

**RESOLUTION NO. 22-\_\_\_\_\_**

**BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby, authorized to enter into a License Agreement by and between City of Huntsville and MidCity South, LLC, which agreement is substantially the same in words and figures as that certain document attached hereto and identified as **“License Agreement between City of Huntsville, Alabama, and MidCity South, LLC”**, consisting of eight (8) pages (including exhibits A, B and C), and the date of January 13, 2022, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and an executed copy of said document after being signed by the Mayor, shall be permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

**ADOPTED** this the 13th day of January, 2022.

\_\_\_\_\_  
President of the City Council of the City of  
Huntsville, Alabama

**APPROVED** this the 13th day of January, 2022.

\_\_\_\_\_  
Mayor of the City of Huntsville, Alabama

**LICENSE AGREEMENT BETWEEN  
MIDCITY SOUTH, LLC AND  
CITY OF HUNTSVILLE, ALABAMA**

STATE OF ALABAMA                    )  
  )  
MADISON COUNTY                    )

**LICENSE AGREEMENT**

This License Agreement (this “**Agreement**”) is made and entered into on the 31<sup>st</sup> day of January, 2022 (the “**Effective Date**”), by and between MidCity South, LLC, an Alabama limited liability company, hereinafter referred to as “**Licensor**” or “**MCS**”, and the City of Huntsville, an Alabama municipal corporation, hereinafter referred to as “**Licensee**” or the “**City**”.

**RECITALS**

**WHEREAS**, the City is in the process of constructing an 8,500-seat amphitheater (the “**Amphitheater**”) adjacent to that certain development known as “MidCity District” located in Huntsville, Alabama; and

**WHEREAS**, MCS is an owner of certain land located within MidCity District; and

**WHEREAS**, the Amphitheater will stimulate economic development in and around the MidCity District which will benefit the land owned by MCS; and

**WHEREAS**, the City has the need for a site to use for construction laydown, parking and material storage during and after the construction phase of the Amphitheater; and

**WHEREAS**, MCS is willing to grant the City a license to utilize the area outlined (hereinafter the “**Licensed Premises**”) on the drawing attached hereto as **Exhibit “A”** and by this reference made a part hereof according to the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants of the parties, and other good and valuable consideration, the parties do hereby agree as follows:

1. License; License Fee. MCS hereby grants to the City a license to occupy and use the Licensed Premises for construction laydown, event parking and material storage during the Term (as defined below) of this Agreement. The City shall pay MCS an annual license fee in the amount of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) (the “**License Fee**”) for the use of the Licensed Premises during the Term. The City shall pay the License Fee to MCS within five (5) days following the Effective Date hereof for the Initial Term (as defined in Paragraph 3 below) and within five (5) days following the commencement of the Renewal Term, if any (as defined in Paragraph 3 below).

2. No Hazardous Materials. The City shall not cause or permit any Hazardous Material (as hereinafter defined) to be brought upon, kept or used in or about the Licensed Premises by the City, its agents, employees, contractors or invitees, without the prior written consent of MCS. For the purpose of this License, “**Hazardous Material**” shall include, but is not limited to, substances defined as “hazardous substances,” “hazardous wastes,” or “toxic substances,” oil, flammable explosives or asbestos ‘in any federal or state statute concerning hazardous materials now or hereafter enacted, including all regulations adopted or publications promulgated thereunder (collectively, “**Environmental Laws**”). The City shall promptly remove, at its cost, any Hazardous Material be brought upon, kept or used in or about the Licensed Premises by the City, its agents, employees, contractors or invitees following receipt of notice from MCS, such obligation to survive the expiration or earlier termination of this Agreement in accordance with its terms.

3. Term. The term of this Agreement (the “**Initial Term**”) shall commence on February 1, 2022 and shall terminate at midnight, central time, on January 31, 2023. The parties may, by mutual written consent at least sixty (60) days prior to the expiration of the Initial Term, agree to renew this Agreement for an additional period of up to one (1) additional year, which period would commence on February 1, 2023 and expire on January 31, 2024 (the “**Renewal Term**”). The Initial Term together with the Renewal Term, if any, is referred to herein, collectively, as the “**Term**.” Following the written approval by MCS, the City may exercise the foregoing renewal option through the written consent of the City Administrator as the Mayor’s designee; provided, however, that MCS shall not be obligated to consent to such renewal in the event MCS is ready to develop the Licensed Premises upon the expiration of the Initial Term hereof. In addition, at any time during the Renewal Term, MCS shall have the right to terminate this Agreement upon delivery of ninety (90) days’ prior written notice to the City to enable MCS to develop the Licensed Premises. In the event that MCS terminates this License during the Renewal Term pursuant to its rights set forth herein, MCS shall return the prorated portion of the License Fee to the City applicable to the unexpired portion of such Renewal Term following the date of such termination.

