

GRANT OF PUBLIC USE LICENSE

This Grant of Public Use License (this “License”) is made and entered into this day of November 1, 2023 (“Effective Date”), by and between the CITY OF MARSHALL, MINNESOTA, a municipal corporation under the laws of the State of Minnesota (“City”) and SCHWAN’S SHARED SERVICES, LLC, a limited liability company under the laws of the State of Delaware, or it assigns (“Schwan’s”).

WHEREAS, the City and Schwan’s have entered into a Real Estate Purchase Agreement (the “Agreement”), dated July 20, 2023; and

WHEREAS Schwan’s owns real property , which is presently used for Schwan’s private parking purposes, legally described on and depicted in Exhibit A (the “Parking Facility”); and

WHEREAS Schwan’s hereby agrees to grant the City a license to use the Parking Facility for public parking and access to the future Marshall Aquatic Center.

NOW, THEREFORE, in consideration thereof, the parties agree, for themselves, their successors and assigns as follows:

1. City Use. Schwan’s hereby grants to the City the non-exclusive use of the Parking Facility to provide for public parking and access to the future Marshall Aquatic Center, but for no other purpose, except with the express written consent of Schwan’s. Use of said parking facilities shall be permitted for all hours, including overnight, with occasional restrictions prohibiting parking for periods of time exceeding 24 consecutive hours. That said public purpose shall continue indefinitely into the future.
2. Schwan’s Use. Notwithstanding the rights granted to the City herein, Schwan’s, its affiliates, and its and their directors, managers, employees, agents, contractors and visitors maintain the right to use the Parking Facility for parking or other business purposes.
3. Terms of the Real Property License. This License with respect to real estate is a privilege to go with the Parking Facility for the specific and certain purposes outlined above. This license does not confer on or vest in any licensee with any title, interest or estate in such property.
4. Maintenance. The City assumes the responsibility for routine maintenance of the Parking Facility, including the parking lot, sidewalks, and surrounding landscaping, including without limitation, making repairs to (and painting of) the pavement, lawn care & snow removal, to ensure the safe condition of the Parking Facility (including the parking lot, sidewalks, and surrounding area). Routine Maintenance does not include public improvements to the Parking Facility that would require surface replacement or mill & overlay of the Parking Facility surface. Surface replacement or mill & overlay repair shall be the responsibility of Schwan’s.

Prior to commencement of this agreement and thenceforth annually and prior to May 15th, of each subsequent year, the City and Schwan's shall visually inspect the facilities to confirm the condition prior to use by the City for that subsequent year. The inspection shall be conducted to review the existing condition of the Parking Facility. Any damage outside of standard wear to the facilities caused by the snow maintenance by the City, shall be the sole responsibility of Schwan's.

5. Indemnification.

- a) City will defend, indemnify and hold harmless Schwan's and any parent, subsidiary or commonly-owned or controlled affiliate company of Schwan's, and each of those companies' shareholders, officers, directors, managers, employees, successors and assigns (each, a "Schwan's Indemnitee") from and against any and all demands, claims, actions, causes of action, proceedings, government investigations, hearings, citations, judgments, damages, losses, fines, penalties, and other reasonable costs and expenses (including reasonable attorneys' fees and costs) of any nature (collectively, "Claims") that are due to or arise from: (i) the breach or violation of any obligation contained in this License by City or any of its directors, officers, employees, agents, contractors, or subcontractors ("City Personnel"); (ii) the negligent or wrongful acts or negligent or wrongful failure to act of City or any City Personnel related to the duties of the City under this Agreement; (iii) the violation of any applicable code, statute, law, regulation, or ordinance by City or any City Personnel; or (iv) all Claims asserted against Schwan's and/or its affiliates by City Personnel arising out of the use of the Parking Facility. Notwithstanding any other provision of this License, in the event Schwan's or any Schwan's Indemnitee is ultimately found by a court of competent jurisdiction or through other final adjudication to be solely responsible for causing the Claim, then City will not owe the indemnification duties set forth herein and Schwan's will reimburse City for the documented costs City incurred in defending, indemnifying, and holding harmless Schwan's for such Claim. Nothing in this Agreement shall be construed as a waiver by the City of any immunity, defenses, or other limitations on liability to which the City is entitled by law.
- b) Schwan's shall indemnify, hold harmless and defend the City, and its officials, employees, contractors and agents, from and against any and all liability, loss, costs, damages, expenses, claims, actions or judgements, including reasonable attorneys' fees arising out of or by reason of any negligent or wrongful act or failure to act by Schwan's, its offices, employees, agents or contractors, pursuant to this agreement. Any and all claims that may arise against Schwan's related to establishment or use of public parking pursuant to this Agreement shall be Schwan's responsibility unless claimed to result from the City's sole negligence. Nothing in this Agreement shall be construed as a waiver by the City of any immunity, defenses, or other limitations on liability to which the City is entitled by law.
- c) City may defend any Claim relating to amounts which may come due pursuant to this Section. The Schwan's Indemnitee will promptly deliver notice in writing to City as soon as practicable after first notice of a

Claim. Any failure or delay by Schwan's in giving such notice will relieve City of its defense and indemnification obligations only if and to the extent City's defense of the indemnifiable Claim is materially prejudiced by such failure or delay. City will assume exclusive control of the defense or settlement of the Claim (subject to the immediately following sentence); provided, however, that the Schwan's Indemnitee: (i) will provide, at City's expense, all authority, information and assistance which City may reasonably request for purposes of such defense; and (ii) may participate in the defense of any Claim with counsel of its choice at its own cost and expense. Notwithstanding anything to the contrary in this Section, if City is unable or unwilling to undertake the defense of any Claim with qualified counsel that has substantial experience defending Claim of the same nature, the Schwan's Indemnitee may elect, in its sole discretion, to assume the defense of such Claim with qualified and experienced counsel, and City will reimburse the Schwan's Indemnitee for all reasonable costs and expenses (including reasonable attorneys' fees) incurred by the Schwan's Indemnitee in connection with such defense (in addition to other amounts owed with respect to the indemnifiable Claim).

