

STATE OF North Dakota  
**Ward County**

**CDBG NATIONAL DISASTER RESILIENCE PROGRAM  
City of Minot**

**AGREEMENT  
With  
ESSENTIAL LIVING, INC.**

**THIS DEVELOPMENT AGREEMENT** (“Agreement”), dated this 21<sup>st</sup> day of August, 2017 (“Effective Date”), is made and entered into by and between the CITY OF MINOT, a North Dakota municipal corporation, whose principal address is P.O. Box 5006, 515 Second Avenue SW, Minot, ND 58702 (“City”), and ESSENTIAL LIVING, INC., a North Dakota nonprofit corporation, whose principal address is 400 10<sup>th</sup> St. SE, Minot, ND 58702 (“Developer”). The City and Developer are hereinafter sometimes individually referred to as a “Party” and collectively, as the “Parties.”

**I. PREAMBLE**

WHEREAS, on January 21, 2016 the U.S. Department of Housing and Urban Development (“HUD”) awarded \$74.3 million in National Disaster Resilience Community Development Block Grant funds for the purpose of assisting recovery and resiliency in the most impacted and distressed areas declared in The Disaster Relief Appropriations Act, 2013 (PL113-2), including funds for disaster recovery from major disasters declared under the Stafford Act (42 U.S.C. 4121 et seq.) in 2011, 2012, and 2012. The Appropriations Act requires funds to be used only for specific resiliency disaster-related purposes, and;

WHEREAS, HUD commonly refers to the National Disaster Resilience Community Development Block Grant program as the Community Development Block Grant Program-National Disaster Resilience (CDBG-NDR), and;

WHEREAS, HUD has issued notices specifying alternative requirements and regulatory waivers for the purpose of undertaking CDBG-NDR activities, and;

WHEREAS, the City has entered into an agreement with HUD, whereby the City shall manage and oversee activities under this funding agreement, and;

WHEREAS, the City has approved up to one million eight hundred fifty thousand dollars (\$1,850,000.00) for Park South affordable housing development to fund the rehabilitation of thirty-five (35) apartment units and construct five (5) additional apartments units within the existing structure as described further in this Agreement in support of the development of long-term affordable housing for the residents of the City of Minot.

WHEREAS, the City and Developer enter into this Agreement in order to memorialize certain conditions and agreements pertaining to the rehabilitation of the existing apartments and construction within the existing building of 5 additional apartments, and their respective rights, duties and obligations relative thereto, all upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the promises and the mutual representations, warranties, and covenants herein contained, the Parties hereby agree as follows:

## II. CONSTRUCTION AND REHABILITATION OF AFFORDABLE RENTAL UNITS

A. **Developer Responsibilities.** Following the execution of this Agreement, in accordance with the terms and conditions of this Agreement and as laid out in Attachment C-1, and in compliance with all applicable Federal Requirements, Developer shall proceed with the rehabilitation of thirty five (35) units and construction of five (5) additional units on approximately 2.22 acres at 234 14<sup>th</sup> Avenue SE, Minot, North Dakota, legally described as Township Lot 13, Block 1, South Park Terrace Addition (the "Project"), of which seventy five percent (75%) of forty (40) of the units will be affordable and offered to tenants that are Low to Moderate Income households as defined by HUD and further explained in Exhibit D of this Agreement. Affordability is further explained in Part IV, Paragraph C within this Agreement. Developer further agrees to comply with all applicable provisions of all applicable development and building codes, ordinances and regulations of the State of North Dakota and City of Minot, ND.

Developer will minimize displacement of persons as a result of activities assisted with CDBG funds. In addition, if applicable, Developer will:

1. Comply with Sections 301-304 of Title III (Uniform Real Property Acquisition Policy) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Chapter 61), and HUD implementing instructions at 24 CFR Part 42 and 24 CFR §570.606; and
2. Inform affected persons of their rights and of the acquisition policies and procedures set forth in the regulations at 24 CFR Part 42.

Developer will comply with HUD's Standards for Rehabilitation of Non-substantially-damaged Residential Buildings. For rehabilitation projects, Developer must apply the guidelines outlined in the HUD CPD Green Building Retrofit Checklist, ([http://portal.hud.gov/hudportal/documents/huddoc?id=drs1\\_reetrofit.xls](http://portal.hud.gov/hudportal/documents/huddoc?id=drs1_reetrofit.xls)), to the extent applicable, on the rehabilitation work undertaken.

Examples of HUD standards and guidelines that this Agreement contemplates the Developer will comply with include the following:

- The use of mold resistant products when replacing surfaces such as drywall.
- When older or obsolete products are replaced as part of the rehabilitation work, the Developer shall use ENERGY STAR labeled, WaterSense labeled, or Federal Energy Management Program (FEMP)-designated products and appliances.
- If the furnace, air conditioner, windows, and appliances are replaced, the replacements must be ENERGY STAR-labeled or FEMP-designated products
- Water Sense-labeled products (e.g., faucets, toilets, showerheads) must be used when water products are replaced.

