

August 3 2020
STATE OF North Dakota
Ward County

CDBG NATIONAL DISASTER RESILIENCE PROGRAM
City of Minot

AGREEMENT
With
BEYOND SHELTER, INC.

THIS DEVELOPMENT AGREEMENT ("Agreement"), dated this 3rd day of August, 2020 ("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 BEYOND SHELTER, INC., a North Dakota nonprofit corporation, whose principal address is P. O. Box 310, Fargo, ND 58107-0310 ("Developer"). The City and Developer are hereinafter sometimes individually referred to as a "Party" and collectively, as the "Parties."

A. PREAMBLE

WHEREAS, on April 16, 2012 the Department of Housing and Urban Development released \$400 million in Community Development Block Grant Disaster Recovery (DR) funds for the purpose of assisting recovery in the most impacted and distressed areas declared a major disaster in 2011 under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) and

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. Funding for this project may be allocated from these two sources. The Appropriations Act requires funds to be used only for specific resiliency disaster-related purposes, and;

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

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

WHEREAS, the Developer and City previously entered into that certain CDBG-DR Program Agreement by and between the City of Minot and Developer dated June 18, 2015 (the "Original Agreement"), as amended by that certain Amendment #1 to the Contract Between the City of Minot and Beyond Shelter for the Development of the rental apartment building project

known as Sunset Ridge, by and between the City and Developer and dated March 7, 2016 (the "First Amendment"), as further amended by that certain Amendment to Services Agreement between City and Developer dated effective as of February 11, 2019 (the "Second Amendment") as further amended by that certain Amendment to CDBG Disaster Recovery Program agreement with Beyond Shelter, Inc., dated May 18, 2020 (the "Third Amendment"), as further amended by that certain Amendment to CDBG Disaster Recovery Program agreement with Beyond Shelter, Inc., dated on or about the date hereof (the "Fourth Agreement", and together with the Original Agreement and First Amendment, Second Amendment, and Third Amendment, collectively (the "CDBG-DR Agreement").

WHEREAS, the City has preliminarily authorized up to Five Million Five Hundred Thousand Dollars (\$5,500,000) of National Disaster Resilience Community Development Block Grant funds ("CDBG-NDR Funds") to fund the construction of the Project (as defined below).

WHEREAS, the Developer has formed Souris Heights, LLLP, a North Dakota limited liability limited partnership (the "Partnership"), the general partner of which is Souris Heights, LLC, a North Dakota limited liability company (the "General Partner"), the sole member and manager of whom shall be the Developer, for the purposes of constructing, owning, operating and maintaining the Project.

WHEREAS, the Developer intends to convey the land underlying the Development Site (as defined below) to either (i) a to be formed LLC, the sole member and manager of whom shall be the Developer ("Land LLC"), which Land LCC would then subsequently convey the land underlying the Development Site, via deed or long-term ground lease to the Partnership, or (ii) the Partnership via deed or long term ground lease, in order to accommodate the above described construction, ownership, operation and maintenance of the Project.

WHEREAS, the City and Developer enter into this Agreement in order to memorialize certain conditions and agreements pertaining to the construction of 54 units of affordable senior apartment units and applicable development of the Development Site, 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:

I. Definitions

For purposes of this Agreement, certain words identified below have the following meanings:

"Affirmative Marketing Plan" means the HUD required affirmative marketing plan described in paragraph IV(I) and Exhibit E of this Agreement.

"Affordable Housing" or "Affordability" means the rents for a CDBG-assisted rental unit including rent and utilities may not exceed the Fair Market Rent (FMR) for existing housing for comparable units in the area as established by HUD under 24 CFR 888.111. If the unit receives Federal or State project-based rental subsidy and the LMI family pays as a contribution toward rent not more than 30% of the tenant's adjusted household income,

then the maximum rent (i.e. tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program. Maximum rental amounts are adjusted annually by HUD based on the income limits prevailing for the location of the rental housing, which are published by HUD for the Section 8 rental assistance program on HUD's website. Developer will adjust the maximum rental amount within 30 days of publication of new income limits and apply the maximum amount to all new leases executed after that time. Regardless of changes in FMR's and in AMI during the Affordability Period, the maximum rents for qualified tenants once in occupancy with a lease are not required to be lower than the rent limits then in effect at the time of such tenant's initial lease. During the Affordability Period and upon vacancy of any unit, when such unit is initially leased to a new qualified tenant, the maximum rent for such unit will not be required to be lower than the rent limits in effect at the time of such new qualified tenant's lease during the term of such lease.

"Affordability Period" is twenty years (20) from the date of issuance of the certificate of occupancy by the City, which permits the Developer, or the Partnership, to commence renting the fifty-four (54) units in this Project to LMI Households.

"AMI" means the Area Median Income applicable to Minot established annually by HUD for North Dakota and its counties and cities.

"Development Site" means the real property on which the Project will be constructed, which is specifically described in paragraph II(C) of this Agreement.

"Eligible Project Costs" means costs directly attributable to activities and needs to accomplish the Project within the Development Site and determined to be eligible for use of CDBG Loan proceeds, based on a review of the detailed Project Development Budget by the City, as described in this Agreement; provided however, Eligible Project Costs shall not include any developer fee payable by the Partnership to the Developer.

"Land LLC" means an LLC to be formed with the sole member and manager to be the Developer with the sole purpose being to hold title to the land on which the Project is located and to convey such land if so decided to the Partnership.

"LMI" means Low and Moderate Income and refers to the HUD calculations that may be adjusted annually to define the income limits, based on family size and including total household income for persons or households with annual incomes at or below eighty percent (80%) of the current area median income adjusted for family size.

"LMI Tenants" means qualified LMI residents living in the affordable housing developed through the Project described in the Agreement.

"LMI Households" means households with a total household income at or below 80% of the current AMI adjusted for family size.

"Partnership" means Souris Heights LLLP, a North Dakota limited liability limited partnership (the "Partnership"), the general partner of which is Souris Heights, LLC, a

North Dakota limited liability company (the "General Partner"), the sole member and manager of whom shall be the Developer, for the purposes of constructing, owning, operating and maintaining the Project.

"Project" means the fifty-four (54) unit multifamily housing complex to be known as Souris Heights Apartments, further described in paragraph II(D) of this Agreement.

"Project Costs" means all costs associated with the development of the Project within the specified Development Site including but not limited to acquisition costs, pre-development costs, hard and soft construction costs, financing costs, developer fee and reserve account capitalization which must be approved by the City as set forth in this Agreement.

"Subsidy Layering Analysis" means the HUD guidance for non-federal project leverage that may be invested in affordable housing. An evaluation of all committed Project funding must be conducted to ensure that the City does not invest any more CDBG-NDR Funds than necessary to provide affordable housing and the public funding does not unduly enrich the developer/sub-recipient. Applicants must demonstrate that they have structured projects to maximize other available financing source to limit CDBG funding to the lowest amount necessary to assure Project feasibility.

"Tenant Income Verification" means the certified document from Developer as property owner or its representative verifying the income of each tenant occupying an CDBG assisted unit. The method used will be the method described in 24 CFR 5.609(b) and (c).

II. General Project Terms and Conditions

A. National Objective. This Project is funded with CDBG-NDR Funds, shall meet HUD's LMI National Objective, and the Developer, itself, is obligated, and is also obligated to cause the Partnership, to fulfill this National Objective. To meet the LMI National Objective, Developer shall cause the Partnership to construct housing that is rented to and occupied by qualified LMI tenants after the City's issuance of the certificate of occupancy relating to the Project for the duration of the Affordability Period.

B. Amount and Form of Award.

1. Amount of Award. The City will contribute through cost reimbursement of active invoices, in an amount of up to \$5,500,000 in CDBG-NDR Funds to the Project for Eligible Project Costs. The City does not represent or agree that the actual amount shall be \$5,500,000 but, rather, this is the maximum amount that could be paid by City to Developer.

2. Form of Award. The award described in this Agreement will be in the form of a twenty (20) year forgivable, no-interest loan ("CDBG Loan"), and subject to the conditions set forth in this Agreement. The CDBG Loan proceeds shall be used by the Developer to make a loan to the Partnership (the "BSI Re-Loan"), the proceeds of which the Partnership shall use solely to fund Eligible Project Costs. The CDBG Loan shall be evidenced by a promissory note and shall be in a form

approved by the City Finance Director. Developer shall also cause the Partnership to execute a mortgage in favor of Developer relating to the Development Site. Developer shall execute a collateral assignment of the mortgage, in a form approved by the City Finance Director, in favor of the City. The promissory note, mortgage, and collateral assignment of mortgage shall be executed by the Developer and the Partnership, respectively, within 30 days after the issuance of the Certificate of Occupancy by the City of Minot.

a. Repayment of CDBG Loan: The CDBG Loan shall be repaid, in full, without interest, no later than thirty days following the conclusion of the Affordability Period subject to paragraph II.B.2.b

b. Forgiveness of CDBG Loan: Developer shall repay the CDBG Loan, in full, no later than thirty days following the conclusion of the Affordability Period, provided, however, Developer will be deemed to have made the following payments against the balance of the CDBG Loan and forgiveness of the CDBG Loan will be provided by the City, as follows, if the Developer or Partnership meets the LMI National Objective and complies with all of the obligations of this Agreement:

i. On the 10th anniversary of the issuance of the certificate of occupancy, if the Developer or the Partnership has met the LMI national objective and all other obligations described throughout this Agreement, 50 percent of the CDBG Loan shall be deemed repaid to the City.

ii. On the 15th anniversary of the issuance of the certificate of occupancy, if the Developer or the Partnership has met the LMI national objective and all other obligations described throughout this Agreement, an additional 25 percent of the CDBG Loan shall be deemed repaid to the City.

iii. On the 20th anniversary year of the issuance of the certificate of occupancy, if the Developer or the Partnership has met the LMI national objective and all other obligations described throughout this Agreement, the remaining balance of the CDBG Loan shall be deemed repaid to the City.

c. Default. In the event of default by Developer of any of the material terms or conditions of this Agreement and the expiration of all applicable notice and cure periods set forth in paragraph IX(G) of this Agreement, the City may proceed with termination for cause as set forth in paragraph IV(G) of this Agreement which may include repayment of the then current outstanding principal balance of the CDBG Loan, after taking into account any and all deemed repayments set forth in paragraph II(B)(1)(b) above at the time of such default.

