

POP-UP BEER GARDEN AGREEMENT

THIS AGREEMENT is made and entered into by and between Raised Grain Brewing Company, LLC (the "BREWER") whose street address is 2244 W. Bluemound Rd., Unit E, Waukesha, Wisconsin 53186, and the City of West Allis (the "HOST"), with offices located at 7525 W. Greenfield Avenue, West Allis, WI 53214 (the "AGREEMENT").

PRELIMINARY RECITALS

WHEREAS, BREWER is the owner and operator of the Raised Grain Pop-Up Beer Garden.

WHEREAS, BREWER is in the business of selling alcoholic beverages and possesses the necessary licensing, experience, and resources to create a beer garden experience at HOST facilities, and HOST wishes to have a qualified business operate a beer garden at HOST facilities.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the receipt and adequacy of which are acknowledged, the BREWER and HOST agree to the following terms:

TERM/RENEWAL

This AGREEMENT shall commence on date of acceptance by BREWER and HOST and terminate upon the conclusion of the event on October 13, 2018. HOST and/or BREWER may terminate this AGREEMENT for any reason upon not less than thirty (30) calendar days written Notice to the other party.

BEER GARDEN

The BREWER shall provide a beer garden experience at the HOST Farmer's Market facilities as identified below. "Beer Garden" is defined as an event at which BREWER may sell alcoholic beverages, non-alcoholic beverages, food and merchandise. In addition, BREWER shall provide a fun venue for families to enjoy. BREWER may provide music, guests, games, and activities for the purpose of family entertainment at the Beer Garden all of which shall be in compliance with any applicable State and Local codes, laws and regulations.

GRANT OF RIGHT AND PRIVILEGE OBLIGATION TO SELL AND PROVIDE

The HOST grants the BREWER the right and privilege to provide merchandise, alcoholic beverages and non-alcoholic beverages on the Farmer's Market premises on October 12-13, 2018, as set forth herein. The HOST shall not permit any other brewery with the right and privilege to operate a pop-up beer garden or similar experience at the Farmer's Market on the

same days as BREWER (i.e., October 12-13, 2018). BREWER may provide third party vendors to supply food or entertainment during the operation of the Beer Garden; said third parties shall comply with all State and Local codes, laws and regulations for such activities. BREWER will ensure the Beer Garden facilities are functioning in a manner compliant with all State and Local codes, laws and regulations.

DATES AND HOURS OF OPERATION

Weather permitting, Beer Garden dates of operations will be October 12-13, 2018; Beer Garden hours of operation shall be from 4:00 pm to 9:00 pm on Friday, October 12, 2018, and 3:00 pm to 9:00 pm on Saturday, October 13, 2018. No alcohol shall be dispensed or distributed to patrons after 9:00 pm. Dates and times of operation may be modified upon written approval of the HOST.

BEER GARDEN LOCATION

The Beer Garden will be located at the West Allis Farmer's Market, 6501 W National Ave, West Allis, WI 53214. Prior to the event taking place, the HOST and BREWER shall determine and agree upon the specific location for the Beer Garden to set up on the Farmer's Market premises.

MARKETING

It is advantageous for both parties to jointly market the Beer Garden. All marketing shall be mutually acceptable to both parties. BREWER's logo will be shared with HOST, and HOST's logo will be shared with BREWER for the purpose of cross marketing the Beer Garden event. Announcement of the event will be scheduled and agreed upon by both parties. Upon the termination or expiration of this Agreement, each party shall immediately cease using the trademarks or any other logos of the other party.

Marketing campaign and logo usage must be agreed upon/approved by all participants prior to any promotion. HOST will promote the event via website and social media posts. Both parties must agree upon hashtags, event name/date/time/location. BREWER will create social media events for this Farmer's Market event, which HOST will share on some of its social media platforms. "Pop-Up Beer Garden" is a registered trademark in the State of Wisconsin belonging to BREWER.

SIGNAGE

BREWER will provide signage one week prior to Beer Garden. HOST will purchase and secure any sign permits for Beer Garden. BREWER's logo will be included in signage. BREWER will provide digital signage files to HOST for printing and posting at HOST discretion.

MANAGEMENT OF THE BEER GARDEN

It is the responsibility of the BREWER to manage the distribution of alcohol. BREWER shall issue wrist bands or other similar evidence that persons may be served alcohol beverages for the event. BREWER shall monitor the service of alcoholic beverages, making sure no one under the age of twenty-one (21) is drinking alcohol and refusing service to people who appear to be intoxicated or using poor judgment in their drinking. Public shall bring in no carry-in alcoholic beverages to the Beer Garden.

