

## REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT is entered into this \_\_\_th day of January, 2019, by and between CITY OF ROCHELLE, an Illinois municipal corporation (“City”), and KENNAY FARMS DISTILLING, LLC, an Illinois limited liability company (“Developer”).

### PREAMBLES

WHEREAS, in the Redevelopment Project Area (as defined below), City has identified a need for the location and redevelopment of industrial property; and

WHEREAS, pursuant to the Tax Increment Allocation Redevelopment Act of the State of Illinois, 65 ILCS 5/11-74.4-1 et seq., as from time to time amended (the “TIF Act”), the Mayor and City Council of City (collectively, the “Corporate Authorities”) are empowered to undertake the redevelopment of a designated area within its municipal limits in which existing conditions permit such area to be classified as a “conservation area” as defined in the TIF Act; and

WHEREAS, pursuant to its powers and in accordance with the requirements of the TIF Act, the Corporate Authorities, pursuant to Ordinance 16-4509, adopted by the Corporate Authorities on January 11, 2016, approved a redevelopment plan and project, entitled “Redevelopment Plan and Program,” as prepared by Teska Associates, Inc. (the “Redevelopment Plan”), for the City of Rochelle Tax Increment Financing District Downtown & Southern Gateway (the “Redevelopment Project Area”), which Redevelopment Plan sets forth a plan for the development, redevelopment and revitalization of the Redevelopment Project Area; and

WHEREAS, also pursuant to its powers and in accordance with the requirements of the TIF Act, the Corporate Authorities, pursuant to Ordinances 16-4510 and 16-4511, respectively, adopted by the Corporate Authorities on January 11, 2-16, designated the Redevelopment Project Area as a “redevelopment project area” (as that term is defined under the TIF Act) and approved tax increment allocation financing for the purpose of implementing the Redevelopment Plan for the Redevelopment Project Area; and

WHEREAS, the Corporate Authorities have determined that the blighting factors described in the Redevelopment Plan are detrimental to the public and impair development and growth in the Redevelopment Project Area, with the result that it is necessary to incur extraordinary costs in order to develop the Redevelopment Project Area; and

WHEREAS, the blighting factors in the Redevelopment Project Area will continue to impair growth and development but for the use of tax increment allocation financing to pay Redevelopment Project Costs (as defined in Section 4(a) of this Agreement) which necessarily must be incurred to implement the aforesaid program of redevelopment; and

WHEREAS, the existence of the blighting factors in the Redevelopment Project Area and the extraordinary costs necessary for redevelopment have prevented private developers from developing, redeveloping and revitalizing the Redevelopment Project Area; and

WHEREAS, Developer is the owner of certain real property located within the corporate limits of City consisting of the following four (4) separate tax parcels (a map illustrating the location of the property is attached hereto as Exhibit A) (the “Subject Property”): PINs 24-24-339-003, 24-24-339-024, 24-24-339-025 and 24-24-339-001 (collectively, the Developer’s Rickhouse site).

WHEREAS, in furtherance of the redevelopment of the Subject Property, Developer proposes to complete the development of the Developer’s Rickhouse site, which is the bottling and barrel storage facility for the Developer’s distillery located on the former HUB Theatre site, including but not limited to those costs and improvements set forth on Exhibit B attached hereto and incorporated herein (the “Project”), all in accordance with the Legal Requirements (as hereafter defined); and

WHEREAS, the cost of the Project is anticipated to be approximately \$1,000,000; and

WHEREAS, also as set forth in Exhibit B, Developer has advised City that, but for the financial assistance of City, Developer is unable to complete the Project; and

WHEREAS, the Project is consistent with the Redevelopment Plan and is located within the Redevelopment Project Area; and

WHEREAS, City is authorized under the TIF Act to enter into redevelopment agreements and to reimburse developers who incur redevelopment project costs authorized by a redevelopment agreement; and

WHEREAS, in order to induce Developer to undertake the Project, the Corporate Authorities have determined that it is in the best interests of City and the health, safety, morals and welfare of the residents and taxpayers of City to reimburse Developer for a portion of the Redevelopment Project Costs incurred in furtherance of the Project as permitted by the TIF Act; and

WHEREAS, the Corporate Authorities have determined that City’s provision of economic development incentives to Developer and Developer’s undertaking of the Project pursuant to this Agreement are in the best interests of City and the health, safety, morals and welfare of its residents and taxpayers, and will be in furtherance of the Redevelopment Plan.

