

LEASE AGREEMENT

This Lease Agreement (this “Agreement”) is dated as of this ____ day of _____, 2023, by and between Knochenmus Enterprises, LLP, a Minnesota limited liability partnership (“Landlord”) and the City of Marshall, Minnesota, a Minnesota municipal corporation (“Tenant”).

1. DEFINITIONS.

“Leased Premises” means the property legally described on attached Exhibit A.

2. TERM; EARLY TERMINATION.

A. Term. In consideration of Tenant’s performance of Tenant’s obligations under this Agreement, Landlord hereby leases the Leased Premises to Tenant for a 30-year term.

B. Termination. This Agreement shall terminate on _____, 2053. Tenant may terminate this Agreement early by providing Landlord with notice 30 days in advance of the effective date of termination.

3. **RENT.** Tenant shall pay Landlord \$30,000/year in rent for the first 10 years of the term of this Agreement. Rent shall be payable by Tenant on January 1st of each year. No rent shall be charged by Landlord for the remaining 20 years of the term of this Agreement.

4. **USE.** Landlord does hereby grant a lease to Tenant for the purposes of a public parking lot. Landlord may also use the Leased Premises for parking.

5. **UTILITIES AND OPERATING COSTS.** Landlord shall pay all costs associated with the use, operation, and management of the Leased Premises during the term of this Agreement. Landlord shall also be responsible for payment of all property taxes for the Leased Premises.

6. **MAINTENANCE AND REPAIR OF THE LEASED PREMISES.** Tenant shall keep the Leased Premises in a clean and orderly condition during the term of this Agreement so long as the Leased Premises are owned by Landlord, including the removal of any materials, debris, or refuse on the Leased Premises. Tenant shall, at all times throughout the term of this Agreement so long as the Leased Premises are owned by Landlord, and at its sole expense, keep the Leased Premises in at least as good condition as existed on the date of this Agreement, reasonable wear and tear excepted. With

the exception of snow removal, installation and repair of parking lot signage, parking lot striping, and parking lot sweeping, which will be performed by Tenant, Landlord shall be responsible for maintaining the Leased Premises. Landlord's maintenance responsibilities shall include, but not be limited to, crack sealing, concrete repair and maintenance (i.e., joint sealing, concrete curb and gutter removal and replacement, concrete panel removal and replacement (including driveway and sidewalks)), repairs to drainage structures and facilities, maintenance of landscaping, grass mowing, and tree removal and replacement. Should Landlord sell or convey the Leased Premises, Tenant's maintenance obligations under this Section 6 of the Agreement shall cease and the successor in title to Landlord shall become responsible for snow removal. In all events, Tenant shall be responsible for repairing any damage caused by Tenant or its invitees to the Leased Premises. Landlord shall be responsible for any damage caused by Landlord or its invitees to the Leased Premises.

7. ALTERATION OR IMPROVEMENT OF THE LEASED PREMISES. Tenant shall not make any additions or improvements in or to the Leased Premises without Landlord's prior written consent. Landlord hereby consents to Tenant repaving the parking lot on the Leased Premises during the 2023 construction season. Tenant shall replace the parking surface on the Leased Premises with a six-inch concrete surface (the "Repaving Project"). Landlord shall be responsible for reimbursing Tenant for its costs incurred with respect to the Repaving Project. Prior to the Repaving Project commencing, Landlord shall execute the form of Petition and Waiver Agreement that is attached as Exhibit B that will allow the costs of the Repaving Project to be specially assessed against the Leased Premises.

8. INDEMNIFICATION; COVENANTS TO DEFEND AND HOLD HARMLESS. Any and all claims that arise or may arise against Tenant, its officials, employees, agents, or contractors while engaged in its use of the Leased Premises shall in no way be the obligation of Landlord. Nothing in this Agreement shall be construed as a waiver by Tenant of any immunity, defenses, or other limitations on liability to which Tenant is entitled by law.

