

REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT ("Agreement") is made this ____ day of _____, 2023("Effective Date") by and between the **CITY OF MARSHALL, MINNESOTA**, a municipal corporation under the laws of the State of Minnesota ("Buyer") and **SCHWAN'S SHARED SERVICES, LLC**, a limited liability company under the laws of the State of Delaware, or its assigns ("Seller").

RECITALS

WHEREAS, the Seller owns real property as described herein:

Parcel #1:

Lot One (1), Block Three (3), SCHWAN'S CORP 1 ADDITION to the City of Marshall, Lyon County, Minnesota,

Parcel #2:

Lot Two (2), Block Three (3), SCHWAN'S CORP 1 ADDITION to the City of Marshall, Lyon County, Minnesota,

Parcel #3:

A portion of Lot Three (3), Block Three (3), SCHWAN'S CORP 1 ADDITION to the City of Marshall, Lyon County, Minnesota, as depicted on the Attached Exhibit A.

(Final Legal Description to be Provided by Surveyor as obtained by Seller.)

WHEREAS, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the Real Property pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree, for themselves, their successors and assigns as follows:

1. **SALE OF PROPERTY.** Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, fee title in the Real Property, together with all gaps, easements, rights benefiting or appurtenant to the Real Property, title or interest in any public streets or other public right of way vacated or unvacated, and Seller's interest in any transferable permits, licenses, or other approvals issued in connection with the Real Property, including rights arising out of any applicable Master Plan or Development Agreement (that includes the Real Property) or otherwise (collectively referred to as "Property").

2. **PURCHASE PRICE AND MANNER OF PAYMENT.** The total purchase price ("Purchase Price") to be paid by Buyer for the Property will be Four Hundred Sixty-Eight Thousand and no/100 (\$468,000.00) Dollars and other good and valuable consideration and is payable on closing date. This purchase agreement is subject to and contingent upon the Minnesota State Legislature authorizing the City of Marshall to proceed with process to collect a local sales tax option to be used as a source of funding for the purchase price herein. Said purchase is further subject to the local citizens of the City of Marshall approving the local sales tax option to fund the purchase of the property. Failure of the State Legislature to authorize the local sales tax option and failure of the local citizens of the City of Marshall to approve the local sales tax prior to

December 15, 2023 shall void this purchase agreement and this real estate purchase agreement shall therefore be deemed to be null and void.

Parking Lot Use. Seller hereby grants Buyer the license to use the parking lot area more specifically depicted in Exhibit C hereof (for the avoidance of doubt, said parking lot is not included in the Property and therefore is not being sold to Buyer), in accordance with the rights and obligations set forth in Exhibit B hereof. Finally, the Purchase Agreement is subject to and contingent upon approval by the Marshall City Council.

3. DEED/MARKETABLE TITLE.

Upon performance by Buyer and satisfaction of all contingencies, the Seller shall execute and deliver a Warranty Deed conveying marketable title, subject to:

- (A) Building and zoning laws, ordinances, state and federal regulations;
- (B) Restrictions relating to use or improvement of the property without effective forfeiture provisions;
- (C) Reservation of any mineral rights by the State of Minnesota;
- (D) Utility and drainage easements which do not interfere with existing improvements;
- (E) Exceptions to title which constitute encumbrances, restrictions or easements which have been disclosed to Buyer and accepted by Buyer in this Purchase Agreement; (MUST BE SPECIFIED IN WRITING).

4. REPRESENTATIONS AND WARRANTIES BY SELLER. Seller represents and warrants to Buyer as follows:

A. **Authority.** The terms of this Agreement have been properly approved by the Seller, including, without limitation, as evidenced by the adoption of any requisite business operating resolutions, and the parties executing this Agreement on behalf of the seller have been duly authorized to execute this Agreement and to bind the Seller to the terms hereof. All documents executed by Seller which are to be delivered at the Closing are duly authorized, executed, and delivered by the Seller, are legal, valid, and binding obligations of Seller, are sufficient to convey title and do not violate any provisions of any agreement to which Seller is a party or to which it is subject.

B. **Title to Real Property.** Seller owns fee title to the Real Property, free and clear of all encumbrances and there are no leases or other agreements granting third parties any right to possess or purchase any portion of the Real Property being sold.