Developer will rebuild to model resilient building standards. Examples of such standards this Agreement contemplates the Developer will comply with include the I-Codes developed by the International Code Council (ICC), the Insurance Institute for Business 18 and Home Safety (IBHS) FORTIFIED home programs, and standards under development by the American National Standards Institute (ANSI) and the American Society of Civil Engineers (ASCE).

**B. City Responsibilities.** In consideration of the Developer providing needed affordable housing as described in Part II, Paragraph A, the City, subject to the terms and conditions of this Agreement, shall make available to the Project CDBG-NDR funds up to the gross amount of one million eight hundred fifty thousand dollars (\$1,850,000.00) (“CDBG-NDR Funds”), for the purpose of rehabilitating thirty-five (35) units and constructing an additional five (5) units within the existing building structure on approximately 2.22 acres at 234 14th Avenue SE, Minot, North Dakota, legally described as Lot 13, Block 1, South Park Terrace Addition, further described in Exhibit A, Project Description.

**C. Time of Performance.**

1. Subject to Environmental Clearance restrictions, as described in this Agreement, Developer authorization to undertake activities under this Agreement shall commence on the effective date stated hereinabove, provided that this Agreement shall not constitute an obligation of funds by the City until and unless notified in writing by the City that environmental clearance requirements of Part III have been satisfactorily completed.

2. Further, Developer shall complete all Project activities described in Section II. A., above, for which funds have been satisfactorily obligated, within 24 months from the execution of the agreement.

D. **Transfer of Property.** Under no circumstances shall the Developer sell the property described in this agreement without the approval of the City, approval of the sale or transfer will not be unreasonably denied. In the event the City approves such a sale all Developer Responsibilities contained in this agreement will be conveyed to the purchaser by a written agreement and the performance requirements and responsibilities contained in this development agreement will be acknowledged and agreed to by the purchaser through the full term of the affordability period..

### **III. ENVIRONMENTAL CLEARANCE**

Developer shall not obligate nor expend funds for any choice-limiting Project activity under this Agreement until notified, in writing from the City, that environmental review requirements pursuant to 24 CFR 570.604 have been satisfactorily completed for the Project activity(s) and that a HUD-approved Request for Release of Funds and certification has been issued. The City's written notice shall specify the date upon which Developer may begin to obligate and expend funds under this Agreement. The Developer does not assume responsibility for undertaking the environmental review process under 25 CFR Part 52. However, Developer shall provide the City with timely and accurate Project information as the City may require in order to cause the environmental review(s) to be satisfactorily undertaken. In the event that there is a proposed change in the location or scope of a Project activity, the Developer shall not undertake any action to obligate or expend funds in connection with the proposed change without obtaining the City's prior written approval. Any such City approval shall be subject to City's sole determination as to whether or not the proposed change requires an additional environmental review and clearance before any funds may be committed or expended for the Project activity.

### **IV. GENERAL CONDITIONS AS THEY RELATE TO THE PROJECT DEVELOPMENT**

A. **General Compliance.** The Developer agrees to comply with the applicable requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG) including subpart K of these regulations, except as may be otherwise stated in this Agreement and as CDBG-NDR regulatory waivers have been granted by HUD and alternative requirements have been specified pursuant to Federal Register /Vol. 81, NO. 109/Tuesday, June 7, 2016 / Notices, concerning funds provided to the Community Development Block Grant (CDBG-NDR) Grantees. Developer also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract.

B. **National Objective.** HUD uses the term “Low to Moderate Income” (LMI) to refer to the national objective of providing assistance to Low to Moderate Income persons for the CDBG-NDR program. The activities funded with CDBG-NDR funds identified herein must meet the LMI national objective and will be obligated to fulfill these requirements regardless of whether or not the activities could qualify under another National Objective. Seventy Five Percent (75%), or thirty (30), of the units rehabilitated and constructed by the Developer must be leased to and occupied by Low to Moderate Income Households. The Developer certifies that it will carry out every activity under this Agreement so as to meet the low- and moderate- income requirements of CDBG-NDR as defined by HUD.

The Developer must meet the performance requirements detailed in paragraph C below to be eligible for forgiveness of the NDR loan. The Minot Housing Authority rent verification and inspection will be used to document compliance with requirements. If the Developer fails to meet the performance requirements within the first 10 years of the agreement, the Developer will repay the City of Minot 100 percent of the monies provided by the City of Minot within 30 days after receipt of a notice of deficiency from the City. On the 10<sup>th</sup> anniversary of this agreement, the City of Minot will forgive 20% of the loan. After the tenth (10<sup>th</sup>) anniversary of the agreement, four (4) percent of the outstanding loan balance will be forgiven each year on the anniversary of this agreement if the Developer has met the performance requirements for the project. At any time after the tenth (10<sup>th</sup>) anniversary of this agreement should the Developers fail to meet the performance requirements, the Developer will pay the City of Minot the full outstanding balance of monies provided by the City of Minot less any amounts previously forgiven. The monies shall be paid to the City of Minot within 30 days after receipt of a notice of deficiency from the City.