4. Licensee Improvements. Within one hundred eighty (180) days following the Effective Date, the City, at its sole cost, will perform all site preparation for the intended use of the Licensed Premises to include: construction fencing, mass grading, placement of a base gravel material, and a 10-ft. width of sod along the perimeter boundary as referred to on Exhibit “B” attached hereto and by this reference made a part hereof. Grading by the City shall be performed pursuant to the grading plan attached hereto as Exhibit “C” and by this reference made a part hereof.

5. Maintenance of Licensed Premises. The City shall repair and maintain the Licensed Premises and all Licensee Improvements located thereon during the Term of this Agreement at its sole cost and expense. Upon termination of this Agreement, the City will, at its sole cost, remove all stored materials or other items brought onto the Licensed Premises by or on behalf of the City and leave the Licensed Premises free and clear of any and all garbage, trash, debris, waste, equipment and materials.

6. Compliance with Laws; Payment of Real Estate Taxes. The City covenants and agrees to use, maintain and repair the Licensed Premises in compliance with all ordinances, laws, rules, and regulations and shall not use (or allow the use of) the Licensed Premises in an unlawful manner. Notwithstanding this Agreement, MCS shall remain responsible for the payment of all real estate taxes or assessments imposed on the Licensed Premises during the Term hereof.

7. Release; Removal of Liens. The City shall release and hold harmless MCS, its employees, officers, agents and affiliates from and against any and all claims arising out of or in connection with personal injury, property damage or otherwise arising from the City's use, occupation, improvement or maintenance of the Licensed Premises. The City shall cause any and all liens which may be filed against the Licensed Premises to be removed or bonded over to the satisfaction of MCS within thirty (30) days following the City's receipt of notice of the filing thereof. If the City fails to so remove or bond any such liens within such 30-day period, then MCS may do so on behalf of the City and the City shall reimburse MCS for all costs and expenses incurred in so removing or bonding such lien within thirty (30) days following receipt of an invoice and reasonable supporting documentation from MCS, such removal obligation and reimbursement obligation to survive the expiration or earlier termination of this Agreement in accordance with its terms.

8. Self-Insured Entity; Insurance. The parties understand and agree that the City is a self-insured municipality. Notwithstanding the foregoing, prior to any entry onto the Licensed Premises as permitted by this Agreement, the City shall deliver written evidence reasonably satisfactory to Licensor that the City, or its contractor or the party that will be using the Licensed Premises, as applicable, has insurance in effect in accordance with the following provisions. The City shall carry or shall cause its contractors and/or agents, as applicable, to carry at all times during the Term of this Agreement a policy of commercial general liability insurance with minimum limits of \$2,000,000.00 per occurrence/\$3,000,000 in the aggregate (the "CGL Policy"). In addition, the City's contractors which perform construction on the Licensed Premises must also carry Workers' Compensation Insurance in an amount equal to not less than the minimum amount required by the applicable laws of the State of Alabama. Further, those parties which will be using the Licensed Premises as part of an event at the Amphitheater will include, as an endorsement to the CGL Policy, so-called "dram shop" insurance (i.e., liquor liability coverage) in an amount of at least \$1,000,000.00. All of the foregoing policies shall be written with a company or companies licensed to do business in the State of Alabama with a financial rating of VIII or better and a policyholder's rating of A- or better in the latest edition of *Best's Rating Guide on Premises and Casualty Insurance Companies* (or a comparable rating in any comparable and generally recognized national or international ratings guide) and shall name Licensor and its mortgagee as additional insureds, as their interests may appear. The foregoing insurance policies shall be used to pay for any claims arising out of the use of the Licensed Premises by the City and/or its contractors and agents and the City shall cause its contractors and/or agents to indemnify Licensor from any costs, expenses, claims or liabilities arising from the exercise of the rights arising under this Agreement, such indemnity to survive the expiration or earlier termination of this Agreement in accordance with its terms.

9. Governing Law. This Agreement shall be governed by the laws of the State of Alabama. Proper venue to enforce any provision of this Agreement shall be in the state or federal

courts in Madison County, Alabama.

10. Binding Effect. This Agreement shall inure solely to the benefit of the parties hereto and their successors and assigns. Nothing contained herein is intended to or shall create a contractual relationship with, or any rights in favor of, or any cause of action in favor of, any third party.

11. Entire Agreement. This Agreement represents the entire agreement between MCS and the City with respect to the matters contained herein and supersedes all prior communications, negotiations, representations or agreements, either written or oral.

12. Notices. All notices, elections, or demands permitted or required to be made under this Agreement shall be made in writing, signed by the party giving such notice, election, or demand, and shall be deemed to have been properly given, unless otherwise specifically provided in this Agreement, (i) when delivered in person; or (ii) one (1) day after deposit with an overnight delivery service (such as FedEx, UPS or other similar overnight service) for next day delivery, delivery charges prepaid, addressed to the appropriate party at the address set out below:

MCS: MidCity South, LLC  
c/o Rex Commercial Properties, Inc.  
920 Bob Wallace Ave. SW, Suite 320  
Huntsville, Alabama 35801  
Attention: Mr. Max Grelier and Mr. Remy Gross

CITY: City of Huntsville  
320 Fountain Circle  
Huntsville, AL 35801  
Attention: Mayor

13. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument. Signatures on this document may be transmitted by electronic mail with the same force and effect as if original signatures appeared on each copy of the document.