C. Development Site. Developer is currently the sole owner of the land upon which the Project will be constructed, which is approximately 3.5042 Acres (152,643 square feet), the address for which is 1400 35th Street NW, Minot, North Dakota and legally described as Lot Two (2), Block One (1), Sunset Ridge Addition to the City of Minot, Ward County, North Dakota (collectively, the "Development Site"); provided however, Developer intends to convey the land underlying the Development Site to either (i) Land LLC, and Land LCC would then subsequently convey the land underlying the Development Site, via deed or long-term ground lease to the Partnership, or (ii) the Partnership via deed or long term ground lease, in order to accommodate the above described construction, ownership, operation and maintenance of the Project.

D. Project. The Developer shall cause the Partnership to construct an affordable multi-unit senior apartment project with fifty-four (54) units of LMI senior apartments with the required parking spaces, lighting, on-site sidewalks, exterior landscaped area, attached parking garages, a secure entrance, elevator, community room with kitchen, patio with grill, computer/library room, and other appurtenances as required by the City of Minot's codes and ordinances. Developer is required to secure, or cause the Partnership to secure, any necessary approvals pursuant to city code from City Departments and/or Planning Commission and/or City Council pertaining to the site improvements cited in this section. The CDBG Loan provided under this Agreement may only be used for Eligible Project Costs.

The Developer must ensure, and shall cause the Partnership to ensure, for the entire Affordability Period, that the fifty-four (54) LMI apartment units are rented and occupied (subject to vacancies occurring in the regular course of business) by LMI residents; and are properly managed and maintained according to HUD's Housing Quality Standards requirements set forth under the HOME Entitlement Grant Program 24 CFR Section 982.401.

More particular descriptions of the Project are found in Exhibit A, which is attached and incorporated into this Agreement by reference.

E. Use of CDBG Loan. The CDBG Loan provided under this Agreement may only be used for reimbursement of Eligible Project Costs.

F. Disbursement of CDBG Loan Funds.

1. Except for an approved proportional share of pre-construction architectural costs (proportional means percentage of CDBG-NDR funds to total Project Costs), Developer agrees and understands that no CDBG-NDR funds will be disbursed until \$4,750,000 in non-CDBG-NDR funds have been expended on Project Costs, not including developer fees. The expenditure of \$4,750,000 shall be demonstrated with supporting documentation and approved in writing by the City Finance Director and NDR Program Manager prior to the disbursement of any CDBG-NDR funds.

2. After Developer meets its obligations under paragraph II(F)(1), Developer may submit or cause Partnership to submit a monthly Draw Request, which will be in

such form as to (1) identify Eligible Project Costs to be reimbursed as described and approved in the Project Development Budget; and (2) attach active invoices for payments, materials, equipment, supplies delivered to the project site, services provided, and certification of work completed, and any related information to support the eligibility of the draw request for reimbursement. The Draw Request will also provide information for the non-CDBG sources of funding for the project. The Draw Request shall be submitted by Developer, or the Partnership, to the City's Finance Director and NDR Program Manager. The City, Developer, and/or the Partnership, will finalize a written draw request process that will facilitate an orderly payment process in conformance with HUD rules as well as 2 CFR Part 200 of the federal Uniform Administrative Guidelines. Developer recognizes and accepts that no CDBG Loan proceeds may be used as an advance and all costs in a Draw Request have been incurred.

3. The Developer understands and agrees that all Eligible Project Costs shall be invoiced and submitted to the City prior to May 1, 2022.

G. Time of Performance.

1. **Construction of Project.** The construction phase of the Project shall be completed as specifically outlined in the Project Schedule, which is attached and incorporated into this Agreement as Exhibit C.

2. **Affordability Period.**

- a. **Affordability Period.** The Affordability Period relating to this Project shall be for twenty (20) years from the date of issuance of the certificate of occupancy relating to the Project.

- b. **Maximum Rental Amount During Affordability Period.** The rents for a CDBG-assisted rental unit including rent and utilities may not exceed the Fair Market Rent (FMR) for existing housing for comparable units in the area as established by HUD under 24 CFR 888.111. If the unit receives Federal or State project-based rental subsidy and the LMI family pays as a contribution toward rent not more than 30% of the tenant's adjusted household income, then the maximum rent (i.e. tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program. LMI tenants have household incomes at or below 80% of the area median income (AMI) for Ward County. Maximum rental amounts are adjusted annually by HUD based on the income limits prevailing for the location of the rental housing, which are published by HUD for the Section 8 rental assistance program on HUD's website. Developer will adjust the maximum rental amount within 30 days of publication of new income limits and apply the maximum amount to all new leases executed after that time. Regardless of changes in FMR's and in AMI during the Affordability Period, the maximum rents for qualified tenants once in

occupancy with a lease are not required to be lower than the rent limits then in effect at the time of such tenant's initial lease. During the Affordability Period and upon vacancy of any unit, when such unit is initially leased to a new qualified tenant, the maximum rent for such unit will not be required to be lower than the rent limits in effect at the time of such new qualified tenant's lease during the term of such lease.

H. Promissory Note, Mortgage, and Collateral Assignment of Mortgage.

1. Execution. Developer shall execute a promissory note in favor of the City and shall assign to the City Developer's rights, title, and interest in and to the mortgage securing the BSI Re-Loan, which mortgage shall be secured by the land and all improvements on the land, to secure Developer's national objective obligations and all obligations during the Affordability Period.

I. Failure to Meet National Objective or Other Requirements of Agreement. If the Developer fails, or fails to cause the Partnership, to fulfill the obligations or meet the national objective stated herein in this Agreement, all funds which the City has expended for the Project, through this Agreement, shall be reimbursed to the City by the Developer, unless a portion of the CDBG Loan was previously forgiven as specified in this Agreement.

J. CDBG-DR Agreement. It is agreed by the Developer that as a result of this Agreement, and on or about the date hereof it has or will execute the Fourth Amendment (as defined in the recitals hereto) to the CDBG-DR Agreement (as defined in the recitals hereto) confirming that this Project represents the second building contemplated in the CDBG-DR Agreement for purposes of meeting the LMI rental unit requirements of said CDBG-DR Agreement.

III. Special Conditions before Release of Funds. None of the proceeds of the CDBG Loan described in paragraph II(B) of this Agreement will be paid by the City until the following special conditions for release of funds are met.

A. Environmental Clearance. Developer shall not obligate nor expend any 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, or may cause the Partnership to, 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, or permit the Partnership to 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.

- B. Receipt of HUD Release of Funds.** Developer shall not, and shall not permit the Partnership to, obligate or expend any funds for this Project until the City is in receipt of HUD's Notice of Release of Funds relating to this Project and the City provides written notice of the HUD Notice to Developer.
- C. Plans and Specifications.** Developer shall submit Project plans and specifications to the City through the Finance Director and NDR Program Manager, or their designees which comply with all applicable State and City laws and meet the requirements of National HBA green building standards. After the City's Finance Director, and NDR Program Manager, determine that the Project plans and specifications are acceptable to the City, the City will provide Developer a written approval of the documents, and such approved plans and specifications shall become part of this Agreement. In addition, all standard and applicable City code, ordinance, policies, and processes relating to review and/or approval of Project documents, plans, and specifications including but not limited to Planning Commission and City Engineer shall still apply. The Project cannot proceed until any and all such reviews and approvals are completed. It is the Developer's responsibility to handle all such matters related to other City reviews and approvals.
- D. Development Site Ownership and Lien Disclosure.** Developer shall provide to the City, through the Finance Director and NDR Program Manager proof of its, or the Partnership's ownership of the land which constitutes the Development Site and copies of all then existing liens on the Development Site property.
- E. Project Development Budget.** The Developer will submit a Project Development Budget, which shall be incorporated into this Agreement as Exhibit B after the City's Finance Director and NDR Program Manager or designees determines it is acceptable to the City and provide written notice to the Developer of approval. The Project Development Budget shall identify allowable architectural fees, construction management fees, contractor profit and overhead and contractor general requirements which should be part of the required soft costs disclosure of the Project Development Budget described on Exhibit B, attached hereto. Allowable fees referenced in the preceding sentence shall not exceed the fees allowable under the Minot Affordable Housing Underwriting Guidelines (same as the North Dakota Housing Finance Agency limits). A final Project Budget will be attached as Exhibit B-1 after the project plans and specifications are completed. This budget will include all sources and uses of project funding and the uses of CDBG funding for the project. A copy of the Minot Affordable Housing Underwriting Guidelines shall be attached as Exhibit G.
- F. Project Schedule.** After the City's Finance Director, and NDR Program Manager or designees determine that the Project Schedule is acceptable to the City, the Project Schedule shall be attached to this Agreement as Exhibit C.