C. **Affordable Housing Requirements.** For and in consideration of the City’s agreement to provide financial assistance for the development of the property located at 234 14<sup>th</sup> Avenue SE, Minot, North Dakota, legally described as Lot 13, Block 1, South Park Terrace Addition, in the form of CDBG-NDR funds, Developer agrees to set aside seventy five percent (75%) (thirty (30) units) of the residential units (hereinafter, collectively, the “Set Aside Units”) for occupancy by households having initial incomes at or below eighty percent (80%) of Area Median Family Income, adjusted for household size, as established under income guidelines promulgated by HUD, and included as Exhibit D of this Agreement. Households shall pay no more than the Maximum Rent Limits promulgated by HUD and further explained in Exhibit D of this Agreement, Affordable Housing Requirements and Income Limits. The income limits are included as Exhibit D of this Agreement.

The Set Aside Units shall remain subject to the foregoing income/affordability restrictions for a period of thirty (30) years following the date the Set

Aside Units are placed into service (the “Period of Affordability”). These requirements shall be set forth in a covenant which attaches to the property. Upon the expiration of the thirty (30) year set aside period, all income/affordability restrictions shall terminate and be of no further force or effect.

- D. **Developer.** Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Developer shall at all times remain a “Vendor” with respect to the Project activities to be performed under this Agreement. The City shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers’ Compensation Insurance.
- E. **Hold Harmless.** The Developer agrees to protect, defend, indemnify, save and hold harmless the City, all its Departments, Agencies, Boards and Commissions, their officers, agents, servants and employees, including volunteers, from and against all loss, liability, claim, demand, suit, expense arising out of injury or death to any person or the damage, loss or destruction of any property which may occur or in any way arise from any act or omission of the Developer, its agents, servants, employees or contractors, or any and all costs, expense and/or attorney fees incurred by the Developer, as a result of any loss, liability, claim, cause of action, demand, suit, or expense related to the performance of Developer Responsibilities as set forth in II.A., above. The Developer agrees to investigate, handle, respond to, provide defense for and defend any such claim, demand or suit at its sole expense and agrees to bear all other costs and expenses related thereto, even if such claim, demand or suit is without merit, groundless, false or fraudulent.
- F. **Workers’ Compensation.** The Developer shall maintain Workers’ Compensation and Employer’s Liability insurance coverage for all of its employees involved in the performance of this Agreement and in conformance with the laws of the State of North Dakota.
- G. **Insurance.** As outlined in Exhibit F, Insurance Requirements, the Developer shall carry sufficient insurance coverage to protect assets, acquired, constructed, and/or improved under this Agreement. The City shall be named as an Additional Insured Loss Payee on all such insurance policies taken out on behalf of the Project by the Developer, including the General Contractors Commercial General Liability and Builders Risk Insurance policies. The Developer shall not allow the commencement of work by the general contractor until evidence of insurance has been provided to the City.
- H. **City Recognition.** The Developer shall ensure recognition of the role of City in this Project by erection of a sign on the premises during the construction of the Project. All activities, facilities and items utilized pursuant

to this Agreement shall be prominently labeled as to funding source. In addition, the Developer will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

I. **Amendments.** The Parties may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by duly authorized representatives of the parties.

1. Any amendment or modification of this Agreement shall be effective only in the specific instance and only for the purpose for which given. Such amendments shall not invalidate this Agreement, nor relieve or release the City or Developer from its obligations under this Agreement.
2. The City may, in its discretion, amend this Agreement to conform with Federal, State or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both the City and Developer except that any change resulting from Developer noncompliance with the terms and conditions of this Agreement shall not require Developer's signature to a written amendment.

J. **Suspension or Termination.**

1. In accordance with Appendix 2 to Part 200, the City may suspend, terminate or partially terminate this Agreement for cause if the Developer materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:
  - a) Failure to comply with any of the applicable rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
  - b) Failure, for any reason, of the Developer to fulfill in a timely and proper manner its obligations under this Agreement; or
  - c) Submission by the Developer to the City reports that are incorrect or incomplete in any material respect.
  - d) Failure to meet the project schedule included in the contract

2. If termination for cause, the City shall give the Developer written notice specifying the Developer's failure. If within thirty (30) days after receipt of such notice, the Developer shall not have either corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then the City may, at its option, place Developer in default and this Agreement shall terminate on the date specified in such notice. The Developer may exercise any rights available to it under North Dakota law to terminate for cause upon the failure of the City to comply with the terms and conditions of this contract; provided that the Developer shall give the City written notice specifying the City's failure and, if within thirty (30) days after receipt of such notice, the City shall not have either corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction.
3. The City reserves the right to terminate this Agreement in whole or in part if there are material changes to the Project that would significantly alter the terms of this Agreement and/or materially alter the feasibility of satisfactorily completing the Project activities of this Agreement.
4. In addition, per 2 CFR § 200.326 Contract Provisions, all contracts in excess of \$10,000 must address termination for cause and for convenience. The City may terminate this Agreement for convenience at any time by giving thirty (30) days written notice to the Developer.

