

RESOLUTION NO. \_\_\_\_\_

Date Passed: June 13, 2016

**A RESOLUTION AUTHORIZING THE SALE OF THE HUB THEATER AND  
LINCOLN SCHOOL PROPERTIES**

**WHEREAS**, the City of Rochelle is a body politic and corporate, organized and existing pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1, et. seq.; and

**WHEREAS**, the City has the power to sell surplus real estate owned by the City, pursuant to 65 ILCS 5/11-76-4.1; and

**WHEREAS**, the City owns, or expects to own, certain real estate commonly known as the Hub Theater, located at 416 Lincoln Highway, the legal description of which is attached hereto as **Exhibit A**, and which is presently zoned B-1 (commercial) ("Hub Theater Property"), and the Lincoln School, located at 108 South Main Street ("Lincoln School Property") the legal description of which is attached hereto as **Exhibit B**, and which is presently zoned R-5 (multi-family residential), but is expected to be rezoned I-1 (light industry) upon its acquisition by the City; and

**WHEREAS**, both of the properties constitute surplus public real estate while in the hands of the City, and

**WHEREAS**, Richard R. Kennay has offered to purchase the Hub Theater Property and the Lincoln School Property for 80% of the appraised value of each property, and to develop them as a distillery and warehouse/storeroom, on the terms of an Agreement for Purchase and Sale attached hereto as **Exhibit C** and a Development Agreement attached hereto as **Exhibit D**, which have been presented to the City Council, and which the City Council finds to be in the best interest of the City; and

**WHEREAS**, the value of the Hub Theater Property has been determined to \$65,000.00 and the value of the Lincoln School Property has been determined to be \$140,000.00 by written MAI certified appraisals available for public inspection in the office of the Community Development Director of the City; and

**WHEREAS**, the City Council finds that it would be in the best interest of the City to sell the Hub Theater Property and the Lincoln School Property for 80% of the appraised value of each, by private sale conducted the City staff, and to publish notice of same as required by statute;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROCHELLE, OGLE COUNTY, ILLINOIS, as follows:**

1. The City Manager is authorized and directed to enter into an agreement for the sale of the Hub Theater Property and the Lincoln School Property to Richard R. Kennay, for a price no less than 80% of the appraised value of each property, substantially on the terms of the Agreement for Sale and Purchase and the Development Agreement attached hereto as **Exhibit C** and **Exhibit D**, and to take all steps necessary and appropriate to consummate the sale.

2. The City Manager is authorized and directed, by this action of the City Council, to take all steps necessary: (i) to rezone the Lincoln School Property to I-1 (light industry); (ii) to amend the zoning provisions of the Rochelle Municipal Code to allow for the intended use of the School Property by Developer as a permitted or special use under the I-1 zoning district; (iii) to grant a special use permit to Developer for such use; (iv) to amend the zoning provisions of the Rochelle Municipal Code to allow for the intended use of the Theater Property by Developer as a special use under the zoning provisions of the Rochelle Municipal Code; and (v) to grant a special use permit to Developer for such use, including scheduling a hearing before the Planning and Zoning Commission and, upon their taking action, placing the matter on the City Council's agenda at the earliest possible date.

This ordinance shall become effective after its passage, approval and publication as provided by law.

PASSED AND APPROVED this 13th day of June, 2016.

Ayes: \_\_\_\_\_ Nays: \_\_\_\_\_ Abstain: \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attested: \_\_\_\_\_  
City Clerk

**EXHIBIT A**  
**(Legal Description of Hub Theater)**

Part of Block 10 in Sunset Fields Subdivision No. 2, being a subdivision located in the Southeast Quarter of Section 13, Township 40 North, Range 1 East of the Third Principal Meridian, Ogle County, Illinois, according to the Plat thereof recorded in Book K of Plats on Page 27, as Document No. 407942, described as follows:

Beginning at the Northeast Corner of said Block 10; thence South 00 degrees 51 minutes 40 seconds West (assumed bearing), on and along the Westerly Right-of-Way Line of IL 251, a distance of 208.42 feet to a point 150.00 feet Northerly of the Southeast Corner of said Block 10; thence South 88 degrees 15 minutes 12 seconds West, on and along a line parallel to the South line of said Block 10, a distance of 335.48 feet to the Easterly Right-of-Way Line of Eighth Street; thence North 01 degrees 36 minutes 27 seconds West on and along last named Right-of-Way Line, a distance of 87.40 feet; thence North 88 degrees 15 minutes 12 seconds East, on and along a line parallel to said South Line of Block 10, a distance of 119.40 feet; thence North 01 degrees 36 minutes 27 seconds West on and along a line parallel to said Easterly Right-of-Way Line of Eighth Street, a distance of 120.35 feet to a point on the North Line of said Block 10; thence North 88 degrees 08 minutes 10 seconds East, on and along last named line, a distance of 225.06 feet to the Point of Beginning, containing 1.29 acres, more or less.

**EXHIBIT B**  
**(Legal Description of Lincoln School)**

PARCEL 1:

A tract in the Northeast Quarter (1/4) of the Northwest Quarter (1/4) of Section 25, in Township 40 North, Range 1 East of the Third Principal Meridian, being also situated in the City of Rochelle, Ogle County, Illinois, which tract is bounded and described as follows: Commencing on the Westerly line of Main Street in said city at a point 67 feet Southeasterly from an iron stake at the intersection of the said Westerly line of Main Street with the South line of First Avenue; thence running South, 58 degrees West, 197.5 feet to a point, on the East line of the alley, 164 feet South of the South line of said First Avenue; thence South, on the said East line of the alley, 77.6 feet to the Northwesterly corner of the School Lot; thence North 58 degrees East, on the Northerly line of said School Lot, 239.5 feet to the Westerly line of said Main Street; thence Northwesterly on said Westerly line of Main Street, 65 feet to the place of beginning; situated in the Township of Flagg, the County of Ogle and the State of Illinois.

Part of the Northeast Quarter (1/4) of the Northwest Quarter (1/4) of Section 25, Township 40 North, Range 1 East of the Third Principal Meridian, the point of beginning of which is described as follows: Commencing at an iron stake 33 feet South and 962 feet East of the Northwest corner of the said Northeast Quarter (1/4) of the Northwest Quarter (1/4) of Section 25, (also being the intersection of the South line of First Avenue and the Westerly line of South Main Street in the City of Rochelle, Ogle County, Illinois); thence South 32 degrees East on the said Westerly line of South Main Street 332 feet; thence South 58 degrees West 159.7 feet to the said point of beginning; thence extending Southwesterly on a projection of the last described course, 150 feet; thence Southeasterly at an angle of 88 degrees 26 minutes measured clockwise from the last described course 137.35 feet; thence Northeasterly at an angle of 91 degrees 24 minutes measured clockwise from the last described course and on a line hereinafter designated as line "A", 146.25 feet; thence Northwesterly at an angle of 90 degrees 10 minutes measured clockwise from the last described course 136.75 feet to the said point of beginning. Also, all that land lying between aforesaid line "A" and the Northerly bank of Kyte Creek; situated in the Township of Flagg, the County of Ogle and the State of Illinois.

A part of Lot Two (2) of the Assessor's Subdivision of the Northwest Quarter (1/4) of Section 25, in Township 40 North, Range 1 East of the Third Principal Meridian, in the City of Rochelle, in Ogle County, Illinois, described and bounded as follows, to-wit: Commencing at the Northeast corner of said Lot 2, at a point established; thence South, 32 degrees East, 132 feet to corner of tract to be established; thence South 58 degrees West, 245 feet; thence South 220 feet; thence North 58 degrees East, 345 feet; thence North 32 degrees West, 200 feet to a point of beginning; situated in the Township of Flagg, the County of Ogle and the State of Illinois.

