

## **TERMINATION AGREEMENT**

### **SUB-RECIPIENT AGREEMENT: CITY OF MINOT AND LUTHERAN SOCIAL SERVICES HOUSING, INC. (SUB-RECIPIENT) FOR THE NATIONAL DISASTER RESILIENCE PROGRAM (JUNE 6, 2019) (LMI Rental Units)**

### **SUB-RECIPIENT AGREEMENT: CITY OF MINOT AND LUTHERAN SOCIAL SERVICES HOUSING, INC. (SUB-RECIPIENT) FOR THE NATIONAL DISASTER RESILIENCE PROGRAM (JUNE 6, 2019) (Family Homeless Shelter)**

This Termination Agreement (“Agreement”), by and between the City of Minot, North Dakota (“City”) and Lighthouse Management Group, Inc., the court-appointed receiver (“Receiver”) for Lutheran Social Services Housing, Inc., a North Dakota Corporation (“LSS”).

#### **RECITALS**

- A. Whereas, the City and LSS entered into two subrecipient agreements (hereinafter collectively referred to as the “Subrecipient Agreements”) on June 6, 2019;
- B. Whereas, in the first subrecipient agreement, the City agreed to provide up to \$3,060,000.00 in CDBG-NDR funds to LSS, for the construction of seventeen (17) affordable rental units for low and moderate income (LMI) households (“Rental Unit Agreement”);
- C. Whereas, in the second subrecipient agreement, the City agreed to provide up to \$2,740,000.00 in CDBG-NDR funds to LSS for the development of the Family Homeless Shelter with six (6) emergency shelter units for LMI households (“Family Homeless Shelter Agreement”);
- D. Whereas, the City on behalf of LSS secured \$300,000 in CDBG funds in a grant from the State of North Dakota Department of Commerce set forth in a Financial Award Agreement to contribute to the cost of acquiring the property necessary for the Rental Unit Agreement;
- E. Whereas, the CDBG-NDR funds to be disbursed under the Subrecipient Agreements, by the City to LSS, were to be in the form of a grant to reimburse eligible expenses associated with the approved project;
- F. Whereas, the City maintains that the amount of \$570,459.23 in funds has been disbursed relating to the Rental Unit Agreement and \$505,878.92 has been disbursed in funds relating to the Family Homeless Shelter Agreement;

- G. Whereas, the City maintains that the amount of \$300,000 in State CDBG funds has been disbursed relating to the Rental Unit Agreement;
- H. Whereas, conveyance of the Property to the City will maintain compliance of the requirements and obligations of the CDBG Financial Award Agreement between the City and North Dakota Department of Commerce;
- I. Whereas, per the terms of the Subrecipient Agreements, the CDBG-NDR funds and state CDBG funds disbursed to LSS by the City were used to acquire the following real property located at 1901 South Broadway; Minot, North Dakota, which said location of the real property is more specifically described as follows:
- Outlots 4, 6, and 7 of the SW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> less that portion as recorded in Document No. 2817138 Section 25, Township 155 North, Range 83 West of the 5th P.M., Ward County, North Dakota
- (“Property”);
- J. Whereas, per the terms of the Subrecipient Agreements, the CDBG-NDR funds disbursed to LSS by the City were also used for reimbursement of 2019 property taxes relating to the Property;
- K. Whereas, Lighthouse Management Group, Inc. was appointed as Receiver of LSS by Findings of Fact, Conclusions of Law and Order for Immediate Appointment of Temporary Receiver (“Order”) entered January 25, 2021 in Cass County District Court, North Dakota;
- L. Whereas, LSS is the fee owner of the Property and owns the improvements located on the Property, which are now controlled by the Receiver;
- M. The Property has a current value of \$1,617,000.00, as assessed by the Minot City Assessor;
- N. Whereas, LSS has informed the City that it cannot perform its remaining obligations under the Subrecipient Agreements;
- O. Whereas, the Receiver has informed the City that there are several contractors who may have performed services in connection with the Property since LSS acquired the Property in December 2019; and that based upon information and belief, these contractors, are owed about \$348,651.95 (“Contractor Liability”);