C. **Utilities.** The Real Property is to be adequately served by water, storm sewer and sanitary sewer and Seller has received no notice of actual or threatened reduction or curtailment of any utility service now supplied to the Real Property.

D. **“As Is” Sale.** The Real Property to be purchased herein is currently vacant. The Real Property has been accessible to the general public. The Buyer acquires said Real Property “As Is” and “Where Is”. The Seller acknowledges that there has been no inspection for any hazardous materials. Seller is not aware of any activity that has been undertaken on the Real Property that would cause or contribute to (i) the Real Property becoming a treatment, storage or disposal facility within the meaning of and in violation of the Resource Conservation and Recovery Act of 1976, (“RCRA”), 42 U.S.C. § 6901 et seq., or any similar state law or local ordinance, (ii) a release or threatened release of Hazardous Substances from the Real Property within the ambit of CERCLA or any similar state law or local ordinance, or (iii) the discharge of pollutants or effluents into any water source or system, the dredging or filling of any waters or the discharge into the air

of any emissions, that would require a permit under the Federal Water Act, 33 U.S.C. § 1251 et seq., or the Clean Air Act, 42 U.S.C. §7401, et seq., or any similar state law or local ordinance.

E. **Rights of Others to the Real Property.** Seller has not entered into any other contracts for the sale of the Real Property, nor are there any rights of first refusal or options to purchase the Real Property or any other rights of others that might prevent the consummation of this Agreement. As of the date of this Agreement and the Closing Date, there are no agreements or understandings between Seller and any other parties which materially affect the operation or financing of the Real Property as currently operated by Seller that have not been disclosed to Buyer pursuant to this Agreement.

F. **Seller's Defaults.** Seller is not in default concerning any of its obligations or liabilities regarding the Real Property.

G. **FIRPTA.** Seller is not a "foreign person", "foreign partnership", "foreign trust" or "foreign estate" as those terms are defined in Section 1445 of the Internal Revenue Code.

H. **Proceedings.** There is no action, litigation, investigation, condemnation, or proceeding of any kind pending or to the best knowledge of Seller, threatened against any portion of the Real Property.

I. **Insurance.** As of the date of this Agreement and the Closing Date, Seller has received no notice or complaint from any insurance underwriter relating to the condition of or operations of the Real Property.

J. **Well Disclosure/Storage Tanks.** There are no wells, monitoring wells or storage tanks on the Real Property within the meaning of Minnesota Statutes Chapter 103I. This warranty is given pursuant to Minnesota Statutes Chapter 103I.

K. **Special Assessments.** There are levied special assessments in connection with the Real Property.

L. **Documents.** Seller has or will promptly provide Buyer accurate and complete copies of all of the Documents (as that term is defined herein) in Seller's possession regarding the Real Property.

M. **Methamphetamine Disclosure.** To Seller's knowledge, no methamphetamine production has occurred on the Property.

N. **Airport Zoning.** A copy of any airport zoning regulations affecting the Property can be reviewed or obtained at the office of the county recorder in and for the county in which the Property is located.

The Seller's representations and warranties survive Closing. Furthermore, Seller will defend, indemnify and hold Buyer harmless from any claims arising out of Seller's breach of the representations and warranties.

5. **CONDITIONS PRECEDENT.**

A. Unless otherwise set forth herein, the obligations of Buyer under this Agreement are expressly contingent upon the satisfaction of each of the following conditions in Buyer's sole discretion ("Buyer's Conditions").

(i) **Access.** Seller will allow Buyer, and Buyer's agents, access to the Real Property without charge and at all reasonable times for the purpose of Buyer's inspection of the Real Property. Buyer will pay all costs and expenses of such investigation and testing and will hold Seller and the Real Property harmless from all costs and liabilities relating to Buyer's activities, except arising out of any existing environmental conditions. Buyer will further repair and restore any damage to the Real Property caused by or occurring during Buyer's testing and return the Real Property to substantially the same condition as existed prior to Buyer's entry. Seller will fully cooperate with Buyer to enable Buyer to satisfy the Buyer's Conditions.