ALSO, beginning at a point at the Northeast corner of Lot 2 of the Northwest Quarter (1/4) of Section 25, Township 40 North, Range 1 East of the Third Principal Meridian, being a part of Assessor's Subdivision; thence South 32 degrees East, 332 feet; thence South 58 degrees West, 345 feet; thence South about 200 feet to the center of Kyte River; thence Northeasterly along the center of said Kyte River to the West line of Main Street; thence North 32 degrees West to the point of beginning; situated in the Township of Flagg, the County of Ogle and the State of Illinois.

EXCEPTING THEREFROM Part of the Northeast Quarter (1/4) of the Northwest Quarter (1/4) of Section 25, in Township 40 North, Range 1 East of the Third Principal Meridian, Ogle County, Illinois, the point of beginning of which is described as follows: Commencing at an iron stake 33 feet South and 962 feet East of the Northwest corner of the said Northeast Quarter (1/4) of the Northwest Quarter (1/4) of Section 25 (also being the intersection of the South line of First Avenue and the Westerly line of South Main Street in the City of Rochelle); thence South 32 degrees East on the said Westerly line of South Main Street, 332 feet; thence South 58 degrees West 309.7 feet to the said point of beginning; thence continuing Southwesterly on an extension of the last described course, 55 feet; thence Southerly at an angle of 122 degrees 23 minutes measured clockwise from the last described course, 163 feet to the Northerly bank of Kyte Creek; thence Northeasterly at an angle of 57 degrees 27 minutes measured clockwise from the last described course on a line hereinafter designated as line "A", 146.3 feet; thence Northwesterly 137.35 feet to the place of beginning, also all that land lying between aforesaid line "A" and the Northerly bank of Kyte Creek; situated in the Township of Flagg, the County of Ogle and the State of Illinois.

ALSO EXCEPTING THEREFROM Part of the Northeast Quarter (1/4) of the Northwest Quarter (1/4) of Section 25, Township 40 North, Range 1 East of the Third Principal Meridian, described as follows: Commencing at the intersection of the South line of First Avenue and the Westerly Right-of-Way Line of Main Street in the City of Rochelle; thence South 32 degrees 09 minutes 54 seconds East along said Westerly Right-of-Way Line, a distance of 332.00 feet to the point of beginning of the hereinafter described tract of land; thence South 57 degrees 53 minutes 40 seconds West, a distance of 159.70 feet; thence South 32 degrees 06 minutes 44 seconds East, a distance of 153.70 feet (153.75 feet deeded) to the Northerly Bank of Kyte Creek; thence North 51 degrees 38 minutes 20 seconds East along said Northerly Bank, a distance of 160.78 feet to the aforesaid Westerly Right-of-Way Line; thence North 32 degrees 09 minutes 54 seconds West along said Westerly Right-of-Way Line, a distance of 136.18 feet (136.00 feet deeded) to the point of beginning; all situated in the City of Rochelle, the Township of Flagg, the County of Ogle and the State of Illinois.

FURTHER EXCEPTING THEREFROM Part of the Northwest Quarter (1/4) of Section 25, Township 40 North, Range 1 East of the Third Principal Meridian, City of Rochelle, Ogle County, Illinois, bounded and described as follows, to-wit: Commencing at the

intersection of the North line of Lot 7 in Block 1 of Atwater's Addition to the City of Rochelle, extended Easterly to the East line of the vacated alley lying East of and adjacent to said Block 1; thence South 01 degree 32 minutes 07 seconds East along said East line a distance of 14.13 feet to the point of beginning; thence continuing South 01 degree 32 minutes 07 seconds East, along said East line, a distance of 80.27 feet; thence North 53 degrees 51 minutes 48 seconds East, a distance of 43.11 feet; thence North 33 degrees 59 minutes 35 seconds West, a distance of 66.12 feet to the point of beginning; situated in the Township of Flagg, the County of Ogle and the State of Illinois.

ALSO INCLUDING Part of the Northwest Quarter (1/4) of Section 25, Township 40 North, Range 1 East of the Third Principal Meridian, City of Rochelle, Ogle County, Illinois, bounded and described as follows, to-wit: Beginning at the intersection of the North line of Lot 7 in Block 1 of Atwater's Addition to the City of Rochelle, extended Easterly to the East line of the vacated alley lying East of and adjacent to said Block 1; thence South 01 degrees 32 minutes 07 seconds East, along said East line, a distance of 14.13 feet; thence North 33 degrees 59 minutes 35 seconds West, a distance of 16.74 feet to a point on the North line of said Lot 7, extended Easterly; thence North 88 degrees 27 minutes 48 seconds East, along said extended line, a distance of 8.99 feet to the point of beginning; situated in the Township of Flagg, the County of Ogle and the State of Illinois.

Part of the Northwest Quarter (1/4) of Section 25, Township 40 North, Range 1 East of the Third Principal Meridian, City of Rochelle, Ogle County, Illinois, bounded and described as follows, to-wit: Commencing at the intersection of the North line of Lot 7 in Block 1 of Atwater's Addition to the City of Rochelle, extended Easterly to the East line of the vacated alley lying East of and adjacent to said Block 1; thence South 01 degrees 32 minutes 07 seconds East along said East line, a distance of 14.13 feet; thence South 01 degree 32 minutes 07 seconds East, along said East line, a distance of 80.27 feet; thence North 53 degrees 51 minutes 48 seconds East, a distance of 43.11 feet to the point of beginning; thence continuing North 53 degrees 51 minutes 48 seconds East, a distance of 11.89 feet; thence South 37 degrees 42 minutes 12 seconds East, a distance of 168.00 feet to a point on the centerline of Kyte Creek; thence South 59 degrees 28 minutes 48 seconds West, along said centerline, a distance of 22.79 feet; thence North 33 degrees 59 minutes 35 seconds West, a distance of 165.82 feet to the point of beginning; situated in the Township of Flagg, the County of Ogle and the State of Illinois.

EXCEPTING THEREFROM Part of the Northeast Quarter (1/4) of the Northwest Quarter (1/4) of Section 25, Township 40 North, Range 1 East of the Third Principal Meridian, Ogle County, Illinois, described as follows: Commencing at a point 33 feet South and 962 feet East of the Northwest corner of the Northeast Quarter (1/4) of the Northwest Quarter (1/4) of said Section 25 (being the intersection of the South line of First Avenue with the Westerly line of South Main Street in the City of Rochelle); thence Southeasterly along the Westerly line of South Main Street, a distance of 67 feet to the place of beginning of the tract herein described; thence South 56 degrees 58 minutes 40 seconds West along the Southerly line of said premises conveyed a distance of 1.76 feet;

thence South 28 degrees 41 minutes 36 seconds East, a distance of 41.43 feet; thence South 33 degrees 27 minutes 25 seconds East, a distance of 175.67 feet; thence South 34 degrees 19 minutes 02 seconds East, a distance of 9.00 feet to the Westerly line of South Main Street; thence Northwesterly along the Westerly line of South Main Street, a distance of 226 feet to the place of beginning; situated in the Township of Flagg, the County of Ogle and the State of Illinois.