- P. Whereas, the Receiver has informed the City that property taxes on the Property are in arrears in the amount of \$25,542.67 (“Tax Liability”);
- Q. Whereas, the Receiver has informed the City that the Receivership cannot satisfy the Contractor Liability and Tax Liability and the only recourse for these parties is to submit a claim to the Receiver that may be partially satisfied as a non-priority claim in the Receivership;
- R. Whereas, the City has informed the Receiver that it has no contractual liability or obligation for the contractors engaged by LSS for the project;
- S. Whereas, the Receiver acknowledges that on or before execution of this Agreement, it will provide to the City all records it has in its possession from LSS which pertain to the requirements, obligations, record keeping requirements, and other relevant documents set forth in both subrecipient agreements being required to be turned over to the City at the City’s request;
- T. Whereas, the City, and the Receiver now mutually desire to terminate the Subrecipient Agreements and the Receiver desires to transfer the ownership interest of LSS in the Property to the City.

**NOW, THEREFORE, IN CONSIDERATION** of the foregoing and of the covenants and promises set forth herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties promise, agree, and covenant as follows:

1. Incorporation of Recitals. The recitals above are hereby incorporated as if fully set forth herein, and are material terms of this Agreement.
2. Termination of Subrecipient Agreements. The Subrecipient Agreements shall terminate on \_\_\_\_\_, 2021 at **INSERT TIME** (“Termination Date”). The Parties shall be released from all duties and obligations contained in the Subrecipient Agreements that arise after the Termination Date.
3. Execution of Purchase Agreement. The Parties agree to execute the Purchase Agreement in a form attached hereto as Exhibit 1 at the same time this Agreement is executed. The Parties further agree to abide by the terms of the attached Purchase Agreement. The parties acknowledge and agree that any transfer of interest in the Property to the City may be subject to claims by the contractors and Ward County, North Dakota, based on the Contractor Liability and Tax Liability.

4. Satisfaction. In exchange for the execution of the Purchase Agreement and full compliance with the terms of this Agreement and the Purchase Agreement, the Subrecipient Agreements, and specifically Sections VII (E) and VIII (F) and (R) of the Subrecipient Agreements, shall be deemed satisfied, released, and terminated.
5. Records. The records to be maintained by LSS per the terms of the Subrecipient Agreements as set forth in VIII (E) shall be provided to the City on or before execution of this Agreement.
6. Program Income. LSS represents that rent collected from the tenant(s) on Property commenced on or after December 13, 2019 and total amount of such rent collected through the date of this agreement is \$19,590.58. LSS further represents that the full amount of rent identified herein was spent for costs directly associated with the projects (Family Homeless Shelter and 17 Unit LMI Rental Housing) to have been located on this property meeting the requirements of Section VII (E) of the Sub-recipient Agreements. LSS and Receiver further agree to provide to the City on or before Termination Date an accounting of the expenditures covering all rent income received to demonstrate compliance with Section VII (E) of the Sub-recipient Agreements. Beginning on January 25, 2021, the date the Receiver was appointed by the Court, Receiver represents that it has not received any rent or related payments from tenant(s) on the Property.
7. Performance of Additional Acts. The Parties agree to perform such acts and to prepare, execute, file, or record any document or instruments reasonably required to comply with the terms of the Purchase Agreement attached hereto or to give full force and effect to this Agreement.
8. Non-Litigation Covenant. The release in this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against any action, suit, or other proceeding which may be instituted, prosecuted, or attempted in breach of the release contained herein, and the Parties shall not in any manner challenge this Agreement. Notwithstanding the mutual releases contained in this Agreement, nothing in this Agreement is, nor shall be deemed to be, a release of the obligations, terms, and conditions of this Agreement, and nothing herein shall in any manner limit or otherwise preclude the Parties from commencing an action solely for the purpose of enforcing any obligation, term, or condition of this Agreement.
9. Binding Effect. The terms of this Agreement, including the recitals above, are considered binding and effective promises, agreements, and covenants, fully enforceable by the Parties. This Agreement shall inure to the benefit of the Parties and any of their heirs, successors, personal representatives, officers, and assigns of each.