(ii) **Due Diligence.** Buyer may perform, at its sole cost and expense, examinations and inspections relative to the economic and physical feasibility of the Real Property as Buyer determines in its sole and absolute discretion, including, without limitation, engineering studies, wetland delineation, market analysis, financial feasibility analysis including the availability of financing, and environmental assessments of the Real Property ("Tests"). Buyer shall promptly commence and diligently proceed with its Tests. Seller agrees promptly to provide Buyer with all readily available property information to assist in the conduct of Buyer's due diligence, including without limitation the Documents (as that term is defined herein). Buyer and its duly authorized agents will, pursuant to Section 4(i), have the right during the period from the Effective Date until the Closing Date, to enter in and upon the Real Property to complete its due diligence, including without limitations, completing the Tests. If such Tests reveal any condition or circumstances which Buyer finds objectionable for any reason, in Buyer's sole and absolute discretion, Buyer has the right and option to terminate this Agreement by written notice delivered to Seller on or before the Condition Date as set forth herein, and this Agreement will be of no further force or effect.

Upon failure of any one or more of the Buyer's Conditions on or before the Condition Date, Buyer may, at its sole and absolute discretion, by written notice to Seller given on or before 5:00 Minnesota time on the Condition Date, terminate this Agreement and neither Buyer nor Seller will have any further right, privilege, duty or obligation under this Agreement, (unless exclusively set forth herein). Failure of Buyer to give Seller notice of its election to terminate this Agreement prior to the Condition Date constitutes waiver by Buyer of the Buyer's Conditions. Buyer has the unilateral right to waive any Buyer's Condition by written notice to Seller.

B. The following conditions are conditions precedent to Buyer's obligations to Close on the purchase of the Real Property:

(i) **Representations and Warranties by Seller.** The representations and warranties of Seller contained in this Agreement must be true now and on the Closing Date as if made on the Closing Date.

(ii) **Title.** Buyer must be able to verify property title (as that term is defined herein) in accordance with the requirements and terms of Section 7.C. below.

(iii) **Performance of Seller's Obligations.** Seller has performed all of the obligations required to be performed by Seller under this Agreement, as and when required by this Agreement.

(iv) **Approvals (and the lapsing of any rights of appeal).** The City's adoption of resolutions granting the Approvals, in form acceptable to both parties.

(v) **Closing Documents.** Delivery of all Seller's documents, pursuant to Section 8.A.

(vi) **Conditions.** There exists no material change in the environmental or physical condition of the Real Property between the Condition Date and the Closing.

In the event that the conditions set forth in this paragraph 5.B are not satisfied, Buyer may elect to terminate this Agreement or waive satisfaction of any of Buyer's Conditions and close by giving written notice to Seller.

C. **Local Sales Tax Approval.** As an additional condition precedent, the City of Marshall must obtain legislative approval from the State of Minnesota regarding the local sales tax option to be approved so as to allow the City of Marshall a funding source to pay for the land acquisition as set forth herein. Failure to obtain State Legislative approval for local sales tax prior to December 15, 2023 and failure of the local voters to approve local sales tax option shall cause this agreement to be null and void, and there shall be no further obligation on behalf of Buyer to purchase the property and no further obligation on behalf of the Seller to sell the property.

D. **Long Term Lease Agreement.** As an additional condition precedent, the Seller and Purchaser shall negotiate and enter into a long-term mutual lease agreement regarding public use of adjacent parking lot which, can then be used by aquatic center constituents for aquatic center facilities. Failure to agree to long-term mutual lease agreement shall cause this agreement to be null and void and there shall be no further obligation on behalf of the Buyer to purchase the property and no further obligation on behalf of the Seller to sell the property.

E. **City Council Approval.** As a final condition precedent, the Marshall City Council must approve the terms and conditions of this Agreement and authorize the appropriate City Officials to sign this Purchase Agreement.