PARCEL 2:

Part of the Northeast Quarter (1/4) of the Northwest Quarter (1/4) of Section 25, in Township 40 North, Range 1 East of the 3rd P.M., described as follows: Beginning at an iron stake 33 feet South and 962 feet East of the Northwest corner of the Northeast Quarter (1/4) of the Northwest Quarter (1/4) of said Section 25 ( being the intersection of the South line of First Avenue with the Westerly line of Main Street in the City of Rochelle) for a point of beginning and running thence South 32 degrees East along the Westerly line of Main Street, 67 feet to the Northeast corner of Lot conveyed to George Carey and Rebecca Elizabeth Carey by deed dated July 29, 1918 and recorded in Book 132 of deeds, page 276 in the Recorder's Office of Ogle County, Illinois (said point being 20 feet Northwesterly along Main Street from the Northeast corner of the original lot conveyed to Rebecca Elizabeth Carey by deed dated February 18, 1910, recorded in Book 124 of Deeds page 470; thence South 58 degrees West along the Northerly line of said Carey Lot, 203 feet to the East line of the alley in Atwater's Subdivision as shown by the Plat recorded in Book A of Plats, page 312, in the Recorder's Office of Ogle County, Illinois; thence North along the East side of said alley, 164 feet to an iron stake in the South line of First Avenue in the City Rochelle; thence East along the South line of First Avenue, aforesaid, 129.55 feet to the place of beginning; EXCEPTING THEREFROM that part described as follows: Beginning at a point 33 feet South and 962 feet East of the Northwest corner of the Northeast Quarter (1/4) of the Northwest Quarter (1/4) of said section 25 (being the intersection of the South line of First Avenue with the Westerly line of South Main Street in the City of Rochelle); thence South 89 degrees 50 minutes 54 seconds West along the South line of First Avenue, a distance of 40.19 feet; thence South 69 degrees 08 minutes 35 seconds East, a distance of 41.73 feet; thence South 54 degrees 53 minutes 22 seconds East, a distance of 15.15 feet; thence South 38 degrees 34 minutes 30 seconds East, a distance of 22.42 feet; thence South 28 degrees 41 minutes 36 seconds East, a distance of 18.78 feet to the Southerly line; thence North 56 degrees 58 minutes 40 seconds East along said Southerly line, a distance of 1.76 feet to the Westerly line of South Main Street; thence Northwesterly along the Westerly line of South Main Street, a distance of 67 feet to the point of beginning; situated in the Township of Flagg, the County of Ogle and State of Illinois.

**EXHIBIT C**  
**(Purchase Agreement)**

## AGREEMENT FOR SALE AND PURCHASE

THIS AGREEMENT FOR SALE AND PURCHASE ("Agreement") is made this \_\_\_\_ day of June, 2016 (the "Effective Date"), by and between the City of Rochelle, an Illinois municipal corporation, hereinafter referred to as the "Seller," and Richard R. Kennay of 8991 Prairie Road, Ashton, IL 61006, or assignee or nominee, hereinafter referred to as the "Buyer."

### **I     PROPERTY TO BE CONVEYED.**

Seller desires to sell, and Buyer desires to purchase, the following (collectively, the "Property"):

(a) Parcels. (i) The commercial parcel commonly known as The Hub Theater, located at 416 Lincoln Highway, Rochelle, Illinois 61068, Parcel Number 24-24-339-018, referred to herein as the Theatre, and (ii) the Lincoln Elementary School (but excluding the temporary classroom located adjacent to the School), located at 108 South Main Street, Rochelle, Illinois 61068, Parcel Number 24-25-128-011, referred to herein as the School (the Theatre and the School being collectively referred to as the "Parcels," and each a "Parcel"), which Parcels are located in Ogle County (the "County"), Illinois;

(b) Appurtenances. Seller's right, title and interest in and to all easements, licenses, privileges and other rights appurtenant to the Parcels (the "Appurtenances");

(c) Improvements. All improvements located on the Parcels (the "Improvements");

(d) Fixtures and Personal Property. Seller's right, title and interest in and to all fixtures, trade fixtures, machinery systems, equipment and personal property owned by Seller attached or appurtenant to, located on and used in connection with the ownership, use, maintenance and operation of the Parcels or the Improvements, if any (the "Fixtures and Personal Property");

(e) Service Agreements. Seller's right, title and interest in and to all of those service agreements listed on Exhibit "A" attached hereto (collectively, the "Service Agreements") (it being understood that Buyer shall have the right to designate some or all of the Service Agreements for termination as provided herein); and

(f) Intangible Property. Seller's right, title and interest, if any, in and to all of the following items, to the extent assignable and without warranty: consents, licenses, approvals, certificates of occupancy, permits, plans, development rights, warranties (including but not limited to warranties for roofs, elevators and other building systems), guarantees and floor plans, plans and specifications and trademarks, if any, relating to the Improvements and the Fixtures and Personal Property (the "Intangible Property").

The Property shall be conveyed "as-is", without warranty, express or implied, except as otherwise expressly set forth herein.

## **II ESCROW DEPOSIT AGENT AND DEPOSIT.**

2.1 Escrow Deposit Agent. The "Escrow Deposit Agent" shall be the Title Company.

2.2 Deposit. Buyer shall deliver to the Escrow Deposit Agent, within three (3) business days after the Effective Date, an initial deposit in the amount of Ten Thousand Dollars (\$10,000) (the "Deposit"). The Deposit shall be considered to be "at risk" and subject to forfeiture to Seller after the expiration of the Investigatory Period except as specifically provided in this Agreement.

## **III PURCHASE PRICE AND CLOSING.**

3.1 Purchase Price. The purchase price for the Property shall be (a) 80% of the current appraised value of each Parcel, with the appraised value of each Parcel to be determined by a certified general real estate appraiser mutually selected by Seller and Buyer, plus (b) Buyer's assumption of not more than \$94,000.00 of potential lien claimants by contractors and/or material suppliers for work done or materials supplied to Parcel 1 (the Hub Theater) (collectively, the "Purchase Price").

3.2 Closing. The consummation of the sale and conveyance of the Property (the "Closing") shall occur on or before July 29, 2016, unless extended by agreement of the parties (the "Closing Date").

## **IV INVESTIGATORY PERIOD, INDEMNITY AND CONTINGENCIES.**

4.1 Investigatory Period. Buyer shall have a period commencing on the Effective Date and terminating at 5:00 p.m., Central Daylight Time, on the thirtieth (30<sup>th</sup>) day after the Effective Date (the "Investigatory Period") within which to conduct, at his sole cost and expense, any and all investigations with respect to the Property which Buyer deems necessary, including, but not limited to, invasive environmental tests, surveys, audits or inspections (*e.g.*, phase I and, if warranted, phase II environmental site assessment (ESA)). In the event that such testing reveals any condition that, according to applicable law, must be reported to a governmental authority, then Buyer will allow Seller to make (and Seller shall promptly make) the initial contact with such governmental authority regarding such condition. Any such environmental audit or report will be certified to both Seller and Buyer. Buyer shall be responsible for all costs associated with the phase I ESA.

4.2 Seller Disclosures. Not later than seven (7) business days after the Effective Date, Seller will provide Buyer with access to all third party reports and other documents and information related to the Property, including, without limitation, title documents, surveys, environmental reports, geotechnical reports, zoning resolutions

and other entitlement documentation, *etc.* to the extent in Seller's possession or control and not reasonably regarded by Seller as proprietary or confidential (the "Inspection Materials"). If Buyer determines, prior to the expiration of the Investigatory Period, for any reason or no reason whatsoever, that the Buyer does not wish to purchase the Property, then Buyer shall have the right, at Buyer's option, and notwithstanding anything to the contrary provided herein, to terminate this Agreement by delivering a written termination notice to Seller prior to the expiration of the Investigatory Period. If Buyer does not timely deliver a termination notice as aforesaid, then the Investigatory Period, and Buyer's right to terminate this Agreement and receive the return of the Deposit pursuant to the provisions of this paragraph, shall thereupon lapse and be of no further force and effect.