K. **Notices and Communications.** Any notice, request, instruction or other document to be given hereunder to any party by another shall be in writing and delivered personally or sent by certified or registered mail, postage prepaid, to the addresses set forth in this Agreement. A party may change the address to which notices are to be sent to it by giving written notice of such change of address to the other parties in the manner herein provided for giving notice. Any such notice, request, instruction or other document shall be conclusively deemed to have been received and be effective on the day on which personally delivered or, if sent by certified or registered mail, on the day on which mailed. Notices shall be addressed as follows:

**To the City:**

City of Minot  
Attn: Finance Department  
PO Box 5006  
Minot, ND 57802

**To Developer:**

Essential Living, Inc.  
PO Box 879  
Minot, ND 58702

## V. PERSONNEL AND PARTICIPANT CONDITIONS

- A. **Civil Rights Compliance.** If applicable to the CDBG eligible activity related to the acquisition of real property, the Developer agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, and Title VIII of the Civil Rights Act of 1968 as amended, Section 104 (B) and Section 109 of Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.
- B. **Nondiscrimination.** If applicable to the CDBG eligible activity related to the acquisition of real property, the Developer agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 2 CFR 570.607, as revised by Executive Order 13279. The Developer will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. The Developer will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.
- C. **Section 504.** With respect to contracts for the housing development, the Developer agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 706) which prohibits discrimination against the handicapped in any federally assisted program. The City shall provide the Developer with guidelines necessary for compliance with that portion of the Regulations in force during the term of this Agreement.
- D. **Access to Records.** The Developer shall cause to be furnished all information and reports required hereunder and will permit access to its books, records and accounts by the City, its authorized representative(s), HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

E. **Employment Restrictions/Prohibited Activity.** The Developer is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities; sectarian or religious activities; lobbying, political patronage, and nepotism activities.

F. **OSHA.** Where employees of the Developer are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participant's health or safety

G. **Conflict of Interest.** The Developer agrees to abide by the provisions of 570.611, which include (but not limited to) the following:

1. No employee, officer or agent of the Developer shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
2. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-NDR assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-NDR assisted activity, or with respect to the proceeds from the CDBG-NDR assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Developer, the Developer, or any designated public agency.

H. **Lobbying.** The Developer hereby certifies that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
3. It will require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all Developers shall certify and disclose accordingly:

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- I. **Religious Activities.** The Developer agrees that where a structure is used for both eligible and inherently religious activities, CDBG funds provided under this Agreement may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to CDBG funds in this part. CDBG funds will not be directly utilized for inherently religious activities prohibited by 24 CFR 570.200(J), such as worship, religious instruction or proselytization.
- J. **Copyright.** If this Agreement results in any copyrightable material or inventions, the Developer and/or the City reserve the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use to authorize others to use, the work or materials for governmental purposes.
- K. Davis-Bacon Fair Labor Standards Act, (40 USC 3141-3144, 3146, and 3147) requires that, on all contracts and subcontracts which exceed \$2,000 in value or that include eight (8) or more residential units for federally assisted construction, alteration or rehabilitation, laborers and mechanics employed by the CDBG Developer, general contractors or subcontractors shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. (This requirement applies to the rehabilitation of residential property only if eight (8) or more contiguous residential family units are involved.)

1. Volunteers - The prevailing wage provisions of this Act do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work.
2. Sweat equity - The prevailing wage provisions of this Act do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for home ownership or provide labor in lieu of, or as a supplement to, rent payments.

L. Contract Work Hours and Safety Standards Act of 1962, (40 USC 3701-3708.) requires that mechanics and laborers employed on federally assisted contracts which exceed \$2,000 be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty in a work week.

M. Copeland "Anti-Kickback" Act of 1934, (40 USC 3145) prohibits and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities.

N. The Lead-based Paint Poisoning Prevention Act of 1971, (42 USC 4831), The Residential Lead-Based Paint Hazard Reduction Act of 1992, and 24 CFR Part 35 and all other related federal regulations, prohibits the use of lead-based paint in residential structures constructed or rehabilitated with federal assistance; requires notification to purchasers and tenants of such housing of the hazards of lead-based paint and of the symptoms and treatment of lead-based paint poisoning; requiring inspection and testing of such housing and requires elimination of any lead-based paint hazards in such housing that is to be rehabilitated, modernized or improved under this Contract. Park South will follow safe work practices and occupant protections except when amount of deteriorated paint is below *de minimis* levels following the guidance of HUD's Lead Based Paint Compliance Attachment 24.1.

