

## PRELIMINARY DEVELOPMENT AGREEMENT

**THIS PRELIMINARY DEVELOPMENT AGREEMENT** (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 (the “Effective Date”), by the City of Marshall, Minnesota, a Minnesota municipal corporation, the Economic Development Authority in and for the City of Marshall, Minnesota, a public body corporate and politic under the laws of Minnesota (the “EDA”), and RCIL Land Holdings, LLC, a Delaware limited liability company, together with any related entity, affiliate, successor or assign (the “Developer”).

### WITNESSETH:

**WHEREAS**, the Developer and the City have been engaged in informal discussions regarding the possible development of a portion of certain land owned by the City, including approximately eight (8) acres of the parcel identified as 27-819005-0, located on London Rd in the City, which parcel is depicted in **Exhibit A** (the “Property”); and

**WHEREAS**, the Developer proposes to acquire and develop the Property by constructing thereon a 60-unit affordable family apartment complex and a 65-unit affordable senior independent living complex (the “Project”), and in connection therewith, the City proposes construction by the Developer of an extension of Paris Rd from London Rd to Channel Parkway, including any required utility extensions (the “Infrastructure Improvements”); and

**WHEREAS**, the Developer has indicated that it is seeking business subsidy assistance or financial incentives from the City and/or the EDA to offset a portion of the costs associated with the proposed acquisition of the Property and construction of the Project thereon (the “Development”), including sale of the Property at a reduced cost, waiver of park dedication fees, and use of pooled tax increment to pay costs associated with the Infrastructure Improvements, and thereby make the Development feasible; and

**WHEREAS**, the City and the EDA are willing to discuss with the Developer any such subsidies or incentives, including those described in the prior paragraph, which may be available for the Development; however, nothing herein shall be interpreted as an approval or guarantee of any future public financial assistance, including but not limited to tax increment financing, tax abatement, business subsidies, or any other public assistance authorized by law; and

**WHEREAS**, various ordinance, land use, zoning, and subdivision issues and actions related to the Development and the Property are required to be approved by the City in order to facilitate the Development by the Developer; and

**WHEREAS**, the City and EDA agree to cooperate with the Developer to review and to assist the Developer, where deemed appropriate by the City and EDA, with obtaining various ordinance, land use, zoning, and subdivision approvals and actions related to the Development, provided that nothing herein shall be interpreted as an approval or guarantee of any future land use, zoning, or other required City approvals; and

**WHEREAS**, the City and the EDA are willing to evaluate the proposed Development and work toward all necessary agreements with the Developer if the Developer agrees to makes the deposit described herein, which is intended to reimburse the City and the EDA for their actual out-of-pocket costs incurred in connection with this Agreement and the proposed Development; and

**WHEREAS**, the City intends to convey title to and possession of the Property to the EDA, and upon such conveyance, the EDA intends to immediately convey such title to and possession to the Developer, pursuant to Minnesota Statutes, Section 469.105, as amended; and

**WHEREAS**, the City and the EDA wish to grant Developer an option to acquire the Property pursuant to a Real Estate Option Agreement (the “Option Agreement”), as set forth in **Exhibit B** attached hereto and made a part hereof, and upon conveyance of title to the Property from the City to the EDA, the EDA intends to grant to Developer, and Developer intends to obtain from the EDA the Property, as set forth herein and under the terms and conditions of the Option Agreement; and

**WHEREAS**, the City Council of the City and the Board of Commissioners of the EDA have reviewed the Developer’s proposal and the parties propose to enter into this Preliminary Development Agreement to provide the Developer with an exclusive period of negotiation which will allow the Developer to, among other things: (i) refine its proposal and give the City, EDA and the Developer an opportunity to negotiate the terms of a purchase and contract for private development (the “Contract”) containing various requirements necessary to (a) facilitate conveyance of the Property by the City to the EDA, for ultimate conveyance by the EDA to the Developer, (b) construction of the Project on the Property, and (c) and construction of the Infrastructure Improvements, the specific terms and conditions of which are yet to be finalized; (ii) explore the possibility and need for public subsidy for the Development, including sale of the Property at a reduced cost, waiver of park dedication fees, and the use of pooled tax increment financing; (iii) submit an application to the Minnesota Housing Finance Agency (“MHFA”) for an allocation of federal tax credits available to owners of qualified affordable rental housing projects for the Development; and (iv) seek approval from the EDA and the City of the final Development; and