G. Qualified Appraisal. If any site acquisition fees are to be paid from CDBG-NDR Funds, the Developer shall submit a qualified appraisal of the Development Site to the City's Finance Director or designee and the Developer will comply with all applicable Uniform Acquisition and Relocation requirements under HUD rules.

H. Project Document. Using the Project Development Budget, the appraisal, and other data, Developer shall develop a Project Document that will provide development monitors and HUD auditors a single source document to readily understand the development costs, other sources and uses of non-CDBG funding, any contributed capital, developer equity, and other building costs, prior to the release of any CDBG-NDR Funds.

I. Affirmative Marketing Plan. Developer shall prepare, or cause the Partnership to prepare, an Affirmative Marketing Plan for the Project that meets all applicable HUD rules and regulations.

IV. Construction Phase Requirements. In addition to any applicable obligations identified in this Agreement, Developer shall comply, and shall cause the Partnership to comply, with the following requirements during the construction phase of the Project:

A. Adherence with Project Schedule. Developer shall cause the Partnership to proceed with the construction of the Project at the Development Site in substantially in accordance with the Project Schedule approved by the City; provided however, the City shall permit reasonable adjustments to the Project Schedule upon notice from the Developer.

B. HUD New Construction. Developer shall cause the Partnership to comply with HUD's requirements for new construction. The Developer must cause the Partnership to ensure the Project meets the HUD Energy Star standards. Developer, or the Partnership and its Architect will coordinate with the City's designee during the preparation of the plans and specifications to ensure the final plans meet HUD requirements and applicable City codes and ordinances, and Uniform Federal Accessibility Standards (UFAS).

C. Payment and Performance Bond. Developer shall, or shall cause the Partnership to secure, in favor of the Partnership, as Owner-Obligee, and the City, as Additional Obligee (together with any other "Additional Obligees", as may be required by the Partnership's investor and other funders), payment and performance bonds in connection with the construction of the Project.

V. Affordability Period Requirements. In addition to any applicable obligations identified in this Agreement, Developer shall cause the Partnership to comply with the following requirements during the Affordability Period of the Project:

A. Affordable Housing Requirements. For and in consideration of the City's agreement to provide the CDBG Loan for the Project, to be developed on the Development Site, Developer agrees and understands:

1. All of the fifty-four (54) residential apartment units will be affordable to and rented and occupied by LMI households with incomes at or below 80 percent of Area Median Family Income, adjusted for household size as established in the income guidelines promulgated by HUD and published annually by HUD. A copy of the 2020 income limits is included in Exhibit D of this Agreement.
 2. Determination and certification of tenant LMI eligibility shall be done by the Partnership or its property manager in accordance with HUD's rules and regulations governing CDBG-NDR Funds.
 3. All fifty-four (54) units shall be leased to eligible LMI tenants and occupied by such tenants.
 4. If the Project has higher than normal vacancies, the Developer shall cause the Partnership to provide, as supplemental information in its quarterly Progress Report, a written report to the City that may include: (1) evidence of a Marketing Plan in place to fill the vacant apartment units; (2) documentation of all advertisements, website postings, listings, open houses, etc. that Partnership has undertaken to fill the vacant apartment units; (3) information relating to the number and location of each vacant unit; and (4) documentation establishing that the fifty-four (54) LMI apartments are being maintained according to HUD Quality Standards for affordable housing set forth in 24 CFR, section 982.401 and City of Minot Code.
 5. All fifty-four (54) residential senior apartment units will remain compliant as LMI rental apartments for the Affordability Period. Once the Affordability Period terminates, all income/affordability restrictions shall terminate with no further action needed from the City, Developer, or the Partnership.
- B. Client Data.** The Developer shall cause the Partnership to maintain client data demonstrating tenant eligibility in accordance with CDBG-NDR LMI requirements as required by HUD.
- C. Client Information.** The Developer understands that client information collected under this Agreement 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 Agreement, 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.

D. Progress Reports and Monitoring.

1. **Progress Reports.** The Developer shall, or shall cause the Partnership to, submit quarterly Progress Reports to the City through the Finance Director, and NDR Program Manager or designees. The Progress Reports shall include, (1) the total units rented and occupied; (2) the units rented and occupied since last Progress Report; (3) a signed statement attesting that all occupied units are rented to LMI

residents and occupied by the same LMI residents; (4) a signed statement attesting that all tenants are being charged monthly rents in compliance with Exhibit D.

2. **Monitoring.** Developer agrees and understands that this Project will be monitored by the City on a regular basis to ensure compliance with HUD rules and regulations and the performance requirements established in this Agreement. The City may perform this activity or may contract a firm qualified, at the City's sole discretion, to perform the monitoring and inspection (upon reasonable advance notice, and subject to rights of tenants of the Project) relating to the Project.

The City will monitor the performance of the Developer or Partnership against the Developer's obligations as stated in this Agreement.

The City will use the above described quarterly Progress Reports to determine compliance with obligations under this Agreement but such Progress Reports shall not be the sole basis to confirm compliance. In addition, the Developer shall cause the Partnership to provide the Project's annual financial information and documentation for this review at no cost to the City. Failure to permit reasonable on-site monitoring or failure to provide the required monitoring and inspection information and documentation may result in the termination of this Agreement and/or the CDBG Loan being called due; but subject to any and all deemed repayments set forth in paragraph II(B)(1)(b) above. An annual fee of \$1,000 may be imposed to cover costs of ongoing monitoring and inspections to comply with the Affordability Period requirements and Developer agrees to pay the imposed fee within thirty days of receipt of an invoice from the City.

3. **Substandard Performance.** Substandard performance, as reasonably determined solely by the City, will constitute noncompliance with this Agreement. The City through its Finance Director or designee will advise the Developer and the Partnership in writing of any substandard performance and grant the Developer and the Partnership in writing a reasonable amount of time to cure the substandard performance, which shall not be less than thirty (30) days, provided, however, if such cure cannot reasonably be corrected within such thirty (30) days, so long as the Developer or Partnership began in good faith to tender such cure within such thirty (30) day period, and are diligently proceeding to complete the same, the Developer and/or Partnership shall have such additional time as may reasonably needed to tender such cure. If the Developer or the Partnership fails to cure such substandard performance after the notice and cure periods set forth described above, that failure to cure 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.

VI. Other Conditions

- A. Cost Reasonableness and Subsidy Layering.** As required by HUD, Developer shall provide to the City's Finance Director or designee required documentation to meet HUD regulations regarding cost reasonableness and subsidy layering.
- B. Property Taxes and Special Assessments.** Developer shall cause the Partnership to remain current with all property taxes and special assessments relating to Development Site. Failure to remain current with all property taxes and special assessments, subject to the Developer's or Partnership's, as the case may be, right to contest any such property taxes or special assessments shall be considered a material breach of this Agreement. Notwithstanding the foregoing, the Developer and the Partnership will be provided sufficient time to cure this breach in the event that it becomes necessary.
- C. Transfer of Property.** Except as expressly contemplated and set forth herein, the Developer will not further sell or otherwise transfer any portion of the Development Site and structures described in this Agreement without the prior written approval of the City Council, however, written approval of the sale or transfer will not be unreasonably denied provided that Developer provides sufficient written guarantees demonstrating that sale or transfer preserves all terms and conditions of this Agreement. In the event the City approves such a sale or transfer, all Developer responsibilities and requirements contained in this Agreement shall be conveyed to the purchaser by a written agreement and the performance requirements and responsibilities contained in this Agreement shall be acknowledged and agreed to by the purchaser through the full term of the Affordability Period contained in this Agreement. The Developer shall provide a copy of the written agreement between Developer and purchaser to the City within three (3) business days of its execution. Failure to obtain written approval of a sale or transfer of any portion of the Development Site, to notify the City of a sale or transfer of any portion of the Development Site, or to provide a copy of the written agreement between Developer and purchaser, shall be considered a material breach of this Agreement and may result in termination of this Agreement. Notwithstanding the foregoing, the City approves of the conveyance of the Development Site to Land LCC and/or the Partnership and nothing contained herein is intended to restrict the transfer or assignment of partnership interests in the Partnership.
- D. Obligations at Close-Out.** The Developer's obligation to the City shall not end until all close-out requirements are completed covering both the Project construction phase and the subsequent Affordability Period. Activities during this close-out period shall include providing documentation that the rental of the units is in accordance with Exhibit D, Affordable Housing Requirements and Income Limits.
- E. Records to City.** All Developer/Partnership 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 or Partnership, as the case may be, within thirty (30) days after receipt by the Developer and the Partnership; provided however, if such deficiency cannot reasonably be cleared within such thirty (30) day period, the

Developer and Partnership shall be granted an additional thirty (30) days to the clear such deficiency Failure of the Developer to comply with requirements will constitute a violation of this Agreement.