8.1. **Indemnification of Landlord.** Except where because of Landlord's gross negligence, willful misconduct, or failure to act in the manner required by this Agreement, Tenant will indemnify and save harmless Landlord from and against all liabilities, damages, claims, fines, penalties, costs and other expenses, including reasonable attorneys' fees, that may be imposed upon, incurred by, or asserted against Landlord by reason of any or all of the following: (a) any personal injury or property damage occurring to the Leased Premises caused by Tenant or its officials, employees, agents, licensees, or invitees; (b) any willful misconduct on the part of Tenant, its officials, employees, agents, licensees, or invitees; (c) any failure by Tenant, its officials, employees, agents, licensees or invitees to comply with any requirements of any governmental authority; (d) any prosecution or defense of any suit or other proceeding in discharging the Leased Premises or any part thereof from any liens, judgments, or encumbrances, created upon or against the same or against Tenant's leasehold estate; (e) any proceedings in obtaining possession of the Leased Premises after the termination of this Agreement by forfeiture or otherwise; (f) any litigation commenced by or against Tenant to which Landlord is made a party without any fault on the part of Landlord; and (g) any failure on the part of Tenant to perform or comply with any covenant or agreement required by Tenant hereunder.

8.2. **Indemnification of Tenant.** Except where because of Tenant's gross negligence, willful misconduct or failure to act in the manner required by this Agreement, Landlord will

indemnify and save harmless Tenant from and against all liabilities, damages, claims, fines, penalties, costs and other expenses, including reasonable attorneys' fees, that may be imposed upon, incurred by, or asserted against Tenant by reason of any or all of the following: (a) any personal injury or property damage occurring on the Leased Premises; by Landlord or those claiming through or under Landlord; (b) any negligence on the part of Landlord, its officers, employees, agents, licensees, or invitees; (c) any failure by Landlord, its officers, employees, agents, licensees or invitees to comply with any requirements of any governmental authority to the extent such compliance is not the specific obligation of Tenant hereunder; (d) any prosecution or defense of any suit or other proceeding in discharging the Leased Premises or any part thereof from any liens, judgments, or encumbrances, created upon or against the same or against Tenant's leasehold estate, to the extent such liens, judgements or encumbrances are not created by Tenant or by parties claiming through or under Tenant; (e) any proceedings in enforcing Tenant's rights and remedies hereunder; (f) any litigation commenced by or against Landlord to which Tenant is made a party without any fault on the part of Tenant; and (g) any failure on the part of Landlord to perform or comply with any covenant or agreement required by Landlord hereunder.

9. LIABILITY INSURANCE. Landlord shall, at its expense during the term of this Agreement, keep in full force and effect a policy or policies of "occurrence" based commercial general liability insurance, providing coverage for bodily injury, personal property damage, personal injury, and contractual liability. Such policy or policies shall have combined policy limits in amounts not less than \$1,500,000.

10. QUIET ENJOYMENT. Landlord warrants that it has full right to execute and to perform this Agreement and to grant the estate demised, and that Tenant, upon Tenant's performance of all of the terms, conditions, covenants and agreements on Tenant's part to be observed and performed under this Agreement, may peaceably and quietly enjoy the Leased Premises subject to the terms and conditions of this Agreement.

11. HOLDING OVER. If Tenant remains in possession of the Leased Premises after the expiration or termination of this Agreement, it shall be deemed to be occupying said Leased Premises as a Tenant at sufferance, subject to all the conditions, provisions, and obligations of this Agreement insofar as the same can be applicable to a tenancy at sufferance.

12. SURRENDER. Upon expiration or termination of this Agreement, Tenant shall peaceably surrender the Leased Premises

13. ACCESS TO LEASED PREMISES. Tenant agrees that Landlord shall be able to continue to use and access the Leased Premises as a parking lot during the term of this Agreement.

14. DEFAULT.

A. Events of Default: The occurrence of any one or more of the following events shall constitute an Event of Default:

(1) Tenant's attempt to sublet any portion of the Leased Premises, or assign its interest under this Agreement without the written permission of Landlord; or

(2) Tenant's or Landlord's failure to fully perform any its obligations, other than the obligations referenced in subsections (1) above, which failure remains uncured for 30 days following the non-defaulting party's written notice to the defaulting party of its failure to perform such obligation.