**WHEREAS**, the City, the EDA and Developer intend to proceed with the Development if: (i) a design for the Development and Infrastructure Improvements can be agreed upon by the City, the EDA and the Developer; (ii) a satisfactory agreement can be reached regarding the terms of the purchase by the Developer of the Property; (iii) a satisfactory agreement can be reached regarding the City and/or EDA’s commitment of public financial assistance necessary for the Development; (iv) satisfactory financing for the Development can be secured; (v) the Project is awarded low-income housing tax credits by MHFA sufficient for the Development; (vi) the economic feasibility and soundness of the Development and other necessary preconditions have been determined to the satisfaction of the parties; and (vii) the financial risk to the City and the EDA, if any, is determined to be reasonable.

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

Section 1. Preliminary Nature of Agreement. The City, the EDA and the Developer agree that this Agreement is intended to be preliminary in nature. Before the City, the EDA and the Developer can decide on whether to proceed with the implementation of the Developer's proposal for the Property, it will be necessary to assemble and consider information relative to the design, economics and other aspects of the proposed Development and Infrastructure Improvements. 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 and the EDA concerning the execution of the Contract which, if executed, will set forth the rights and responsibilities of the City, the EDA and the Developer with respect to the Development and Infrastructure Improvements.

Section 2. Present Intent of Parties. (a) It is the intention of the parties that this Agreement memorialize their present understandings and commitments, and if the following conditions can be fulfilled to the satisfaction of the City, the EDA and the Developer, the parties may proceed to use their best efforts to negotiate a mutually satisfactory Contract, which Contract may include conveyance of the Property:

- (i) The Developer demonstrates the market-feasibility of the Development;
  - (ii) The Developer demonstrates that sources of financing for the Development are available to the Developer, and if Developer requests business subsidy assistance or financial incentives from the City or the EDA, such assistance or incentives are necessary to make Developer's development proposal financially feasible and Developer provides security adequate to reasonably justify any such City or EDA investment in the Development;
  - (iii) Resolution of any land use and site design issues with respect to the Development and Infrastructure Improvements; and
  - (iv) The Project is awarded low-income housing tax credits by MHFA sufficient for the Development; and
  - (v) Satisfaction of such other reasonable and customary conditions as are determined to be appropriate by either party.
- (b) Presently, the parties anticipate that the Contract will provide the following terms:
- (i) The City will convey title to and possession of the Property to the EDA, and the EDA will simultaneously convey title to and possession of the Property to the Developer for a purchase price of One Dollar and No/100 (\$1.00), as provided in Section 7 hereof, and subject to satisfaction of contingencies specified in the Contract. The value of the Property shall be determined by a third-party appraiser.
  - (ii) The Developer will construct the Project on the Property, in accordance with the Contract.
  - (iii) The Developer will construct the Infrastructure Improvements, in accordance with City standards, as set forth the Contract.
  - (iv) The EDA will provide pooled tax increment revenues to pay costs associated with the Infrastructure Improvements, in an amount not to exceed \$500,000, in accordance with the Contract.

The Contract (together with any other agreements entered into between the parties hereto or contemporaneously therewith) when executed will supersede all obligations of the parties hereunder.

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

- (i) Submit to the City and EDA a design proposal to be approved in concept by the City and the EDA showing the location, size, and nature of the Development, including floor layouts, renderings, elevations, and other graphic or written explanations of the Development, and the Infrastructure Improvements meeting City standards; provided, however, such approval shall be for purposes of this Agreement only and shall not constitute approval for purposes of obtaining a building permit or any other purpose;
- (ii) Submit to the City and EDA an over-all cost estimate for the design and construction of the Development and Infrastructure Improvements;

(iii) Submit to the City and EDA a proposed schedule for all phases of the Development and Infrastructure Improvements;

(iv) Undertake and obtain such other preliminary economic feasibility studies, income and expense projections, financing commitments and such other economic information as the Developer may desire to further confirm the economic feasibility and soundness of the Development;

(v) Submit to the City and EDA the Developer's financing plan showing that the Development is financially feasible, and, to the extent Developer seeks public financial assistance in any form (including reduced land cost, waiver of fees, and tax increment financing), evidence that such assistance is reasonably necessary to make the Development financially feasible; and

(vi) Submit to the City and EDA pro forma operating and financial data and projections for the Development evidencing the Developer's ability to undertake the Development.

