

PRELIMINARY DEVELOPMENT AGREEMENT

THIS PRELIMINARY DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2021, by the City of Marshall, Minnesota, a municipal corporation under the laws of the state of Minnesota, (the "City") with its principal office at 344 W. Main Street, Marshall MN 56258, and Block 11 Marshall LLC, a corporation (the “Developer”) with its principal office at 201 N. Riverfront Drive, Suite 230, Mankato, MN 56001.

WITNESSETH:

WHEREAS, the City and the Housing and Redevelopment Authority in and for the City of Marshall (the “HRA”) have previously adopted plans (collectively, the "Redevelopment Plan") to address blighted conditions within the City through the utilization of a series of different tools, and the Developer has indicated interest in pursuing certain programs; and

WHEREAS, the Developer has proposed to acquire certain real property generally described in Exhibit A attached hereto (the "Property"); and

WHEREAS, the Developer proposes to construct a mixed-use commercial/residential development on the Property in up to 3 phases with the first phase consisting of the construction of a multifamily housing building with approximately 24 one bedroom units and 12 two bedrooms units on the Property and the second and third phases consisting of a mix of commercial and residential uses (the “Development”); and

WHEREAS, the Developer has indicated that it may seek financial assistance from the City to offset a portion of the costs associated with such Development; and

WHEREAS, the City Council has reviewed the Developer's proposal and desires to enter into this Preliminary Development Agreement to provide the Developer with an exclusive period of negotiation which will allow the Developer to refine its proposal and give the parties hereto an opportunity to negotiate the terms of a purchase and development agreement (the “Purchase Agreement”).

NOW, THEREFORE, in consideration of the covenants and obligations of the parties hereto, the City and the Developer hereby agree as follows:

Section 1. Preliminary Nature of Agreement. The City and the Developer agree that this Agreement is intended to be preliminary in nature. Before the City and the Developer can decide on whether to proceed with the implementation of the Developer's proposal, it will be necessary to assemble and consider information relative to the design, economics and other aspects of the proposed Development. The purpose of this Agreement is to allow the Developer an exclusive opportunity to assemble such necessary information, to refine the above-referenced development proposal, and to negotiate with the City concerning the execution of the Purchase Agreement which, if executed, will set forth the rights and responsibilities of the City and the Developer with respect to the sale and development of the Property.

Section 2. Present Intent of Parties. It is the intention of the parties that this Agreement document their present understandings and commitments and that if the following conditions can be fulfilled to the satisfaction of the City and the Developer that the parties may proceed in an attempt to formulate a mutually-satisfactory Purchase Agreement:

- (a) the Developer demonstrates the feasibility of the Development at a design and density acceptable to the City;
- (b) the Developer provides such documentation regarding the economic feasibility of the Development as the City may reasonably wish to receive during the term of this Agreement;
- (c) the completion of all undertakings required by this Agreement in a satisfactory and timely manner; and
- (d) the satisfaction of such other reasonable and customary conditions as are determined to be appropriate by either party.

In the event that the parties enter into a Purchase Agreement, the terms of that agreement shall supersede any contrary items herein.

Section 3. Developer's Undertakings. During the term of this Agreement the Developer shall do the following:

- (a) There are no businesses located in the project area, so no relocation plan is required.
- (b) Within 30 days after the date of this Agreement submit an application for any financial assistance to the City which shall include, in addition to any information required by the City's application, a statement of the sources and uses, including any public financial assistance which may be requested by the Developer, for the construction of the Development and a pro forma detailing all costs of the

Development and including the income that is anticipated to be generated by the commercial portion of the Development. The pro forma shall be in such detail and form as would be acceptable to a lender being asked to provide mortgage financing for the Development. The Developer shall provide to the City such additional information as the City and its financial consultant may require to allow the City and its financial consultant to undertake a “but for” analysis for purposes of the Minnesota law. The Developer understands that if the City considers providing tax increment assistance or tax abatement assistance for the Development such assistance will only be provided on a “pay as you go” basis by which tax increment or tax abatements would be made available as it is generated by the Development, and the City will not be obligated to make payments to the Developer if the actual tax increment or tax abatements received from the project are less than expected.

- (c) Within 30 days after the date of this Agreement, the Developer shall do the following:
 - (i) submit to the City a proposed schedule for all phases of the Development, including without limitation, the timing of the closing on financing and the various stages of construction;
 - (ii) submit to the City a report by the Developer’s engineer describing the nature and location of any public improvements that it will be necessary to construct as a result of the construction of the Development; and
 - (iii) complete a concept review of the proposed Development by the City’s Zoning and Planning Commission and City Council as required by the City Code.

- (d) Within 45 days after the date of this Agreement, the Developer shall do the following:
 - (i) hold a public meeting with written notice being provided to all owners of property which is adjacent to the Property to discuss the Development and to hear and respond to such parties’ concerns. The City will provide the Developer a mailing list of property owners to be notified of the meeting; and
 - (ii) submit to the City a formal development proposal including a narrative description of the proposed Development and specific information on the Developer’s background and experience with similar redevelopment projects. Such proposal shall also include references including contact persons at other cities in which the Developer has completed projects.

- (e) Within 60 days after the date of this Agreement, the Developer shall do the following:

- (i) submit to the City a refined site plan for the Development showing the size, nature, and location of the proposed Development, including parking, access points off of roadways, access points to parking, locations of building, landscaping, other exterior improvements and such other matters as the City may require, and elevation and perspective drawings for the Development, showing the elevations of the buildings as seen from all streets. The design of the Development shall be consistent with the City's architectural standards for the area, a copy of which standards are attached to this Agreement as Exhibit B; and
 - (ii) submit to the City a letter from a financial institution stating a preliminary commitment to provide financing for the Development.
- (f) Every two weeks during the term of this Agreement, the Developer shall provide to the City written status reports on its activities under this Agreement and will attend, on a monthly basis or as otherwise requested, meetings of the City Council or Housing and Redevelopment Authority to discuss the Development.