F. Compliance with Public Records Laws. Developer understands that, the City must disclose to the public upon request any records it receives from Developer or Partnership. Developer further understands that any records obtained or generated by Developer or Partnership under this Agreement may, under certain circumstances, be open to the public upon request under the North Dakota public records law. At no additional cost to the City, Developer agrees to contact City promptly upon receiving a request for information under the public records law and to comply with City's instructions on how to respond to the request.

G. Environmental Conditions.

1. Air and Water. The Developer agrees to cause the Partnership to comply with the following requirements insofar as they apply to the performance of this Agreement:

- a. Clean Air Act, 42 U.S.C., 7401, *et seq.*;
- b. 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;
- c. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

2. 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.

3. Historic Preservation. The Developer agrees to cause the Partnership 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.

- H. City Recognition.** The Developer shall cause the Partnership to ensure recognition of the role of City in this Project including on site signage during the Construction Phase of the Project and any media releases or activities. Media events, media releases, or similar activities should be coordinated with the City's designee and Public Information Officer. All activities, facilities, and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Developer shall include a reference to the support provided under this Agreement in all publications and printed material, including signage.
- I. Civil Rights Compliance.** If applicable to the CDBG eligible activity related to the acquisition of real property, the Developer shall 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.
- J. Non-Discrimination.** If applicable to the CDBG eligible activity related to the acquisition of real property, the Developer shall cause the Partnership 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 permit the Partnership to 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 cause the Partnership to 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 cause the Partnership 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.
- K. Section 504.** With respect to contracts for the housing development, the Developer shall cause the Partnership 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. Upon written request from Developer or the Partnership, the City shall provide the Developer and the Partnership with guidelines necessary for compliance with that portion of the Regulations in force during the term of this Agreement.
- L. Access to Records.** The Developer shall cause the Partnership to cause to be furnished all Project information and reports required hereunder and will permit access to its books, records and accounts by the City as requested by and through the Finance Director, any of the City's other 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.

M. Employee 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.

N. 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.

O. Conflict of Interest. The Developer shall cause the Partnership to abide by the provisions of 24 CFR 570.611, which include (but not limited to) the following:

1. The Developer shall cause the Partnership to maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. The Developer must cause the Partnership to provide this document to the City prior to the release of any CDBG Loan for the Project.
2. 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.
3. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG 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 assisted activity, or with respect to the proceeds from the CDBG 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.

P. 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 subawards at all tiers (including subcontracts, subgrants, 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.

Q. Religious Activities. The Developer agrees that the CDBG Loan provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(J), such as worship, religious instruction or proselytization.

R. 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.

S. Davis-Bacon Act Compliance Required. When applicable, the Developer shall cause the Partnership to comply with any requirements of the Davis-Bacon Act. The Davis-Bacon 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 Partnership, 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.

T. Contractual Work Hours and Safety Standards Act of 1962 – Compliance Required. When applicable, Developer shall cause the Partnership to comply with the 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.

U. Copeland Anti-Kickback Act of 1934 – Compliance Required. When applicable, Developer shall cause the Partnership to comply with the Copeland "Anti-Kickback" Act of 1934, (40 USC 3145) prohibits and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities.

V. Lead Based Paint Poisoning Prevention Act of 1971, (42 USC 4831) – Compliance Required. When applicable, the Developer shall cause the Partnership to comply with 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.

W. Section 3 Housing/Community Development Act of 1968 – Compliance Required. When applicable, Developer shall cause the Partnership to comply with 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 subaward exceeding \$100,000. The Developer will provide the City with verification of compliance with Section 3 for contractors and subcontractors.

As a condition of receiving Federal funds, the Developer is required to cause the Partnership to comply with Section 3 of the Housing and Urban Development (HUD) Act of 1968 (Section 3), The Developer is required to pass down the Section 3

requirements to construction contractors and subcontractors funded with HUD funds and to monitor contractors and subcontractors for compliance with these requirements.

X. Workers Compensation. The Developer shall cause the Partnership to maintain Workers' Compensation and Employer's Liability insurance coverage for all its employees involved in the performance of this Agreement and in conformance with the laws of the State of North Dakota.

Y. Insurance. As outlined in Exhibit F, Insurance Requirements, the Developer shall cause the Partnership to 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 permit the Partnership to allow the commencement of work by the general contractor until evidence of insurance has been provided to the City through the Finance Director. See Exhibit F Insurance Requirements.

Z. Hold Harmless. The Developer shall protect, defend, indemnify, save and hold harmless the City, all its elected officials, Departments, Agencies, Boards and Commissions, its 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 this Agreement. 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.

The City also agrees to protect, defend, indemnify, save and hold harmless the Developer and its officers, directors, managers, employees, including any volunteers, and agents 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 City, its agents, servants, employees or contractors, or any and all costs, expense and/or attorney fees incurred by the City, as a result of any loss, liability, claim, cause of action, demand, suit, or expense related to the construction of utility or other City work at the site. The City 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.

VII. Compliance with City Agreements and Applicable Laws

- A. The Developer shall comply, and cause the Partnership to comply, with all terms and conditions contained in this Agreement;
- B. The Developer shall comply with the terms and conditions contained in each of the other City agreements relating to this Project or Development Site, if any;
- C. The Developer shall comply, and cause the Partnership to comply, with all applicable HUD Rules and/or Regulations;
- D. The Developer agrees comply, and cause the Partnership 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-DR regulatory waivers have been granted by HUD and alternative requirements have been specified pursuant to FR-Vol. 81, NO. 109/Tuesday June 7 2016/Notices concerning funds provided to the CDBG Grantees. Developer also agrees to comply, and cause the Partnership to comply, with all other applicable Federal, state and local laws, regulations, and policies governing the CDBG Loan provided under this Agreement;
- E. The Developer shall comply, and cause the Partnership to comply, with all applicable provisions of the zoning, development, and building codes, and all ordinances and regulations of the State of North Dakota and the City of Minot, North Dakota;
- F. The Developer shall comply, and cause the Partnership to 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
- G. Developer shall inform, or cause the Partnership to inform, affected persons of their rights and of the acquisition policies and procedures set forth in the regulations at 24 CFR Part 42.

VIII. 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	Project Development Budget
Exhibit C	Project Schedule
Exhibit D	Affordable Housing Requirements and Income Limits
Exhibit E	Affirmative Marketing Plan
Exhibit F	Insurance Requirements
Exhibit G	Minot Affordable Housing Underwriting Guidelines

IX. Miscellaneous Conditions

- 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 Agreement by assignment, transfer, or novation, without prior written consent of the City. This provision shall not be construed to prohibit Developer from assigning their bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Written 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. 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 both 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 it is 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.

G. Suspension or Termination.

1. In accordance with Appendix 2 to 2 CFR Part 200 of the federal Uniform Administrative Guidelines which are applicable to all federal grants, 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. Examples of material failures to comply with the terms of this Agreement may 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;
- c. Submission by the Developer/Partnership to the City reports that are incorrect or incomplete in any material respect; or
- d. Failure to cause the Partnership to meet the Project Schedule included in this Agreement.

If termination for cause is initiated by the City, the City shall give the Developer and the Partnership written notice of default, specifying the non-compliance with the terms of this Agreement. The Developer and the Partnership shall each have thirty (30) days after receipt of such notice, to either correct such non-compliance or, in the case of non-compliance that cannot be corrected in thirty (30) days, the Developer and/or Partnership began in good faith to correct such non-compliance and diligently proceed to complete such correction. In the event neither the Developer nor the Partnership tender such cure within such period, then the City may formally declare Developer to be in default of this Agreement. Upon a declaration of default, this Agreement shall terminate on the date specified in such notice. Upon termination, unless specified otherwise in this Agreement, the unpaid balance of the CDBG Loan, after taking into account any and all deemed repayments set forth in paragraph II(B)(1)(b), shall be immediately due and payable to the City by the Developer.

2. 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 Agreement; provided that 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.

H. Notice/Communication. 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
Finance Director

City of Minot
PO Box 5006
Minot, North Dakota, 57802

To Developer

Beyond Shelter, Inc.
PO Box 310
Fargo, North Dakota 58107-0310

With a copy to

Souris Heights, LLLP
PO Box 310
Fargo, North Dakota 58107-0310

- I. Developer Shall Not Have Employer/Employee Relationship with City.** 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.
- J. 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 fully 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.
- K. 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.

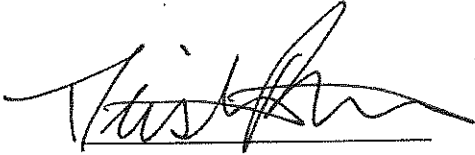
This Agreement is signed below, in three (3) duplicate originals, by the duly authorized representatives of Developer and the City and is made effective on the first date as is herein set out above.