10. Authority. The City acknowledges that the execution of this Agreement by the Receiver and the performance of its respective obligations hereunder are subject to court prior approval by the Cass County District Court (the “Court”), pursuant to the Order. If the Court does not approve the terms of this Agreement or the Purchase Agreement, the City acknowledges and agrees that this Agreement is null and void.
11. Entire Agreement. This Agreement and the Purchase Agreement signed herewith contain the entire agreement between the Parties. No statements, promises, or inducements made by any Party or any agent of any Party that are not contained in this Agreement or the Purchase Agreement shall be valid or binding. This Agreement and the Purchase Agreement may not be enlarged, modified, or altered, except in writing signed by all Parties hereto expressly referencing it.
12. Severability. The Parties agree that if any portion of this Agreement is ever determined to be unenforceable, such determination will not affect the enforceability of any other clause or the remainder of this Agreement. In the event that any portion of this Agreement is ever determined to be unenforceable, the unenforceable provision shall be considered severed from the remainder of the Agreement and the Agreement will be, to the extent possible, interpreted and enforced in a manner that is most consistent with the letter and spirit of all of the terms of this Agreement as executed. However, the parties acknowledge and agree that this Agreement and the Purchase Agreement is subject to Court approval; and if the Court does not approve the terms of this Agreement or the Purchase Agreement, the City acknowledges and agrees that this Agreement is null and void.
13. Non-Waiver. No delay or failure by any Party to exercise any right under this Agreement and no partial single exercise of any right shall constitute a waiver of that or any other rights under this Agreement or afforded to the Party by law, unless expressly provided herein.
14. Representation by Counsel/Voluntary Nature of Agreement. The Parties acknowledge and represent that they have been represented by legal counsel in connection with the consideration and execution of this Agreement. The Parties represent and declare that in executing this Agreement, they relied solely upon their own judgment, belief, and knowledge, and, after consultation with their legal counsel concerning the nature, extent, and duration of their rights and claims, and that they were not induced into executing this Agreement by any representations or statements not expressly contained or referred to herein. By entering into this Agreement, the Parties acknowledge and expressly warrant and represent to each other that, as a part of the consideration for the promises contained

herein, that before executing this Agreement they have fully and completely read its terms and that the terms of this Agreement are fully understood and voluntarily accepted by each Party, without duress or coercion of any kind.

15. Governing Law and Venue. This Agreement shall be construed and governed by the laws of the State of North Dakota. Venue for any dispute shall be a court of competent jurisdiction located in Ward County, North Dakota.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

**LUTHERAN SOCIAL SERVICES HOUSING, INC.**

---

---

**LIGHTHOUSE MANAGEMENT GROUP, INC.**

---

By: Samuel Sigelman, Its Director

**CITY OF MINOT, a North Dakota  
municipal corporation**

---

By: Shaun Sipma, Its Mayor

---

By: David Lakefield, Its Finance Director

Exhibit 1  
**PURCHASE AGREEMENT**

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between Lighthouse Management Group, Inc., the court-appointed receiver (“Receiver”) for Lutheran Social Services Housing, Inc., a North Dakota Corporation (“LSS”) whose post office address is 900 Long Lake Road, Suite 180, New Brighton, MN 55112, hereinafter called "Seller", and the City of Minot, a North Dakota municipal corporation, whose post office address is P.O. Box 5006, Minot, ND 58702-5006, hereinafter called "City."

WITNESSETH, that the Seller agrees to sell and the City agrees to purchase, upon the terms and conditions hereinafter set forth, the following described real property and all appurtenances thereunto belonging, owned by the Seller and located in the County of Ward, State of North Dakota, to-wit:

Outlots 4, 6, and 7 of the SW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> less that portion as recorded in Document No. 2817138 Section 25, Township 155 North, Range 83 West of the 5th P.M., Ward County, North Dakota

Street Address: 1901 South Broadway; Minot, North Dakota

Tax Parcel ID: MI252882530070

Notwithstanding any other provision of this Purchase Agreement, City shall have no obligation to purchase the Property, and no transfer of title to the City may occur, unless and until the City has received a written determination, on the basis of a federally required environmental review and an approved request for release of federal funds, that purchase of the Property by City may proceed. Upon receipt of the written determination and approved release of funds and subject to other terms and conditions of this Purchase Agreement and the Termination Agreement by and between the City of Minot and Lutheran Social Services Housing, Inc., dated **INSERT DATE**, the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property. City shall use its best efforts to ensure environmental review of the property is concluded expeditiously.

WITNESSETH, Lighthouse Management Group, Inc. was appointed as the Receiver of LSS and its assets by Findings of Fact, Conclusions of Law and Order for Immediate Appointment of Temporary Receiver (“Order”) entered January 25, 2021 in Cass County District Court, North Dakota. Pursuant to the Order any sale of property by the Receiver is subject to court approval.