4.3 Buyer's Indemnity. Buyer shall indemnify Seller, their successors and assigns, and their respective agents, advisors, representatives, affiliates, employees, directors, partners, members, managers, beneficiaries, investors, shareholders, trustees and other persons and entities acting on their behalf or otherwise related to or affiliated with the foregoing (collectively, "Seller Related Parties") and save and hold Seller and Seller Related Parties harmless from any and all third-party liabilities, claims, damages, suits, obligations or demands which Seller and/or the Seller Related Parties may incur or which may be asserted against Seller and/or the Seller Related Parties as a result of or related to Buyer's and/or Buyer's representatives' or agents' entry upon the Property prior to Closing, any investigations or other activities conducted thereon by Buyer and/or Buyer's representatives or agents prior to Closing, and/or any and all other activities undertaken by Buyer and/or Buyer's representatives or agents on or about the Property prior to Closing (provided, however, the foregoing indemnity and hold harmless shall not extend to the mere discovery (as opposed to exacerbation) of any existing conditions at or on the Property).

4.4 Buyer Contingencies. Buyer's obligations under this Agreement are expressly contingent on each of the following during the Investigatory Period ("Buyer's Contingencies"):

- (a) Buyer's satisfaction, in his sole discretion, with his investigation of the Property.
- (b) Buyer's satisfaction, in his sole discretion, with the Inspection Materials.
- (c) Buyer procuring benefits of a Tax Increment Financing district to the extent being satisfactory to Buyer, in his sole discretion.
- (d) Buyer obtaining a satisfactory liquor production and sale license from the State of Illinois for alcohol production at the Property.

- (e) Buyer obtaining a satisfactory liquor production and sale license from the City of Rochelle.
- (f) Buyer obtaining an economic development grant in an amount not less than 80% of the appraised value of the Property, payable to Buyer not later than the time of Closing.
- (g) Buyer obtaining a commitment by the City of Rochelle for a rebate of 100% of the real estate taxes attributable to the increase in the equalized assessed value of each of the Parcels over the equalized assessed values for the tax year 2016, for a period of five (5) consecutive tax years, commencing with the real estate taxes for the year 2017, payable in 2018.
- (h) Both Parcels being suitably zoned for Buyer's proposed use (the Theater as a liquor distillery and the School for Barrel and other storage and related purposes).
- (i) A redevelopment agreement with the Seller in form and substance reasonably satisfactory to Buyer.

Buyer shall provide a written notice that all contingencies have been satisfied or are waived prior to Seller's closing of its purchase of the School.

4.5 Seller Contingencies. Seller's obligations under this Agreement are expressly contingent upon the following ("Seller's Contingencies"):

- (a) \_\_\_\_\_ Seller acquiring title to the Property sufficiently in advance of the time of Closing to be able to convey title to the Property to Buyer.
- (b) \_\_\_\_\_ A redevelopment agreement with the Buyer in form and substance reasonably satisfactory to Seller.
- (c) Seller's receipt of a written notice from Buyer that all of Buyer's contingencies have been satisfied or are waived, prior to Seller's closing of its purchase of the School.

**V WARRANTIES, REPRESENTATIONS, COVENANTS AND AGREEMENTS.**

5.1 Seller Representations. Seller hereby represents and warrants to, and covenants and agrees with, Buyer that:

- (a) Seller has all requisite power and authority to own their properties and assets and to carry on its business as now being conducted; and has full power and authority to execute, deliver and perform this Agreement and, at Closing, will have the full power and

authority to consummate the transactions contemplated hereby, including the execution, delivery and performance of each of the documents required to be delivered by Seller to Buyer pursuant to this Agreement.

- (b) This Agreement has been, and the other documents, instruments and agreements required to be delivered by Seller pursuant to or in connection with this Agreement will be when executed and delivered, duly authorized, executed and delivered by Seller and constitute the legal, valid and binding obligation of Seller enforceable in accordance with their respective terms. Neither the execution, delivery or performance of this Agreement, or any document, instrument or agreement required to be delivered by Seller pursuant hereto, nor the consummation of the transactions contemplated hereby, is prohibited by, or requires Seller to obtain the consent, approval or authorization of, or notice to or filing or registration with, any person.
- (c) Seller is not a party to any voluntary or involuntary proceedings under any applicable laws relating to the insolvency, bankruptcy, moratorium or other laws affecting creditors' rights to the extent that such laws may be applicable to Seller.
- (d) There are no pending, nor, to Seller's knowledge, threatened lawsuits, administrative, or quasi-judicial actions related to the Property or which could adversely affect Seller's ability to perform its obligations under this Agreement.
- (e) There are no pending, nor, to Seller's knowledge, threatened condemnation, taking or similar proceeding affecting the Property.
- (f) At the time of Closing, there will be no parties (i) in possession of the Property or (ii) with any rights to possession or occupancy of any portion of the Property, including, without limitation, any tenants.
- (g) No person, firm, corporation, or entity, other than Buyer, has the right or option to acquire the Property.
- (h) To the best of Seller's knowledge, the Property is duly serviced by water, sewer, natural gas, electricity and telephone service and Seller has no knowledge of any defects in or inadequacies of any utility service to the Property.

- (i) Except with respect to the potential lien claimants identified in Section 3.1, there are, to the best of Seller's knowledge, no unpaid bills for labor, services or work performed or rendered upon the Property, or for materials or supplies furnished or delivered to the Property that would result in the filing of mechanics', materialmen's or laborers' liens upon the Property, except for labor, services or work contracted, performed or rendered in the ordinary course of business.
- (j) Seller has received no notice of, and to Seller's knowledge, there is no existing violation of any ordinance, code, law, rule, requirement or regulation applicable to the Property.
- (k) To the best of Seller's knowledge, the Property has not ever been used or operated by any other party for the storage, use, treatment, manufacture or disposal of any Hazardous Materials. The term "Hazardous Materials" means and refers to any "hazardous waste" or "hazardous substance," as such terms are set forth in, under or pursuant to the Environmental Laws and Regulations, oil or petroleum products or their derivatives, polychlorinated biphenyls, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, explosive, contaminating or polluting materials which are now or in the future subject to governmental regulation. "Environmental Laws and Regulations" means any federal, state or local laws, ordinances or regulations now or hereafter in effect relating to pollution or protection of the environment or emissions, discharges, spills, releases or threatened releases of any Hazardous Substance into the environment (including without limitation indoor air, ambient air, surface water, ground water or Parcels), including without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., as amended, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 et seq., as amended, the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq., as amended, the Clean Water Act, 33 U.S.C. §§ 1251 et seq., as amended, the Clean Air Act, 42 U.S.C. §§ 7401 et seq., as amended, the Toxic Substance Control Act, 15 U.S.C. §§ 2601 et seq., as amended, and any rules and regulations now or hereafter promulgated under any of such acts.
- (l) The Seller is a "United States person" within the meaning of Sections 1445(f)(3) and 7701(a)(30) of the Internal Revenue Code of 1986, as amended.

- (m) Seller (i) has not been designated as a “specifically designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <<http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>> or at any replacement website or other replacement official publication of such list and (ii) is currently in compliance with and will at all times during the term of this Agreement (including any extension thereof) remain in compliance with the regulations of the Office of Foreign Asset Control of the Department of the Treasury and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto. Seller agrees to cooperate with Buyer in providing such additional information and documentation on Seller’s legal or beneficial ownership, policies, procedures and sources of funds as the Buyer reasonably deems necessary or prudent solely to enable it to comply with anti-money laundering laws as now in existence or hereafter amended.
- (n) There is no person who is employed by Seller or any property manager engaged by Seller in the operation, management or maintenance of the Property whose employment will continue after Closing, and Seller is not an entity whose assets are deemed to be “plan assets” under ERISA (as defined below), nor is the Property deemed to be a “plan asset” under ERISA. On and after the Closing, there will be no obligations concerning any pre-Closing employees of Seller, and Seller agrees to terminate any existing property management agreement relating to the Property.
- (o) Each Parcel is a single, separate tax parcel and subdivided lot.
- (q) There are no special assessments, special tax districts or outstanding obligations (contingent or otherwise) to governmental entities (collective “Assessments”) with respect to the Property or any part thereof, nor are there any pending condemnation actions, nor has Seller any knowledge of any Assessments or condemnation actions being contemplated; the Property is separately assessed for real estate tax purposes and not combined with any other property for such purposes.