O. Section 3 of the Housing and Community Development Act of 1968, and 24 CFR part 135 as amended, provides that, to the greatest extent feasible, opportunities for training, employment, and new contracting opportunities that arise through HUD-financed projects under this Program will be given to lower income persons who qualify as a Section 3 resident in the unit of the project area, and that contracts be awarded to businesses located in the project area owned, in substantial part, by Section 3 eligible residents of the project area or who have thirty percent (30%) or more of their full-time employees qualify as a Section 3 residents. The regulation applies to any HUD grant exceeding \$200,000 and any sub-award exceeding \$100,000.

The Developer the City with verification of compliance with Section 3 for contractors and subcontractors.

## **VI. OPERATING REQUIREMENTS**

### **A. Documentation and Record Keeping**

1. Records of reimbursable expenses pertaining to this Agreement and records of accounts between the City and the Developer shall be kept on a generally recognized accounting basis. The Developer shall retain information in its files which shall clearly document all activities performed in conjunction with this Agreement, including but not limited to, financial transactions, conformance with assurances, and Developer reports. These records shall be retained by the Developer for a period of five (5) years after completion of the Project.
2. The Developer shall maintain client data demonstrating tenant eligibility in accordance with CDBG-NDR LMI requirements. Such data shall include, but not be limited to, client name, address, income level, family size, racial and ethnic characteristics or other basis for determining eligibility and for HUD reporting. Such information shall be made available to the City monitors or their designees for review upon request.
3. The Developer understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the City's or Developer's responsibilities with respect to activities undertaken under this contract, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.
4. The Developer's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, providing documentation that the lease of the units is in accordance with Exhibit D, Affordable Housing Requirements and Income Limits.
5. All Developer records with respect to any matters covered by this Agreement shall be made available to the City and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Developer within thirty (30) days after receipt by the Developer. Failure of the Developer to comply with requirements will constitute a violation of this contract.

6. The Developer shall submit quarterly Progress Reports to the City in the form and content, as required by the City. The City will monitor the performance of the Developer against goals and performance as stated in this Agreement. Substandard performance as determined by the City will constitute noncompliance with this Agreement. The City will advise the Developer in writing of any substandard performance and grant the Developer a reasonable amount of time to cure the substandard performance. What constitutes a reasonable amount of time shall be in the sole discretion of the City, and the City shall advise the Developer in writing of the amount of time it will afford them to cure their substandard performance. If the Developer fails to cure their substandard performance after receiving notice, their substandard performance shall be considered a material failure to comply with the terms of this Agreement, and the City in its sole discretion, may proceed to suspend or terminate this Agreement under paragraph IV.J above.

## VII. ENVIRONMENTAL CONDITIONS

The Developer agrees to comply with all mitigation measures and conditions for approval as specified in the environmental review, completed pursuant to 24 CFR Parts 58.5 and 58.6, including:

- A. **Air and Water.** The Developer agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:
  1. Clean Air Act, 42 U.S.C., 7401, *et seq.*;
  2. Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
  3. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.
- B. **Flood Disaster Protection.** In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Developer shall assure that for activities including the construction of the housing which is located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance.

C. **Historic Preservation.** The Developer agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. Specifically, this requires the State Historic Preservation Officer to evaluate the impact of all federally funded projects on historic properties including potential historically significant archeological sites.

## **VIII. FORM OF AWARD AND DISBURSEMENT OF FUNDS**

Grant award will be in the form of a thirty-year (30) forgivable promissory note. Developer must sign a lien to secure the full amount of the forgivable promissory. The promissory note and North Dakota Lien form will be recorded at the Ward County Courthouse following the completion of the rehabilitation and construction of the project. The forgivable promissory note bears no interest and will be forgiven annually on a prorated basis as the low to moderate income national objective is confirmed annually.

The City will approve the project's plans and specifications, to ensure compliance with HUD's green building requirement. After Developer and NDHFA funds are expended, the Developer may request NDR disbursements for additional eligible work completed. Documentation of eligible expenditures must accompany the request for payment to the City.

## **IX. EXHIBITS**

The following exhibits are attached to this Agreement, and are incorporated and made a part hereof by reference:

- Exhibit A** Project Description
- Exhibit B** Developer Project Budget
- Exhibit C** Project Schedule
- Exhibit D** Affordable Housing Requirements and Income Limits
- Exhibit E** Affirmative Marketing Plan
- Exhibit F** Insurance Requirements

## **X. MISCELLANEOUS**

A. **Severability.** The provisions of this Agreement are severable and if for any reason a clause, sentence, paragraph or other part of this Agreement shall be determined to be invalid by a court or federal or state agency, board or commission having jurisdiction over the subject matter thereof, such invalidity shall not affect other provisions which can be given effect without the invalid provision.