B. Landlord's Remedies: If an Event of Default occurs, Landlord shall have the following remedies:

(1) Landlord may, but shall not be obligated to, and without notice to or demand upon Tenant and without waiving or releasing Tenant from any obligations of Tenant under this Agreement, pay or perform any obligations of Tenant; pay any cost or expense to be paid by Tenant; and make any other payment or perform any other act on the part of Tenant to be made and performed as provided for in this Agreement, in such manner and to such extent as Landlord may deem desirable, and in exercising any such right, may also pay all necessary and incidental costs and expenses, employ counsel and incur and pay attorneys' fees. Tenant shall pay costs to Landlord upon demand with interest at seven percent per annum.

(2) Landlord may terminate this Agreement by written notice to Tenant in which case Tenant shall vacate the Leased Premises in accordance with Section 12. Neither the passage of time after the occurrence of an Event of Default nor Landlord's exercise of any other remedy with regard to such Event of Default shall limit Landlord's right to terminate this Agreement by written notice to Tenant.

(3) Landlord may, whether or not Landlord has elected to terminate this Agreement, immediately commence summary proceedings in Unlawful Detainer to recover possession of the Leased Premises. In the event of the issuance of a Writ of Restitution in such proceeding, upon Landlord's reentry upon and repossession of the Leased Premises, Landlord may remove Tenant and all other persons from the Leased Premises (subject to Tenant's right and responsibility to remove its personal property pursuant to Section 13). In the event Landlord reenters the Leased Premises pursuant to this paragraph and Tenant fails to remove its personal property within the time period, all items of personal property not removed by Tenant within said period shall be deemed abandoned, and title thereto shall transfer to Landlord at the expiration of such period or, upon Tenant's vacation of the Leased Premises. These items may be disposed of by Landlord. Tenant shall be responsible for all disposal costs.

C. Tenant's Remedies. If an Event of Default occurs, Tenant shall have the following remedies:

(1) Tenant may, but shall not be obligated to, and without notice to or demand upon Landlord and without waiving or releasing Landlord from any obligations of Landlord under this Agreement, pay or perform any obligations of Landlord; pay any cost or expense to be paid by Landlord; and make any other payment or perform any other act on the part of Landlord to be made and performed as provided for in this Agreement, in such manner and to such extent as Tenant may deem desirable, and in exercising any such

right, may also pay all necessary and incidental costs and expenses, employ counsel and incur and pay attorneys' fees. Landlord shall pay costs to Tenant upon demand with interest at seven percent per annum or alternatively, Tenant's costs may be deducted from the rent due under this Agreement.

(2) Tenant may terminate this Agreement by written notice to Landlord in which case Tenant shall vacate the Leased Premises in accordance with Section 12. Neither the passage of time after the occurrence of an Event of Default nor Tenant's exercise of any other remedy with regard to such Event of Default shall limit Tenant's right to terminate this Agreement by written notice to Landlord.

Prior to exercising any of the above remedies, Landlord and Tenant shall meet to discuss and attempt to resolve the Event of Default. Each party shall make a good faith effort to resolve the Event of Default. If the Event of Default is not resolved by the parties, the parties shall submit the dispute to non-binding mediation before filing any action in court. The parties shall share the cost of the mediator, and each shall be responsible for their own costs associated with preparing for and attending the mediation.

No remedy provided for herein or elsewhere in this Agreement or otherwise available to Landlord or Tenant by law, statute, or equity, shall be exclusive of any other remedy, but all such remedies shall be cumulative and may be exercised from time to time and as often as the occasion may arise.

15. EMINENT DOMAIN. If an eminent domain or condemnation proceeding is commenced with respect to the Leased Premises during the term of this Agreement, the following provisions shall apply:

A. If a public or private body with the power of eminent domain or condemnation ("Condemning Authority") acquires all of the Leased Premises through the exercise of its power of eminent domain or condemnation or as a result of a sale in lieu thereof, this Agreement shall cease and terminate as of the date the Condemning Authority acquires possession.

B. If a Condemning Authority acquires only a part of the Leased Premises, and such acquisition materially affects the Leased Premises so as to render the Leased Premises unsuitable for the business of Tenant, in the absolute discretion of Tenant, then this Agreement shall cease and terminate as of the date the Condemning Authority acquires possession.