The representations of Seller set forth in this Section 5.1 will survive for a period of one (1) year after Closing (the “Survival Period”).

5.2 Buyer Representations.

- (a) Buyer (i) is an individual residing in rural Ogle County, Illinois, (ii) has all requisite power and authority to own its properties and assets and to carry on its business as now being conducted; and (iii) has full power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby, including the execution, delivery and performance of each of the documents required to be delivered by Buyer to Buyer pursuant to this Agreement.
- (b) This Agreement has been, and all documents, instruments and agreements required to be delivered by Buyer pursuant to or in connection with this Agreement will be when executed and delivered, duly authorized, executed and delivered by Buyer and constitute the legal, valid and binding obligation of Buyer enforceable in accordance with their respective terms. Neither the execution, delivery or performance of this Agreement, or any document, instrument or agreement required to be delivered by Buyer pursuant hereto, nor the consummation of the transactions contemplated hereby, is prohibited by, or requires Buyer to obtain the consent, approval or authorization of, or notice to or filing or registration with, any person.
- (c) Buyer is not a party to any voluntary or involuntary proceedings under any applicable laws relating to the insolvency, bankruptcy, moratorium or other laws affecting creditors' rights to the extent that such laws may be applicable to Buyer.
- (d) To Buyer's knowledge, there are no lawsuits pending which could affect Buyer's ability to perform its obligations under this Agreement.
- (e) Buyer acknowledges and agrees that Seller makes no representation or warranty as to the truth, accuracy or completeness of the Inspection Materials, that the Inspection Materials have been prepared by third parties unaffiliated with Seller and have been provided to Buyer as a convenience only and that any reliance on or use of such Inspection Materials by Buyer is at the sole risk of Buyer. Without limiting the generality of the foregoing provisions, Buyer acknowledges and agrees that (a) the Inspection Materials are for general informational purposes only, (b) Buyer will not have any right of action against Seller with respect to such Inspection Materials, (c) neither Seller nor any affiliate of Seller will have any liability to Buyer for any inaccuracy

in or omission from such Inspection Materials and (d) Seller does not represent or warrant the truth, accuracy or completeness of such Inspection Materials or any written or verbal statement made by Seller's agents in connection therewith. Buyer acknowledges and agrees that access to the Inspection Materials has been provided to Buyer by Seller merely as an accommodation, and that Buyer will rely upon the Inspection Materials at its own risk.

## **VI TITLE.**

Within seven (7) days after the Effective Date, Seller shall at Seller's expense cause Kenzley Title Group, Inc. writing on behalf of Chicago Title Insurance Company (the "Title Company") to produce and deliver to Buyer a commitment to issue a current form ALTA Extended Coverage (except for survey matters) Owner's Policy of Title Insurance (the "Title Commitment"), together with complete and legible copies (to the extent available from public records) of all exception documents applicable to the Property that are referred to in the Title Commitment (collectively with the Title Commitment, referred to herein as the "Title Documents"). On or before the expiration of seven (7) days after receipt of the Title Commitment, Buyer may advise Seller in writing (the "Initial Objection Notice") of any of any title objections to the Title Documents ("Objections"). Buyer may update the effective date of its Title Commitment and give written notice to Seller (a "Subsequent Objection Notice") of all Objections appearing subsequent to the effective date of its previous Title Commitment. The encumbrances disclosed by the Title Commitment and not objected to by Buyer are referred to as the "Permitted Exceptions." In addition, if Buyer subsequently waives (or is deemed to have waived) an Objection, that encumbrance will be included in the Permitted Exceptions.

Seller will have five (5) business days after receipt of Buyer's Initial Objection Notice or any Subsequent Objection Notice to advise Buyer in writing of the Objections Seller agrees to cure. If Seller fails to respond within the five (5) business day period, then Seller will be deemed to have declined to cure any of the Objections in Buyer's notice. If Seller declines to cure any encumbrances, then Buyer may elect either (i) to terminate this Agreement by written notice to Seller, in which event the Deposit will be immediately refunded to Buyer and all rights and obligations of the parties under this Agreement will be of no further force or effect, except as expressly set forth in this Agreement, or (ii) to accept title subject to the specific encumbrances, and such encumbrances shall be deemed Permitted Exceptions.

Buyer acknowledges and agrees that Seller will have no obligation whatsoever to cure or agree to cure, bond, release, satisfy or otherwise discharge any instrument(s) described in the Title Commitment except that notwithstanding any of the provisions of this Article VI to the contrary, Seller shall be obligated to satisfy and cure (i) any matter Seller expressly agrees to cure in a written notice from Seller or Seller's counsel, (ii) any mortgage or other monetary lien voluntarily entered into by Seller (or any party

claiming by, through or under Seller) and evidencing or securing a definite or ascertainable sum of money regardless of the amount thereof; and (iii) any involuntary monetary liens in definite or ascertainable amounts arising as a result of Seller's actions or omissions or the actions or omissions of any party claiming by, through or under Seller (collectively, "Seller's Cure Obligations").

If Seller fails to cure any of Seller's Cure Obligations on or prior to the Closing Date, (a) Buyer may declare Seller in default and pursue the remedies in Section 8.2 of this Agreement, (b) Buyer may attempt to cure the applicable encumbrance on Seller's behalf, in which event the Purchase Price will be reduced by the amount equal to the actual cost and expense incurred by Buyer in curing the encumbrance, (c) Buyer may accept title to the Property subject to the encumbrance, or (d) any combination of clauses (b) and (c). If Buyer elects to attempt to cure any such encumbrance pursuant to clause (b), Buyer may extend the Closing for a period not to exceed thirty (30) days. If Buyer is not successful in curing the encumbrance, then Buyer may exercise its options under either clauses (a) or (c).

## **VII CLOSING.**

The Closing shall take place in escrow through the office of the Escrow Deposit Agent. At the Closing, Seller shall cause the Title Company to issue to Buyer the Title Policy (as defined below). As used herein, the "Title Policy" shall mean a current form ALTA Owner's Policy of Title Insurance in the full amount of the Purchase Price, dated as of the Closing Date, insuring Buyer's fee simple title to the Parcels, subject only to the Permitted Exceptions, which policy shall (i) provide affirmative insurance with respect to all beneficial easements, and (ii) contain the following endorsements: extended coverage, access, contiguity, zoning, multiple tax parcels, same as survey, owner's comprehensive and, to the extent available, utility facilities, private rights, minerals and other subsurface substances.

## **VIII DEFAULT.**

8.1 Buyer's Default. If Buyer fails, neglects or refuses to perform his obligations under this Agreement, or if there is a breach of any of Buyer's representations or warranties hereunder and such failure or breach shall continue for fourteen (14) days following notice thereof in writing from the Seller (and Seller is not then in material default of its obligations under this Agreement), then Seller may elect to terminate this Agreement by giving written notice to Buyer and Escrow Deposit Agent, whereupon Seller shall receive the Deposit as liquidated damages in consideration for the execution of this Agreement and in full and exclusive settlement of any claims as Seller's sole remedy, it being agreed that in such event Seller's actual damages would be incapable of precise ascertainment and the amount of the Deposit is fair and reasonable as liquidated damages; whereupon Seller, Buyer, and Escrow Deposit Agent shall be relieved of all rights, liabilities and obligations under the Agreement, except with respect to Buyer's indemnification obligation under Section 4.3

of this Agreement and any other obligations hereunder which this Agreement expressly provides shall survive its termination.