NOW, THEREFORE, the parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

Section 1. Incorporation of Recitals. The recitals contained in the preambles to this Agreement are true and correct and are hereby incorporated into this Agreement as though they were fully set forth in this Section 1.

Section 2. Term. Unless earlier terminated pursuant to Section 14, the term of this Agreement shall commence on the date of its execution and end on the latter of (i) December 31, 2038, and (ii) the date upon which the Redevelopment Plan terminates pursuant to the TIF Act.

### Section 3. The Project.

(a) The Project consists of Developer's redevelopment of the Subject Property as described in the recitals contained in the preambles to this Agreement.

(b) Developer shall undertake the Project in conformance with all applicable federal, state and local laws, regulations, codes and ordinances (collectively referred to as "the Legal Requirements"). Developer shall complete the Project on or before December 31, 2020. Completion of the Project shall be evidenced by City's inspection of the Subject Property and confirmation that all activities described in the building permit for the Project and other required City approvals, if any, have been completed in a good and workmanlike manner in accordance with the Legal Requirements. City may inspect the Project at all reasonable times to ensure compliance with this Agreement. If Developer does not complete the Project on or before December 31, 2020, then Developer shall not be entitled to any reimbursement for any work performed on the Project pursuant to this Agreement.

(c) City and Developer shall use reasonable efforts to cooperate with each other in connection with all permits and other approvals required for the Project. City agrees to expeditiously process, consider and act on all applications for City approvals as may be necessary, provided such applications are consistent with the Project and in compliance with all Legal Requirements.

### Section 4. Payments.

(a) As long as no event described in Section 13 of this Agreement shall have occurred and be continuing, and Developer has completed the Project as described in Section 3(b) hereof, City shall reimburse Developer for all Redevelopment Project Costs incurred by Developer in connection with the Project which have been approved by City pursuant to Section 4(d). Notwithstanding the foregoing, the total amount reimbursed to Developer shall not exceed \$1,000,000.00. For purposes of this Agreement, "Redevelopment Project Costs" shall mean and include all costs defined as "redevelopment project costs" in Section 11-74.4-3(q) of the TIF Act.

(b) In connection with the establishment and ongoing administration of the Redevelopment Project Area, City has established a special tax allocation fund pursuant to the requirements of the TIF Act ("the STAF") into which City shall deposit all Incremental Taxes (defined below) generated in respect of the Subject Property each year during the term of this Agreement promptly upon receipt of the same from Ogle County. "Incremental Taxes" shall mean the amount of *ad valorem* taxes, if any, paid in respect of the Subject Property and its improvements which is attributable to the increase in the equalized assessed value of the Subject Property and its improvements over the initial equalized assessed value of the Subject Property, calculated as set forth in the TIF Act.

(c) City shall further establish, upon execution of this Agreement, a segregated special subaccount of the STAF designated as "the Kennay Farms Distilling Subaccount" into which City shall deposit all Net Increment generated only in respect of the Subject Property each

year during the term of this Agreement promptly upon receipt of Incremental Taxes from Ogle County. "Net Increment" shall mean Incremental Taxes in respect of the Subject Property each year less amounts retained by City constituting the City's Share. The "City's Share" shall mean fifty percent (50%) of the Incremental Taxes in respect of the Subject Property each year. In order to avoid any doubt Kennay Farms Distilling, LLC shall not be reimbursed from the increment generated by any other parcel located in the TIF district and any increase in the EAV of those parcels. No payments shall be made pursuant to this Agreement for any remaining balances upon the closure and/or expiration of the TIF.

(d) Net Increment deposited from time to time in the Kennay Farms Distilling Subaccount in respect of the Subject Property shall be used to pay or reimburse Developer for Redevelopment Project Costs as hereafter set forth. On December 15th of each year during the term of this Agreement (or, if later, the date which is thirty (30) days following the date which City receives the final installment of annual real estate taxes from Ogle County ) (the "STAF Allocation Date"), Net Increment credited to the Kennay Farms Distilling Subaccount during the period from the immediately preceding STAF Allocation Date (or the date of this Agreement in the case of the period from the date of this Agreement to the first STAF Allocation Date) to, but not including, the current STAF Allocation Date shall be used annually for the following purposes and in the following priority:

(i) To the extent there are monies available in the Kennay Farms Distilling Subaccount, such monies shall be paid to Developer to reimburse it for Redevelopment Project Costs in accordance with Section 4(e) hereof until such times as Developer has been reimbursed a maximum of \$1,000,000.00; and

(ii) Following (i) above, to the extent there are any monies remaining in the Kennay Farms Distilling Subaccount after Kennay Farms Distilling has been reimbursed a maximum of \$1,000,000.00, such monies shall be transferred to the STAF and used in the discretion of City.

