

## EASEMENT AGREEMENT FOR PIPING

This Easement Agreement for Balcony is made and entered into on this ~~12<sup>th</sup>~~     <sup>th</sup> day of ~~December~~October, 2018, by the **CITY OF ROCHELLE**, an Illinois municipality, Grantor, in favor of **KENNAY FARMS DISTILLING, LLC**, an Illinois limited liability company formerly known as Box Office Distillery, Grantee.

Grantor, in consideration of one (\$1.00) dollar and other good and valuable consideration the receipt of which is acknowledged by Grantor, grants to Grantee an air rights easement for the installation, construction and maintenance of overhead piping (the “piping”) on the west side of the building commonly known as 416 Lincoln Highway, Rochelle, IL 61068 (the “building”), the legal description of the building being as follows:

Lot 3 in Block 7 in the Original Town of Land, now the City of Rochelle, according to the Plat thereof recorded in Book D of Plat, page 2, as Document No. 9921, in the Township of Flagg, County of Ogle, State of Illinois, under PIN 24-24-339-018,

The legal description of the air rights for the piping being as follows:

Part of the Alley through the middle of Block 7 in the Original Town of Lane, now called the City of Rochelle, according to the Plat thereof recorded in Book D of Plats page 2 as Document No. 9921, situated in the Township of Flagg, the County of Ogle and State of Illinois, described as follows; Beginning at a point on the West line of said Alley, said point being North 01 degrees 33 minutes 40 seconds West (assumed bearing) a distance of 46.00 feet from the Southeast corner of Lot 8 in said Block 7; thence North 01 degrees 33 minutes 40 seconds West on and along said West line of the Alley, a distance of 14.00 feet; thence North 88 degrees 26 minutes 20 seconds East a distance of 16.50 feet to the West line of Lot 3 in said Block 7; thence South 01 degrees 33 minutes 40 seconds East on and along said West line of Lot 3, a distance of 14.00 feet; thence South 88 degrees 26 minutes 20 seconds West a distance of 16.50 feet to the Point of Beginning, at an elevation from 14 feet above the existing asphalt alley surface lying below the area herebefore described, upwards to a height of 2 feet.

This easement is granted to Grantee for a period of thirty (30) years with an option for two ten (10) year extensions provided that Grantee is not in breach of any of its obligations under this Agreement and maintains the piping in accordance with the applicable City Codes and all other applicable building code regulations. If such a breach occurs, Grantee has thirty (30) days to cure such breach and any failure to cure such breach will result in the revocation of this easement. Further, this easement shall be deemed revoked if Grantee discontinues use of the piping for more than one (1) year. This easement shall inure to the benefit of Grantee's successors and assigns in the building, subject to the written consent of the City.

Grantee shall be solely responsible for the installation, construction and maintenance of the piping, and Grantor shall have no responsibility with regard to such installation, construction or maintenance. Further, Grantee agrees to protect, defend, indemnify and hold Grantor harmless from all claims, actions, demands, liability, costs (including court costs) and expenses (including attorney fees) related to the installation, construction, maintenance, or use of the piping.

Except to the extent caused by the Grantor's negligence or willful and wanton conduct, Grantee, at its sole cost and expense, shall maintain and repair the improvements to the piping and otherwise taking the reasonable, necessary and appropriate measures to keep the piping in a clean, attractive, safe, unobstructed, good and useable condition. The piping will be constructed of stainless steel with steel corrugated supports. The Grantor grants Grantee and its agents and contractors access to, the right to enter, and the non-exclusive control of the alley as necessary to install the piping.

To the fullest extent permitted by law, Grantee shall defend, indemnify and hold the Grantor harmless from and against any and all claims, causes of action, liability, loss, damage, costs and expenses (including reasonable attorneys' fees) for injury to person or death or property damage arising out of or resulting from (i) Grantee's use of the easement area; (ii) any failure by Grantee to perform any maintenance obligation required herein; or (iii) arising out of or resulting from of Grantee's breach of any provision of this Easement Agreement.

~~Grantee agrees to maintain public liability and property damage insurance with an insurance company qualified and licensed to do business in Illinois with limits of not less than two million dollars (\$2,000,000.00) for bodily injury or death to any one person, four million dollars (\$4,000,000.00) for bodily injury or death to more than one person, and five hundred thousand dollars (\$500,000.00) for damage to the piping. The Grantor will be named as an additional insured on Grantee's policies and shall be provided thirty (30) days' advance notice prior to the cancellation of any such policy. Certificates of such insurance shall be filed with the City clerk within 30 days of the approval of this Easement Agreement by the City Council.~~

Grantee will at its own expense comply with all federal, state and local laws, ordinances of the Grantor and the State of Illinois, and rules and regulations now or later in force which may be applicable to its operations in the City. Grantee will obtain and pay for all permits, licenses, variations, and other authorizations which may be required for the improvements and its activities contemplated by this Easement Agreement.

~~Grantee shall provide a performance bond equal to 125% of the cost of the improvements to the piping and 5 years' of the estimated costs of the maintenance of the piping, including the costs for potential closure of the piping, prior to the issuance of building permits for the improvements to the Subject Property.~~

The piping is to be constructed of either metal or other impervious composition to ensure that no debris or liquid can fall onto pedestrians below the piping.

In witness whereof, Grantor and Grantee have executed this Easement Agreement for Overhead Piping on the date written above.

GRANTOR:

**CITY OF ROCHELLE**, an Illinois municipality

By: \_\_\_\_\_  
**Jeff Fiegenschuh**, City Manager

ATTEST:

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

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF OGLE        )

The undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Jeff Fiegenschuh**, City Manager, and ~~**Bruce McKinney**~~**Sue Messer**, City Clerk, personally known to me to be the same persons whose names are subscribed to the foregoing instrument appeared before me this day in person and acknowledged that they signed and delivered the said Easement Agreement for Overhead Piping in their capacities as City Manager and City Clerk of the City of Rochelle, respectively.

GIVEN under my hand and notarial seal this ~~12<sup>th</sup>~~ -     <sup>th</sup> day of ~~December~~October, 2018.

\_\_\_\_\_  
Notary Public

GRANTEE:

**KENAY FARMS DISTILLING, LLC**, an Illinois limited liability company

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

**Richard R. Kennay**, Member  
and Authorized agent

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF OGLE        )

The undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Richard R. Kennay**, personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said Easement Agreement for Overhead Piping as member and authorized agent for **KENNAY FARMS DISTILLING, LLC**.

|        GIVEN under my hand and notarial seal this ~~12<sup>th</sup>~~ --<sup>th</sup> day of ~~December~~October, 2018.

\_\_\_\_\_  
Notary Public

Under penalty of perjury, the undersigned certifies that this transaction is exempt from the Illinois Plat Act (765 ILCS 205/1 et seq.) because:

- a. X the owner is not subdividing the land into 2 or more parts; or
- b. \_\_\_ exemption no. \_\_\_ of § 1 of the Act applies.

\_\_\_\_\_  
Date                      Owner or Representative

This transaction is exempt under provisions of § 31-45 (e) of the Real Estate Transfer Tax Law. (35 ILCS 200/31-1 et seq.)

\_\_\_\_\_  
Date                      Buyer, Seller or Representative

Prepared by and Return to:  
  
Gary R. Gehlbach

Taxes to:  
  
No Change

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