- d) City may not, without the Schwan's Indemnitee's prior written consent, settle or compromise any Claim regarding which indemnification is being sought hereunder unless such settlement, compromise, or consent: (i) includes an unconditional release of the Schwan's Indemnitee from all liability arising out of such claim; (ii) does not contain any admission or statement suggesting any wrongdoing or liability on behalf of the Schwan's Indemnitee; and (iii) does not contain any equitable order, judgment, or term (other than the fact of payment or the amount of such payment) that in any manner affects, restrains, or interferes with the business of the Schwan's Indemnitee or its affiliates, or any of its or their shareholders, officers, directors, managers, employees, successors or assigns.

6. Insurance. City agrees to maintain the following insurance coverage as long as may be necessary to respond to claims arising out of this License: a) Commercial General Liability: (including but not limited to: premises liability, products and completed operations coverage) limits of liability of not less than \$1,000,000 each occurrence, \$2,000,000 aggregate (limits may be satisfied by primary and/or umbrella or excess insurance and will include a severability of interests provision and no cross suit exclusions); b) Commercial Auto Liability: limits of liability of not less than \$1,000,000 combined single limit bodily injury and property damage, including coverage for owned, non-owned and hired vehicles; c) Workers' Compensation: statutory limits; and d) Employer's Liability: limits of liability of not less than \$1,000,000 each accident by accident or disease. City will obtain an additional insured endorsement (on or before the Effective Date) that designates Schwan's, and all of its parent, subsidiary and commonly-owned-or-controlled affiliates" as an additional insured under the coverage described above (except for (c) and (d) above).

With respect to any coverage that is issued on a claims-made basis, the retroactive coverage date will be no later than the Effective Date. Further, such claims-made policies will be maintained or include extended claim reporting for a period of any applicable statute of limitation following the expiration or

termination of this License. Schwan's reserves the right to disallow and refuse carriers with a rating of less than A-VII by the A.M. Best Company, in which case City will promptly replace any such substandard carrier with a carrier that satisfies the A-VII rating. For claims arising out of allegations of the City breaching its duties under this agreement, the insurance described herein will be primary and *non-contributing* over any insurance maintained by Schwan's. City will provide Schwan's with a certificate evidencing the insurance coverage required herein within thirty days of the Effective Date and City will be responsible to provide at least thirty days' prior written notice to Schwan's if such insurance coverage is canceled or materially modified so as not to be in conformance with this Section. All certificates required hereunder will be sent to: Schwan's Attn: Insurance Services, 115 West College Drive, Marshall, Minnesota 56258. Approval of any of City's insurance policies by Schwan's will not relieve City of any obligations described in this License, and the policy limits described herein will not be deemed to be a limit or "cap" on City's liability to Schwan's for any breach of City's obligations or warranties described herein.

7. Counterparts. This License may be executed in one or more counterparts of a physical, digital or facsimile format; each of which shall take effect as an original, and all of which shall evidence one and the same agreement.
8. Assignment. The City shall not assign this License in any event and shall not and will not permit the use of the Parking Facility by anyone other than the City, without prior written approval of Schwan's.
9. Notice. Any notice to be given in connection with this License will be given by either U.S. certified mail (return receipt requested) or by delivery through a nationally-recognized express or "next-day" delivery service (e.g., DHL, Federal Express or United Parking Facility Service) and will be deemed delivered on the earlier of the date such notice is received by the addressee, the third day after such notice is deposited into the U.S. Mail, or the second day after such notice is provided to such delivery service, as evidenced by documentation of such receipt or delivery date from the courier, U.S. Postal Service or express delivery service. The proper address for the delivery of any such notice to City or Schwan's is as follows, except that either party may change its address for receiving notices by appropriate written notice to the other:

If to City:
City of Marshall
344 West Main Street
Marshall, MN 56258
Attn: City Administrator

If to Schwan's:
Schwan's Shared Services, LLC
115 West College Drive
Marshall, MN 56258
Attn: Jeff Thompson, Director of Real Estate

With a copy to:

Schwan's Shared Services, LLC
8500 Normandale Lake Blvd.
Suite 2000
Bloomington, MN 55437
Attn: Law Department

10. Governing Law, Severability. The laws of the State of Minnesota shall govern the validity, performance and enforcement of this License. If any provision of this License is construed to be illegal or invalid, it will not affect the legality or

validity of the other provisions herein, and the illegal or invalid provisions will be deemed stricken and deleted here from to the same extent and effort as if never incorporated herein, and, if necessary or desired by both parties, replaced with a mutually agreeable replacement provision.

11. Entire Agreement; Modification. This License constitutes the entire agreement between the parties hereto with regard to the subject matter described herein, and there are no other agreements or understandings between the parties with regard to such subject matter. This License supersedes any previous understandings or agreements of the parties (whether written or oral) with respect to the subject matter described herein (including, but not limited to, the Agreement).

[signature page follows]

IN WITNESS WHEREOF, the parties have hereinto executed the License to be effective as of the Effective Date.

CITY OF MARSHALL, MINNESOTA

By: _____

Its: _____

Date: _____

ATTESTED BY: _____

SCHWAN'S SHARED SERVICES, LLC

By: _____

Its: _____

Date: _____

EXHIBIT A

Legal Description of Land

Lot 3, Block 3 of Schwan's Corp 1 Addition, Lyon County, City of Marshall, Minnesota