- B. **Headings.** Any headings or subheadings preceding the texts of the several parts hereof shall be solely for the convenience of reference and shall not constitute a part of this Agreement, nor shall it affect its meaning, construction or effect.
- C. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota. The parties agree that any lawsuit filed to enforce, terminate, or interpret this Agreement will be filed in a District Court located in Ward County, North Dakota.
- D. **Non-assignability.** Developer shall not assign any interest in this contract by assignment, transfer, or novation, without prior written consent of the City. This provision shall not be construed to prohibit Developer from assigning his bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the City.
- E. **Waiver.** The City's failure to act with respect to a breach by the Developer does not waive its right to act with respect to subsequent or similar breaches. Any failure of the City to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.
- F. **Entire Agreement.** This Agreement and any exhibits specifically incorporated herein by reference, constitutes the entire Agreement between the City and Developer for the use of funds under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the City and the Developer with respect to this Agreement.
- G. **Authority to Execute Agreement.** Each party represents and warrants that this Agreement has been duly authorized, executed and delivered by it; that the undersigned representatives are duly authorized to sign this Agreement on behalf of the party for whom they are signing and whom they represent; that performance of all the actions contemplated thereby have been duly authorized by all requisite action and that this Agreement constitutes a valid and binding obligation, enforceable against each party, its successors and assigns in accordance with its terms.

This Agreement is signed below, in three (3) duplicate originals, by the duly authorized representatives of Developer and the City and is made effective on the first date as is herein set out above.

WITNESSES:

Developer:

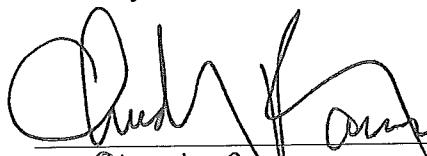


By: Bruce Walker  
Title: President

8/21/17

Date

The City of Minot:



By: Chuck Barney  
Title: Mayor

8-21-17

Date

**EXHIBIT A**  
**CDBG-NDR Agreement**  
**Project Description**

Essential Living, Inc., will rehabilitate thirty-five (35) rental units and construct five (5) additional rental units within the existing building footprint located at 234 14<sup>th</sup> Avenue SE, Minot, North Dakota, legally described as Lot 13, Block 1, South Park Terrace Addition (the “Project”). The Project will be constructed in a single phase and will have a unit mix of twenty-four (24) one-bedroom units and thirteen (13) two-bedroom units and three (3) three-bedroom units. Four (4) units will be fully accessible.

Planned Improvements include: The plans for updating the Park South facility will modernize the property and change its aesthetic appearance, while more importantly enhancing the living conditions of the property by implementing the following improvements: Asbestos abatement/encapsulation, Electrical service upgrade; New Fire Alarm System; Site improvements & utilities; Aluminum entrances; Window replacement; Common Area flooring & lighting; New Doors; Fire Sprinkler; New Mechanical System; Updated Plumbing & Lighting; Adding Handicap Accessible units, Ramp, Door Operators, Elevator, Parking and Sidewalks. Parking lots and sidewalks will be safe and in good condition.

Essential Living has agreed to covenants with North Dakota Housing Finance Agency regarding the remaining land owned by Essential Living that surrounds the building that is part of this agreement. In these covenants, Essential Living, Inc. agreed that future projects will comply with the NDHFA guidelines for affordable housing. Essential Living, Inc. has incorporated the aforementioned property into their charitable organization, that must be used for affordable housing. At a minimum seventy-five (75%) of future development will be affordable housing.

In consideration of the Developer providing affordable rental housing as identified within this Agreement, the City is committing \$1,850,000 of CDBG-NDR funding for the completion of site improvements described in the sources and uses statement.

**EXHIBIT B**  
**CDBG-NDR Agreement**  
**Developer Project Budget**

The initial Project budget for all activities under this Agreement is mutually agreed to consist of the Sources and Uses Budget as attached hereto this Exhibit B as Attachment B-1.

Any revisions to the Project Budget shall be submitted to the City within 30 days.

In the event of a Developer revision to the Project Budget that involves a change to any other funds, the Developer shall provide a written explanation of the change and certification that sufficient other funds are committed to and available to the Project so as to enable satisfactory completion. The City is under no obligation to neither commit nor disburse CDBG-NDR funds if, at its sole determination, it reasonably finds that funding is insufficient to satisfactorily complete any Project activities.

Signatures:

Developer:

Bruce Walker  
By: Bruce Walker  
Title: President

The City of Minot  
Chuck Barney  
By: Chuck Barney  
Title: Mayor

8-21-17

Date

8/21/17

Date

**Exhibit B**  
**Attachment B-1**

Page 1 of 1

**EXHIBIT C**  
**CDBG-NDR Agreement**  
**Project Schedule**

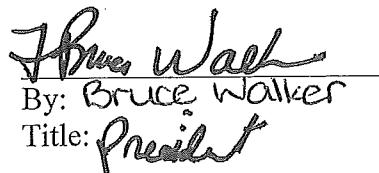
Developer agrees to undertake the Project activities of this Agreement in accordance with the Project Schedule attached hereto this Exhibit C as Attachment C-1.