**CITY'S OBLIGATION TO MAKE THE PAYMENTS DESCRIBED ABOVE IS A LIMITED OBLIGATION PAYABLE SOLELY FROM NET INCREMENT DEPOSITED IN THE KENNA FARM DISTILLING SUBACCOUNT FROM TIME TO TIME AND SHALL NOT BE A GENERAL OBLIGATION OF CITY OR SECURED BY THE FULL FAITH AND CREDIT OF CITY.**

(e) To establish a right of reimbursement for a specific Redevelopment Project Cost under this Agreement, Developer shall submit to the City Manager or his designee a written statement in the form attached to this Agreement as Exhibit C (a "Request for Reimbursement") setting forth the amount of reimbursement and the specific Redevelopment Project Costs for which reimbursement is sought. Each Request for Reimbursement shall be accompanied by such bills, paid receipts, contracts, invoices, lien waivers or other evidence as City shall reasonably require to evidence the right of Developer to payment or reimbursement under this Agreement. All receipts shall contain the date of service, type of service, location of service, amount paid, name/address/telephone number of the service provider and other information as necessary to establish the identity of the provider, type of service and amount invoiced/paid. The City

Manager or his designee shall have thirty (30) days after receipt of any Request for Reimbursement from Developer to approve or disapprove of any of the expenditures for which reimbursement is sought. If said Request for Reimbursement is not approved, the City Manager or his designee shall provide to Developer a written explanation setting forth the reason or reasons for the denial. Provided, however, the only reasons for disapproval of any expenditure for which reimbursement is sought shall be that such expenditure was not incurred by Developer in accordance with the Legal Requirements or the provisions of this Agreement. Reimbursement of Redevelopment Project Costs shall be made annually on each STAF Allocation Date only to the extent money is available in the Kennay Farms Distilling Subaccount. To the extent money in the Kennay Farms Distilling Subaccount is insufficient to reimburse Developer for Redevelopment Project Costs, such Redevelopment Project Costs shall be reimbursed on the next succeeding STAF Allocation Date on which there are available monies in the Subaccount. To the extent money in the Kennay Farms Distilling Subaccount exceeds the amount necessary to reimburse Developer for Redevelopment Project Costs on any STAF Allocation Date, such monies shall be transferred to the STAF and used in the discretion of City pursuant to Section 4(d)(ii) of this Agreement.

(f) The parties acknowledge that the determination of Redevelopment Project Costs and qualification for reimbursement under this Agreement are subject to the TIF Act, all amendments to the TIF Act after the date of this Agreement, and administrative rules and judicial interpretations rendered during the term of this Agreement. City has no obligation to Developer to attempt to modify said rules or decisions.

Section 5. Enterprise Zone. City hereby acknowledges that the Subject Property is situated in the Lee/Ogle Enterprise Zone as approved and certified by the State of Illinois. Developer shall be eligible to receive any generally available benefits that are made through the Enterprise Zone program so long as such enterprise zone is in existence, with the exception of real estate tax abatements.

Section 6. Verification of Tax Increment. Not less than thirty (30) days prior to each STAF Allocation Date, Developer shall provide the City Manager with a preliminary calculation of Incremental Taxes generated by the Subject Property for each year of this Agreement. Developer shall also provide City such supporting information, including paid real estate tax bills and documentation of the equalized assessed valuation of the Project, as is reasonably necessary to verify the calculation of Incremental Taxes by Developer. The City Manager shall have thirty (30) days from receipt of the calculation of Incremental Taxes and supporting information to recommend approval or disapproval of the calculation and, if disapproved, to provide Developer with a written explanation setting forth the reasons for the disapproval. The parties acknowledge that the determination of Incremental Taxes shall be subject to the TIF Act. The failure of Developer to provide the information required in this Section 6 shall not constitute a default of this Agreement; provided, City shall not be required to make the applicable annual payment to Developer under Section 4 of this Agreement for such year until the information has been provided.

Section 7. No Liability of City to Others for Developer's Expenses. City shall have no obligation to pay costs of the Project or to make any payments to any person other than Developer

and permitted assignees of Developer, nor shall City be obligated to pay any contractor, subcontractor, mechanic, or materialman providing services or materials for the development of the Project.