*[Signatures appear on following page]*

**IN WITNESS WHEREOF** the parties have entered into this Agreement on the date first above written.

**LICENSOR:**

**MIDCITY SOUTH, LLC**

By: RCP CAPITAL I, LLC, an Alabama limited liability company

By: \_\_\_\_\_  
Max Grelier, its Manager

**LICENSOR:**

**THE CITY OF HUNTSVILLE, ALABAMA**

By: \_\_\_\_\_  
Its: Mayor

**ATTEST:**

\_\_\_\_\_  
Kenneth Benion  
City Clerk-Treasurer

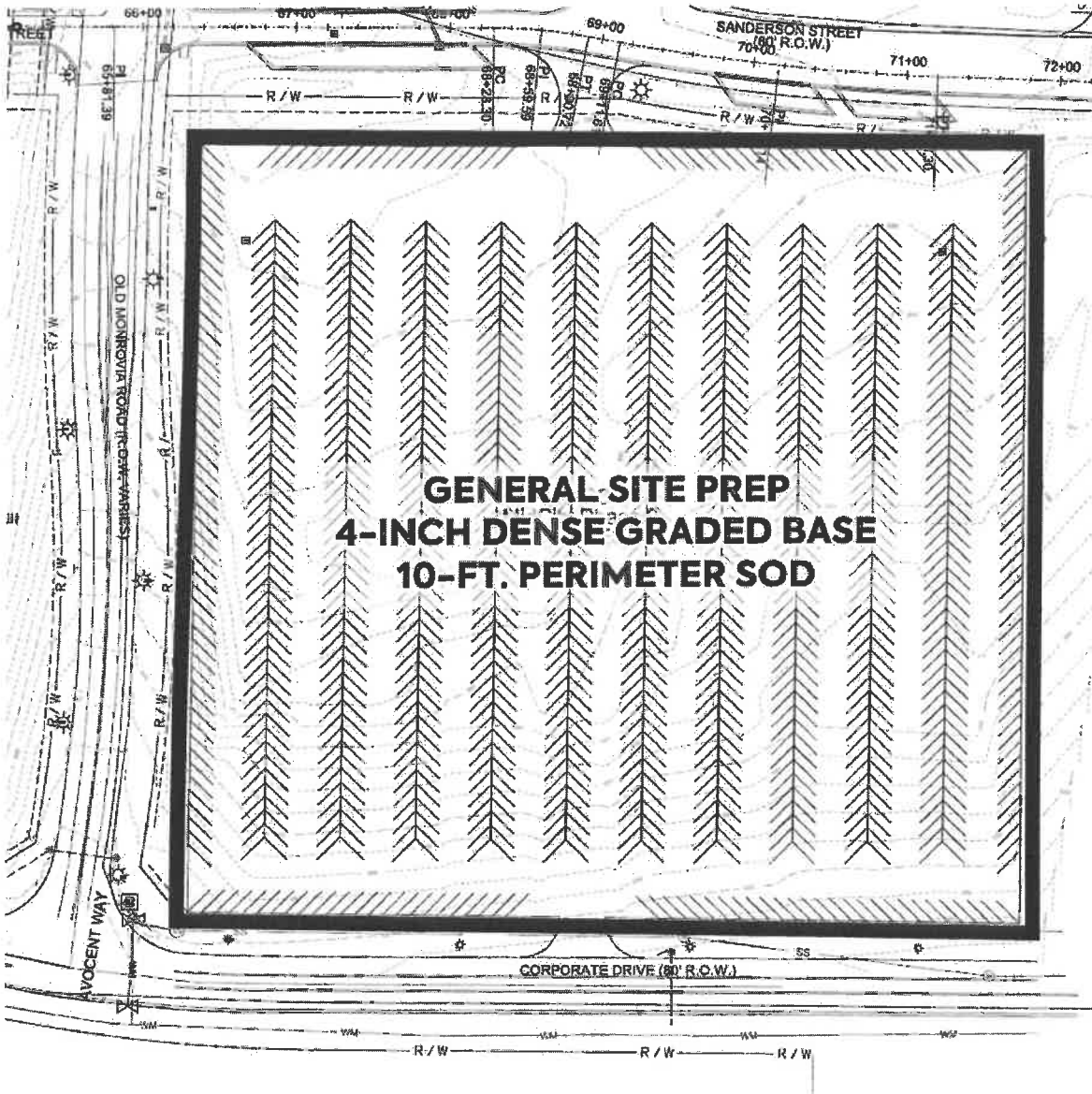
## EXHIBIT "A"

### Licensed Premises



**EXHIBIT "B"**

**LICENSEE IMPROVEMENTS**





**EXHIBIT "C"**

**GRADING PLAN**

