

## PETITION AND WAIVER AGREEMENT

This Petition and Waiver Agreement (the “Agreement”) made this \_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Marshall, a Minnesota municipal corporation (the “City”), and Knochenmus Enterprises, LLP, a Minnesota limited liability partnership (the “Owner”).

WITNESSETH:

WHEREAS, the Owner is the fee owner of certain real property (the “Subject Property”) located in the City, the legal description of which is set forth on **Exhibit A**, attached hereto and hereby made a part hereof; and

WHEREAS, the Owner desires to have improvements constructed to serve the Subject Property generally described as repaving of the parking lot on the Subject Property and as more specifically described in **Exhibit B**, attached hereto and hereby made a part hereof (hereinafter referred to as the “Improvement Project”); and

WHEREAS, the Owner wishes for the City to construct the Improvement Project without notice of hearing or hearing on the Improvement Project, and without notice of hearing or hearing on the special assessments levied to finance the Improvement Project, and to levy an amount not to exceed the estimated amount of \$300,000 as the cost of the Improvement Project against the Subject Property, attached hereto and hereby made a part hereof; and

WHEREAS, the City is willing to construct the Improvement Project in accordance with the request of the Owner and without such notices or hearings, provided the assurances and covenants hereinafter stated are made by the Owner to ensure that the City will have valid and collectable special assessments as they relate to the Subject Property to finance the costs of the Improvement Project; and

WHEREAS, were it not for the assurances and covenants hereinafter provided, the City would not construct the Improvement Project without such notices and hearings and is doing so solely at the behest, and for the benefit, of the Owner.

NOW, THEREFORE, ON THE BASIS OF THE MUTUAL COVENANTS AND AGREEMENTS HEREINAFTER PROVIDED, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. The Owner hereby petitions the City for construction of the Improvement Project.
2. The Owner represents and warrants that the Owner is the sole owner of the Subject Property, that the Owner has full legal power and authority to encumber the Subject Property as herein provided, and that as of the date hereof, the Owner has fee simple absolute title in the Subject Property, which is not subject to any liens, interests or encumbrances.
3. The Owner requests that one hundred percent (100%) of the cost of the Improvement Project, including project administration and engineering fees as typically assessed in accordance with City Special Assessment Policy, be assessed against the Subject Property.
4. The Owner waives notice of hearing and hearing pursuant to Minnesota Statutes Section 429.031, on the Improvement Project and notice of hearing and hearing on the special assessments levied to finance the Improvement Project pursuant to Minnesota Statutes Section 429.061, and specifically requests that the Improvement Project be constructed and special assessments levied against the Subject Property therefor without hearings.
5. The Owner waives the right to appeal the levy of the special assessments in accordance with this Agreement pursuant to Minnesota Statutes Section 429.081, or reapportionment thereof upon land division pursuant to Minnesota Statutes Section 429.071, subdivision 3, or otherwise, and further specifically agrees with respect to such special assessments against the Subject Property or reapportionment that:
  - a. Any requirements of Minnesota Statutes Chapter 429 or any other law or regulation relating to the special assessments with which the City does not comply are hereby waived by the Owner;
  - b. The increase in fair market value of the Subject Property resulting from construction of the Improvement Project will be at least equal to the amount specified in paragraph 3, and that such increase in fair market value is a special benefit to the Subject Property that the Owner does not contest; and
  - c. Assessment of the amount specified in paragraph 3 against the Subject Property is reasonable, fair, and equitable.
6. Special assessments for the Improvement Project will be levied on the Subject Property, payable over eight (8) years, bearing interest at a rate of two (2) points over the bond rate for bonds issued by the City for the Improvement Project.
7. The Owner represents and warrants that the Subject Property is not and will not be so classified for tax purposes as to result in deferral of the obligation to pay special assessments; and Owner agrees that the Owner will take no action to secure such tax status for the Subject Property during the term of this Agreement.

8. The covenants, waivers, and agreements contained in this Agreement shall bind the successors and assigns of the Owner and shall run with the Subject Property and bind all successors in interest thereof. It is the intent of the parties hereto that this Agreement be in a form that is recordable among the land records of Lyon County, Minnesota. In the event the Owner conveys all or a portion of the Subject Property, the parties agree to file a copy of this Agreement or amendment hereto in the land records of Lyon County, Minnesota prior to such conveyance, along with any apportionment between the subsequent owners of the Subject Property or any portion thereof; and they agree to make any changes to this Agreement that may be necessary to effect the recording and filing of this Agreement against the title of the Subject Property.
  
9. This Agreement shall terminate upon the final payment of all special assessments levied against the Subject Property regarding the Improvement Project, and the City shall thereupon execute and deliver such documents, in recordable form, as are necessary to extinguish its rights hereunder.

IN WITNESS WHEREOF, the parties have set their hands the day and year first written above.

**CITY OF MARSHALL**

By: \_\_\_\_\_  
Robert J. Byrnes

Its: Mayor

By: \_\_\_\_\_  
Steven Anderson

Its: City Clerk

STATE OF MINNESOTA            )  
  ) ss.  
COUNTY OF LYON                )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Robert J. Byrnes and Steven Anderson, the Mayor and City Clerk, respectively, of the City of Marshall, Minnesota, a municipal corporation under the laws of the State of Minnesota, on behalf of the City.

\_\_\_\_\_  
Notary Public



## **EXHIBIT A**

### **Legal Description of the Property**

Lot 2, Block 1, Schwan's Corp I Addition, according to the recorded plat thereof, County of Lyon,  
State of Minnesota.

## **EXHIBIT B**

### **Description of the Improvement Project**

The repaving project shall consist of the following:

The installation of a new 6" concrete pavement surface over the existing, in-place, aggregate base section. To accommodate the new pavement surface, the existing bituminous pavement surface will be removed and the spot-removal of existing curb and gutter will be completed as needed to ensure positive drainage. The existing curb and gutter and drainage structures will remain in-place to the maximum extent practicable. Additional aggregate base may be added to the in-place aggregate base section as needed to ensure proper grade on the new parking lot surface. Additional curb and gutter and concrete sidewalk replacement may be completed on the southeast side of the parking lot area to provide better definition between the parking and walking areas, and to promote positive drainage.