

LEASE AGREEMENT

This Lease Agreement is made this 28th day of November, 2022, by and between the City of Grand Rapids, a Minnesota municipal corporation with its principal offices at 420 North Pokegama Avenue, Grand Rapids, Minnesota (hereinafter “City”) and Rapids Brewing Company, a Minnesota limited liability company duly organized under the laws of the State of Minnesota, with its principal office at 214 North Pokegama Avenue, Grand Rapids, Minnesota (hereinafter “Lessee”).

RECITALS

WHEREAS, the City is a municipality and the owner of property located within the City, the legal description of which is set forth on Exhibit “A” attached hereto (the “Premises”); and

WHEREAS, Lessee is a Minnesota company that wishes to build, operate and maintain a shared garbage/dumpster enclosure (Built Improvements) on the Premises owned by City; and

WHEREAS, the Built Improvements will allow businesses nearby the Premises to make better use of their property and present a more appealing rear facing storefront by moving garbage containers to an enclosed structure that is separated from their storefronts.

NOW, THEREFORE, in consideration of the covenants, terms and conditions of this agreement the parties agree as follows:

1. **Premises:** City shall lease to Lessee the Premises described on Exhibit “A” attached hereto. The parties acknowledge and agree that Lessee intends to design, build, operate and maintain in good condition the Built Improvements pursuant to the terms of this lease. The site will only be used for purposes reasonably related to the operation of the described Built Improvements.

2. **Term:** This Lease will commence on November 1, 2022 and remain in effect through November 1, 2023 (the “initial term” of 1 year). At the expiration of the initial term of the Lease, Lessee shall have the option to enter into a new agreement leasing the Premises for 3 years upon terms and conditions mutually agreeable to both parties; provided the terms of the new agreement must be mutually agreed upon by the parties within thirty (30) days from expiration of the initial term, or this Lease shall terminate automatically without notice and Lessee’s rights and interest in the use and occupancy of the Premises shall be null and void. Upon termination or expiration of this Lease without renewal, Lessee shall remove the Built Improvements pursuant to paragraph 17 below and vacate the Premises.

3. **Rent:** The Lessee shall pay to the City rental payments, due on the 1st day of each month, in the amount of \$50.00; payments will be mailed to the City of Grand Rapids, Attn: Finance Department, 420 North Pokegama Avenue, Grand Rapids, MN 55744.

4. **Site Improvements and Construction:** Lessee shall make all necessary site improvements to the property and shall be responsible for all permitting, material and labor costs

associated with said site improvements, subject to the removal provisions of paragraph 16 below at either termination or expiration of this lease. Lessee will also be responsible for the design, permitting, material and labor costs associated with constructing said Improvements, including, but not limited to, obtaining planning board approval. Lessees shall utilize an underground location service to determine the underground infrastructure prior to any underground work performed. Lessee also further agrees that it shall not permit liens to attach or remain on upon the leased premises for labor or material furnished in connection with said construction.

The Lessee agrees that the Built Improvements including fences, landscaping, etc. be approved by the City Community Development Director and shall be done in a manner that is aesthetically appealing.

5. **Utilities:** In the event Lessee requires any additional utilities or related equipment, the installation and maintenance thereof shall be the Lessee's sole obligation, provided that such installation shall be subject to prior written consent of the City.

6. **Use of Leased Premises:** The Lessee shall use the leased premises only for the purpose of operating and maintaining a shared garbage/dumpster enclosure. Said use shall be maintained by the Lessee in a neat and clean condition.

7. **Snow/Ice Removal:** Lessee shall provide snow removal services on an as-needed basis in addition to sand and/or salt applications to ensure that the CNG station fuel island lanes are safe for passage of vehicles and drivers.

8. **Maintenance:** Lessee agrees to maintain the leased premises in good condition. Lessee shall not permit the leased premises to be overloaded, damaged, stripped, defaced, nor to suffer any waste. Lessee shall not be permitted to erect any sign on the premises.

9. **Premises Subleasing:** Lessee shall not assign or sublet the whole, or any part of, the leased premises without City's prior written consent. Notwithstanding such consent, Lessee shall remain liable to the City for the payment of rent and the full performance of the covenants and conditions of this Lease.

