

## **MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (the “MOU”) is made this \_\_\_ day of \_\_\_\_\_, 2023 (the “Commencement Date”), by the Northfield Housing and Redevelopment Authority, a/k/a Housing and Redevelopment Authority of the City of Northfield, a body politic and corporate under the laws of the State of Minnesota (the “HRA”) and Northcountry Cooperative Foundation, a Minnesota nonprofit corporation, or its permitted assigns (“NCF”); (collectively the “parties”).

### **RECITALS**

**WHEREAS**, NCF desires to receive from HRA the exclusive right and privilege to seek to negotiate with the HRA for purchase and development of the land identified with PID 22.07.3.27.001 and described as Spring Creek Townhomes Outlot A, Northfield, MN, legally described on Exhibit A attached hereto and incorporated herein (the “Property”), for the purposes of investigating the Property and determining if it is suitable for the use intended by NCF.

**WHEREAS**, the parties agree that it is beneficial for the parties for the HRA to give NCF the opportunity to negotiate for purchase and development of the Property for a limited period of time and subject to the conditions of this MOU.

**NOW, THEREFORE**, the parties agree as follows:

- I. The foregoing Recitals are hereby made a part hereof.
- II. NCF and the City have identified the Property as the prospective site of a new housing development project (the “Project”). NCF is willing to determine, at its own expense, the feasibility of developing the Property for the Project. The HRA is willing to provide NCF with the opportunity to negotiate with HRA for the purchase and development of the Property during the due diligence period described below while such studies are being conducted by NCF.
- III. **NEGOTIATING PRIVILEGE**. The HRA does hereby grant unto NCF the opportunity and privilege to negotiate for the acquisition and development of the Property for the due diligence period and under the conditions set forth herein. During the Term of this agreement, the HRA shall not negotiate with or entertain offers from other parties with respect to the Property.
  - A. **DUE DILIGENCE PERIOD**. Within **three hundred sixty-five (365)** days after the Commencement Date (the “Due Diligence Period”) with respect to the possible sale of the Property and development of the Project on the Property:
    - i. NCF, will have (i) submitted at least one funding application for development of the Project, and (ii) engaged an architect to prepare a preliminary design concept, and (iii) undertaken its investigation of the Property for purposes of purchase of the Property and development of the Project on the Property pursuant to Section III.B.; and

- ii. HRA, in HRA's sole judgment and discretion, may negotiate with NCF a mutually acceptable purchase agreement in compliance with applicable law using the HRA form purchase agreement for the sale of the Property by HRA to NCF via quit claim deed, and subsequent consideration of approval of such negotiated purchase agreement by the Board of Commissioners of the HRA at a future duly noticed public meeting of the HRA.

The conditions of Section III.A. of this MOU may be satisfied by prior work initiated before the Commencement Date.

If the conditions of Section III.A. of this MOU are not satisfied by the end of the Due Diligence Period, then this MOU will automatically terminate at the end of the Due Diligence Period without further action by either party.

- B. **RIGHT OF ENTRY**. Subject to the terms and conditions of this MOU, and the satisfaction of the insurance requirements set forth in the following paragraph, HRA does hereby grant unto NCF, its employees, members, agents, contractors, representatives, and prospective lenders (collectively, the "NCF Parties"), at NCF's sole cost and expense, access and the opportunity to enter the Property, at times acceptable to HRA staff during the term of this MOU, for the purpose of conducting environmental, engineering, percolation, soil compaction tests, surveys, appraisals, water and sewer availability tests, verifying utility existence and such other examinations or investigations for such other purposes of this MOU and development of the Project on the Property, subject, however, to the following restrictions: (i) NCF will notify HRA staff not less than 48 hours in advance of NCF's desiring to enter onto the Property and receive HRA staff's permission for the same, which permission may be granted verbally by HRA staff to the NCF representative; (ii) NCF will not perform any invasive testing on the Property (including digging, boring, sampling, and the like) without the prior written consent of HRA.
- C. **RESTORATION AND COSTS**. Upon the completion of any activities permitted by this MOU, including but not limited to any invasive testing authorized by HRA in writing, NCF will within 10 days of such activities, or upon written request of HRA staff, restore the Property to the condition that existed prior to such activities or testing at NCF's sole cost and expense. If NCF fails to undertake and complete timely restoration to HRA staff's reasonable satisfaction, HRA may undertake the work and invoice NCF for costs incurred by HRA for such work, with payment by NCF to HRA required within 30 days of invoicing from HRA. Failure by NCF to make such timely payments or to restore the Property to the HRA staff's reasonable satisfaction shall constitute grounds for immediate termination of this MOU by HRA.
- D. **INSURANCE REQUIRED**. NCF will procure and maintain during the term of this MOU the following required insurance coverage: Commercial General Liability Insurance at limits of not less than One Million Five Hundred Thousand Dollars (\$1,500,000) per occurrence for claims arising out of bodily injuries or

