right, power remedy provided for in this LURA, or hereafter existing at law or in equity or by statute or in the NDR Subrecipient Agreement or otherwise, and the exercise or beginning of the exercise by City of Minot of any one or more of the rights, powers or remedies provided for in this LURA or now or hereafter existing at law, in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by City of Minot of any or all such other rights, powers or remedies.

SECTION 7 - MISCELLANEOUS

A. Successors Bound. This LURA and the covenants and conditions contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Owner and the City of Minot and their respective grantees, heirs, personal representatives, successors and assigns of all or any of them, or any interest(s) therein for the Affordability Period as specified herein above in Section 1.

B. Additional Documents. The Owner shall submit any other information, documents or certifications requested by the City of Minot which the City deems reasonably necessary to substantiate the Owner's continuing compliance with the NDR program.

C. Reasonable Access. The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the City, to inspect any books and records of the Owner regarding the Project with respect to the incomes and rents of tenants in Restricted Units, including physical inspections of the Project to ensure compliance with HUD Housing Quality Standards or other applicable habitability standards.

D. Severability. The invalidity of any clause, part or provision of this LURA shall not affect the validity of the remaining portions thereof.

E. Notices. All notices to be given pursuant to this LURA shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses herein set forth below, or to such other place as a party may from time to time designate in writing to the other(s).

City:	Essential Living
City of Minot	
c/o Finance Director	
P.O. Box 5006	
Minot, ND 58702	
finance@minotnd.gov	

F. Applicable Laws and Venue. This agreement is governed by the laws of the state of North Dakota and where applicable, the laws of the United States of America. Any legal action to interpret this Agreement will be filed in a District Court located in Ward County, North Dakota.

G. Assignment or Transfer. Owner may not assign or otherwise transfer or delegate any right or duty without the express written consent of the City of Minot.

H. Waivers. This agreement may not be waived, altered, modified, supplemented, or amended, in any manner, except by written agreements signed by both parties.

I. Compliance. Owner agrees to comply with all applicable laws, rules, regulations, and policies, including but not limited to those relating to non-discrimination, accessibility and civil rights.

J. Indemnity. Owner shall comply with all applicable federal, state, and local laws, rules, and ordinances at all times in the performance of this agreement, and shall conduct its activities so as not to endanger any person or property. Owner agrees to indemnify and save and hold harmless the City of Minot, its officers, directors, employees, and agents, and from any and all claims of any nature, including claims of employees or agents of the Owner, resulting from or arising out of the activities of Owner, its subcontractors, agents, officers, or employees.

K. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by electronic image scan transmission will be effective as delivery of a manually executed counterpart of the Agreement.

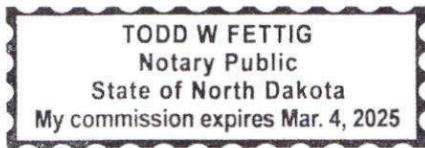
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Signature pages follow.

STATE OF NORTH DAKOTA)
) ss
COUNTY OF WARD)

The foregoing instrument was acknowledged before me this 3 day of December, 2024 by Bruce Walker, President of Essential Living, Inc., a North Dakota nonprofit corporation, on behalf of the nonprofit corporation.

(seal)

A handwritten signature of Todd W Fettig in blue ink, placed above a horizontal line.

Notary Public, Ward County,
North Dakota.
My Commission Expires: _____

Essential Living, Inc.

A handwritten signature of Bruce Walker in blue ink, placed above a horizontal line.

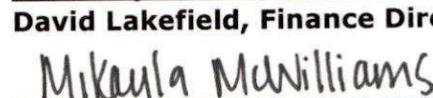
Bruce Walker, President

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City of Minot


Tom Ross, Mayor

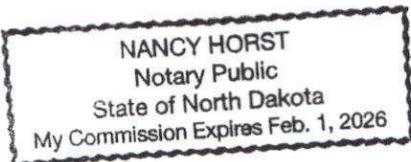

David Lakefield, Finance Director

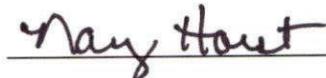

Mikayla McWilliams
Mikayla McWilliams, City Clerk

STATE OF NORTH DAKOTA)
) ss
COUNTY OF WARD)

On this 10th day of December, 2024 before me personally appeared Thomas Ross, David Lakefield, and Mikayla McWilliams known to me to be the person who is described in, and who executed the within and foregoing instrument and who acknowledged to me that he executed the same.

(seal)





Notary Public, Ward County,
North Dakota.
My Commission Expires: Feb 1, 2026

EXHIBIT A

Lots 1-22, Block 1, Essential Townhomes Addition to the City of Minot, Ward County, North Dakota. A replat of Lot 13, Block 1 of South Park Terrace Addition.