(vii) Cooperate with the City and the EDA in meeting the requirements of any participating governmental entity with respect to the proposed public assistance, including providing to the City such additional information as the City and its fiscal and development consultant, Baker Tilly, may require to allow the City and its financial consultant to undertake a "but for" analysis for purposes of the Minnesota tax increment financing laws; and.

(viii) Negotiate the Contract in accordance with, and subject to, the terms hereof.

The costs of all undertakings by the Developer under this Section 3 shall be borne solely by the Developer. All of the information and materials described in this Section 3 shall be the property of the Developer.

Section 4. City's and EDA's Undertakings. During the term of this Agreement, the City and/or the EDA shall undertake the following:

(i) Make available to the Developer all engineering drawing and other similar materials with respect to the Property, to assist Developer in its efforts under this Agreement;

(ii) Make available City/EDA staff for consultation with respect to the preparation and review of the items described in Section 3 of this Agreement; and

(iii) In the event the Developer requests public financial assistance in connection with the Development and Infrastructure Improvements, the City will cause its fiscal and development consultant, Baker Tilly, to prepare a report for the City and the EDA, utilizing the documentation and information submitted by the Developer pursuant to Section 3, setting forth the following:

1. Whether any public financial assistance requested by the Developer in connection with the Development is appropriate; and

2. Whether there is anticipated to be sufficient cash flow from the Development and other sources of funding to pay all of the costs associated with the Development;

(iv) Review zoning, planning and subdivision implications of the Development, as appropriate;

(v) Grant to the Developer a right of access to the Property for purposes of environmental and soil testing; provided that the Developer shall indemnify, save harmless, and defend the EDA and City, their respective officers, employees, agents, members, officials and representatives from and against any and all claims, actions, damages, liability and expense in connection with personal injury and/or damage to the Property arising from or out of any occurrence in, upon or at the Property caused by the act or omission of the Developer in connection with Developer's entry on the Property. Further, Developer shall not permit any mechanics', materialmens' or other liens to stand against the Property or any part thereof for work or materials furnished to Developer in connection with the right of entry granted pursuant to this Agreement and Developer shall indemnify, defend and hold harmless the EDA and City from and against the same.

(vi) Keep the Developer fully apprised of the status and substance of the foregoing undertakings, as well as the accrued amount of reimbursable expenses described in Section 9 of this Agreement;

(vii) Negotiate the Contract in accordance with, and subject to, the terms hereof.

Section 5. Option Rights. (a) The parties currently anticipate that the Property will be conveyed to the Developer for the purchase price One Dollar and No/100 (\$1.00), subject to satisfaction of contingencies specified in the Contract. As noted in Section 6 hereof, the City and EDA may not sell, or negotiate for the sale of, any portion of the Property to any other person or entity during the term of this Agreement. As consideration for such exclusive rights, the agrees to pay the following amounts (referred to as the "Option Payments") on the following dates:

Payment Required	Payment Due Date
Fifty Cents (\$.50/100)	Within five (5) business days following the Effective Date of this Agreement.
Fifty Cents (\$.50/100)	On the date of closing of the sale by the EDA and purchase by the Developer of the Property

Failure by Developer to make any timely Option Payments as described in this Section will be an event of default permitting termination of this Agreement by the Authority under Section 12 hereof.

(b) If a Contract is executed within the terms of this Agreement, and the Property is conveyed to the Developer in accordance with its terms, the Option Payments paid to date shall be applied against the purchase price of the Property.