6. **EXAMINATION OF TITLE.** Seller shall, within ten (10) days of the satisfaction of all contingencies of this Agreement, furnish Buyer with an abstract of title or a registered property abstract certified to date including proper searches covering bankruptcies and state and federal judgments, liens and levied and pending special assessments. Buyer shall have ten (10) business days after receipt of the abstract of title or registered property abstract either to have Buyer's attorney examine the title and provide Seller with written objections ("Objections") or, at Buyer's own expense, to make an application for a title insurance policy and notify seller of the application. Buyer shall have ten (10) business days after receipt of the commitment for title insurance to provide Seller with a copy of the commitment and written Objections. Buyer shall be deemed to have waived any title Objections not

made within the applicable ten (10) day period for above, except that this shall not operate as a waiver of Seller's covenant to deliver a statutory warranty deed, unless a warranty deed is not specified above.

7. **TITLE CORRECTIONS AND REMEDIES.** Seller shall have 90 days from receipt of Buyer's written title objections to make title marketable. Upon receipt of Buyer's title objections, Seller shall within ten (10) business days, notify Buyer of Seller's intention to make title marketable within the 90-day period. Liens or encumbrances for liquidated amounts which can be released by payment or escrow from proceeds of closing shall not delay the closing. Cure of the defects by Seller shall be reasonable, diligent, and prompt. Pending correction of title, all payments required herein, and the closing shall be postponed.

A. If notice is given and Seller makes marketable title, then upon presentation to Buyer and proposed lender of documentation establishing that title has been made marketable, and if not objected to in the same time and manner as the original title objections, the closing shall take place within ten (10) business days or on the scheduled closing date, whichever is later.

B. If notice is given and Seller proceeds in good faith to make title marketable but the 90-day period expires without title being made marketable, Buyer may declare this Purchase Agreement null and void by notice to Seller, neither party shall be liable for damages hereunder to the other.

C. If Seller does not give notice of intention to make title marketable, or if notice is given but the 90-day period expires without title being made marketable due to Seller's failure to proceed in good faith, Buyer may seek, as permitted by law, any one or more of the following:

(i) Proceed to closing without waiver or merger in the deed of the objections to title and without waiver of any remedies, and may:

a) Seek damages, costs and reasonable attorney's fees from seller as permitted by law (damages under this subparagraph shall be limited to the cost of curing objections to title and consequential damages are excluded); or

b) Undertake proceedings to correct the objections to title;

(ii) Rescission of this Agreement by notices as provided herein, in which case the Agreement shall be null and void.

(iii) Damages from Seller include costs and reasonable attorney's fees as permitted by law;

(iv) Specific performance within six month of such right of action arises.

D. If title is marketable, or is made marketable as provided herein, and Buyer defaults in any of the agreements herein, Seller may elect either of the following

options as permitted by law:

(i) Cancel this Agreement as provided by statute and retain all payments made hereunder as liquidated damages. The parties acknowledge their intention that any not given pursuant to this Agreement is a down payment note, and may be presented for payment notwithstanding cancellation;

E. If the title is marketable or is made marketable as provided herein, and Seller defaults in any of the agreements herein, Buyer may, as permitted by law:

- a) Seek damages from Seller including costs and reasonable attorney's fees;
- b) Seek specific performance within six months after such right of action arises.

8. **CLOSING.** Closing shall occur on or before December 15, 2023. The Closing will take place at the office of Quarnstrom & Doering, P.A. – 109 S. 4th St. Marshall, MN 56258, or at such other date and time as the parties may mutually agree upon in writing.

A. **Seller's Closing Documents.** On the Closing Date(s), Seller will sign and/or deliver to Buyer the following (collectively, "Seller's Closing Documents") at such Closing for the respective Lot, if Buyer elects to close in phases:

(i) **Warranty Deed.** A Warranty Deed in recordable form acceptable to Buyer conveying the Real Property from Seller to Buyer, free and clear of any encumbrances except the Permitted Encumbrances.

(ii) **Seller's Affidavit.** An Affidavit by Seller indicating that on the Closing Date there are no outstanding, unsatisfied judgments, tax liens or bankruptcies against or involving Seller or the Real Property; that there has been no skill, labor or material furnished to the Real Property for which payment has not been made or for which mechanic's liens could be filed; and that there are no other unrecorded interests in the Real Property together with any standard indemnity agreement required by Title to issue the Title Policy.

(iii) **FIRPTA Affidavit.** A non-foreign affidavit, properly executed and in recordable form containing such information as is required by IRC § 1445(b)(2) and its regulations.