[Remainder of this page has intentionally been left blank]

WITNESSES:

Developer:

Beyond Shelter, Inc. a North Dakota
nonprofit corporation

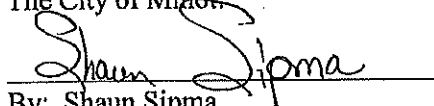


By: Daniel P. Madler
Title: Chief Executive Officer

Date

8-18-2020

The City of Minot:



By: Shaun Sipma
Title: Mayor

8/5/2020
Date

Date



By: David Lakefield
Title: Finance Director

8-12-20
Date

Date

EXHIBIT A
CDBG Agreement
Project Description

Beyond Shelter, Inc. a North Dakota nonprofit corporation ("BSI"), in partnership with the Minot Housing Authority (MHA") will, collectively, develop fifty-four (54) rental units of affordable senior housing on a parcel of property located at 1400 35th Street NW, Minot, North Dakota (the "Project"). All of the units will be reserved for households having initial incomes at or below eighty percent (80%) of the Area Median Family Income, adjusted for household size, as established by HUD and further explained in Exhibit D of this Agreement.

BSI is the sole member and manager of Souris Heights, LLC, a North Dakota limited liability company (the "MGP"), which will serve as the Managing General Partner of Souris Heights, LLLP, a North Dakota limited liability limited partnership (the "Partnership"). BSI intends to convey the Development Site to either (i) a to be formed LLC, the sole member and manager of whom shall be the Developer ("Land LLC"), which Land LCC would then subsequently convey the land underlying the Development Site, via deed or long-term ground lease to the Partnership, or (ii) the Partnership via deed or long term ground lease, for purposes of constructing, developing, owning, and operating the Project.

Planned Improvements include: A three-story building with two attached parking garages. The unit mix will be 45 one-bedroom apartments, and 9 two-bedroom apartments. Eight (8) of the one-bedroom apartments and three (3) of the two-bedroom apartments, just over 20% of the units, will be fully accessible featuring universal design. The building will include a secure entrance, elevator, community room with kitchen, patio with grill, computer/library room, and a guest suite for the convenience of those who call Souris Heights home.

BSI has received conditional funding commitments for; 1) Four percent (4%) Low Income Housing Tax Credits and Housing Incentive Funds from North Dakota Housing Finance Agency; 2) anticipates CDBG funds from North Dakota Division of Community Services; and 3) anticipates utilizing the Bank of North Dakota Flex PACE Affordable Housing Program.

In consideration of the Developer providing affordable senior rental housing as identified within this Agreement, the City is committing up to \$5,500,000 of CDBG-NDR Funds for the completion of site improvements and construction of the affordable housing units as described in this Agreement.

EXHIBIT B
CDBG 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.

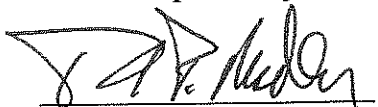
Upon completion of the project plans and specifications by the Architectural Firm, a revised Project Budget will be submitted to the City for review and approval and will be attached to this as Exhibit B-1 within 30 days.

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:


Beyond Shelter, Inc. a North
Dakota nonprofit corporation



By: Daniel P. Madler
Title: Chief Executive Officer

8-18-2020
Date

The City of Minot


By:
Title: Mayor

8/5/2020
Date

Exhibit B
Attachment B-1

Page 1 of 1

EXHIBIT C
CDBG Agreement
Project Schedule

Developer agrees to cause the Partnership 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, or shall cause the Partnership to 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 and the Partnership, if, at its sole determination, progress is unsatisfactory to meet the requirements of the Agreement.

Signatures:

Developer:

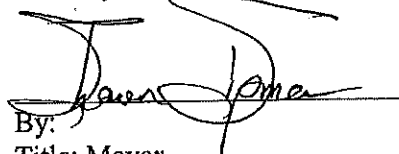
Beyond Shelter, Inc. a North
Dakota nonprofit corporation



By: Daniel P. Madler
Title: Chief Executive Officer

8-18-2020
Date

The City of Minot



By:
Title: Mayor

Date

EXHIBIT C
Attachment C-1

Page 1 of 1

PROJECT SCHEDULE

Substantial completion is expected to be completed by June 2022, unless extended in writing by the City. A detailed project milestone schedule will be provided by the developer.

Activity	Month/Year
Acquisition	August/2015
Zoning/Plat Approval	May/2015
Building Permit	December/2020
Closing and Disbursement of Construction Financing	December/2020
Closing of Permanent Financing	December/2020
Partnership Closing	December/2020
Construction Start	May/2021
Construction Completion	June/2022
Issuance of Certificate of Occupancy	August/2022
Occupancy of Rental Units	December/2022
Disbursement of Permanent Financing	April/2023

Exhibit D
CDBG Agreement
Affordable Housing Requirements and Income Limits

Developer acknowledges and agrees that one hundred percent (100%) of the fifty-four (54) units constructed for the Souris Heights affordable senior housing will benefit households having initial incomes at or below eighty percent (80%) of Area Median Family Income (AMI), 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 and CDBG-NDR-assisted housing units developed by the Developer.


HUD Household 2020 80% Income Limits, Ward County, ND
Ward County, ND

FY 2020 MFI:

Category	1 PER	2 PER	3 PER	4 PER	5 PER	6 PER	7 PER	8 PER
EXTRA LOW INCOME	\$18,800	\$21,450	\$24,150	\$26,800	\$30,680	\$35,160	\$39,640	\$44,120
VERY LOW INCOME	\$31,300	\$35,750	\$40,200	\$44,650	\$48,250	\$51,800	\$55,400	\$58,950
LOW INCOME	\$50,050	\$57,200	\$64,350	\$71,450	\$77,200	\$82,900	\$88,600	\$94,350

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.

Developer:
Beyond Shelter, Inc. a North
Dakota nonprofit corporation


By: Daniel P. Madler
Title: Chief Executive Officer

8-18-2020
Date

The City of Minot


By:
Title: Mayor

8/5/2020
Date

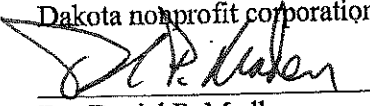
Exhibit E
CDBG Agreement
Affirmative Marketing Plan

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.

Developer:

Beyond Shelter, Inc. a North
Dakota nonprofit corporation


By: Daniel P. Madler
Title: Chief Executive Officer

8-18-2020
Date

The City of Minot

The City of Minot


By:
Title: Mayor

8/5/2020
Date

Exhibit F
CDBG 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:

Beyond Shelter, Inc.
PO Box 310
Fargo, ND 58107-0310

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:

Beyond Shelter, Inc.
PO Box 310
Fargo, ND 58107-0310

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

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City of Minot NDR Affordable Housing Underwriting Guidelines for Developers and Sub-Recipients

The City of Minot received National Disaster Resilience (NDR) funds from the US Department of Housing and Urban Development (HUD) to support resilience and recovery projects identified in the City's NDR Action Plan. Minot identified three integrated NDR projects: reduce flood risk; increase the supply of quality long-term affordable housing and foster a robust and healthy economy. NDR Affordable Housing is dedicated to addressing the housing needs of low- and moderate-income households in Minot in accordance with HUD's NDR requirements.

The city has two options in carrying out the goal of creating resilient affordable housing through the use of NDR funds which are either through competitive RFPs resulting on developer contracts or through negotiated sub-recipient agreements with non-profit corporations.

Underwriting and Subsidy Layering Analysis for NDR projects will follow the federal OMB 2 CFR 200 standards both for developer and sub-recipient projects. These guidelines will be used by the City of Minot to ensure transparency and evaluate project costs and fees to determine if they are eligible in meeting HUD's necessary and reasonable cost justification standards; evaluate income, expenses, and risks to determine there is a reasonable rate of return both to cover long term project operating costs as well as an acceptable profit and/or positive income realization base depending on whether it is a developer or sub-recipient project all of which will meet the HUD requirement that CDBG-DR or CDBG-NDR funds are justified and necessary for the proposed project. The guidelines comply with applicable federal, state and local laws, and establish the standards for evaluating affordable housing projects funding by the City of Minot NDR Affordable Housing Program. These guidelines follow the underwriting requirements of the North Dakota Housing Finance Agency and HUD regulations.

Applicants for any NDR Affordable Housing Program funds must comply with all applicable federal, state and local regulations related to the construction, acquisition, rehabilitation or provision of housing. These regulations include, but are not limited to:

- Community Development Block Grant (CDBG) regulations and policies
- Title III of the Americans with Disabilities Act (ADA) of 1990
- Section 504 of the Rehabilitation Act of 1973
- Fair Housing Act
- Davis-Bacon and Related Acts
- Identify of Interest Transactions
- Copeland Anti-Kickback Act of 1034
- Conflict of Interest Requirements
- Environmental Regulations

- The Lead-Based Paint Poisoning Prevention Act and Lead Safe Housing Rule
- Section 3 – Economic Opportunities for Low and Very Low-Income Persons
- Uniform Relocation Act – URA

Applications received by the City of Minot through competitive RFPs or proposals received from non-profits for the sub-recipient vetting process must comply with all applicable federal environmental regulations. If any funds including non-NDR funds are spent or committed to a development prior to the completion of the environmental process, the City of Minot cannot provide NDR funding for the project.