(c) If for any reason the Contract is not negotiated and executed within the term of this Agreement or any mutually approved extension thereof, or if this Agreement is terminated pursuant to Section 12 hereof (other than due to breach by the City or the EDA), or if the Contract is terminated pursuant to its terms for any reason (other than due to breach by the City or the EDA) before closing on conveyance of the Property to the Developer, then the City and the EDA shall retain all Options Payments made to the Authority to date. The Developer shall have no rights or interest in any interest earnings on the Option Payments or in the amount retained by the City and EDA under this Section. The substantial terms of this section shall be incorporated in any Contract entered pursuant to this Agreement.

Section 6. Exclusive Development Rights. During the term of this Agreement, the City and the EDA each agree that it will not negotiate or contract with any other party concerning the sale or

development of the Property. The Developer shall not assign or transfer its rights under this Agreement in full or in part, or enter into any subcontracts to perform any of its obligations hereunder, without the prior written consent of the City and the EDA.

Section 7. Conveyance Subject to Right of Re-entry. As of the date of this Agreement, the City owns the Property. If a Contract is executed within the terms of this Agreement, the City will convey title to and possession of the Property to the EDA, and the EDA will simultaneously convey title to and possession of the Property to the Developer, subject to all the terms and conditions of the Contract. The EDA's conveyance of the EDA Property to the Developer pursuant to the Contract will be made in the form of a quit claim deed (the "Deed"). The Deed will include a right of re-entry for breach of a condition subsequent in favor of the EDA (the "Right of Re-entry") for the Development. The condition(s) subsequent will be determined by the EDA in accordance with Minnesota Statutes Section 469.105 and set forth in the Deed conveying the EDA Property to the Developer in the form attached to the Contract. If the Developer breaches such condition(s) subsequent with respect to the Development, the Developer shall re-convey the Property back to the EDA. If the Developer fails to re-convey the Property to the EDA, the EDA may elect to exercise its right of reentry by commencing an action in Lyon County District Court to establish the breach of the condition subsequent. If the EDA establishes a breach of the condition subsequent, title to and the right to possession of the Property and title to all improvements located thereon reverts to the EDA, and the Developer is not entitled to any compensation from the EDA for the Property or the value of any improvements the Developer has made to the Property. The Developer must record any certificate of completion or certificate of release of the Right of Re-entry in the proper County land records at its expense.

Section 8. Negotiation of Contract. If all parties have satisfied their obligations hereunder and have each determined that they desire to move forward with the Development, the City and EDA shall prepare a draft Contract for negotiation between the parties. Nothing herein shall bind the parties to approve a Contract.

Section 9. City and EDA Costs. The Developer agrees that it will pay all out-of-pocket costs incurred by the City and the EDA in relation to the negotiation and execution of this Agreement, including, without limitation, all fees owed to the traffic, development, fiscal, legal, engineering, environmental and other consultants of the City and EDA. The Developer shall also be responsible for reimbursing the City and the EDA for all costs associated with the drafting of the Contract, and any other activities which the City and the EDA undertake in furtherance of the Development. To date, the Developer has deposited \$[\_\_\_\_\_] with the City and the City has used such amount deposited to pay its costs associated with the City's and EDA's review of the Development. The City and EDA shall have the right to draw upon amounts remaining on deposit with it to pay its costs. The Developer agrees to maintain a deposit with the City in the amount of \$[\_\_\_\_\_]. If the amount on deposit becomes depleted below \$[\_\_\_\_\_], the City shall have the right to request that the Developer replenish such funds upon which the Developer shall, within 15 days of request by the City, remit to the City additional funds to be held on deposit so that the amount on deposit will equal \$[\_\_\_\_\_]. If on termination of this Agreement, the amounts held by the City are insufficient to pay the City's and EDA'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 and the EDA 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 10. Effect of Approvals. No approval given by the City and the EDA 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, rezoning or other zoning or planning approval process of the City or the EDA relative to the development of real estate.

Section 11. 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 12. Term of Agreement. (a) This Agreement shall be effective from the date of this Agreement through [\_\_\_\_\_, 20\_\_], subject to earlier termination in accordance with this section. If for any reason a Contract has not been entered into by the parties within the term of this Agreement or any other mutually approved extension thereof, this Agreement shall be null and void and neither party thereafter shall have any liability or obligations to the other except as otherwise provided in Sections 5 and 9 hereof.

