

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT (“Agreement”) made and entered into as of this ____ day of _____, 202__, by and between Block 11 Marshall, LLC, a limited liability company under the laws of the State of Minnesota, (“Owner”) and the City of Marshall, a Minnesota municipal corporation (“City”).

RECITALS

- A. The Owner is the fee owner of certain real estate located at 103 W. Lyon Street, Marshall, Minnesota, (PID No.27-677119-0) legally described on the attached Exhibit A (“Property”).
- B. The Property is adjacent to city owned Right-of-Way (“Right of Way”) shown on Exhibit B, attached hereto. Owner intends to install landscape rock and plantings (the “Encroachment”) on City Right of Way, contrary to local laws and regulations (the “Encroachment Area”). The Encroachment Area is depicted on Exhibit B.
- C. The City is willing to allow the Encroachment on the Encroachment Area subject to the terms and conditions contained in this Agreement.

AGREEMENT

- 1. **Incorporation of Recitals.** The recitals set forth above are incorporated herein and made part of this Agreement.
- 2. **Grant of Limited Use Within Encroachment Area.** The City warrants that it has the right to grant this limited use interest affecting the Encroachment Area. The City grants the Owner the right to encroach into the Encroachment Area for the sole purpose of maintaining the Encroachment. The Encroachment Area must not extend beyond seven and one-half (7.5) feet into the Right of Way, as measured from the Owner’s property line abutting the Right of Way and projecting into the city right of way. The permission granted by the City under this Agreement is limited exclusively to such purpose. This Agreement only creates a license to maintain the Encroachment and does not create any interest in real property.
- 3. **Scope.** The City reserves the right to use its Right of Way and all rights included therein, including the Encroachment Area for its own purposes. The City may take any action necessary to exercise its interest in its Right of Way, including excavation, even if doing so renders the Encroachment Area unusable. In the event the Encroachment Area becomes unusable for the use contemplated herein, the Owner will have no claim against the City.
- 4. **Maintenance and Repair.** The Owner must repair and maintain the Encroachment in a structurally sound manner and must keep the Encroachment and the Encroachment

Area neat, clear and uncluttered, and where landscaping in the Encroachment Area is required as part of city approvals, any plant material which is diseased or dies shall be replaced with like kind of the original size, as may be determined by the Director of Public Works/City Engineer, or his/her designee. All such repair and maintenance shall be at the Owner's sole cost and expense.

If Owner fails to repair or maintain the Encroachment Area during the term of this Agreement, such limited use granted may be revoked by the City. Upon termination of this Agreement, Owner must remove the Encroachment from the Encroachment Area.

5. **Hold Harmless; Indemnification.** All claims that arise or may arise against the Owner, its officers, employees, agents, or contractors while engaged in its use of the Encroachment Area will in no way be the obligation of the City. Furthermore, Owner will indemnify, hold harmless and defend the City, its officials, employees, contractors and agents from and against all liability, loss, costs, damages, expenses, claims, actions or judgments, including reasonable attorneys' fees which the City, its officers, employees, agents or contractors may sustain, incur, or be required to pay, arising out of any act or failure to act by Owner, its officers, employees, agents or contractors under this Agreement. Nothing in this Agreement is a waiver by the City of any immunity, defenses, or other limitations on liability to which the City is entitled by law.
6. **Insurance.** During the term of this Agreement, Owner shall procure and keep in force a general property casualty insurance policy which includes the area designated as the Encroachment Area. Any claims for damages based upon Owner's use of the Encroachment Agreement must be submitted to Owner's insurance policy. The City must be named as an additional insured on such policy.
7. **Termination.** The Owner or the City may terminate this Agreement at any time for any reason, or for no reason at all, by providing 30 days' written notice to the other party. Upon termination of this Agreement, Owner must immediately remove any landscaping from the Encroachment Area and return the Encroachment Area to the condition it was in prior to the Owner's use at Owner's sole cost. In the event that the Right of Way is substantially damaged or destroyed from the Encroachment or the removal of all or part of the Encroachment, or the Owner fails to comply with the terms and conditions of this Agreement, the Owner shall remove the Encroachment or any remaining portions thereof located within the Encroachment Area and the Owner's right to construct, maintain, or repair the Encroachment shall automatically terminate. The removal of the Encroachment shall be at the Owner's sole cost and expense.
8. **Notices.** Any notice, demand, or other communication under this Agreement by either party to the other will be sufficiently given or delivered if it is dispatched by certified or registered mail or delivered personally to the address of Owner as set forth in the beginning of this Agreement, or with respect to the City, to the address below:

City: City of Marshall
Attn: City Administrator

EXHIBIT A

Legal Description of the Owner's Property

All of Lots 1, 2, 3, 4, and 5, Block 11, Original Plat Addition, in the City of Marshall, as filed and recorded in the Office of the County Recorder, in and for Lyon County, Minnesota.

EXHIBIT B

Map of Right of Way, with depiction of Encroachment area