(iv) **Assignment.** Assignment of all of the Documents and other documents relevant to the Project (at no cost to Buyer), Plans and any facets of the Property not covered by the Warranty Deed, in which Seller assigns all rights, title and interest in said Plans or Documents in form acceptable to the Buyer.

(v) **Additional Documents.** Such other documents as Buyer may reasonably request to carry out the transactions contemplated under this Agreement.

B. **Buyer's Closing Documents.** On the Closing Date, Buyer will sign and/or deliver to Seller the following (collectively, "Buyer's Closing Documents") at such Closing:

(i) **Payment.** The payment due at Closing.

(ii) **Additional Documents.** Such other documents as Seller may reasonably request to carry out the transactions contemplated under this Agreement.

9. **PRORATIONS.** Seller and Buyer agree to the following prorations and allocation of costs regarding this Agreement:

A. **Title Insurance and Closing Fee.** Seller will pay all costs of the Title Evidence (as defined in Section 6.1 below). Buyer shall pay all premiums required for the issuance of any owner's and/or mortgagee's title insurance policy. Seller and Buyer shall each pay one-half of any closing fee or charge imposed by any closing agent or by Title.

B. **Transfer Taxes.** Transfer Taxes. Seller shall pay all deed, documentary stamp and transfer taxes payable in connection with the recording of the deed. Buyer shall pay all fees and taxes payable in connection with Buyer's financing, including any fees or taxes imposed in connection with the execution, delivery and/or recording of any mortgage, deed to secure debt, deed of trust or other security document.

C. **Real Estate Taxes and Special Assessments.** General real estate taxes and installments of special assessments due and payable in the calendar year immediately preceding the year in which the Closing occurs, and all prior years shall be paid by Seller. General real estate taxes and installments of special assessments due and payable in the calendar year in which the Closing occurs shall be prorated by Seller and Buyer as of the Closing Date based upon the calendar year. Buyer shall assume all real estate taxes and installments of special assessments due and payable in all years following the calendar year in which the Closing occurs. For purposes of this Section, real estate taxes and installments of special assessments shall be deemed to be "due and payable" in the last calendar year in which such payment can be made without incurring interest or penalties for late payment.

D. **Recording Costs.** Seller will pay the cost of recording all documents necessary to place record title in Seller in the condition required by this Agreement. Buyer will pay the cost of recording all other documents.

E. **Other Costs.** All other operating costs of the Property shall be allocated between Seller and Buyer as the Closing date, so that the Seller pays that part of operating costs payable before Closing Date, and Buyer pays that part of operating costs payable on and after the Closing Date.

F. **Attorney's Fees.** Each of the parties will pay its own attorney's fees.

10. **OPERATION PRIOR TO CLOSING.** During the period from the date of Seller's acceptance of this Agreement to the Closing Date (the "Executory Period"), Seller will maintain the Real Property in the ordinary course of business in accordance with prudent, reasonable business standards. Seller will execute no contracts, leases or other agreements regarding the Real Property during the interim that are not terminable on or before the Closing Date, without the prior written consent of Buyer, which consent may be withheld by Buyer in its sole discretion.

11. **DAMAGE.** If, prior to the Closing Date, all or any part of the Real Property is substantially damaged by fire or other casualty, the elements or any other cause, the Seller will immediately give notice to Buyer of such fact and at Buyer's option (to be exercised within twenty

(20) days after Seller's notice), this Agreement will terminate, in which event neither party will have any further obligations under this Agreement. Buyer may elect to Close, in accordance to this agreement.

12. **NOTICES.** All notices and demands given or required to be given by any party hereto to any other party shall be deemed to have been properly given if and when delivered in person, the next business day after being sent by reputable overnight commercial courier (e.g. U.P.S. or Federal Express), sent by facsimile (with verification of receipt) or three (3) business days after having been deposited in any U.S. Postal Service and sent by registered or certified mail, postage prepaid, addressed as follows (or sent to such other address as any party shall specify to the other party pursuant to the provisions of this Section):

If to Seller:

Schwan's Shared Services, LLC
115 West College Drive
Marshall, MN 56258

If to Buyer:

Sharon Hanson, City Administrator
City Hall
344 W. Main St.
Marshall, MN 56258

Phone: 507-537-6760
Facsimile: 507-537-6830
Email: Sharon.Hanson@ci.marshall.mn.us

With a copy to:

Dennis H. Simpson
109 S. 4th St.
Marshall, MN 56258
Phone: 507-537-1441
Facsimile: 507-537-1445
Email: dsimpson@qdlawfirm.com

In the event either party delivers a notice by facsimile, as set forth above, such party agrees to deposit the originals of the notice in a post office, branch post office, or mail depository maintained by the U.S. Postal Service, postage prepaid and addressed as set forth above. Such deposit in the U.S. Mail shall not affect the deemed delivery of the notice by facsimile, provided that the procedures set forth above are fully complied with.

Any party, by notice given as aforesaid, may change the address to which subsequent notices are to be sent to such party. Attorneys for each party are authorized to give notices for each such party.

13. **POSSESSION.** Possession of the Real Property will be delivered by the Seller to the Buyer on the Date of Closing.

14. **REMEDIES.** If Buyer defaults under this Agreement and fails to cure such default within the time period allowed by Minn. Stat. §559.21, subd. 4(a) (30 days), this Agreement will terminate.

If Seller defaults under this Agreement, Buyer may; (i) terminate this Agreement; (ii) seek and recover specific performance, provided, that such action for specific performance is commenced within six (6) months after such cause of action arises.

15. **CONDEMNATION.** If eminent domain proceedings are threatened or commenced against all or any part of the Property, Seller shall immediately give notice to Buyer, and if the taking is likely to materially and adversely impact the use and operation of the Property as presently used and operated, Buyer shall have the right to terminate this Agreement and receive back all Earnest Money by giving written notice to the Seller and Escrow Agent within ten (10) days after Seller's notice. If Buyer shall fail to give such notice, then the parties shall proceed to Closing, and Seller shall assign to Buyer all rights to appear in and receive any award from such proceedings. Upon any return of Earnest Money pursuant to this Section, neither the Seller nor the Buyer shall have any further rights or obligations under this Agreement, other than those expressly stated to survive a termination.

16. **BROKER'S COMMISSION.** Buyer may not assign this Agreement without the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed. Any attempted assignment without Seller's prior written consent shall be void, at Seller's option. No assignment by Buyer shall release or relieve Buyer from any obligations or liabilities under this Agreement. Buyer shall immediately notify Seller of any assignment or purported assignment and shall include with such notice a true and complete copy of the assignment document. Notwithstanding anything in this Section or Agreement to the contrary, Seller shall not withhold its consent to Buyer assigning this Agreement to an entity controlled by original Buyer, where "control" means a greater than fifty percent (50%) equity and voting interest, if Buyer provides to Seller reasonable evidence of such control. Buyer shall be responsible for any transfer taxes payable in connection with any assignment of this Agreement by Buyer.

17. **POST CLOSING OBLIGATIONS.** At any time and from time to time after the Closing Date, each party will upon request of another party, execute, acknowledge and deliver all such further and other assurances and documents, and will take such actions as are consistent with the terms of this Agreement, as may be reasonably requested to carry out the transactions contemplated herein and to permit each party to enjoy its rights and benefits hereunder. If requested by Buyer, Seller further agrees to prosecute or otherwise enforce in its own name for the benefit of Buyer, any claim, right or benefit transferred by this Agreement that may require prosecution or enforcement in Seller's name. Any prosecution or enforcement of claims, rights or benefits under this provision shall be solely at Buyer's expense, unless the prosecution or enforcement is made necessary by a breach of this Agreement on the part of the Seller.

18. **ENTIRE AGREEMENT, MODIFICATION AND WAIVER.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties, and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth in this Agreement. No supplement, modification or waiver of this Agreement shall be binding unless it is executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions whether or not similar, nor shall such waiver constitute a continuing waiver.

19. **SUCCESSORS AND ASSIGNS.** This Agreement will be binding upon and inure to the benefit of the parties, their successors and assigns, provided that Buyer is permitted to assign its interest hereunder, with notice to, and with Sellers consent, which will not be unreasonably withheld.

20. **GOVERNING LAW.** This Agreement was executed in Minnesota and shall be governed by the laws of the State of Minnesota.