(b) This Agreement may be terminated by any party upon 30 days' written notice to the other parties if:

- (i) A party fails to perform any of its obligations hereunder, and fails to cure the default within 30 days after receipt of written notice thereof; or
- (ii) An impasse has been reached in the negotiation of any material term of the Contract.

Upon termination under this section 12(b), neither party thereafter shall have any liability or obligations to the other except as otherwise provided in Sections 5 and 9 hereof.

Section 13. Indemnification. The Developer agrees to indemnify, defend and hold harmless the City and the EDA and their respective officers, employees, agents, members, officials 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 14. 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 15. Notices. Notice, demand, or other communication from one party to another party shall be deemed effective if sent by certified mail, postage prepaid, return receipt requested or delivered personally to a party at its address listed below, or at such other address as such party may designate in writing to the other party:

As to the City: City of Marshall  
344 West Main St.  
Marshall, MN 56258  
Attn: [\_\_\_\_\_]

As to the EDA: Marshall EDA  
344 West Main St.  
Marshall, MN 56258  
Attn: Lauren Deutz, Economic Development Director

Email: lauren.deutz@ci.marshall.mn.us

As to the Developer:

RCIL Land Holdings, LLC  
2001 Killebrew Drive, Suite 100  
Minneapolis, MN 55425  
Attn: Tim Trimble  
Email: ttrimble@tapestrycompanies.com  
Phone: 612-859-1910

Section 16. Effective Laws. This Agreement shall be construed in accordance with the laws of Minnesota, and any disputes shall be adjudicated in Lyon County district courts.

Section 17. Execution in Counterparts; Electronic Signatures. This Agreement may be executed in several counterparts, all of which shall constitute one and the same instrument. The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. For purposes hereof: (i) “electronic signature” means a manually signed original signature that is then transmitted by electronic means or a digital signature provided by DocuSign or other digital signature provider; and (ii) “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a portable document format (“pdf”) or other replicating image attached to an electronic mail or internet message.



**IN WITNESS WHEREOF**, the City, the EDA and the Developer have caused this Preliminary Development Agreement to be signed by their respective duly authorized representatives as of the date and year first written above.

**CITY OF MARSHALL, MINNESOTA**

By: \_\_\_\_\_  
Its Mayor

By: \_\_\_\_\_  
Its: City Administrator

[Signature page to Preliminary Development Agreement]

**ECONOMIC DEVELOPMENT  
AUTHORITY IN AND FOR THE CITY OF  
MARSHALL, MINNESOTA**

By: \_\_\_\_\_  
Its President

By: \_\_\_\_\_  
Its: Executive Director

[Signature page to Preliminary Development Agreement]

**RCIL LAND HOLDINGS, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: President

[Signature page to Preliminary Development Agreement]

**EXHIBIT A**

**Property**



## EXHIBIT C

### Option Agreement

THIS REAL ESTATE OPTION AGREEMENT (“*Agreement*”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2023 (the “Effective Date”), by and between the City of Marshall, Minnesota (the “*City*”), a Minnesota municipal corporation, together with the Economic Development Authority in and for the City of Marshall, Minnesota (the “*EDA*”), a public body corporate and politic under the laws of Minnesota (collectively, the City and the EDA are the “*Seller*”) and RCIL Land Holdings, LLC, a Delaware limited liability company (“*Buyer*”).

#### RECITALS:

A. The City owns certain real property, which is located in Lyon County, Minnesota, identified as parcel no. 27-819005-0 and legally described on Exhibit A attached hereto and hereby made a part hereof, together with all rights, title and interest appurtenant thereto (the “*Real Property*”); and

B. Buyer intends to purchase a portion of the Real Property, including [7.9] acres legally described on Exhibit B attached hereto and hereby made a part hereof (the “*Development Property*”) from Seller and to develop the Development Property; and

C. Seller wishes to grant Buyer an option to acquire the Development Property; and

D. Seller desires to grant to Buyer, and Buyer desires to obtain from Seller the Development Property, under the terms and conditions hereunder.