All of the activities described above shall be performed at the sole expense of the Developer unless expressly stated otherwise.

Section 4. City's Undertakings. During the term of this Agreement, the City will undertake the following:

- (a) Utilizing the documentation and information submitted by the Developer pursuant to Section 3, the City will cause its fiscal and development consultant, Baker Tilly Municipal Advisors, LLC, to prepare a report for the City indicating:
 - (i) Whether any public financial assistance requested by the Developer in connection with the Development is appropriate;
 - (ii) Whether there is anticipated to be sufficient cash flow and tax increment or tax abatements from the Development to pay all of the costs associated with the Development.
 - (iii) Whether the Development is supported by market conditions; and
 - (iv) Indicating any other actions to be performed by the City or Developer in order to proceed with the Development.
- (b) The City will analyze the information provided by the Developer pursuant to Section 3 to determine the feasibility of the Development and whether proceeding with the Development is, in the City's sole discretion, desirable. Within 30 days after the City is provided with the information required to be submitted by the Developer under Section 3, the City will notify the Developer if the City determines that it needs additional information, in which case the Developer shall

have 30 days to supply such information. The City may, in its sole discretion, extend the time for the Developer to act under this paragraph.

- (d) To the extent necessary, coordinate with the HRA and any other agencies or authorities related to the compilation of the Property as well as exploring whether public financial assistance may be offered for the Development.

Section 5. Negotiation of Purchase Agreement. If both parties have satisfied their obligations hereunder, and have each determined that they desire to move forward with the project, the City shall prepare a draft Purchase Agreement for negotiation between the parties. Nothing herein shall bind either party to approve a Purchase Agreement.

Section 6. Effect of Approvals. No approval given by the City hereunder or in connection herewith shall be deemed to constitute an approval of the Development for any purpose other than as stated herein and the process outlined in this Agreement shall not be deemed to supersede any concept review, conditional use permit, vacation, subdivision, or other zoning or planning approval process of the City relative to the development of real estate.

Section 7. City Costs. The Developer agrees that it will pay all out-of-pocket costs incurred by the City in relation to the negotiation and execution of this Agreement, including, without limitation, all fees owed to the City's traffic, development, fiscal, legal, engineering, environmental and other consultants. The Developer shall also be responsible for reimbursing the City for all its costs associated with the drafting of the Purchase Agreement, any related documents and agreements necessary in connection with the Development, and any other activities which the City undertakes in furtherance of the Development . On the date hereof, the Developer has deposited \$750.00 with the City. If at any one or more times during the term of this Agreement, the City determines that its costs will exceed \$750.00, the Developer must pay such costs to the City within 15 days after receipt of a written invoice from the City describing the amount and nature of the costs to be reimbursed.

If on termination of this Agreement, the amounts held by the City are insufficient to pay the City's costs, the Developer shall be liable for any deficiency. If this Agreement is terminated in accordance with the terms hereof, or it expires and the parties do not move forward with the Development, any sums remaining on deposit with the City, after the City pays or reimburses itself for all costs incurred to the date of termination, shall be returned to the Developer. The Developer's obligations under this Section shall survive termination of this Agreement to the extent costs were incurred prior to the date of termination or to the extent that costs are incurred to enforce the Developer's obligations under this Section.

Section 8. Modifications. This Agreement may be modified and the term hereof may be extended only through written amendments hereto signed by all parties to this Agreement.

Section 9. Term of Agreement; Exclusive Negotiations. This Agreement shall be effective until December 31, 2021. If for any reason a Purchase Agreement has not been entered into by the parties within the term of this Agreement or any mutually approved extension thereof, this

Agreement shall be null and void and, subject to Section 7, neither party shall have any liability or obligations to the other.

During the term of this Agreement, the City agrees that it will negotiate exclusively with the Developer concerning the development of the Property.

Section 10. Indemnification. The Developer agrees to indemnify, defend and hold harmless the City, the HRA and their officers, employees, agents and representatives from and against any claims, demands, suits, costs, expenses (including reasonable attorneys' fees) actions or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Developer (or if other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Development; including, without limitation, any claim by a land owner or tenant located on the Property to be entitled to relocation costs and related expenses.

Section 11. Severability. If any portion of this Agreement is held invalid by a court of competent jurisdiction, such decision shall not affect the validity of any remaining portion of this Agreement.

Section 12. Notices. Notice, demand, or other communication from one party to the other shall be deemed effective if sent by certified mail, postage prepaid, return receipt requested or delivered personally to a party at its address in the first paragraph of this Agreement, or at such other address as such party may designate in writing to the other party.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf and the Developer has caused this Agreement to be duly executed in its name and behalf on or as of the date first above written.

CITY OF MARSHALL, MINNESOTA

By _____
Its Mayor

By _____
Its City Administrator

BLOCK 11 MARSHALL LLC

By _____
Its _____

EXHIBIT A

Property

The property located in the City of Marshall, Lyon County, Minnesota described as follows:

Lots 1, 2, 3, 4, & 5, Block 11

Lots 15 to 20, Block 11

EXHIBIT B

Architectural Standards

Sections 86-276 through 86-293 under the common title of Central Heritage District Exterior Construction Standards.

https://library.municode.com/mn/marshall/codes/code_of_ordinances?nodeId=PTIICOOR_CH8_6ZO_ARTVISURE_DIV5CEHEDIEXCOST_S86-276DE