10. **City's Access:** The City and its authorized representatives shall have the right to enter the premises at all times for any of the following purposes:

A. To determine whether the premises are in good condition and whether the Lessee is complying with its obligations under this agreement;

B. To do any necessary emergency maintenance or to make any restoration to the premises.

11. **Compliance with Laws:** Lessee shall pay for, at its sole cost and expense, and maintain during the term, and any extension thereof, all applicable permits, licenses, approvals, tariffs, tolls and fees and shall comply with all laws, ordinances, rules, standards, orders and/or regulations of any government entity or agency in conjunction with the performance of this Lease.

The City assumes no liability or responsibility whatsoever with respect to Lessee's operations at the premises or the facility.

12. **Insurance**: Lessee shall maintain at its own cost and expenses general liability insurance required herein. All insurance coverage is subject to approval of the City and shall be maintained by Lessee at all times this Agreement is in effect. Lessee further agrees that to protect themselves as well as the City of Grand Rapids under the indemnity provisions set forth below, the Lessee shall at all times during the term of the Agreement have and keep in force insurance protection as specified by Minn. Stat. Cpt. 466.04, subd. 1, as may be modified from time to time by the State Legislature and Lessee shall name the City as an additional insured on said policy. Throughout the term of this Lease Agreement, Lessee shall provide Lessor with evidence that Lessee has obtained the insurance required herein and that City is an additional insured under said policies of insurance.

13. **Indemnity**: Lessee hereby agrees to release, defend, to indemnify, and to save harmless City and its officers, agents, and employees from and against any and all loss of, or damage to, property, or injuries to, or death of, any person or persons, as well as from and against any and all claims, damages, suits, costs, expense, liability, actions or proceedings of any kind or nature whatsoever, of or by anyone whomever, in matters resulting from, or arising out of, or alleged to have resulted from or to have arisen out of, directly or indirectly, Lessee's operations or activities under or in connection with this Lease or Lessee's use and occupancy of any portion of the Premises, and including, without limiting the generality of the foregoing, acts and omissions of Lessee's officers, employees, representatives, suppliers, invitees, contractors or agents. Provided, however, Lessee shall not be liable for any loss occasioned by the negligence or willful misconduct of City, its respective officers, agents and employees. City covenants to give Lessee prompt notice of any claims. This indemnify provision shall survive the termination and/or expiration of this Lease for a period of ten (10) years.

14. **Damage and Vandalism by Third Parties**: Lessee will promptly notify the City of damage to the Built Improvements due to acts of God or vandalism by third parties. Lessee will undertake any necessary repairs or emergency work as soon as possible. Lessee will be responsible for all costs and expenses associated with any repairs or other work to restore the Built Improvements as a result of such damage to the extent not covered by insurance proceeds.

15. **Termination**: The term and this Lease shall immediately terminate without further notice upon the occurrence of any of the following events (Termination Events):

A. Lessee breaches any of its obligations under this Lease and fails to cure such breach within thirty (30) days after the City delivers written notice of such breach to Lessee, except in the case of Lessee's failure to maintain insurance as required in Section 12 hereof, termination shall be immediate upon expiration of insurance. However, if the City chooses to pay any unpaid or overdue insurance costs, Lessee shall have ten (10) business days to repay those costs and reactive this Lease.

B. Lessee commences a voluntary case under federal bankruptcy laws, or shall apply for, consent to or acquiesce in the appointment of, or taking possession by, a trustee,

receiver, custodian or similar official or agent for itself or any substantial part of its property.

C. A trustee, receiver, custodian or similar official or agent is appointed by an outside party for the Lessee or any substantial part of its property.

D. Lessee is the subject of an involuntary case brought pursuant to federal bankruptcy laws, or a petition or action seeking Lessee's reorganization, readjustment, arrangement, composition, dissolution, or other similar relief, whether under federal or state law, is brought against it and remains undismissed for a period of sixty (60) days.

E. Any purported lien or attachment against the premises or Lessee's property therein, is claimed, filed, recorded or asserted and the same is not fully released, discharged or abated within a period of ninety (90) days.

F. Lessee attempts to assign or purportedly assigns this Lease without City's written prior consent.

G. The City and/or the Grand Rapids Economic Authority have entered into an agreement involving the sale or redevelopment of the premises.

H. The City has determined it is necessary to improve the premises and that improvement requires the use of the premises.