NOW, THEREFORE, in consideration of mutual covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. Grant of Option. In consideration of the Option Payments, as defined in Section 5(a) of the Preliminary Development Agreement, dated \_\_\_\_\_, 2023 (the “*Preliminary Development Agreement*”), by the City, the EDA, and the Buyer, paid by Buyer to Seller, receipt of the first of which (the “*Option Deposit*”) is hereby acknowledged by Seller, Seller hereby grants to Buyer a period of time of [ ] months from and after the Effective Date of this Agreement (the “*Option Deadline*”) the option to acquire the Development Property (the “*Option*”).

2. [Reserved]

3. Obligation to Purchase. If Buyer elects to exercise its Option, Buyer shall be obligated to purchase the Development Property from Seller under the terms stated herein. This provision shall be subject to specific performance.

4. Manner of Exercise of Option; Notices. If Buyer elects to exercise the Option, it shall do so by giving written notice thereof to Seller (such notice, an “*Option Notice*”) on or before the Option Deadline. An Option Notice shall be in writing and shall be deemed given on the date (i) delivered personally, (ii) deposited with the United States Postal Service, postage prepaid, registered or certified, return receipt requested, (iii) deposited with a national courier guaranteeing overnight delivery, or (iv) sent via facsimile or email with electronic delivery confirmed. Notwithstanding anything in this Agreement to the contrary, upon Buyer giving a written Option Notice to Seller, Buyer shall be obligated to acquire the

Development Property from Seller and shall pay all costs associated with such transaction, including, but not limited to the Purchase Price and the Seller's Costs, as defined below, and Buyer shall enter into a Contract for Private Development and a separate Purchase Agreement or a Purchase and Development Contract (collectively, the "***Development Agreement***") with Seller regarding the sale and development of the Development Property consistent with Minnesota law, including but not limited to Minnesota Statutes, Section 469.105.

5. Seller's Actions. Promptly upon receipt of an Option Notice from Buyer, Seller shall undertake all actions required in order for Seller to convey title of the Development Property to Buyer pursuant to the terms of this Agreement.

6. Purchase Price; Costs; Assessment.

6.1. The purchase price paid by Buyer to Seller for the Development Property shall be the sum of One Dollar and No/100 (\$1.00), less the amount of the Option Deposit (such sum, the "***Purchase Price***"). The Purchase Price shall be payable by certified check or wire transfer on the Closing Date (as hereafter defined).

6.2. In addition to the Purchase Price, Buyer shall also be required to reimburse Seller for any and all costs incurred by Seller in acquiring the Development Property and undertaking all actions required in order for Seller to obtain fee title to and effectuate development of the Development Property, including, without limitation, taxes and fees, attorneys' fees, document drafting fees, engineering fees, financial advisor fees and fees for the drafting various documents required for this transaction, including but not limited to the Preliminary Development Agreement and the Development Agreement (the "***Seller's Costs***"). Buyer shall, upon execution of this Agreement, provide a cash escrow in the amount of \$[ ] to be used to reimburse Seller for the Seller's Costs. If such costs exceed the amount of the established escrow, Buyer shall, upon demand by Seller, pay such additional costs to Seller within ten (10) days of such demand, and provided further that the amount by which this deposit exceeds the Seller's Costs, if any, shall be returned to Buyer.

6.3. In the event Seller does not recover its costs as required by this Agreement, as an additional remedy, Seller may, at its sole discretion, assess the Development Property in the manner provided by Minnesota Statutes, Chapter 429, and Buyer hereby consents to the levy of such special assessments without notice or hearing and waives all rights to appeal such assessments pursuant to Minnesota Statutes, Section 429.081, provided the amount levied, together with the funds deposited with Seller under this Section 6, does not exceed the expenses actually incurred by Seller. Further, Seller may, at its sole discretion, as an additional remedy, recover expenses actually incurred by Seller as service charges, in the manner provided by Minnesota Statutes, Sections 415.01, 366.011 and 366.012, and Buyer hereby consents to the levy of such assessments without notice or hearing and waives all rights to appeal such assessments pursuant to such Minnesota Statutes, provided the amount levied, together with the funds deposited with Seller, does not exceed the expenses actually incurred by Seller pursuant to this Agreement.