Section 8. Developer's Representations and Warranties. In addition to the other representations, warranties, covenants and agreements of Developer set forth in this Agreement, Developer represents and warrants as follows:

(a) Developer is a limited liability company duly organized and existing under the laws of the State of Illinois, and is authorized to enter into, and by proper action has been duly authorized to execute, deliver and perform, this Agreement. Developer is now and at all times hereafter shall be solvent, able to pay its debts as they mature and financially able to perform all of the terms of this Agreement. To Developer's knowledge, there are no actions, suits or similar proceedings pending or threatened before any court or governmental or administrative body or agency affecting Developer which would result in any material adverse change to Developer's financial condition or which would materially and adversely affect the ability of Developer to undertake and complete the Project.

(b) Neither the execution, delivery, nor performance of this Agreement or any other agreement or instrument executed and delivered by or on behalf of Developer in connection herewith, nor the consummation of performance of the obligations herein or therein contemplated, nor compliance with the terms and provisions hereof or thereof, contravenes the organizational documents of Developer or any provision of law, statute, rule, regulation, or order of any court or governmental authority to which Developer is subject, or any judgment, decree, franchise, order, or permit applicable to Developer, or conflicts or is inconsistent with or will result in any breach of or constitute a default under any contract, commitment, agreement, understanding, arrangement, or instrument.

(c) Developer will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and standing as a limited liability company under the laws of the State of Illinois, as long as Developer maintains an interest in the Subject Property or has any other remaining obligations pursuant to the terms of this Agreement.

(d) Developer covenants that no officer, director, shareholder, member, employee or agent of Developer, or any other person connected with Developer, has made, offered or given, either directly or indirectly, to the Corporate Authorities or any other person connected with City, except for payments for which adequate and fair consideration was received in return, any money or anything of value as a gift or bribe or other means of influencing his or her action in his or her official capacity with City.

(e) But for the economic development incentives granted by City pursuant to this Agreement, the Project would not reasonably be anticipated to be completed.

Section 9. Insurance. At all times during the term of this Agreement, Developer shall procure and maintain policies of insurance as follows at its sole cost and expense:

(a) During any period of construction of the Project, Developer shall procure and maintain the following: (i) comprehensive general liability insurance from any liability incidental to the use of or resulting from any claim for injury or damage occurring in or about the Project or the Subject Property; (ii) workers' compensation insurance in amounts no less than the minimum coverage required by the laws of the State of Illinois covering Developer's employees working on the Project, if any; and (iii) all contractors working on the Project shall be required to procure and maintain contractor's insurance policies covering matters (i) and (ii) above.

(b) After completion of construction of the Project, and for so long as Developer owns the Subject Property, Developer shall procure and maintain the following: (i) fire insurance and extended coverage on a replacement basis for the full insurable value covering all of the Project; and (ii) comprehensive general liability insurance from any liability incidental to the use of or resulting from any claim for injury or damage occurring in or about the Project or the Subject Property.

(c) All such policies of insurance shall name City as an additional insured, be in such amounts, in such form and issued by such companies as shall be reasonably acceptable to City given the locality in which the Project is undertaken. Prior to issuance of any construction permit for the Project and thereafter, not less than thirty (30) days prior to the expiration of any policy, Developer shall deliver to City certificates evidencing coverage from each insurer.

Section 10. No Discrimination. Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. To the fullest extent permitted by law, Developer shall require that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, religion, sex or national origin. Notwithstanding the foregoing, Developer may employ union labor hereunder pursuant to the rules, regulations and practices of applicable unions.

Section 11. Developer Indemnification. Developer shall indemnify and hold harmless City, its agents, officers and employees against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses (including any liabilities, judgments, costs and expenses and reasonable attorneys' fees) which may arise directly or indirectly from (i) the failure of Developer to timely pay any contractor, subcontractor, laborer or materialman or any claim or cause of action whatsoever brought by a third party arising out of the Project; (ii) the failure of Developer to comply with any Legal Requirements; (iii) any material default or breach of the terms of this Agreement by Developer; (iv) any negligence or reckless or willful misconduct of Developer and contractors, subcontractors or agents or employees thereof; (v) any material misrepresentations or omissions of Developer. With respect to any action for which Developer's foregoing indemnity applies, Developer shall, at its own cost and expense, appear, defend and pay all charges of attorneys, costs and other expenses arising therefrom or incurred in connection therewith. If any judgment shall be rendered against City, its agents, officers, officials or employees in any such action for which Developer's foregoing indemnity applies, Developer shall, at its own expense, satisfy and discharge the same. This Section 11 shall not apply, and Developer shall have no obligation whatsoever, with respect to any acts of negligence, gross negligence, or reckless or willful misconduct on the part of City or any of its, officers, officials, agents, employees

or contractors or City's material default or breach of the terms of this Agreement. Developer's indemnification obligation hereunder shall be a continuing obligation and shall not expire with the termination of this Agreement.