PERSONNEL

The BREWER shall supply all personnel necessary to carry out its responsibilities under this AGREEMENT. The HOST shall supply all personnel necessary to provide appropriate seating and sufficient refuse and recycling receptacles to maintain general cleanliness during the Beer Garden. The HOST shall assist the BREWER with any electrical needs during setup, with the understanding that in the event electricity is not available in the Beer Garden location the BREWER shall be responsible for supplying its own power source (i.e., a generator).

THIRD PARTY VENDORS

Third party vendors are not a party to this AGREEMENT. BREWER may fulfill its responsibilities under this AGREEMENT by contracting with third party vendors to provide services ("Third Party Vendor"). BREWER shall provide HOST advance notice of the third party vendors it has lined up for the event; HOST reserves the right to approve or disallow Third Party Vendors. BREWER shall be responsible for all acts and omissions of third party vendors. Third Party Vendors shall comply with any and all applicable State and Local codes, laws and regulations.

BEER GARDEN SITE AND EQUIPMENT

BREWER shall be responsible for the site established as the Beer Garden. Games and entertainment shall be safe and well-maintained. All Beer Garden equipment and disposable expenses in establishing the Beer Garden are the responsibility of the BREWER. All necessary equipment and personnel to create the Beer Garden experience are the responsibility of the BREWER. The BREWER shall include all labor, merchandise, alcoholic and non-alcoholic beverage supplies, equipment and related items necessary to serve the needs of the customers of a Beer Garden.

RESPONSIBILITY OF HOST

Anything to the contrary notwithstanding, HOST shall be responsible for and shall take the following actions: (a) cleaning and maintaining the cleanliness of the area surrounding the Beer Garden, including without limitation lawn mowing and maintenance of the restrooms, and (b) staffing and operating the parking entrances and lots, as HOST deems appropriate, at the Farmer's Market facilities. HOST shall provide available lighting, seating and tables, waste and recycling receptacles, and sufficient space for Beer Garden setup. HOST shall allow BREWER to use available electric services provided at the Farmer's Market location, however, in the event electricity is not available BREWER shall provide its own power source (i.e., a generator). HOST is responsible for complying with all laws, related to safety, applicable to the HOST in connection with this Agreement.

CLEANLINESS

BREWER shall keep the premises and the surrounding area, at least twenty-five (25) feet from setup, clean and sanitary at all times. No offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable, or unlawful hazard, nor any material detrimental to the public health, shall be permitted to remain thereon, and BREWER shall prevent any such matter or material from being or accumulating upon the Beer Garden site.

BREWER shall assist with recycling efforts by using #1, #2 or #5 recyclable drink cups for beverage service.

HOST, at its own expense, shall see that all garbage or refuse is collected as often as necessary and in no case less than once per event and disposed of in the HOST receptacles.

HOST will supply waste receptacles and recycling receptacles for the Beer Garden use.

BEVERAGE AND MERCHANDISE FEES

In return for the right to sell merchandise, alcoholic and non-alcoholic beverages through the Beer Garden, the BREWER shall pay the HOST Twenty-five and 00/100 Dollars (\$25.00) per day when Beer Garden is open.

INCLEMENT WEATHER

Beer Garden is an outdoor experience. BREWER shall make every effort to hold events as scheduled. Cancellation of an event is dependent upon weather conditions at the host facility. The decision to cancel an event is the mutual responsibility of the BREWER and HOST and will be made as close to event time as possible. BREWER and HOST will assist with social media postings to notify the public.

INDEMNIFICATION

The HOST, forever discharges, holds harmless and indemnifies the BREWER, its agents and employees, and its, or their successors and assigns, from and against any and all claims, demands, damages, costs including attorney fees, actions and causes of action of whatever kind or nature, incurred by BREWER (its agents and employees, and its, or their successors and assigns) for any third party claim to the extent arising out of (a) a material breach or non-fulfillment of any material representation, warranty or covenant in this Agreement by HOST (or its personnel) or (b) any negligence or more culpable act or omission of HOST (or its personnel) in connection with the performance of its obligations under this Agreement.

Nothing contained within this agreement is intended to be a waiver or estoppel of the HOST or its insurer to rely upon the limitations, defenses and immunities contained within Wisconsin Statutes sections 893.80 and 345.05. To the extent that indemnification is available and enforceable, the HOST or its insurer shall not be liable in indemnity, contribution or otherwise for an amount greater than the limits of liability for municipal claims established by Wisconsin law.