Definitions

AMI – Area median income

Adjusted household income – gross household income limit that has been modified according to the number of persons residing within a dwelling unit

Affordable housing – In general, housing for which the household is paying no more than 30 percent of its income for gross housing costs, including utilities

Cost Reasonableness – HUD 2 CFR 200.404 regulations, the City must evaluate project costs to ensure they comply with reasonable cost regulations

Eligible applicants – For-profit developers, private non-profit developers, private non-profit subrecipients, public non-profits (housing or redevelopment authorities), and public entities (state or local government agency).

Extremely Low Income – households with incomes at or below 30 percent of the area median income (AMI) for Ward County, ND

Fair Market Rents – rental rates as established and updated periodically by HUD that are determined to be fair, affordable and appropriate rents for a geographical area

Household – all persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements (24 CFR 570.3)

Housing Market Analysis – A market analysis or study is required for projects that will receive NDR funding for acquisition, rehabilitation and new construction. A market analysis is an evaluation of the economic conditions of supply, demand and rental rates for the type of low-income housing development being proposed as well as the rent levels proposed for the project. The market study must have been completed within the past 12 months.

Income – all reference to “Income” shall mean the annual income as defined in 24 CFR 5.609 referred to as “Part 5 annual income”

Low Income – households with incomes at or below 80% of the area median income (AMI) for Ward County, ND

Multifamily – any building or group of buildings with four or more permanent residential rental units operated as a single housing project and at least twenty percent of the units are restricted for occupancy by persons or families of low and moderate income

NDR Assisted Unit – All housing units that benefit from financial assistance from NDR funding. The number of NDR assisted units in a project will be calculated based on the amount of NDR assistance in relation to the cost of construction and NDR funds can only be used for NDR eligible LMI units.

Rent Restricted – Rent including utilities and any tenant-based rental assistance that does not exceed the applicable published area median income limits which are calculated based on an assumed 1.5 persons per bedroom (single person in an efficiency).

Subsidy Layering Analysis – HUD establishes limits on the amount of federal funds that may be invested in affordable housing on a per-unit basis. Before committing funds to a project, an evaluation of all committed project funding must be conducted to ensure that the city does not invest any more NDR funds than necessary to provide affordable housing and the public funding does not unduly enrich the developer/subrecipient. Applicants must demonstrate that they have structured projects to maximize other available financing source to limit NDR funding to the lowest amount necessary to assure project feasibility

Tenant Income Verification – The property owner or its representative must verify the income of each tenant occupying an NDR assisted unit. The method used will be the Section 8 Part 5 income verification.

Total Development Cost – The all-in cost of developing the project including acquisition cost (if applicable), pre-development costs, hard and soft construction or rehab costs, financing costs, developer feed and reserve account capitalization is applicable.

Very Low Income – households with incomes at or below 50% of the area median income (AMI) for Ward County, ND

Eligible Projects

To be considered for NDR funding a project must:

- be located within the city limits of Minot, outside of the new FEMA flood plain
- submit a complete and accurate project application and all required financial documentation. A complete Capital Needs Assessment (CNA) must be submitted identifying the useful life of major building systems that was prepared by an

independent, qualified third party, independent of the developer or the sub-recipient non-profit

- ensure at a minimum, that at least 51% of the units to be built or rehabilitated in the project will meet LMI rental standards with CDBG-NDR funds only eligible for use for the LMI units (note: NDR funds for any project shall only be used for LMI units and/or LMI percentage share of common area costs) to and leased by households with incomes at or below 80% of the Ward County Area Median Income (AMI) published by HUD on an annual basis. To find the most current income limits (IL) for Ward County, click on the HUD website <https://www.huduser.gov/portal/datasets/il.html#2018> ; select the most current year; click on the button for “FY 2018 IL Documentation” (or the most current year available); from the drop down table select “North Dakota” and click on the state; then select Ward County from the drop down table and click on the county; finally click on the “View County Calculation” button. Rents must be affordable to households within the current income limits based on family size for Ward County. Tenant eligibility and rent rate compliance will be monitored annually.
- ensure that the affordable housing is properly managed and maintained throughout the affordability period to provide quality affordable housing for LMI residents and remains affordable for the longest period possible enforced through deed restrictions or similar instrument detailed in the project agreement and monitored on a yearly basis as set out in the development agreement or subrecipient agreement.
- meet and continue to meet all applicable HUD regulations and requirements in accordance with the City’s NDR contract with HUD
- project applicant must have control of the site proposed to receive NDR funds for rehabilitation or new construction activities. Site control must be documented at the time the application is submitted. The site must have access to all public utilities including roads, water, wastewater, stormwater retention as required, electric and/or natural gas, and broadband infrastructure defined as cables, fiber optics, wiring or other permanent infrastructure including wireless infrastructure, resulting in broadband capacity meeting the Federal Communication Commission (FCC) definition in effect at the time the pre-construction estimates are generated.
- the project applicant must demonstrate they have the capacity to implement the project
- prior to any award, the developer or sub-recipient must ensure that the developer, sub-recipient, contractors, or subcontractors are not on the federal or state debarred or suspended list.

- may be used for new construction of multifamily rental housing units if the need for new construction can be supported by verifiable data
- may be used for substantial rehabilitation of existing multifamily rental housing to preserve quality, long-term rent restricted affordable housing for LMI households in accordance with the cost per unit restrictions contained in an RFP, request for application, or other allowable procurement process
- may be used to support adaptive reuse of an existing non-residential building to create affordable housing units
- only permanent multifamily rental properties with a minimum of 4 units are eligible
- the costs for NDR supported affordable housing projects must meet cost principles and requirements outlined in 2 CFR 200 Subpart E and other related cost and price analysis required by HUD. HUD requires the City of Minot to evaluate cost reasonable for all NDR projects.
- projects awarded funding will be monitored annually to ensure compliance with HUD rules and regulations and the performance requirements established in the project development or subrecipient agreement. The property owner/manager will be assessed an annual fee for the project annual compliance monitoring and inspection. The City of Minot shall, itself or will select an agency to perform the monitoring and inspection of the project, except with respect to a sub-recipient which shall have the lead responsibility for such compliance monitoring. The project owner/manager or sub-recipient as applicable is required to provide annual financial information and documentation for this review. Failure to provide the required monitoring and inspection information can result in additional costs assessed based on added work by the city to assure compliance to the project owner/manager or sub-recipient as applicable and can result in the project loan being called.
- projects currently in a project pipeline with existing commitments of funding from NDHFA, LIHTC or other similar funding sources are generally not eligible unless the applicant can demonstrate that NDR funds will allow rents to be reduced from the proposed market rate levels to levels which are affordable to household at or below 80% of AMI and will remain affordable for a period of at least 20 years, or additional funding is necessary as leverage to be able to completely carry out the project to serve LMI households.

PLEASE BE ADVISED: Once an application from a RFP or a proposal for a sub-recipient has been received by the City of Minot, the project must follow all federal environmental regulations. During the review period, neither an applicant nor any participant in the development process or any of their contractors may commit or expend any funds, including non-HUD funds or undertake any activities having either an adverse environmental impact or limitation on the choice of reasonable alternatives. If any funds (public or private) are spent or committed to a development prior to the completion of the environmental process, the City cannot provide federal funding for the project.

Maximum NDR Award

Minot may reject an application for NDR funds if the total development costs exceeds \$180,000 (current maximum per unit cost limit established by NDHFA) per unit for purposes of determining gap assistance from NDR funds. The City may waive this cost cap if the project requires atypical infrastructure or features such as historic rehabilitation elements, etc.

Reserves

All projects will be required to establish and maintain a replacement reserve account for the term of the NDR loan. This account will be separate from the project's operating account and will be established in a federally insured financial institution or the Bank of North Dakota, to be adequately funded for the entirety of the project's Affordability Period. The initial balance of the Replacement Reserve account shall be an amount greater-than or equal-to the sum of three-hundred dollars (\$300) per unit for each unit within the project. Each year \$300 per unit (total units in the project building) will be deposited in the replacement reserve account, each year after year 1 the amount deposited will increase by 3% per year. These funds will not be used for operation or routine maintenance and upkeep expenses, the funds will only be used for replacement of short-lived capital assets (example replacement of roof, windows, heating systems, parking surface, or other similar capital asset). Written permission must be secured from the City of Minot prior to any decrease in the Replacement Reserve account's minimum.

All projects will be required to fund and maintain an operating reserve account in a federally insured financial institution or the Bank of North Dakota. The operating reserve account will be equal to two (2) months of operating expenses and hard debt service. This account shall be separate from the replacement reserve and operating accounts and must be fully capitalized during the development phase of the project as part of the total development cost. Operating Reserve funds shall be accounted for separately from other project operational funds.

Eligible Project Activities and Costs:

Fees-

Combined builder profit, builder overhead and general requirements cannot exceed 14 percent of the hard construction costs. A developer fee cannot exceed 15 percent of total development cost net of the developer fee, acquisition and any permanent financing costs. When the Developer and the Contractor are the same entity, in addition to the fee limits stated above, the combined sum of Developer Fee, Contractor Profit, Contractor Overhead and General Requirements may not exceed 15 percent of the total development cost, less the Developer Fee.