Satisfactory performance in accordance with this Project Schedule shall be to the City's sole satisfaction. Developer shall provide quarterly progress reports to the City, but provided that the City may require more frequent reporting if it determines that such reporting is necessary to measure adequate progress toward undertaking and completing activity assisted under this Agreement.

The City may reduce or cancel funding under this Agreement by giving thirty (30) days written notice to the Developer, if, at its sole determination, progress is unsatisfactory to meet the requirements of the Agreement.

Signatures:

Developer:

  
By: Bruce Walker  
Title: President

8-21-17

Date

The City of Minot  
  
By: Chuck Borney  
Title: Mayor

8/21/17

Date

**EXHIBIT C**  
**Attachment C-1**

Page 1 of 1

## PROJECT SCHEDULE

Substantial completion is expected to be completed by \_\_\_\_\_, unless extended in writing by the City. A detailed project milestone schedule will be provided by the developer.

Activity	Month/Year

**Exhibit D**  
**CDBG-NDR Agreement**  
**Affordable Housing Requirements and Income Limits**

Developer acknowledges and agrees that seventy five percent (75%) (thirty (30) units) of the units rehabilitated and constructed must benefit households having initial incomes at or below eighty percent (80%) of Median Family Income (MFI), adjusted for household size, as established under income guidelines of HUD. These income limits are determined for the Project according to HUD's income limits for the area in which the Project is located.

Based upon current HUD-described income limits for this area, the following income limits apply for all beneficiaries of the CDBG-NDR -assisted housing units developed by the Developer.

**HUD Household 2017 80% Income Limits, Ward County, ND**  
**Ward County, ND**

**FY 2016 MFI:**

Category	1 PER	2 PER	3 PER	4 PER	5 PER	6 PER	7 PER	8 PER
EXTRA LOW INCOME	15,450	17,650	20,160	24,300	28,440	32,580	36,730	40,890
VERY LOW INCOME	25,750	29,400	33,100	36,750	39,700	42,650	45,600	48,550
LOW INCOME	41,200	47,050	52,950	58,800	63,550	68,250	72,950	77,650

---

The above-referenced income limits may be periodically adjusted, as based upon HUD annual adjustments. Upon any annual HUD adjustment, the City will provide Developer with updated income limits, and such notice shall be considered an amendment to this Agreement. Developer shall apply the most current income limits, as confirmed by the City, in effect at the time of selection of each program beneficiary.

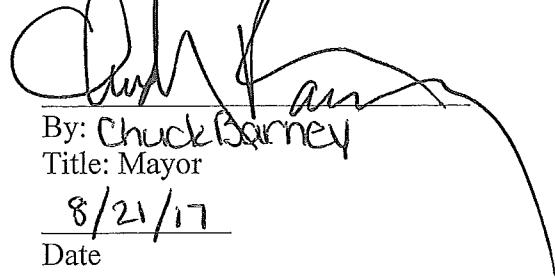
In addition to income eligibility criteria governing program beneficiaries under this Agreement, the Project must comply with housing affordability requirements of this Agreement. Specifically, the Project must adhere to the income and rent restrictions for the thirty (30) CDBG-NDR assisted housing units as detailed herewith, and as adjusted on an annual basis by HUD.

Unit Size (Number of Bedrooms)	Monthly Tenant- Paid Rent	2017 FMR
1	\$319; \$583; \$825	\$893
2	\$730; \$925	\$1,187
3	\$975	\$1,728

Developer:

Brook Walker  
By: Patricia Brook Walker  
Title: President  
8-21-17  
Date

The City of Minot

  
By: Chuck Barney  
Title: Mayor  
8/21/17  
Date

**Exhibit E**  
**CDBG-NDR Agreement**  
**Affirmative Marketing Plan**

Developer shall cause to be established and implemented a written Affirmative Marketing Plan and procedures defining actions to provide information and to otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability. The Affirmative Marketing Plan shall include, but not necessarily be exclusively limited to:

1. The methods to be used in informing the public and potential renters about the availability of housing at the property assisted under this Agreement.
2. Procedures to be used to inform and solicit applications from persons in the housing market area not likely to apply for the housing without special outreach.
3. The use of the federal Equal Housing Opportunity logotype or slogan shall be contained on all advertisements, press releases, brochures and materials used in the solicitation of housing beneficiaries or to otherwise inform the public about the availability of housing under this Agreement.
4. A Fair Housing poster shall be displayed, in locations available to the public, at the office of Developer, any sales/rental office and, in the case of rental property, at any community room on the property.
5. A brochure or similar printed document, describing Federal fair housing laws shall be provided to each applicant for housing under this Agreement.
6. An annual record of Developer actions to affirmatively market units shall be maintained by Developer, and made available for City inspection.
7. During the Period of Affordability, the Developer shall annually assess its success of affirmative marketing actions, and provide said assessment, in writing, to the City within 60 days following the end of each calendar year. Developer shall take necessary and appropriate action to correct deficiencies found from this annual assessment, whether identified by Developer or reasonably required of the City.

