

## **BUILDING PERMIT AGREEMENT**

THIS BUILDING PERMIT AGREEMENT, is made and entered into this \_\_\_\_ day of November, 2024, is by and between the City of Grand Rapids, a Minnesota municipal corporation (the “City”) and HWY35, LLC, a Minnesota limited liability company (the “Owner”) of real property located at 502 County Road 63, Grand Rapids, MN (the “Property”).

### **RECITALS**

- A. The Owner currently owns the Property and is redeveloping the buildings on the Property into a cannabis cultivation and manufacturing facility (the “Project”).
- B. On May 30, 2024, Kraus-Anderson, the Owner’s contractor applied for a building permit from the City for the Project (the “Building Permit”). The Building Permit was approved by the City’s Building Official but has not been paid for, so it has not been issued by the City.
- C. At this time, the Owner has decided to not use Kraus-Anderson as its general contractor and will be using other general contractors to perform the work.
- D. The Owner would like to pay for the Building Permit so that the City may issue it to the Owner even though the Project is being re-bid by the Owner with the new contractor and could potentially have a new valuation.
- E. Issuance of the Building Permit will sustain the Owner’s design and construction of the Project under the pre-January 5, 2024 Commercial Energy Code. This is because the design of the Project began before January 5, 2024.
- E. In order for the Building Permit to be considered to be “issued” pursuant to Minnesota Rules Part 1300.016, subpart 7, the Owner must pay for the Building Permit.
- F. Because the Project is being re-bid by the Owner, it is unable to confirm the valuation of the Project at this time, which is what the Building Permit fee is based upon.
- G. The Owner has requested and the City has agreed to escrow the Building Permit fee until December 31, 2026 or when the entirety of the Project under the issued Building Permit is re-bid, whichever comes first. At that time, the difference in the Building Permit fee can be refunded by the City to the Owner or paid by the Owner to the City.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and obligations set forth herein, the parties agree as follows:

**ARTICLE ONE  
REPRESENTATIONS AND WARRANTIES**

- 1.01. The City makes the following representations as the basis for the undertakings on its part contained herein:
  - A. The City is a municipal corporation under the laws of Minnesota.
  - B. The City has the right, power, and authority to execute, deliver, and perform its obligations under this Building Permit Agreement.
  
- 1.02. The Owner makes the following representations as the basis for the undertakings on its part contained herein:
  - A. The Owner is the owner of the Property.
  - B. The Owner has the right, power, and authority to execute, deliver, and perform its obligations under this Building Permit Agreement. The Owner assures the City that the individual who executes this Building Permit Agreement on behalf of the Owner is duly authorized to sign on behalf of the Owner and to bind the Owner thereto.
  
- 1.03. The Recitals set forth in the preamble to this Building Permit Agreement are incorporated into this Building Permit Agreement as if fully set forth herein.

**ARTICLE TWO  
ADDITIONAL PROVISIONS**

- 2.01. Consistent with the terms of this Building Permit Agreement, the City will issue the Building Permit to the Owner to allow the Owner to construct the Project on the Property. The Owner is responsible for and shall pay at the time of issuance of the Building Permit to the Owner, all applicable permit fees necessary for the Building Permit, which are in the amount of \$488,692.79 (the "Permit Fees").
  
- 2.02. The City will escrow the Permit Fees, less the State Surcharge portion (\$5,812.42) and will hold the Permit Fees either: a) until December 31, 2026; or b) when the Project is re-bid by the Owner, whichever comes first.
  
- 2.03. When the Project is re-bid by the Owner, the Owner shall submit sworn construction statements from its new contractor to the City for review in order to determine the value of the Project. The City will then re-calculate the plan check fee and the permit fee portion of the Building Permit fee based upon the new valuation of the Project. The City will refund to the Owner any amounts that exceed the Permit Fee within 30 days of the date of submittal of the sworn construction statements encompassing all of the area covered by the Building Permit. The Owner agrees to pay the City any difference in the amount of the original Permit Fees and the recalculated amount of the Permit Fees. The Owner agrees to pay the City this amount within 30 days of the receiving an invoice from the City for this amount.
  
- 2.04. Should the Owner not submit its sworn construction statements by December 31, 2026, the City may keep the Permit Fees in their entirety for the Project with no refund being due to the Owner.

- 2.05 The Owner may elect to do the work covered by the Building Permit by phase as shown in applicable reviewed permit drawings. The City will apply the cost of each phase to the escrowed amount of the Permit Fees based on a prorated square footage calculation of the area of each phase divided by the total square footage for all of the buildings included in the original Building Permit application. The City will adjust the Permit Fees to reflect the actual cost of each phase. If the escrowed Permit Fees become depleted, the Owner is responsible for paying any additional fees.