Rehabilitation -

Housing rehabilitation includes essential repairs or improvements to meet local codes and Uniform Physical Condition Standards, major systems repair or replacement, accessibility improvements (ADA, section 504), abatement of hazardous materials, energy efficient improvements, and improvements to increase building resilience. Units to be rehabilitated that are currently occupied must meet URA and have a temporary relocation plan in place that will be followed during the project. New NDR affordable housing investments must create additional affordable housing units that will become rent restricted for the affordability period of the project as a requirement for the NDR investment as outlined in the development or subrecipient agreement.

NDR funds are provided to rehabilitate existing multifamily housing to preserve and improve the quality of affordable rental housing for qualified low and moderate income (LMI) households and ensure this affordable rental housing remains affordable to LMI households for a minimum of 20 years. A minimum of 51 percent of the units included in the proposal will be leased to and occupied by LMI households with NDR funds only eligible for use with the LMI pledged units. NDR funds may not be used to cover necessary general building improvements that benefit all building residents but NDR funds may be used to cover proportional share of such costs based on dedicated LMI units to total units in the project building (s). Detailed project costs must be provided. These project costs will be evaluated to determine if the costs are reasonable and comply with HUD's cost principles in 2 CFR 200 Subpart E. Only costs determined to meet HUD's cost reasonableness requirements may be included:

1. The remaining useful life of the proposed general building improvements must be reviewed in a qualified capital needs assessment and the proposed general building improvements must be within 5 years of or have reached or exceeded their expected useful life.
2. A subsidy layering analysis will be conducted in accordance with HUD requirements. NDR funding for a project may be adjusted based on the subsidy layering review.

3. NDR funds are disbursed on a pro-rate basis with other financing provided to the project and will be further defined in a project agreement if NDR funds are committed to the project. NDR funds are also only disbursed on a reimbursement basis. There is no advance of NDR funds permitted.

Soft Costs -

Eligible soft costs include architectural and engineering fees, financing costs, credit reports, title insurance, appraisals, environmental reviews, and builder or developer fees. Project-related soft costs may be included on a limited basis and may not exceed those limits established by the North Dakota Housing Finance Agency. Soft costs will be reviewed and approved based on need determined during the underwriting review.

Ineligible Project Costs

Refinancing of property; developer fees in excess of those allowed under North Dakota Housing Finance Agency HIF rules for 2015-2017 or as set forth in these guidelines whichever is lower; operating and management costs; costs associated with creating commercial spaces; and costs incurred prior to funding approval except as advised in writing.

NDR Funding

All NDR awards will be structured as a forgivable zero-interest loan with repayment terms based on project performance requirements and terms determined on a project specific basis as necessary to achieve project feasibility. The term of the loan will match the term of the NDR affordability period in the project agreement.

The applicant or sub-recipient must meet the performance requirements detailed within their agreement to be eligible for forgiveness of the NDR loan. Annual compliance monitoring and will verify tenant incomes and rent rates to ensure compliance with requirements. If the developer or sub-recipient fails to meet performance requirements the NDR loan for affordable housing will become immediately due and payable based on the forgiveness provisions included in the agreement. A deed of trust or other similar document will be secured against the property for the length of the affordability period or term of the loan, whichever is longer.

The NDR loan may be subordinated subject to the review and approval by the City of Minot. Loans or loan commitment may not be assigned without the prior written approval of the City of Minot. If the assignment is approved, the assignee must assume all loan requirements and obligations including but not limited to the affordability requirements.

Loan to value and Debt Coverage Ratio - For new construction and rehabilitation projects, the loan amount awarded by the City, plus the principal amount of all loans with a senior claim to the subject property shall not exceed 100% of the "as-proposed" value. Generally, the minimum

debt service coverage ratio will not be less than 1.15 and not more than 1.3. All project not within the stated parameters may be reviewed on a case-by-case basis.

National Objectives

HUD uses the term “Low to Moderate Income” (LMI) to refer to the national objective 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 whether the activities could qualify under another National Objective. All projects must provide at least 51% of the total project units to be restricted for LMI qualified tenants per NDR restrictions and NDR funds may only be used for such units and/or percentage share of common costs. The Developer/subrecipient must certify they will carry out the project funded with NDR funds to meet the low- and moderate- income requirements of CDBG-NDR as defined by HUD.

To support resilience

The City of Minot and HUD requirements encourages implementation of green infrastructure principles and energy efficient practices. Tools for green infrastructure are available at the Environmental Protection Agency’s website; Indoor AirPlus website; Healthy Indoor Environment Protocols for Home Energy Upgrades website; and ENERGY STAR website: www.epa.gov/greenbuilding.

Project Requirements

When an application or sub-recipient proposal is received, it will be reviewed for eligibility and accuracy. In order to be eligible for review, the application must be complete and include the information identified below. Application packages missing any of the required items after the application deadline will be deemed incomplete and returned to the application.

The City must be satisfied that those who will develop, own, and operate the project are familiar with and prepared to comply with, the requirements of the CDBG-NDR program including applicable HUD rules and regulations and applicable state and local laws and ordinances. In addition, the Applicant must demonstrate that members of the development team have the experience, ability, and financial capacity, in their respective roles, to undertake, comply, maintain and manage the project. The City may require the Applicant or Sub-recipient to provide financial statements as deemed necessary. Applicants with limited experience in the development, ownership and management of affordable multifamily rental property may partner with an experienced developer or sponsor. Misrepresentation of any information about the experience or financial capacity of any property team member will be grounds for denial.

The application must address the following project requirements:

1. Market Conditions – Applicants must demonstrate that the City of Minot has an unmet affordable housing need or shortage that proposed project will support. A detailed in-house or 3rd party market analysis may be submitted demonstrating the demand for the proposed project. The market analysis should have been completed within the previous 12-months. The market analysis should evaluate the economic conditions of supply, demand and rental rates for the type of low-income housing development being proposed as well as the rent levels proposed for the project. The analysis should determine the feasibility of the subject property rental rates and state conclusions as to the impact of the property with respect to determining existing housing needs. All data presented should reflect the most current information available and the report must provide source data information. Other acceptable methods to demonstrate an unmet need is data provided from such sources as the Minot Housing Authority, applicant or proposer's experience with other properties it owns or manages in Minot which have low vacancy rates connected to LMI housing, etc.
2. Demonstrated Site Control - Evidence the applicant has and will maintain from the beginning of the application review process, direct control of the site included in the application until the land is acquired if it is not already owned by the applicant. Applicant will provide a site concept plan for the project and exterior plan perspective showing how the project will look when developed.
3. Zoning – Evidence that the appropriate zoning will be or is in place to accommodate the project must be provided
4. Available Utilities – Evidence must be provided to demonstrate that appropriate utilities (water, wastewater, electric and/or natural gas, stormwater management if required, and internet) will be available to the project with adequate capacity to serve the proposed project
5. Financial Projections – Must include at a minimum: a 20-year pro forma financial statement for the project using the required vacancy rate identified in the application; sources and uses statement with adequate explanations; a project operating budget; square footage detail for the project; estimations of average annual unit utility costs; and a detailed development budget for the proposed project must be included in the application.

The reasonableness of the development costs and operating expenses in relation to other similar developments will be assessed in evaluating the financial feasibility of applications as well as the cost reasonableness and the subsidy layering review.

6. Capital Needs Assessment – A complete Capital Needs Assessment (CNA) must be submitted with any application package involving rehabilitation (including adaptive reuse projects). The CNA must be completed by a qualified, independent third party acceptable to the City, such as a licensed architect or engineer, as well as an interview with available on-site property management and maintenance personnel to inquire about past repairs and improvements, pending repairs, and existing or chronic physical deficiencies. The assessment will include a site visit and a physical inspection of the interior and exterior of all units and structures. The assessment will consider the presence of environmental hazards such as asbestos, lead paint and mold on the site. The assessment will include an opinion as to the proposed budget for recommended improvements and should identify critical building systems or components that have reached or exceeded their expected useful lives. If the remaining useful life of any component is less than 50 percent of the expected useful life, immediate rehabilitation will be required unless capitalized. If the remaining useful life of a component is less than the term of the NDR loan, the application package must provide for a practical way to finance the future replacement of the component. The assessment will examine and analyze the following:
- Site, including topography, drainage, pavement, curbing, sidewalks, parking, landscaping, amenities, water, sewer, stormwater drainage, and gas and electric utilities and lines
 - Structural systems, both substructure and superstructure, including exterior walls and balconies, exterior doors and windows, roofing systems, and drainage
 - Interiors, including unit and common area finishes (carpeting, tile, plaster walls, paint condition, etc.), unit kitchen finishes, cabinets and appliances, unit bathroom finishes and fixtures, and common area lobbies and corridors
 - Mechanical systems, including plumbing and domestic hot water, HVAC, electrical, lighting, fixtures, fire protection, and elevators
7. Appraisal – Each application package involving acquisition costs or equity contribution of real estate which exceeds 15 percent of the total development costs, must include an appraisal of the subject property completed within 12 months of the date of the application by a state Certified General Real Property Appraiser, that support the value of the real property.
8. Project addresses Housing Needs of Individuals or Households with Low or Moderate Incomes – A minimum of 51 percent of the total units in each multifamily project must be reserved for households of low and moderate income defined as at or below 80 percent of the area median income (AMI) for Ward County as adjusted annually. NDR funds can only be used for the LMI dedicated units and the LMI units share of common area costs.