In further consideration of the covenants and obligations contained herein, the Parties agree as follows:

1. PURCHASE PRICE. The purchase price for all of the Seller's right, title and interest in the Property shall be one and 00/100 Dollars (\$1.00), payable at Closing. Additional consideration for this Purchase Agreement is the satisfaction of two sub-recipient agreements, both dated June 6, 2019, between the City and LSS, and a release of all claims and causes of action as specifically described in the Termination Agreement relating to the subrecipient agreements. Except as otherwise provided herein, the Seller shall receive no other compensation from the City for the Seller's right, title, and interest in the Property.

2. ABSTRACT AND TITLE INSURANCE. Prior to Closing, Seller shall provide the City possession of an abstract of title or title insurance policy showing marketable title of the Seller to the real estate described in this agreement. The cost of any abstract continuation or provision of title insurance shall be paid by the City. In the event that Seller is unable to deliver an existing abstract or title insurance policy to the City, the cost of creating a new abstract or acquisition of title insurance shall be paid by the City. Seller agrees to cooperate with the City and to execute all documents necessary to demonstrate or obtain marketable title to the property. Upon Closing, all abstracts and title insurance policies shall become the property of the City.

If Seller's title is not insurable or free of defects and cannot be made so within sixty (60) days after notice containing a written statement of defects delivered to the Seller, then this agreement may be terminated at the option of the City, except that the City may waive defects and elect to close the purchase.

3. DEED. Seller shall, on full compliance by City with the promises herein, execute and deliver to City a Receiver's Deed, in recordable form, conveying marketable title.

4. CLOSING DATE. This transaction shall be finally closed and a Receiver's Deed as required herein delivered to the City 15 days after court approval of the sale or at a date mutually agreed to by the Parties. The Receiver agrees to seek court approval within 15 days of execution of this Agreement, or as soon thereafter as reasonably practical.

5. POSSESSION. City shall be entitled to possession of the Property at the Closing. The City shall be entitled to receipt of all rents from the Property after closing.

6. INSPECTION OF PROPERTY. City shall have the right to conduct such investigations, inspections and inventories of the Property as it deems reasonable or necessary prior to Closing. Seller hereby grants the City, its officers, agents, employees and independent contractors, the right to enter upon the Property at reasonable times upon reasonable notice, oral or written, from time to time after the date of this agreement for the purposes of investigating, inspecting and performing inventories of the Property and for other purposes consistent with City's interest under this agreement.

7. REMOVAL OF PERSONAL PROPERTY. Prior to the Closing Date, Seller at its own expense shall remove all personal property not purchased with CDBG-NDR funds or

Program Income which Seller wishes to retain. Also, prior to or on the Closing Date, Seller shall execute and deliver to the City the Certificate of Removal of Personal Property attached as Exhibit "A." Any personal property remaining in the structure at the time of Closing will become the property of the City. Personal property needs to be demonstrated by the seller to have not been acquired or benefited with Community Development Block Grant (CDBG) or CDBG National Disaster Recovery Funds.

8. NO HOLDOVER PERIOD FOR OCCUPANTS. Seller shall ensure that it vacates the Property at the Closing Date.

9. STATUS QUO MAINTAINED. Except as otherwise authorized by City, the Property shall be preserved in its present condition and Seller shall deliver it intact at the time of closing. In the event salvage is authorized, the replacement value of the salvaged items will be deducted from the Purchase Price stated in paragraph 1. All risk of loss or damage to the Property is on Seller until closing. Prior to closing, Seller shall promptly give written notice to the City of any salvage, loss or damage to the Property. In the event of salvage, loss, damage or destruction of all or part of the Property, City shall have the option to terminate this Purchase Agreement effective immediately. However, in the case of salvage, loss, damage or destruction of all or part of the Property, City shall have the option to: (1) take possession of the Property upon completion of the terms and obligations of this Purchase Agreement; (2) terminate this agreement effective immediately; or (3) renegotiate the Purchase Price.

10. TAXES. Buyer shall assume all taxes on the Property through date of closing and all unpaid taxes for prior years, including property taxes for 2020. The Buyer acknowledges and agrees that there may be property taxes in arrears in the amount of \$25,542.67 ("Tax Liability"), and the Seller is not responsible in satisfying the Tax Liability.