death, and property damages, subject to a minimum of Two Million Dollars (\$2,000,000) annual aggregate. Such insurance will include contractual liability and premises/operations insurance and will cover all acts of the NCF, its employees and consultants regarding this MOU.

- i. The insurance policy required under this section will provide that such policy will not be suspended, voided, canceled, reduced in coverage paid, until after thirty (30) days prior written notice has been given by the insurer to the HRA. There will be an exception for non-payment of premium, which is ten (10) days' notice of cancellation.
- ii. NCF will name HRA as an additional insured and furnish the HRA a "Certificate of Insurance" with copy(ies) of the additional insured endorsement(s) as verification that coverage is in force. The HRA reserves the right to require complete copies of insurance policies at any time upon not less than five (5) business days prior written notice.
- iii. Failure to obtain and maintain for the term of this MOU insurance coverage as required or failure to furnish Certificate(s) of Insurance as required, within fifteen (15) days after written notice from HRA to NCF of such failure, will permit HRA to immediately terminate this MOU, and that during such period of non-insurance NCF shall not request nor be permitted access to the Property for any reason under this MOU.

IV. **INDEMNIFICATION.** (i) NCF agrees to indemnify, defend, and hold harmless the HRA, its employees, agents, and representatives against any and all claims, demands, suits and actions of every nature and description, including attorneys' fees brought against HRA, its employees, agents and representatives arising as a result of any and all willful or negligent acts or omissions of NCF, its employees, agents, representatives, assigns or successors., By signing this MOU below, Alliance Housing Inc. guarantees the performance of NCF under this MOU. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of HRA. All indemnification obligations shall survive termination, expiration or cancellation of this MOU. NCF agrees, that in order to protect itself and HRA under the indemnity provisions set forth above, it will at all times during the term of this MOU keep in force policies of insurances required in the Paragraph entitled, "Insurance Required." Nothing in this MOU shall be construed to waive any immunities or limitations to which HRA is entitled under Minn. Stat. Chapters 466 and 469 or otherwise.

V. **NCF WORK PRODUCT.** HRA may, at HRA's cost and election, acquire from NCF, at a cost equal to NCF's actual cost therefor, NCF's right, title, and interest in and to any of the reports, studies, plans, and other due diligence in connection with its investigation and anticipated development of the Property as selected by HRA.

VI. **HRA NOT LIABLE FOR NCF'S EXPENDITURES.** HRA will not be liable for any expenditure whatsoever made by the NCF during the period of this MOU arising out of or related to this MOU.

- VII. **SEVERABILITY**. Any term, covenant or condition deemed invalid or unenforceable by a Court of competent jurisdiction is completely severable and will not invalidate or render unenforceable this document as a whole, or any other term, covenant or condition contained herein.
- VIII. **APPLICABLE LAW**. This MOU and the obligations of the parties hereunder will be governed by and construed in accordance with the laws of the State of Minnesota.
- IX. **NO JOINT VENTURE**. HRA and NCF expressly acknowledge and agree that there exists no intentional or implicit joint venture, partnership or other legal relationship between them and that this document will not be deemed evidence of any such relationship.
- X. **NOTICES**. Where notice or approval are required in this MOU, they will be given in writing, by certified mail, return receipt requested.