21. **MUTUAL DRAFTING.** This Agreement is the mutual product of the parties, and each provision hereof has been subject to the mutual consultation, negotiation and agreement of each of the parties, and shall not be construed for or against any party to this Agreement.

22. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

23. **HEADINGS.** Headings contained herein are for reference only and are not a part of this Agreement.

24. **ABSENCE OF THIRD-PARTY BENEFICIARY RIGHTS.** No provision of this Agreement is intended, nor is any provision to be interpreted to provide or create any third-party beneficiary rights or any other rights of any kind in any client, customer, affiliate, shareholder, employee or partner of any party to this Agreement or any other person or entity.

25. **EXHIBITS.** All Exhibits referred to in and attached to this Agreement are incorporated in and made a part of this Agreement.

26. **REVIEW BY COUNSEL.** Buyer and Seller acknowledge that they have each been represented by counsel and that their respective counsel have reviewed and approved this Agreement, and the parties hereby agree that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

27. **EFFECT OF SUBMISSION.** The submission by Buyer to Seller or Seller to Buyer of this Agreement in an unsigned form shall be deemed to be a submission solely for consideration and not for acceptance and execution. Such submission shall have no binding force or effect and shall not confer any rights or impose any obligations, irrespective of any reliance thereon, change of position or partial performance. The submission by Seller or Buyer of this Agreement for execution shall similarly have no binding force or effect unless and until both parties shall have executed this Agreement and a counterpart hereof shall have been delivered to the other party hereto.

28. **DATES.** All times specified in this Agreement will be of the essence of this Agreement. If any date herein set forth for the performance of any obligations by Seller or Buyer or for the delivery of any instrument or notice as herein provided should be on a Saturday, Sunday or legal holiday, the compliance with such obligations or delivery will be deemed acceptable on the next business day following such Saturday, Sunday or legal holiday. As used herein, the term "legal holiday" means any state or federal holiday on which financial institutions or post offices are generally closed in the state in which the Property is located. For purposes of computing any period of time specified in or relevant to performance hereunder, the day or date from which such time period is measured will be excluded and all other days, including holidays, will be counted.

29. **LEGAL PROCEEDINGS.** If either party commences legal proceedings for any relief against the other party arising out of this Agreement or any documents, agreements, exhibits or certificates contemplated hereby, the losing party shall pay the prevailing party's actual reasonable attorneys' fees and costs upon final settlement, judgment or appeal thereof.

30. **SURVIVAL.** Except as otherwise provided herein, all of the terms (including without limitation, warranties and representations) of this Agreement will survive and be enforceable after the Closing.

TIME IS OF THE ESSENCE FOR ALL PROVISIONS OF THIS CONTRACT.

[Signatures Appear On Next Page]

IN WITNESS WHEREOF, the parties have executed this Real Estate Purchase Agreement as of the later of the dates set forth above:

Date of Signature

_____, 2023

BUYER:
CITY OF MARSHALL, A MUNICIPAL CORPORATION,
MINNESOTA

By _____

Its _____

Date of Signature

_____, 2023

SELLER:
SCHWAN'S SHARED SERVICES, LLC, A LIMITED
LIABILITY COMPANY ORGANIZED UNDER THE LAWS
OF THE STATE OF DELAWARE

By: _____

Its: _____

EXHIBIT A

Legal Description of Land

Lot One/Two/portion of Three, Block 3 of Schwan's Corp 1 Addition, Lyon County, City of Marshall, Minnesota.

FINAL LEGAL DESCRIPTION TO BE PROVIDED BY SURVEYOR



EXHIBIT B

PARKING LOT USE

1. Seller hereby grants Buyer the right to use the parking lot identified in Exhibit C hereof.
2. Buyer assumes the full responsibility to maintain the lot, including without limitation, making proper and prompt repairs/painting, lawn care & snow removal, etc., to ensure the safe condition of the lot.
3. Notwithstanding the rights granted to Buyer herein, Seller's employees and guests can continue to use such parking lot.
4. The Parties shall enter in a mutual use lease agreement setting for obligations and responsibilities for liability insurance, use of the parking lot and other issues related thereto.

EXHIBIT C
PARKING LOT AREA