Section 12. No Liens. In connection with the Project, Developer shall neither cause, nor permit any mechanic's or other liens to attach to or encumber the Project or the Subject Property except for the lien of Developer's lenders. In the event a mechanic's or other lien is filed which attaches to or encumbers the Project or Subject Property, Developer shall, within sixty (60) days after Developer's receipt of notice of such lien, institute such proceedings necessary to have the lien claim adjudicated and removed. Developer shall pay within ten (10) days any final judgment awarded to a lien claimant so as to prevent a foreclosure sale. Notwithstanding the foregoing, Developer shall have the right to bond over any lien or obtain a title insurance endorsement in form and substance reasonably acceptable to City in order to satisfy its obligations pursuant to this Section 12.

Section 13. Default – Remedies.

(a) If Developer defaults in the performance of any material covenant, warranty, representation or obligation set forth in this Agreement, City shall provide Developer with a written statement setting forth the default of Developer. Except as required to protect against further damages, City may not exercise any remedies against Developer in connection with such failure until thirty (30) days after giving such notice. If such default cannot be cured within such thirty (30) day period, said thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of the same, as long as Developer is diligently proceeding to cure such default. A default not cured as provided above shall constitute a breach of this Agreement. Any failure or delay by City in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach or of any rights or remedies it may have as a result of such default or breach.

(b) If Developer fails to cure any default after the expiration of the cure period described in subparagraph (a), City may elect to terminate this Agreement or exercise any other right or remedy it may have at law or in equity, including the right to specifically enforce the terms and conditions of this Agreement. If any voluntary or involuntary petition or similar pleading under any section or sections of any bankruptcy or insolvency act shall be filed by or against Developer, or any voluntary or involuntary proceeding in any court or tribunal shall be instituted to declare Developer insolvent or unable to pay its debts, or Developer makes an assignment for the benefit of creditors, or a trustee or receiver is appointed for Developer for the major part of its property, City may elect, to the extent such election is permitted by law, but is not required, with or without notice of such election, to terminate this Agreement. In the case of an involuntary petition, action or proceeding for the adjudication as a bankrupt or for the appointment of a trustee or receiver as set forth above, Developer shall have sixty (60) days after the service of such petition or pleading or the commencement of such action or proceeding within which to obtain a dismissal of such petition, pleading, action or proceeding.

(c) If City defaults in the performance of any material covenant, warranty, representation or obligation set forth in this Agreement, Developer shall provide City with a

written statement setting forth the default. Developer may not exercise any remedies against City in connection with such failure until thirty (30) days after giving such notice. If such default cannot be cured within such thirty (30) day period, such thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of the same, as long as City is diligently proceeding to cure such default. A default not cured as provided above shall constitute a breach of this Agreement. Any failure or delay by Developer in asserting any of its rights or remedies as to any default or any alleged default or breach shall not operate as a waiver of any such default or breach or of any rights or remedies it may have as a result of such default or breach. Notwithstanding the foregoing, the sole remedy of Developer in the event of a breach of this Agreement shall be to institute legal action for specific performance or injunctive relief against City. Under no circumstances shall City have any liability for monetary damages, whether compensatory or punitive, under this Agreement.

(d) Upon any dispute between the parties under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs and expenses incurred in contesting such dispute.

(e) It is hereby agreed by Developer that no recourse for any claim under or upon any obligation contained in the Agreement shall be had against City, its officers, agents, attorneys, representatives, or employees, in any amount in excess of any specific sum agreed to be paid by City pursuant to this Agreement; and no liability, right, or claim at law or in equity shall be attached to or incurred by City, its officers, agents, attorneys, representatives or employees in any amount in excess of any specific sums agreed by City to be paid hereunder, and any such claim is hereby expressly waived and released as a condition of and in consideration for the execution of this Agreement by City.