As to HRA, notice or approval will be addressed to:

They City of Northfield- HRA  
c/o Melissa Hanson  
801 Washington Street  
Northfield, MN 55057  
Attn: Melissa Hanson (email: melissa.hanson@northfieldmn.gov)

with copies to:

They City of Northfield- Community Development  
c/o Jake Reilly  
801 Washington Street  
Northfield, MN 55057  
Attn: Jake Reilly (email: jake.reilly@northfieldmn.gov)

As to NCF, notice or approval will be addressed to:

Northcountry Cooperative Foundation  
c/o Tory Clark  
2715 University Avenue West, Suite 300  
St. Paul, MN 55114  
Attn: Tory Clark (email: victoria@northcountryfoundation.org)

with a copy to:

Avisen Legal, P.A.  
c/o John Saunders  
901 Marquette Ave, Suite 1675  
Minneapolis, MN 55402  
Attn: John Saunders (email: jsaunders@avisenlegal.com)

- XI. **COMPLIANCE WITH THE LAW.** NCF agrees to abide by all applicable federal, state and local statutes, ordinances, rules and regulations, including procurement of all applicable permits, licenses and approvals pertaining to the work to be performed hereunder.
- XII. **MODIFICATION.** All terms and conditions made between HRA and NCF are included herein and can be modified only by an amendment signed by both parties.
- XIII. **DATA PRACTICES.** The parties acknowledge that this MOU is subject to the requirements of Minnesota's Government Data Practices Act (Act), Minnesota Statutes, Section 13.01 *et seq.*
- XIV. **NON-BINDING EFFECT, TERMINATION, AND SURVIVABILITY.** It is the intention of the parties that this MOU is non-binding on the HRA with respect to negotiation and/or approval of any negotiated purchase agreement and/or development agreement by the Board of Commissioners of the HRA or any subsequent land use approvals required by the City of Northfield or any other requirements provided in City of Northfield City Code or applicable law. Execution of this MOU by any person on behalf of the HRA prior to obtaining the necessary approvals of the HRA and/or the City of Northfield, or such other governmental agencies having jurisdiction, shall not confer any personal authority nor create any personal liability on the signers of this MOU under this MOU. This agreement shall terminate at the end of the Due Diligence Period ("Termination"). Upon Termination, neither party shall have further obligation, financial or otherwise, to the other party, provided however that it is the intention of the parties that Sections III.C., III.D., IV, VI, VIII, and IX are for the benefit of the HRA and public interest and that the same shall survive termination, expiration or cancellation of this MOU for a period of two years.
- XV. **NO WAIVER.** Any party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this MOU or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that party's right to assert or rely upon the terms and conditions of this MOU. Any express waiver of a term of this MOU shall not be binding and effective unless made in writing and properly executed by the waiving party.
- XVI. **MECHANIC'S LIENS.** NCF hereby covenants and agrees that NCF will not permit or allow any mechanic's or materialman's liens to be placed on HRA's interest in the Property during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on HRA's interest, NCF shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that NCF may contest any such lien provided NCF first posts a surety bond, in favor of and insuring HRA, in an amount equal to 125% of the amount of any such lien.
- XVII. **EXECUTION.** This MOU may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any party to the counterpart shall be deemed a signature to the MOU, and may be appended to, any other counterpart. Facsimile and email transmissions

of executed signature pages shall be deemed as originals and sufficient to bind the executing party.

*[Signatures appear on the next page]*

**IN WITNESS WHEREOF**, this MOU represents the full intent and interest of the parties hereto as evidence by their respective signatures affixed below as of the date and year hereinabove written.

NORTHCOUNTRY COOPERATIVE  
FOUNDATION, a Minnesota nonprofit  
corporation

By \_\_\_\_\_  
\_\_\_\_\_, Its \_\_\_\_\_

NORTHFIELD HOUSING AND  
REDEVELOPMENT AUTHORITY, a body  
politic and corporate under the laws of the  
State of Minnesota

By: \_\_\_\_\_  
Brent Nystrom, Its Chair

By: \_\_\_\_\_  
Jayne Hager Dee, Its Secretary

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Lot A of SPRING CREEK TOWNHOMES OUTLOTS