

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN THE CITY OF MINOT  
AND ESSENTIAL LIVING, INC., FOR THE  
ESSENTIAL TOWNHOMES ADDITION DEVELOPMENT**

THIS DEVELOPMENT AGREEMENT is made and entered into this \_\_\_day of \_\_\_\_\_, 2020, by and between the City of Minot, a municipal corporation, hereinafter the “City,” and Essential Living, Inc., a corporation organized under the laws of the State of North Dakota, hereinafter the “Developer.” City and Developer are jointly referred to herein as the “Parties.”

WHEREAS, the City may enter into a development agreement with a person having ownership or control of real property within its jurisdiction; and

WHEREAS, this Development Agreement (hereinafter the “Agreement”), relates to the development known as Essential Townhomes Addition, owned by the Developer, and located within the City of Minot, whose legal description is Essential Townhomes Addition, Lots 1-32 (hereinafter the “Property ”); and more particularly described on the attached Exhibit A; and

WHEREAS, the purpose of this Agreement is to memorialize the specific improvements and conditions the Developer must complete before the City will authorize additional permits for the development of the Property; and

WHEREAS, the following Exhibits are attached and incorporated into this Agreement:

- a) Exhibit A – Essential Townhomes Addition Plat
- b) Exhibit B – City of Minot Development Policy; and

WHEREAS, the City Council authorized the following action:

- a) By subdivision plat, Lot 13, Block 1, South Park Terrace Addition was approved as Essential Townhomes Addition, Lots 1-32;
- a) By Resolution No. 3662, the City amended the City’s Comprehensive Land Use Map from Neighborhood Commercial to Medium Density Residential;
- b) By Ordinance No. 5490, the City amended the City’s Zoning Ordinance to rezone the Property from R4 (Planned Residential District) to RM (Medium Density Residential District) and R3C (Townhouse Residential District), subject to Planning Commission and City Council conditions, as listed in section 5 below;
- c) The City Council authorized the Mayor to sign this Development Agreement with the Developer; and

WHEREAS, the City is requiring the Developer to complete the following improvements as conditioned within the approval of the Essential Townhomes Addition; and

NOW, THEREFORE, the Parties hereto agree and stipulate as follows:

- 1. Utility Infrastructure Improvements

- a. Developer shall install, at their sole cost, the sanitary sewer, storm sewer, and water main utilities to serve the Essential Townhomes Addition development.
  - i. The Developer shall reroute the existing 4” cast iron water main that is feeding South Hill Complex. New water main shall be 4” PVC.
  - ii. The water main within the Property shall be installed in a looped fashion.
  - iii. Each townhome shall have individual services with its own curb stop.
  - iv. The Developer shall pay all fees due to the City for connection to City utilities prior to the issuance of a plumbing permit for the connection into the City sanitary sewer system.
  - v. Developer shall install storm water utility infrastructure as required in the City’s adopted Storm Sewer Design Standards Manual. The infrastructure shall include all manholes, pipes, and inlets as required.
- b. The Developer shall ensure all required public and private street and utility infrastructure and general site improvements are designed and included in the plans titled “Essential Townhomes – Park South 2”, and must be approved by the City and kept on file with the Engineering Department.
- c. All utility infrastructure must be installed and tested per the City Standard Specifications and Details by the Developer.
- d. All utility infrastructure must be inspected full time during active construction by an engineering firm, licensed to do work in North Dakota, and under the direction of a professional engineer, licensed to do work in North Dakota.
  - i. If at any time during construction the work is not being inspected by an engineering firm, the City may order the work to stop immediately until the work can be inspected. The City shall not be held responsible in any way for the work stoppage due to Developer’s failure to retain an engineering firm to conduct inspections.
- e. The Developer shall warranty all utility infrastructure work constructed as part of the Essential Townhomes Addition development to be free of material and workmanship defects for a period of two years after written notice of substantial completion by the City.
  - i. At any time during the two-year warranty period, the Developer shall correct any deficiencies found by the City. The Developer shall be responsible for any and all costs associated with correcting any deficiencies identified by the City including but not limited to contractor costs, attorney’s fees, and engineering costs.

- f. The Developer shall submit record drawings certified by the engineer of record to the City for all public street and utility infrastructure installed as part of the Essential Townhomes Addition development conforming to the City's Record Plan Policy on file with the Engineering Department. Record drawings shall be submitted hard copy, dwg, and GIS format.

## 2. Storm Water Management

- a. Storm Water Management Plans shall be required and must be approved by the City Engineer.
- b. The development improvements must conform to all floodplain management requirements.
- c. Developer will be required to operate and maintain the storm water infrastructure that is located outside the right-of-way and in dedicated easements. This includes any pipes, channels, ponds, and outlet structures.
  - i. An operation and maintenance plan must be submitted to the City for approval before Certificates of Occupancy for any building may be issued.
  - ii. Developer consents and agrees that if they do not maintain the storm water infrastructure according to the operations and maintenance plan, the City is authorized to enter the property where the infrastructure is located and perform any maintenance required. The City's cost to perform the maintenance will be billed to the Developer. The City also reserves the right to special assess the cost of maintenance against the benefitting properties.
  - iii. All critical storm water infrastructure, as determined by the City Engineer, including but not limited to channels and ponds, outside the right of way, must have an easement (storm water and access) recorded over the improvements. The easement width and location shall be approved by the City Engineer.

## 3. Erosion Control

- a. Erosion Control practices shall meet the requirements of the State of North Dakota and be approved by the City Engineer.

## 4. Maintenance of Public Right of Way and Easements

- a. Unless specific ownership is defined on the plat, all easements and public right of way dedicated with this plat shall be for public use and access.
- b. All water and sewer mains and services within the Property shall be located within easements.

- c. All infrastructure within the Property is considered private and shall be maintained by the Developer, except the 4” City water main which shall be placed in a dedicated utility easement.

5. Planning Commission and City Council Requirements

- a. A storm water management plan is required for development
- b. A site plan is required for development
- c. Erosion Control practices will need to meet State of North Dakota requirements and approved by the City Engineer
- d. Connection fees are required when connections are made to City utilities
- e. A Developer’s Agreement is required to be recorded along with the plat
- f. A 6’ privacy fence is required along the western property line
- g. A landscape buffer containing trees and bushes is required along the western property line
- h. The rear yard building setback shall be 35’ along the western property line

This Agreement shall be governed by and interpreted according to North Dakota law. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in Ward County, North Dakota.

Each party represents and warrants that this Agreement has been duly authorized, executed, and delivered by it; that the undersigned representatives are duly authorized to sign this Agreement on behalf of the party for whom they are signing and whom they represent; that performance of all the actions contemplated thereby have been duly authorized by all requisite action and that this Agreement constitutes a valid and binding obligation, enforceable against Developer, its successors and assigns, in accordance with its terms.

Neither this Agreement nor any item hereof may be changed, waived, discharged, or terminated orally, but only by instrument in writing, signed by both Parties hereto.

If a Court finds any part of this Agreement to be invalid, the remainder of this Agreement shall not be invalidated. Any part of any section found to be invalid shall not invalidate the remaining part of said section, and the invalid section may be reformed to be valid and enforceable to the extent allowed by law.

This agreement shall be recorded in the Ward County Recorder’s Office, and shall constitute a covenant running with the land, and shall be binding on the Developer, its administrators, executors, assigns, heirs and any other successors in interests, including any property association.