Signatures:

Developer:

John Wahl  
By: President  
Title: President

8-21-17

Date

Chuck Garney  
The City of Minot  
By: Chuck Garney  
Title: Mayor

8/21/17

Date

**Exhibit F**  
**CDBG-NDR Agreement**  
**Insurance Requirements**

1) Property Damage insurance:

- Insuring the Owner for all risks of physical loss of or damage to the real property comprising the Project, personal property of the Owner used to maintain or service the Project, and new construction, additions, alterations and repairs to structures including:
  - 1) Coverage for explosion
  - 2) Coverage against loss by fire and allied perils
  - 3) General boiler and machinery coverage
  - 4) Collapse and underground hazards
  - 5) Earthquake coverage for 80% of replacement value if property is in Zone 1 or 2 and all or partial wood frame construction with no reinforcement
  - 6) Sinkhole coverage in the amount of the full replacement value
  - 7) Mine subsidence insurance
  - 8) Theft, vandalism and malicious mischief coverage
  - 9) Sprinkler leakage coverage
  - 10) Windstorm & hail coverage with a deductible not to exceed 5%
  - 11) Consequential and resulting losses from an insured peril should also be covered
- Policy shall provide for claims to be paid based upon replacement cost of the lost or damaged property without deduction for depreciation
- The policy shall have a deductible of no greater than \$5,000 per occurrence
- The policy shall carry no coinsurance provisions
- Coverage and limits shall be extended to include the actual loss of rents sustained due to an insured loss, for a period of at least twelve months from the date of such loss
- Coverage shall be further extended to include debris removal, outdoor trees, shrubs, plants and lawns, and Ordinance or Law coverage for the increased costs of construction, or the loss in value of undamaged portions of the building(s), caused by the enforcement of building, zoning or land use law
- The policy shall include an endorsement naming:

Essential Living, Inc.  
PO Box 879  
Minot, ND 58702

and

The City of Minot  
PO Box 5006  
Minot, ND 57802

as Loss Payee

2) Commercial General Liability insurance:

- Insuring for third party claims of legal liability against the Owner, and caused by bodily injury, property damage, personal injury or advertising injury, arising out of the ownership of the Project and including the costs to defend such actions brought against the Owner
- The policy shall include hired and non-owned automobile liability insurance
- The policy shall include an endorsement adding:

Essential Living, Inc.  
PO Box 879  
Minot, ND 58702

The City of Minot  
PO Box 5006  
Minot, ND 57802

as additional named insured

- The policy shall include an endorsement adding Essential Living, Inc, the City of Minot as additional named insured for Ongoing Operations (Form CG 20 33 07/04) **and** for Completed Operations (Form CG 20 37 07/04), or their equivalent on a combined form
- Limits of the policy shall be at least \$1 million per occurrence and \$2 million in the general aggregate
- Coverage needs to be primary and non-contributory

3) Umbrella/Excess Liability insurance:

- Limit on the policy shall be \$3 million per occurrence
- The policy shall include an endorsement adding Essential Living, Inc. and the City of Minot as additional named insured

All insurance policies:

- are to be written through companies duly entered and authorized to transact that class of insurance in North Dakota. The Insurance Companies must have an A.M. Best rating of A-, VIII or better in the most recent Best's Key Rating Guide
- shall include endorsements requiring at least thirty (30) days prior written notice to the Owner of any cancellation, termination or reduction of coverage therein
- shall provide notice of renewal of any policy made at least ten (10) days prior to the scheduled date of such renewal, and shall be in the form of endorsement to the policy
- CASUALTY MUST BE WRITTEN ON FORM ACORD 27
- GENERAL LIABILITY MUST BE WRITTEN ON ACORD 25-S

## **PROJECT SCHEDULE**

Renovation is expected to be completed by January, 2019, and no later than 24 months following the execution of the Development Agreement with the city of Minot.

<b><u>Activity</u></b>	<b><u>Month/Year</u></b>
Execute Development Agreement	Aug 2017
Environmental Review Complete	Aug 2017
Building Permit	Aug 2017
Closing of NDHFA HIF	Aug 2017
Construction Start	Sept 2017
Occupancy 1 <sup>st</sup> Phase of units	Feb 2018
Occupancy 2 <sup>nd</sup> Phase of units	Aug 2018
Completion of all project construction	Jan 2019
Closing of permanent financing	June 2019