8.2 Seller's Default. If the Closing shall not occur by reason of a default of Seller or any breach of any of Seller's representations or warranties hereunder and such default or breach shall continue for ten (10) days following notice thereof in writing from the Buyer, then, the Buyer may, as his sole and exclusive remedies, either (a) compel the Seller to convey the Property to Buyer pursuant to, or otherwise perform under, this Agreement, by a suit for specific performance, or (b) terminate this Agreement and demand return of all Deposit from the Escrow Deposit Agent, and upon the return of same, Buyer, Seller, and Escrow Deposit Agent shall be released and relieved from any further liability or obligation hereunder, except with respect to Buyer's indemnification obligation under Section 4.3 of this Agreement and any other obligations hereunder which this Agreement expressly provides shall survive its termination; provided, however, in the event that Buyer elects to seek specific performance of this Agreement such action must be filed and served on Seller within one hundred twenty (120) days of the scheduled Closing date hereunder. Except as expressly provided above, in no event may either party seek, nor be entitled to receive, any damages (including, without limitation, incidental, consequential, indirect, punitive, special or exemplary damages and/or damages for lost profits, unrealized expectations or other similar claims) from the other party.

8.3 Attorney's Fees. Should it become necessary for either party to this Agreement to seek redress by court proceedings against the other for any default hereunder, or to defend same, then, in that event, the prevailing party shall be entitled to recover all costs of such proceedings, including reasonable attorneys' fees, from the non-prevailing party at all trial and appellate levels. The exclusive venue of any such proceeding shall be in the circuit court for the 15<sup>th</sup> judicial circuit, Ogle County, Illinois.

## **IX BROKERAGE.**

The parties represent unto each other that there are no real estate brokers, salesmen, agents or finders involved in this transaction claiming a commission or fee. Buyer shall indemnify and hold harmless Seller and Seller Related Parties from any claims by any brokers, salesmen, agents or finders claiming by or under Buyer and Seller shall indemnify and hold harmless Buyer from any claims for any commissions by any brokers, salesmen, agents or finders claiming by or under Seller. All indemnifications in this Section shall survive the Closing or sooner termination of the Agreement.

## **X EXPENSES.**

Seller shall pay for the basic premium for the Title Policy (including all search and examination fees related to the issuance of the Title Commitment and any revisions thereto). Buyer shall pay for any premiums for special endorsements included in the

Title Policy. Seller shall pay the transfer taxes due on the Deed. Escrow charges shall be paid equally by Seller and Buyer. Operating expenses, utility charges and Property revenues shall be prorated as of Closing. General real estate taxes of the Property shall be prorated as of 12:01 a.m. on the day of Closing, with Buyer receiving all income and being responsible for all expenses commencing as of such time. Real estate taxes not yet due and payable shall be pro-rated on an accrual basis as of the Closing Date on a per diem basis based on 105% of the most recent ascertainable real estate tax data. At least five (5) days prior to the Closing Date (as hereinafter defined), Seller shall supply Buyer with the necessary information to compute or estimate the prorations, including such supporting evidence as Buyer reasonably requests. Installments of special assessments shall be prorated as of the Closing Date. The aforesaid prorations shall be deemed final. In the case of Assessments for which a lien has been imposed on the Property as of the Closing Date, Seller shall be responsible for all installments, whether currently due or due subsequent to Closing. If any special assessments on the Property are payable in installments, then the installment for the current period shall be prorated (with Buyer assuming the obligation to pay any installments due after the Closing). The provisions of this Section shall survive the Closing.

#### **XI CONDEMNATION OR EMINENT DOMAIN; CASUALTY.**

In the event of the commencement of any condemnation or eminent domain proceedings with respect to all or any part of the Property for any public or quasi-public purpose at any time prior to Closing which, in the reasonable estimation of Buyer, adversely affects the use or operation of the Property (including, without limitation, ingress and/or egress), Buyer shall have the option to elect within forty-five (45) days after Buyer's receipt of written notice from Seller (Seller hereby covenanting to provide notice of the commencement of any such proceedings):

- (a) To cancel this Agreement, by giving written notice of termination to Seller and Escrow Deposit Agent, whereupon the Deposit shall be promptly refunded to Buyer, and Seller, Buyer and Escrow Deposit Agent shall be released and relieved of any liability or obligation hereunder, except with respect to Buyer's indemnification obligation under Section 4.3 of this Agreement and any other provision hereof which expressly survives termination; or
- (b) To close the transaction contemplated by this Agreement, in which event the Purchase Price shall not be reduced, provided, however, that Seller shall assign any condemnation or eminent domain award to Buyer.

If the Property is damaged or destroyed by fire or other casualty prior to the Closing then promptly after Seller becomes aware of the damage or destruction Seller shall notify Buyer thereof (the "Damage Notice"). If the cost of repair is less than

\$25,000.00, as determined by an independent contractor or adjuster selected by Seller and reasonably acceptable to Buyer, and repairs will, in the reasonable estimation of such independent contractor, take less than sixty (60) days to effectuate, Closing will proceed in accordance with the terms of this Agreement for the full Purchase Price, notwithstanding the damage or destruction; provided, however, that Seller will pay or assign to Buyer at Closing all insurance proceeds, if any, resulting from such casualty damage, and credit to Buyer any applicable deductible amounts under the insurance policies pursuant to which the insurance proceeds are paid or assigned. If the cost of repair is equal to or greater than \$25,000.00, as estimated as aforesaid, or if repair will, in the reasonable estimation of such independent contractor, take sixty (60) days or longer to effectuate, Buyer may elect to terminate this Agreement by delivering written notice to Seller no later than 5:00 p.m., CDT, ten (10) days after the date of the Damage Notice (and Closing will be extended as needed to provide for such 10-day period), in which event the Deposit will be refunded to Buyer. If Buyer does not terminate this Agreement within such 10-day period, Closing will proceed in accordance with the terms of this Agreement for the full Purchase Price, notwithstanding the damage or destruction and Seller will pay or assign to Buyer at Closing all insurance proceeds, if any, resulting from the casualty and credit to Buyer any applicable deductible amounts under the insurance policies pursuant to which the insurance proceeds are paid or assigned. Seller shall not enter into any settlement with its insurance carrier without first obtaining Buyer's consent thereto, which consent shall not be unreasonably withheld, conditioned or delayed.

## **XII ASSIGNMENT.**

This Agreement shall be binding upon and inure to the benefit of Buyer and Seller and their respective successors and assigns. Notwithstanding the foregoing, Buyer may assign his rights under this Agreement, whether in whole or in part, to any third party (an "Assignee"), without the consent of Seller prior to Closing. Any such assignment must be pursuant to an assignment of this Agreement in writing, which must be executed by Buyer as assignor and the Assignee, and in which the Assignee accepts such assignment and assumes and agrees to pay and perform all obligations of the assignor hereunder, and in which Buyer agrees that such assignment shall not in any way release assignor from any liabilities or obligations hereunder.

## **XIII ESCROW DEPOSIT AGENT.**

13.1 Limitation of Liability. The Escrow Deposit Agent referred to in this Agreement has agreed to act as escrow agent with respect to the Deposit for the convenience of the parties for a customary escrow fee. With respect to such escrow service (only), the Escrow Deposit Agent shall not be liable:

- (a) to any of the parties for any act or omission to act except for Escrow Deposit Agent's own negligence or willful misconduct;

- (b) for any loss or impairment of funds that have been deposited in escrow while those funds are in the course of collection, or while those funds are on deposit in a financial institution insured by the FDIC, if such loss or impairment results from the failure, insolvency, or suspension of a financial institution;
- (c) for the default, error, action or omission of Seller or Buyer.