13. CONTRACTOR LIABILITY. The Buyer acknowledges and agrees that:

A. There may be several contractors who have performed services in connection with the Property since LSS acquired the Property in December 2019;

B. These contractors are owed about \$348,651.95 (the "Contractor Liability");

C. The Contractor Liability may be partially satisfied as a non-priority claim in the Receivership, and liability against the Property may remain.

14. SPECIAL ASSESSMENTS. Buyer agrees to assume any and all unpaid special assessments including but not limited to any uncertified balance of special assessments.

15. TIME IS OF THE ESSENCE. Time is of the essence of this agreement.

16. LEASES. Seller represents and warrants to City that, except as stated herein, there are no leases, tenancies or other rights of occupancy for use for any portion of the Property. The foregoing representation and warranty shall survive the Closing Date. Seller shall hold harmless and indemnify City from and against any claims which may arise or be based upon any alleged leasehold interest, tenancy or other right of occupancy or use of any portion of the Property except as listed below:

<u>Tenant Name</u>	<u>Phone #</u>	<u>Tenant Lease Date</u>	<u>Lease Beginning Date</u>	<u>Lease Ending Date</u>
--------------------	----------------	--------------------------	-----------------------------	--------------------------

1. Chen Chang Huan d/b/a Grand Hibachi Buffet, Inc. dated April 6, 2020 commencing April 6, 2020 for a 5-year term with two optional 5-year terms.

If the Property or any portion thereof is leased to a third party, such third-party tenant or occupant may be eligible for benefits or assistance pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and/or *N.D.C.C.* § 54-01.1. The City and/or its agents, contractors or representatives will be contacting tenants or occupants to provide information and notices as may be required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and/or *N.D.C.C.* § 54-01.1, including, but not limited to, notices that the tenant or occupant must permanently relocate from the Property. Consequently, tenants or occupants might move from the Property prior to the Closing Date. Seller agrees to allow such tenants to move from the Property without penalty and will not consider such move as a breach of any lease, rental or occupancy agreement which Seller may have with the tenant or occupant.

Sellers Initials
------------------

**If any tenant or occupant should move out of the Property after the date of this agreement, Seller agrees not to lease or rent such vacated unit to any other person or otherwise allow any occupancy of such vacated unit. Other than the consideration stated in paragraph 1, Seller shall not receive any additional payment, consideration or compensation for loss of rent or reimbursement of any expenses**

**related to any vacancies.**

16. APPROVAL OF COURT. This Agreement is only enforceable if the Cass County Court approves the terms of the Agreement.

17. ENVIRONMENTAL MATTERS.

A. Environmental Representations and Warranties. For purposes of this agreement, the terms "hazardous waste" or "hazardous substance" shall include every material, waste, contaminant, chemical, toxic pollutant or other substance listed or described in any of the following sources, as amended from time to time: (i) the Resource Conservation and Recovery Act to 1976, 42 U.S.C. 6901 et.seq. (RCRA); (ii) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (Pub. Law. 96-510) (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub.L. 99-499) (SARA) codified at 42 U.S.C. 9601 et.seq.; (iii) Federal Environmental Protection Agency Regulations at 40 C.F.R. Parts 122-124 and 260-265; (iv) North Dakota Code Chapter 19-21; (v) any other federal, state, or local statute or ordinance which defines "hazardous waste" or "hazardous substance" or similar terms, and which could create liability in the City or the City's successors in interest; and (vi) any federal, state or local regulations, rules or orders issued or promulgated under or pursuant to any of the foregoing or otherwise by any department, agency or other administrative regulatory or judicial body having jurisdiction over the Property (hereinafter collectively referred to as "Environmental Laws"). Without limiting the foregoing, the terms "hazardous waste" and "hazardous substance" shall also include all substances or materials containing asbestos, PCBs, or hydrocarbons.

- B. Additional Environmental Provisions. If Seller receives any notice from any governmental authority or any other party regarding the release or presence of any hazardous waste or hazardous substance on any portion of the property, or otherwise learns of any release or presence of any hazardous waste or hazardous substance on any portion of the Property, Seller shall immediately notify the City of such fact. In addition, the City or its agents shall have the right to enter upon the Property at any time to perform additional environmental studies. If at any time the City in its sole and irrevocable discretion determines that hazardous wastes or hazardous substances are present on any portion of the Property, the City may terminate this agreement effective immediately.

19. CONTRACT BINDING ON SUCCESSORS IN INTEREST. The document shall apply to and bind the heirs, executors, administrators, partners, assigns and successors in interest of the respective Parties.