The BREWER, forever discharges, holds harmless and indemnifies the HOST, its Departments, Commissions, Officials, Agents and Employees, his, her, its, or their successors and assigns ("Released Parties") from any and all claims, demands, damages, costs including attorney fees, actions and causes of action of whatever kind or nature, incurred by the Released Parties for any third party claim to the extent arising out of (a) a material breach or non-fulfillment of any material representation, warranty or covenant in this Agreement by BREWER (or its personnel) or (b) any negligence or more culpable act or omission of BREWER (or its personnel) in connection with the performance of its obligations under this Agreement.

INSURANCE

In order to protect against potential liability arising out of the activities performed hereunder, BREWER shall obtain and maintain, in full force and affect, comprehensive general liability, bodily injury and property damage insurance coverage with minimum limits of \$1,000,000 per occurrence and \$1,000,000 aggregate. Said insurance may not be cancelled, reduced or changed in any way without at least thirty (30) day written notice to the HOST. Failure to provide proper notice, in and of itself, shall be grounds for termination of this AGREEMENT. Brewer shall obtain Certificates of Insurance as well as Endorsements, acceptable as to form by HOST, to its insurance policies as follows:

- 30 day notice of cancellation to HOST.
- BREWER's primary insurance.
- Waiver of rights of recovery against others to us.
- Naming the HOST as an additional insured.

ASSIGNMENT

This AGREEMENT may not be assigned by the BREWER without the prior written consent of the HOST.

INDEPENDENT CONTRACTOR

For purposes of this AGREEMENT, the BREWER is an independent contractor and not the employee or agent of the HOST. The BREWER is not an employee of the HOST for any purpose whatsoever, to include coverage under the Wisconsin Worker's Compensation Statute.

JURISDICTION/VENUE

The circuit court of Milwaukee County, Wisconsin, shall have exclusive jurisdiction for any legal proceedings concerning this AGREEMENT, and Milwaukee County shall be the exclusive venue for such proceedings. All such proceedings shall be governed by the laws of the State of Wisconsin.

DISPUTE RESOLUTION

Should disputes arise between parties during the course of this AGREEMENT, the parties shall make a good faith attempt to resolve disputes through dialogue and negotiation. If such efforts fail to resolve the differences, prior to the commencement of legal action, the parties will attempt to resolve the issues through mediation conducted in Milwaukee County, State of Wisconsin, by a Wisconsin mediator chosen by AGREEMENT of the parties. The parties shall share equally in all costs associated with Mediation.

RELATIONSHIP

Nothing contained in this AGREEMENT shall constitute or be construed to create a partnership or joint venture between the HOST and the BREWER or successors or assigns. This AGREEMENT does not create the relationship of principal and agent.

FORCE MAJEURE

The obligation of the Parties shall be excused by detention of key personnel by sickness, accident, riot, strike, epidemic, act of God, Force Majeure or any other legitimate condition beyond the control of the obliged Party. In case of Force Majeure, neither Party shall be liable for indirect, special or consequential damages arising from any breach of this Agreement.

SEVERABILITY

In the event that any provision of this AGREEMENT is deemed to be invalid by reason of the operation of any law or by reason of the interpretation placed thereon by any Governmental Authority, the validity, legality and enforceability of the remaining terms and provisions of this AGREEMENT shall not in any way be affected or impaired thereby, all of which shall remain in full force and effect, and the affected term or provision shall be modified to the minimum extent permitted by law so as to achieve most fully the intention of this AGREEMENT.

ENTIRE AGREEMENT; AMENDMENTS

This AGREEMENT, together with any attachments, shall constitute the entire AGREEMENT between the parties and previous communications or AGREEMENTS pertaining to the subject matter of this AGREEMENT are hereby superseded. Any contractual revisions may be made only by a written amendment to this AGREEMENT, signed by both parties prior to the ending date of this AGREEMENT.

NOTICES

BREWER:

Raised Grain Brewing Company, LLC
Attn: Nick Reistad
2244 W. Bluemound Rd, Unit E
Waukesha, WI 53186

HOST:

City of West Allis
Attn: David Wepking, Director of Public Works
6300 W. McGeoch Ave., West Allis, WI 53219

In Witness Whereof, the parties hereto agree to this AGREEMENT:

BREWER:

Raised Grain Brewing Company, LLC

BY:  _____
Nick Reistad
Owner, Sales & Marketing

Dated: 8/15/2018 _____

HOST:

City of West Allis

BY: _____
David Wepking
Director of Public Works

Dated: _____