13.2 Interpleader. In connection with such escrow services (only), the Escrow Deposit Agent shall be entitled to rely on any document or paper received by it, believed by such Escrow Deposit Agent, in good faith, to be bona fide and genuine. Further, in the event of any dispute as to the disposition of the Deposit or any other monies or documents held in escrow, the Escrow Deposit Agent may, if it so elects, interplead the parties by filing an interpleader action in the Circuit Court in and for Ogle County, Illinois (to the jurisdiction of which both parties do hereby consent), and to pay into the registry of the court the Deposit and any other monies or documents held in escrow including all interest earned thereon, if any, whereupon Escrow Deposit Agent shall be relieved and released from any further liability as escrow agent (only) hereunder.

#### **XIV BINDING AGREEMENT, INUREMENT, PLACE OF CONTRACT, AMENDMENT.**

This Agreement, when duly executed by all parties, shall be binding upon, and shall inure to the benefit of, the parties hereto and their heirs, executors, successors, and permitted assigns. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois, and this Agreement shall not be construed more strictly against one party than the other, merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both the Buyer and the Seller have contributed substantially and materially to the preparation of this Agreement. This Agreement contains the sole and only agreement between the parties with respect to the subject matter hereof, and all prior discussions, writings, proposals, letters of intent, oral representations, and like are merged herein.

#### **XV DOCUMENTS OR THINGS TO BE DELIVERED AT CLOSING**

##### **15.1 Seller shall deliver at the Closing:**

- (a) A Special Warranty Deed for the Property, subject only to the Permitted Exceptions (the "Deed") in form reasonably satisfactory to counsel for Buyer, together with any applicable transfer tax forms, affidavits and the like.
- (b) To the extent that the legal description for either Parcel is different from the legal description in the chain of title as reflected on the Title Commitment, a Quitclaim Deed for the legal description

attached to the Survey (the "Quitclaim Deed") in form reasonably satisfactory to counsel for Buyer.

- (c) A customary owner's affidavit in order to delete the so-called "standard exceptions" in an ALTA title policy.
- (d) A Title "GAP" Affidavit in the usual and customary form, certifying, among other things, that there are no parties in possession and no mechanic's liens affecting the Property, except as expressly stated therein, and that no person is entitled to maintain a mechanic's lien against the Property.
- (e) The Non Foreign Affidavit of the Seller asserting that Seller is not a foreign person or foreign entity within the meaning of Section 1445 (F) of the Internal Revenue Code.
- (f) The information required for the Title Company to file IRS Form 1099 S.
- (g) A bill of sale in a form reasonably satisfactory to counsel for Buyer.
- (h) Such other documents as Buyer, the Title Company or the issuer of the title policy pursuant to the Title Commitment may reasonably require to evidence Seller's existence and authority to enter into and consummate the transactions contemplated herein.
- (i) All keys and lock combinations for the Property and all leasing and other files relating to the Property and all other licenses, certificates, permits, plans, books, records and reports and other materials that comprise the Intangible Property, if any, to the extent such items are in Seller's actual possession or control;

15.2 By the Buyer:

- (a) At Closing, the Buyer shall deliver to the Seller the Purchase Price (less the Deposit, and subject to adjustments and prorations as provided herein) by immediately usable wired funds or the equivalent thereof.
- (b) Such other documents as Seller, the Title Company or the issuer of the Title Policy may reasonably require to evidence Buyer's existence and authority to enter into and consummate the transactions contemplated herein.

### 15.3 Closing Statement:

The parties shall mutually execute and deliver each to the other, at Closing, a closing statement in customary form, showing the Purchase Price, the Deposit, the several prorations and adjustments required hereby, and the cash to close with respect to the Property. Each party agrees to execute and deliver to the other such other and further documents as may be reasonably required by counsel for the parties, to carry into effect the purposes and intents of this Agreement, or which is otherwise required by the terms and conditions of this Agreement.

### **XVI CONFIDENTIALITY.**

Buyer covenants and agrees, as a material inducement to Seller to enter into this Agreement, that prior to Closing, except as permitted below and as may be required by law or by any governmental employee or official, all information disclosed to Buyer with respect to the Property and/or the transactions contemplated herein, including, without limitation, the Inspection Materials and any internal ongoing action and administration, technical and non-technical information and other trade and business matters relating to the Property and/or this Agreement (collectively, the "Confidential Information") is confidential, and Buyer agrees for itself, its agents, contractors, employees, accountants, attorneys, engineers, lenders and equity investors to keep any such Confidential Information strictly confidential and not to disclose or permit the disclosure, without Seller's consent, of any such Confidential Information to any third party other than their respective agents, contractors, employees, accountants, attorneys, engineers, lenders and equity investors who shall be advised of the confidentiality of such information. The obligations hereunder will survive termination, but shall not survive Closing.

### **XVII RETURN OF DUE DILIGENCE DOCUMENTS.**

In the event this Agreement is terminated for any reason other than as a result of the default of Seller, and provided Seller executes a non-reliance letter in form and scope reasonably acceptable to Buyer and Seller reimburses Buyer for the cost of such reports, Buyer shall provide to Seller copies of any due diligence reports obtained by Buyer regarding the physical or environmental condition of the Property and prepared by third parties for Buyer's use.

### **XVIII NOTICES.**

Any notice to be given hereunder shall be in writing and shall be: (i) hand delivered, or (ii) sent by a nationally recognized overnight courier, or (iii) sent by registered or certified mail, postage prepaid to the addresses listed below or (iv) transmitted by electronic mail (.pdf file), with subsequent delivery pursuant to subsection (i) or (ii). All notices shall be sent as follows:

If to Seller:

City of Rochelle  
420 North 6th St.  
P.O. Box 601  
Rochelle, IL 61068  
PH: 815-562-6161  
E-mail address: info@rochelleil.us

With a copy to:

Alan H. Cooper  
Cooper & Lyons  
P.O. Box 194  
233 E. Illinois Route 38, Suite 202  
Rochelle, IL 61068-0194  
PH: 815-562-2677  
E-mail address: alan@cooperlyonslaw.com

If to Buyer:

Richard R. Kennay  
8991 Prairie Road  
Ashton, IL 61006  
PH: 815-751-4381  
E-mail address: Rich.Kennay@Pioneer.com

With a copy to:

Gary R. Gehlbach  
Ehrmann Gehlbach Badger Lee & Considine, LLC  
215 E. First Street, Ste. 100, P.O. Box 447  
Dixon, IL 61021-0447  
E-mail address: gehlbach@egblc.com

If to Escrow Deposit Agent:

Kenzley Title Group, Inc.  
119 S. Fourth St.  
Oregon, IL 61061  
Attn: Kevin Rudy  
E-mail address: kevinr@kenzleytitlegroup.com

For the purpose of determining the timeliness of any notice required herewith, the notice shall be deemed to have been received on the earlier of: (i) date actually delivered or transmitted successfully by electronic mail to the address specified above if such transmission was sent prior to 5:00 pm Central Daylight Time; (ii) the date of actual receipt of the notice by a representative of the recipient at the address specified above; or (iii) the date that delivery was attempted at the address specified above

during normal business hours of the recipient, but with delivery having been refused or not accepted.

**XIX HEADINGS.**

The headings in paragraph titles utilized throughout this Agreement have been placed herein as a matter of convenience only, and the same shall not be construed in derogation of the language of the remaining provisions of this Agreement.

**XX TIME.**

The parties hereto hereby agree that time shall be of the essence with respect to the performance of this Agreement; however, if the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal holiday under the laws of the United States or the State of Illinois, then, in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

**XXI AMENDMENT AND WAIVER.**

This Agreement may not be modified or amended, except by an agreement in writing signed by Seller and Buyer. The parties may waive any of the conditions contained herein or any of the obligations of the other party hereunder, but any such waiver shall be effective only if in writing and signed by the party waiving such condition or obligation.