**ARTICLE THREE  
GENERAL PROVISIONS**

- 3.01. This Building Permit Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Building Permit Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Building Permit Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.
- 3.02. This Building Permit Agreement will automatically terminate when one of the following events occurs:
- A. The parties mutually agree in writing to terminate it; or
  - B. The City refunds the excess Permit Fees to the Owner or the Owner pays the City any difference in the amount of the original Permit Fee; or
  - C. December 31, 2026.
- 3.03. This Building Permit Agreement constitutes the entire agreement among the parties as to the reissuance of the Building Permit and supersedes and replaces any previous verbal or written agreements among or between the parties pertaining to the reissuance of the Building Permit to the Owner for the Project.
- 3.04. Except as otherwise expressly provided in this Building Permit Agreement, a notice, demand, or other communication under this Building Permit Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally:

As to the City:           City of Grand Rapids  
420 North Pokegama Avenue  
Grand Rapids, MN 55744-2662  
Attention: City Administrator

As to the Owner:       HWY35, LLC  
6910 N Holmes St, Ste 380  
Gladstone, MO 64118

- 3.05. The provisions of this Building Permit Agreement shall be binding upon the Owner and the Owner's assigns or successors in interest. Notwithstanding the foregoing, no conveyance of the Property or any part thereof shall relieve the Owner of its liability for full performance of this Building Permit Agreement unless the City expressly so releases the Owner in writing.

- 3.06. Any amendment to this Building Permit Agreement must be in writing and signed by all parties.
- 3.07. The Owner may not assign any of its rights or obligations under this Building Permit Agreement without the prior written consent of the City.
- 3.08. Notwithstanding anything to the contrary in this Building Permit Agreement, the City, its officials, agents, and employees shall not be liable or responsible in any manner to the Owner, the Owner's successors or assigns, the Owner's contractors or subcontractors, material suppliers, laborers, or to any other person or persons for any claim, demand, damage, or cause of action of any kind or character arising out of or by reason of the execution of this Building Permit Agreement or the performance of this Building Permit Agreement. The Owner and its successors or assigns, agree to protect, defend and save the City, and its officials, agents, and employees, harmless from all such claims, demands, lawsuits, damages, causes of action, liability, loss, cost or expense, and the costs, disbursements, and expenses of defending the same, including but not limited to, attorneys' fees, consulting engineering services, and other technical, administrative, or professional assistance. Nothing in this Building Permit Agreement shall constitute a waiver or limitation of any immunity or limitation on liability to which the City is entitled under Minnesota Statutes, Chapter 466 or otherwise. This Section shall survive termination of this Building Permit Agreement and shall be binding on the Owner regardless of the enforceability of any other provision of this Building Permit Agreement.
- 3.09. The Owner, for itself, its agents, employees, former employees, insurers, officers, representatives, successors, and assigns, hereby releases and forever discharges the City, and its officials, agents, employees, and assigns of and from any and all past, present or future claims, demands, obligations, actions or causes of action, at law or in equity, whether arising by statute, common law or otherwise, and for all claims for damages, of whatever kind or nature, and for all claims for attorneys' fees, and costs and expenses, including but not limited to all claims of any kind arising out of the negotiation, City consideration, execution and performance of this Building Permit Agreement between the parties.
- 3.10. The Owner warrants that all activities and performance related to this Building Permit Agreement shall be in compliance with existing federal, State and City laws, ordinances, pertinent regulations, standards, and specifications of the City.
- 3.11. Miscellaneous Provisions:
  - A. Wherever possible, each provision of this Building Permit Agreement and each related document shall be interpreted so that it is valid under applicable law. If any provision of this Building Permit Agreement or any related document is to any extent found invalid by a court or other governmental entity of competent jurisdiction, that provision shall be ineffective only to the extent of such invalidity, without invalidating the remainder of such provision or the remaining provisions of this Building Permit Agreement or any other related document.
  - B. No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Building Permit Agreement or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach of any other covenant, agreement, term, or condition, nor does it imply that

such covenant, agreement, term, or condition may be waived again. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Building Permit Agreement. To be binding, amendments or waivers shall be in writing and signed by the parties. The City's failure to promptly take legal action to enforce this Building Permit Agreement shall not be a waiver or release.

- C. Each right, power, or remedy herein conferred upon the City is cumulative and in addition to every other right, power, or remedy, express or implied, now or hereafter arising, available to the City, at law or in equity, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so exciting may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power, or remedy.
  - D. This Building Permit Agreement constitutes the complete and exclusive statement of all mutual understandings between the parties with respect to this Building Permit Agreement, superseding all prior or contemporaneous proposals, communications, and understandings, whether oral or written, pertaining to the subject matter of this Building Permit Agreement.
  - E. No officer, agent, or employee of the City shall be personally liable to the Owner, or any successors in interest, in the event of any default or breach by the City on any obligation or term of this Building Permit Agreement.
  - F. Data provided to the Owner or received from the Owner under this Building Permit Agreement shall be administered in accordance with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13.
- 2.22. Upon completion of all of the obligations contained in this Building Permit Agreement, absent any default of the Owner, this Building Permit Agreement (other than as stated to the contrary in the Building Permit Agreement) shall be terminated.

IN WITNESS WHEREOF, the undersigned have executed this Building Permit Agreement as of the date written above.

CITY OF GRAND RAPIDS

By: \_\_\_\_\_

Its: Mayor

By: \_\_\_\_\_

Its: City Administrator

HWY35, LLC

DocuSigned by:

By: Jack Mitchell

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Its: Authorized Manager  
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