6.4 This entire Section 6 shall survive termination of this Agreement and shall be binding on Buyer regardless of the enforceability of any other provision of this Agreement.

7. Closing. If Buyer shall become obligated to purchase the Development Property from Seller pursuant to this Agreement and the contemplated Development Agreement, the parties shall set a mutually agreeable closing date, which shall be as soon as reasonably practicable following the EDA's acquisition of fee title (the "***Closing Date***"). On the Closing Date, the EDA shall deliver to Buyer a Quit Claim Deed, duly executed and in recordable form, together with any such other documents as may be reasonably required by

Buyer's title insurance company to effectuate the conveyance of marketable title of the Development Property to Buyer. Upon the Closing Date, Buyer shall deliver to Seller the Purchase Price, together with any documents as may be reasonably required by Buyer's title insurance company to consummate the transaction. Buyer shall be responsible for any and all costs of the closing for the Development Property.

8. Exercise of Option. Notwithstanding anything in this Agreement to the contrary, upon Buyer giving a written Option Notice to Seller, Buyer shall be obligated to acquire the Development Property from Seller, and Buyer shall pay all costs for such transaction, including, but not limited to the Purchase Price and the Seller's Costs as set forth in this Agreement. Buyer shall also be required to enter into a Development Agreement (for any public financing assistance and for the Development Property) with Seller regarding the sale and development of the Development Property consistent with Minnesota law, including but not limited to Minnesota Statutes, Section 469.105. In the event that Buyer does not exercise the Option by the Option Deadline, then Seller shall retain the Option Deposit as full and complete consideration for the Option granted by this Agreement.

9. Property "As Is" / Buyer's Diligence. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND TO BUYER, INCLUDING, WITHOUT LIMITATION, THE PHYSICAL CONDITION OF THE DEVELOPMENT PROPERTY OR ITS SUITABILITY FOR ANY PARTICULAR PURPOSE. Buyer acknowledges that Buyer has already (or, prior to the Closing Date, will have) independently inspected the Development Property and, if Buyer shall deliver an Option Notice, then it shall do so based solely upon Buyer's own examination and inspection. Buyer agrees that the Development Property is to be sold to and accepted by Buyer upon the Closing Date in its then present condition, AS IS, WITH ALL FAULTS, IF ANY, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED. To the extent possible, Seller shall permit Buyer access to the Development Property to conduct such inspections and tests thereof as Buyer may deem necessary or desirable prior to the Closing Date, provided that Buyer shall indemnify and save Seller harmless from any claims or liability arising from Buyer's tests and inspections of the Development Property.

10. Governing Law. This Agreement shall be construed as to both validity and performance and enforced in accordance with and governed by the laws of the State of Minnesota.

11. Execution in Counterparts; Electronic Signatures. This Agreement may be executed in several counterparts, all of which shall constitute one and the same instrument. The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. For purposes hereof: (i) "electronic signature" means a manually signed original signature that is then transmitted by electronic means or a digital signature provided by DocuSign or other digital signature provider; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a portable document format ("pdf") or other replicating image attached to an electronic mail or internet message.

*[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY.]*

IN WITNESS WHEREOF, the undersigned have signed this Real Estate Option Agreement as of the day and year first written above.

**SELLER:**

**CITY OF MARSHALL, MINNESOTA**

By: \_\_\_\_\_  
Its Mayor

By: \_\_\_\_\_  
Its: City Administrator

**ECONOMIC DEVELOPMENT  
AUTHORITY IN AND FOR THE CITY OF  
MARSHALL, MINNESOTA**

By: \_\_\_\_\_  
Its President

By: \_\_\_\_\_  
Its: Executive Director

*[Signature pages to Real Estate Option Agreement]*



**BUYER:**

**RCIL LAND HOLDINGS, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: President

*[Signature pages to Real Estate Option Agreement]*

Exhibit A

Legal Description for the Real Property

[insert]

Exhibit B

Legal Description for the Development Property

[Insert]