**XXII MULTIPLE COUNTERPARTS.**

This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

**XXIII CONDITIONS TO BUYER'S OBLIGATION TO CLOSE.**

Buyer's obligation to purchase the Property is expressly conditioned upon each of the following:

- (a) Performance by Seller. Seller's performance in all material respects of the obligations, covenants and deliveries required of Seller under this Agreement.
- (b) Seller's Deliveries. Seller's delivery of the documents set forth in Article XV hereof:

- (c) Seller's Representations and Warranties. The representations and warranties of Seller set forth in this Agreement being true and correct in all material respects as if made on the date of Closing.
- (d) Buyer's Contingencies. All of Buyer's Contingencies being satisfied.
- (e) Title Insurance. Issuance of an American Parcels Title Association owner's policy of title insurance, with liability in the amount of the Purchase Price, insuring that fee title vests in the Buyer subject only to the Permitted Exceptions.

In the event each of the foregoing is not satisfied (or waived in writing) by Buyer as of Closing, Buyer may terminate this Agreement by written notice to Seller, in which event the Deposit shall be returned to Buyer, and neither party shall have any further obligations hereunder except for those expressly surviving the termination of this Agreement.

#### **XXIV SELLER'S MAINTENANCE OF THE PROPERTY.**

From the Effective Date through Closing, or earlier termination of this Agreement, Seller will continue to maintain and insure the Property in a manner substantially consistent with its standards of maintenance and insurance prevailing immediately prior to the Effective Date. In no event shall Seller enter into any lease or occupancy agreement with respect to the Property, or any, service contract or other agreement without the express written consent of Buyer.

*[SIGNATURES COMMENCE ON FOLLOWING PAGE]*

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be properly executed on the dates set forth below.

**SELLER:**  
**CITY OF ROCHELLE, an Illinois municipal corporation**

By: \_\_\_\_\_  
David S. Plyman, City Manager

**ATTEST:**

\_\_\_\_\_  
Bruce McKinney, City Clerk

**BUYER:**

\_\_\_\_\_  
Richard R. Kennay

**JOINDER OF ESCROW DEPOSIT AGENT**

Kenzley Title Group, Inc. writing on behalf of Chicago Title Insurance Company (the "Title Company") hereby joins in the execution and delivery of the foregoing Agreement for Sale and Purchase (the "Agreement") for the sole purpose of acknowledging, accepting and agreeing to abide and be bound by the provisions of the Agreement which relate to the Deposit.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Joinder as of the date specified below.

**KENZLEY TITLE GROUP, INC.**

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

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**EXHIBIT "A"**

**List of Service Contracts**

**None**

**EXHIBIT B**  
**(Development Agreement without Exhibits)**

**DEVELOPMENT AGREEMENT  
(HUB THEATER AND LINCOLN SCHOOL)**

This Development Agreement (Agreement) entered into this \_\_\_ day of June, 2016 between the CITY OF ROCHELLE, an Illinois municipal corporation (City), RICHARD R. KENNAY, an individual ("Kennay"), or his assignee (such assignee to be a "Permitted Assignee" as defined herein) (Developer):

**WITNESSETH**

**THAT WHEREAS**, the Developer is, or expects to be, the Developer of two (2) parcels of land located within the corporate boundaries of the City, as follows: (1) the Hub Theater property located at 416 Lincoln Highway ("Theater Property"); and (2) the Old Lincoln School property located at 108 South Main Street ("School Property"), the legal descriptions of which are shown on **Exhibit A** attached hereto; and

**WHEREAS**, the Developer intends to develop the Theater Property as a distillery and to develop the School Property as a warehouse/storeroom for equipment and/or inventory used in the business of the distillery, provided that the City offers Developer certain economic incentives to do so; and

**WHEREAS**, the City deems it to be in the best interests of the City for the Theater Property and the School Property to be developed in the manner intended by the Developer, and for the City to offer certain economic incentives to the Developer to do so; and

**WHEREAS**, the Parties have entered into this Agreement for the purpose of memorializing the agreements reached by the Parties with respect to the development, and the economic incentives offered by the City to the Developer for the development; and

**WHEREAS**, contemporaneously with the execution of this Agreement the parties have entered into an Agreement for Sale and Purchase of the Theater Property and the School Property on terms set forth therein ("Purchase Agreement");

**NOW, THEREFORE**, in consideration of the mutual agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. Purchase and Sale of the Theater Property and the School Property.**  
The Developer will purchase from the City, and the City will sell to the

Developer, the Theater Property and the School Property, for the consideration and on the terms set forth in the Purchase Agreement of even date herewith.

**2. Development of Property.** Developer agrees to develop the Theater Property as a distillery and the School Property as a warehouse/storeroom for equipment and/or inventory used in the business of the distillery, with development of each property commencing within thirty (30) days of the conveyance of that property to the Developer, and with development being completed on or before two (2) years from the date of the conveyance of that property to the Developer. The Development shall comply in all respects with the requirements of the Rochelle Municipal Code, except as expressly set forth in this Agreement, unless a variance is granted following the procedures set forth in the Rochelle Municipal Code.

**3. Rezoning.** The City agrees to take all necessary actions, prior to closing under the Purchase Agreement: (i) to rezone the Lincoln School Property to I-1 (light industry); (ii) to amend the zoning provisions of the Rochelle Municipal Code to allow for the intended use of the School Property by Developer as a permitted or special use under the I-1 zoning district; (iii) to grant a special use permit to Developer for such use; (iv) to amend the zoning provisions of the Rochelle Municipal Code to allow for the intended use of the Theater Property by Developer as a special use under the zoning provisions of the Rochelle Municipal Code; and (v) to grant a special use permit to Developer for such use. Developer agrees to cooperate in such actions by the City, to the extent reasonably requested by the City.

**4. Economic Incentives.** In consideration of Developer's development of the Property in conformity with the terms of this Agreement, the City shall provide the following economic incentives to Developer and Developer for the Development:

(a) Economic Development Grants: The City will provide two (2) economic development grants to the Developer, one in the amount of 80% of the appraised value of the Theater Property, and the other in the amount of 80% of the appraised value of the School Property, at the closing of the Developer's purchase of each of the properties for a price equal to the amount of the economic development grant for that property.

(b) Real Estate Tax Rebate: The City will provide to Developer a rebate of 100% the real estate taxes attributable to the increase in the equalized assessed value of each of the properties over the equalized assessed values for the tax year 2016, for a period of five (5) consecutive tax years, commencing with the real estate taxes for the year 2017, payable in 2018.

5. **Term.** This Agreement shall terminate on December 31, 2023.

6. **Entire Agreement; Non-Assignability; Severability.** This Agreement, and the Purchase Agreement represent the entire agreement of the parties with respect to the subject matter hereof, and supersede and discharge all prior oral or written, or contemporaneous oral, agreements. To the extent not inconsistent with the terms of this Agreement, the terms of the Purchase Agreement are incorporated herein. Except as set forth below, this Agreement may not be assigned by either party without the prior written consent of the other party. However, prior to the closing under the Purchase Agreement, Kennay may assign all of his rights and obligations under this Development Agreement and the Purchase Agreement to a limited liability company of which he is, or he and his wife are, the sole members (a "Permitted Assignee"). If any portion of this Agreement should for any reason be declared to be invalid or illegal by a court of competent jurisdiction, the remaining portions of this Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, the Parties have executed and delivered this Agreement as of the date set forth above.

CITY OF ROCHELLE, an Illinois  
municipal corporation

\_\_\_\_\_  
RICHARD R. KENNAY

By: \_\_\_\_\_  
DAVID S. PLYMAN  
City Manager

Attest: \_\_\_\_\_  
BRUCE MCKINNEY  
City Clerk

ALAN H. COOPER  
Cooper & Lyons  
233 East Route 38, Suite 202  
P. O. Box 194  
Rochelle, IL 61068  
(815) 562-2677