C. If a Condemning Authority acquires only a part of the Leased Premises and such acquisition does not render the Leased Premises unsuitable for the business of Tenant in the absolute discretion of Tenant, this Agreement shall continue in full force and effect.

D. Landlord shall be entitled to the award paid in any condemnation acquisition under power of eminent domain or the proceeds of a sale in lieu thereof, and Tenant shall not receive any portion of such award.

E. Although all damages in the event of any condemnation shall belong to Landlord whether such damages are awarded as compensation for diminution in value of the leasehold or to

the fee of the Leased Premises, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant, in Tenant's own right on account of any and all damage to Tenant by reason of the condemnation and for or on account of any cost or loss to Tenant.

16. DAMAGE OR DESTRUCTION. If fire or other casualty damages or destroys the Leased Premises or the Leased Premises incurs substantial damage due to vandalism, or other unforeseen cause occurs during the term of this Agreement, then this Agreement shall terminate.

17. GENERAL.

A. Relationship of Landlord and Tenant: This Agreement does not create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant, the sole relationships between the parties hereto being that of Landlord and Tenant under this Agreement.

B. Waiver: No waiver of either party's remedies upon the occurrence of an Event of Default shall be implied from any omission by such party to take any action on account of such Event of Default, and no express waiver shall affect any Event of Default other than the Event of Default specified in the express waiver and such an express waiver shall be effective only for the time and to the extent expressly stated. One or more waivers by the non-defaulting party shall not then be construed as a waiver of a subsequent Event of Default.

D. Choice of Law: The laws of the State of Minnesota shall govern the validity, performance, and enforcement of this Agreement.

E. Time: Time is of the essence in the performance of all obligations under this Agreement.

F. Notices and Demands. Except as otherwise expressly provided in this Agreement, any notice, demand, or other communication under this Agreement and any related document by either party to the other shall be sufficiently given or delivered if it is dispatched by United States Mail or delivered personally to:

(a) in the case of Landlord:
Knochenmus Enterprises, LLP
1600 Hahn Road
P.O. Box 318
Marshall, MN 56258
Attention: _____

(b) in the case of Tenant:
City of Marshall
344 West Main St.
Marshall, MN 56258

Attention: City Administrator

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this Section 17.

G. Entire Agreement and Amendment. This Agreement constitutes the entire agreement between Landlord and Tenant affecting the Leased Premises and there are no other agreements, either oral or written, between them other than said documents and as are herein set forth. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon Landlord or Tenant unless reduced to writing and executed in the same form and manner in which this Agreement is executed.

H. Successors and Assigns: The terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Agreement shall run with the land and be recorded in the land records of Lyon County, Minnesota.

IN WITNESS WHEREOF, Landlord and Tenant have caused these presents to be executed in form and manner sufficient to bind them at law, as of the day and year first above written.

CITY OF MARSHALL

By: _____
 Robert J. Byrnes
 Its: Mayor

By: _____
 Steven Anderson
 Its: City Clerk

STATE OF MINNESOTA)
) ss.
 COUNTY OF LYON)

On this _____ day of _____, 2023, before me, a Notary Public within and for said County, personally appeared Robert J. Byrnes and Steven Anderson, to me personally known, who being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Marshall, a Minnesota municipal corporation and that they acknowledged this Lease Agreement to be the free act and deed of said city.

 Notary Public

KNOCHENMUS ENTERPRISES, LLP

By: _____

Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2023, before me, a Notary Public within and for said County, personally appeared _____ to me personally known, who being by me duly sworn, did say that _____ is the _____ of Knochenmus Enterprises, LLP, a Minnesota limited liability partnership, and that _____ acknowledged this Lease Agreement to be the free act and deed of said partnership.

Notary Public

This document drafted by:
Kennedy & Graven, Chartered (SJS)
150 South 5th Street, Suite 700
Minneapolis, MN 55402
(612) 337-9300

EXHIBIT A TO AGREEMENT

Depiction and Description of the Leased Premises

Lot 3, Block 1, Schwan's Corp Addition, according to the recorded plat thereof, County of Lyon, State of Minnesota.

EXHIBIT B TO AGREEMENT
Form of Petition and Waiver Agreement

[to be attached]