9. Need for Public Funds – The applicant must be able to demonstrate, as part of the application or proposal package, that the project would not be feasible without financial assistance from NDR funds. This will be evaluated in terms of the gap between cost of construction and the amount of debt the project could reasonably obtain and support. Applicant must have provided information outlining both the short- and long-term financial feasibility of the project based on the maximums as set forth in the General Provisions section. A 20-year financial pro-forma must accompany the application. Project proposals will be underwritten to achieve a target debt service coverage ratio of 120 percent.
10. Cost Reasonableness – HUD requires a project to be reviewed to determine if the cost of the project is reasonable. In determining reasonableness of a given cost consideration must be given to:
 - a. Whether the cost is a type generally recognized as ordinary and necessary
 - b. The restraints or requirements imposed by such factors as: sound business practices; arms-length bargaining; federal, state, local, and other laws and regulations; and terms and conditions of the Federal award
 - c. Market prices for comparable goods or service for the geographic area
 - d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities
 - e. Whether the costs significantly deviate from established practices and policies regarding the incurrence of costs, which may unjustifiably increase the award's cost
11. Readiness to Proceed – Applicant or sub-recipient must have provided a schedule for completion of the project. Project schedules that show a completion date after November 1, 2021 may be eliminated due to NDR requirements for program completion.
12. Generation of Private Capital Contribution – Applicant or Sub-recipient must demonstrate the ability to raise capital for the project through private contributions. The value of any non-cash contributions must be documented through an “arm’s length” third party evaluation and written documentation.
13. Rehabilitation of Existing Habitable Structures – Applications or proposals involving the rehabilitation of existing structures that are not currently rent restricted to meet the needs of households at or below 80 percent AMI and require a minimum rehabilitation of \$20,000 in hard construction costs per unit to preserve the useful life and quality of affordable housing in Minot (not including cosmetic maintenance such as new paint, carpet, etc.) is allowed.

14. Special Needs Affordable Housing – Special needs housing must serve residents who are income qualified and meet other special need criteria including: elderly, those with mental illness, developmental disabilities, and the project must provide documentation that it meets the following requirements:
 - a. Documenting a need for the type of special housing based on market demand and the findings of local social service agencies
 - b. Third-party verification of the services appropriate to the targeted population
 - c. Detailed commitment for a service agency to provide specific on-going services consistent with the needs of the targeted population
 - d. Housing for residents with physical disabilities, evidence that the units for disabled tenants and the building meet the specific needs of the targeted population including accessibility features that may exceed ADA standards but make a project more functional for people with a disability
 - e. Certification from an architect or Applicant that the accessible units and common areas meet or exceed Federal Fair Housing Accessibility Guidelines
15. An applicant or sub-recipient may request a waiver to allow submission of the CAN and/or appraisal at a later date if there are other funding sources in the project which would otherwise require the applicant to incur additional costs for multiple reports because of timing issues. In all cases, the CAN and appraisal will be required prior to issuance of a final financial commitment.

Project Award Process

NDR funding will be provided in the form of a loan to assure compliance with all NDR project performance criteria including LMI affordability for a minimum of 20 years. The terms and condition for each project will be determined on a case by case basis based on HUD requirements and regulations. For the full affordability period of the project, the loan will function as a zero interest, forgivable loan secured by a Deed of Trust or similar legal instrument and the responsible project owner(s) or assigns must meet all project performance requirements established in the project development agreement. However, if the responsible project owner or assigns does not meet project performance requirements (affordable rents, affordability period, required compliance monitor, acceptable maintenance and operation of the development, etc.) for the full affordability period, the NDR loan will become due and payable to the City of Minot based on the terms established in the project development agreement.

An applicant or sub-recipient must submit a complete and accurate NDR Affordable Housing Application or proposal including all required financial documents. **Step 1:** Applications or proposals will be reviewed and an underwriting and subsidy layering review will be prepared. A

written underwriting and subsidy layering review will be provided to the City's Chief Resilient Officer. **Step 2:** The City's Chief Resilience Officer will make a recommendation regarding the application to the City Council. **Step 3:** The Minot City Council will action on the application **Step 4:** Once an application is approved by City Council the final development agreement or subrecipient agreement will be executed detailing all applicable requirement, loan details, performance requirements, and other applicable requirements and policies.

Access to NDR Funds

Draw requests against an NDR financial award can be made for costs incurred upon firm commitment of all other funding sources such as construction financing. NDR funds will only be disburse on a reimbursement basis. An agreement with recapture provisions and restrictions will be recorded by the City prior to release of any NDR funds. The borrower may request available NDR proceeds for payment or reimbursement of approved costs incurred toward the development of the project. Draw requests will be submitted on the Draw Request form and submitted with documentation supporting the expenses claimed, general contractor's sworn construction statement, and architect's inspection report.

Disbursement of up to 95 percent of the NDR proceeds may be made during construction of the project. Five percent of the NDR loan proceeds will be retained until project completion. Disbursement of retainage will be made upon satisfaction of all conditions including an inspection of the project and approval of the final draw request by Minot City Council.

Compliance Monitoring

Owners of NDR-assisted properties must remain in compliance with their project agreement and program and HUD guidelines throughout the term of the NDR loan. The City of Minot will annually monitor all properties for compliance with NDR program requirements including those related to income and rent limits, revenues and expenses, cash flow, reserve accounts, insurance coverage, and property condition. The City of Minot may delegate monitoring to the Minot Housing Authority or other entity. Annual compliance monitoring will include a desk review of information and documentation provide by property owner and a property inspection and review of the project location.

On an annual basis, owners of NDR-assisted properties must provide the following information to the City of Minot or their designated compliance monitor:

- 1) Rent Compliance report
- 2) Project-specific financial statements including a balance sheet and statement of revenues and expenses (income statement) including documentation
- 3) Reserve account statements

- 4) Proof of property and liability insurance coverage
- 5) Documentation supporting current utility allowances being used

Fees will be assessed to property owners/managers that do not submit the required reports and documentation for the compliance monitoring and inspection and for projects determined to be in substantial noncompliance to cover the expense of additional monitoring. Project owners/managers that do not provide and required information and documentation for compliance monitoring and/or projects that are found to be in noncompliance will be subject to their project loan becoming immediately due and payable.

Subsidy Layering

This analysis is used to determine the amount of investment needed to make a project feasible and is sometimes referred to as a “gap analysis”. It is used to evaluate the gap between approved costs (Uses) and available financing and other subsidies (Sources). Before committing funds to a project, the City will evaluate the project in accordance with HUD guidelines to ensure that the amount of NDR investment is needed to make a project feasible and will not unduly enrich the project owner. The City will evaluate:

- Debt capacity to ensure financing terms are reasonable and comparable to those available from other lenders
- Equity Contributions to assess the full spectrum of returns that are accruing to owners and investors. If it appears that the project is returning a higher level of return than is warranted given project risk and market conditions, then the City can require additional equity investment or reduce the level of NDR assistance.

HUD does not allow the investment of more funds than necessary to make the housing affordable for the project period. If the City determines the amount of NDR assistance and other sources exceeds the amount necessary to make the project feasible and viable for the affordability period, the City may: reduce the amount of NDR assistance; increase the number of NDR assisted units in the project or lower the target income levels and rents to be charged; or, revise the loan terms that bring the rate of return into line with reasonable standards.

Applicants or sub-recipients must demonstrate they have structured projects to maximize other financial sources thereby limiting NDR funding to the lowest amount necessary to assure project feasibility. Applicants must certify in their application whether additional assistance will be provided to the project, and if so, what type, source and amount of assistance will be provided.

Generally, for affordable rental housing development projects, funds provided from the contributions of private lenders and other funding resources including equity may not enough to cover the cost of developing and operating the project. HUD NDR funds typically fill the gap and serve as “gap financing”. The subsidy layering analysis is conducted to determine an appropriate

amount of NDR funds needed to “fill the gap”. The gap is influenced by several factors, some of which can be modified prior to a commitment of NDR funds, including:

- Level of physical improvements
- Rent levels and affordability
- Income levels being served (e.g. a target population of 60 percent of area median income could require less assistance than a target population below 30 percent of area median income)
- Payment terms of all funding including public and private funding
- The City’s funding will be the “last gap in” such that the City’s funding will be the first funding source reduced when there are net cost savings or increases in other sources

The City can deny NDR assistance if the applicant or sub-recipient refuses to make reasonable adjustments or to limit its return/costs in compliance with underwriting guidelines or if it appears that NDR funds are not needed to close a financing gap. While the City will identify the amount of subsidy needed through gap and other project analysis, the City must also determine that the amount of NDR assistance needed for program-eligible costs or activities.