Lessee hereby warrants that none of the foregoing termination events is occurring or has occurred as of the date of inception of this Lease. Further, Lessee shall pay City all costs and expenses incurred by City in connection with the termination of the Lease and eviction of the Lessee.

16. **Removal of Built Improvements by Lessee:** Unless otherwise agreed to by the parties in writing, upon termination or expiration of this lease, Lessee shall be obligated to remove all improvements constructed by Lessee to the leased Premises (including any and all of Lessee's merchandise, equipment, furnishings, fixtures, machinery and tools relating to said alterations and improvements from the Premises). The Premises must be restored in all material respects to its original condition as it existed upon the effective date of this Lease. Lessee shall use its best efforts to complete such removal within thirty (30) days but in no event in excess of sixty (60) days after termination or expiration of this Lease. In the event the removal causes damage to the Premises that is not repaired by Lessee, Lessee shall reimburse City for the repair and restoration by Lessee of the Premises to a condition substantially as good as the condition of the Premises prior to occupancy by Lessee

17. **Dispute Resolution:** City and Lessee agree that any and all disputes shall be resolved pursuant to the terms and conditions of this paragraph.

A. City and Lessee agree to negotiate in good faith all disputes arising from or relating to this Lease or the termination thereof between them for a period of thirty (30)

days from the date of notice before exercising their dispute resolution rights under this paragraph.

B. If the dispute cannot be settled through negotiation, the parties agree to endeavor in good faith to settle the dispute in an amicable manner by mediation before resorting to litigation.

C. If mediation is unsuccessful in resolving a dispute, the parties irrevocably submit to the jurisdiction and venue of the Itasca County District Court, Minnesota, for the resolution of such dispute.

18. **Notice:** Correspondence and/or other communications regarding this Lease shall be addressed to the following individuals, postpaid by registered or certified mail or via email, return receipt requested, to:

City:
City of Grand Rapids
Attn: City Administrator
420 No. Pokegama Ave.
Grand Rapids, MN 55744

Lessee:
Rapids Brewing Co., LLC
Attn: Bill Martinetto
214 No. Pokegama Ave.
Grand Rapids, MN 55744

19. **Entire Agreement:** This Lease agreement supersedes, terminates, and merges all prior, collateral, contemporaneous agreements, written or oral, between the parties relating to the subject matter hereof.

20. **General:**

A. No promises, agreements, representations, or warranties shall be binding upon either party unless the same is evidenced by a signed writing and made part of this Lease agreement.

B. Any consent, express or implied, by the city to any breach by Lessee of any term or condition of this Lease shall not constitute a waiver by the City of any prior or succeeding breach by Lessee of the same or any other term or condition of this Lease. Acceptance by the City of rent or other payment with knowledge of a breach or of default under any term hereof by Lessee shall not constitute a waiver by the City of such breach or default.

C. In the event any terms, covenants, conditions or provisions of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other term, covenant, condition or provision hereof.

D. Lessee shall perform duties herein as an independent contractor. Nothing contained herein shall be considered to create the relationship of employer and employee, partnership,

joint venture or other association between the parties, except as principal and independent contractor agent.

E. If any action at law or equity is commenced concerning this Lease or to enforce its terms, the prevailing party in such matter shall be entitled to the payment of reasonable attorney's fees and costs as determined by the court, in addition to any other relief which may be awarded to that party.

LESSOR:
CITY OF GRAND RAPIDS

LESSEE:
RAPIDS BREWING CO., LLC

By: _____
Its: Mayor

By: _____
Its: Manager

By: _____
Its: City Administrator

By: _____
Its: _____

EXHIBIT "A"

The Premises shall consist of a tract of land in Grand Rapids, Itasca County, Minnesota described as follows:

Beginning at the Northeast corner of Block 19 of the original plat of Grand Rapids, thence South, along the East line of said Block 19, a distance of 13 feet, thence West, parallel to the north line of said Block 19, a distance of 2 feet to the Point of Beginning.

From the Point of Beginning thence South, parallel to the East line of said Block 19 a distance of 20 feet, thence West, parallel to the North line of said Block 19, a distance of 10 feet, thence North, parallel to said East line of Block 19, a distanced of 20 feet, thence East a distance of 10 feet to the Point of Beginning and there terminating.

Rapids Brewing Lease Exhibit