Section 14. Cancellation. In the event that (i) City or Developer shall be prohibited, in any material respect, from performing the covenants and agreements or enjoying rights and privileges herein contained by the final, non-appealable order of any court of competent jurisdiction or by any changes to the TIF Act, or (ii) all or any part of the TIF Act or any ordinance adopted by City in connection with its Redevelopment Plan shall be declared invalid or unconstitutional by the final, non-appealable order of any court of competent jurisdiction and such declaration shall materially impair the ability of either party to perform its obligations under the Redevelopment Plan or the covenants and agreement or rights and privileges of either City or Developer, then the party so materially impaired may, at its election, cancel or terminate this Agreement by giving written notice thereof to the other party within sixty (60) days after such court order has been issued. However, the termination of this Agreement hereunder shall have no effect on any of the authorizations granted to Developer for activities permitted or approved and under redevelopment to the extent allowed by such order.

Section 15. Notices. All notices, demands, requests, consents, approvals or other communications required or permitted by this Agreement shall be given in writing at the addresses set forth below and shall be deemed to have been given (i) on the day of actual delivery if delivered personally, (ii) on the day immediately following deposit with overnight courier, or (iii) as of the third (3<sup>rd</sup>) day from and including the date of posting if mailed by registered or certified first class mail, postage prepaid, return receipt requested. The parties, by notice

hereunder, may designate any further or different addresses to which subsequent notices, demands, requests, consents, approvals or other communications shall be sent.

If to City: City of Rochelle  
Attn: City Manager  
420 North 6<sup>th</sup> St.  
Rochelle, Illinois 61068

With copy to: Dominick L. Lanzito  
Peterson, Johnson & Murray – Chicago LLC  
200 W. Adams – Suite 2125  
Chicago, Illinois 60606

If to Developer: Kennay Farms Distilling, LLC  
Attn: Richard and Doris Kennay  
8991 S. Prairie Road  
Ashton, Illinois 61006

Section 16. Time is of the Essence; Force Majeure. Time is of the essence of this Agreement; provided, however, a party shall not be deemed in material breach of this Agreement with respect to any obligations of this Agreement on such party's part to be performed if such party fails to timely perform the same and such failure is due in whole or in part to any strike, lock-out, labor trouble (whether legal or illegal), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruptions of power, restrictive governmental laws and regulations, condemnations, riots, insurrections, war, fuel shortages, accidents, casualties, floods, earthquakes, fires, acts of God, epidemics, quarantine restrictions, freight embargoes, acts caused directly or indirectly by the other party (or the other party's agents, employees or invitees) or similar causes beyond the reasonable control of such party ("*Force Majeure*"). If one of the foregoing events shall occur or either party shall claim that such an event shall have occurred, the party to whom such claim is made shall investigate the same and consult with the party making such claim regarding the same and the party to whom such claim is made shall grant any extension for the performance of the unsatisfied obligation equal to the period of the delay, which period shall commence to run from the time of the commencement of the Force Majeure; provided that the failure of performance was reasonably caused by such Force Majeure.

Section 17. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

Section 18. Recordation of Memorandum of Agreement. City, at its sole cost and expense, may cause a memorandum of this Agreement (in a form and substance to be reasonably agreed upon by the parties) to be recorded with the Ogle County Recorder of Deeds.

Section 19. Severability. If any provision of this Agreement, or any Section, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held to be invalid, the remainder of this Agreement shall be construed as if such invalid part were never included

herein, and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

Section 20. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois with venue lying in the Circuit Court for Ogle County, Illinois.

Section 21. Amendments. This Agreement (together with the Exhibits attached hereto) constitutes the entire agreement between City and Developer and supersedes all prior agreements, negotiations and discussions between them relating to the subject matter hereof. This Agreement may not be modified or amended except by a written instrument executed by all the parties or their permitted successors or assigns.

Section 22. Third Parties. Except as specifically set forth in this Agreement, nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the parties and their permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party, nor shall any provision give any third parties any rights of subrogation or action over or against any party.

Section 23. Waiver. Any party may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

Section 24. Successors In Interest. The terms, conditions and covenants set forth in this Agreement or otherwise attaching by operation of law shall extend to, be binding upon, and inure to the benefit of the respective successors and permitted assigns of City and Developer and shall run with the land. Any person or entity now or hereafter owning legal title to all or any portion of the Subject Property, including Developer, shall be bound to this Agreement only during the period such person or entity is the legal titleholder thereof; provided, however, that all such legal title holders shall remain liable after their ownership interest in the Subject Property ceases as to those liabilities and obligations which accrued during their period of ownership but remain unsatisfied or unperformed. The rights of City to enforce this Agreement shall be applicable against any person or entity who is the legal title holder of the Subject Property.

Section 25. Assignment. Developer may only assign its rights and obligations under this Agreement to an Affiliated Entity, with the prior written consent of the City, which consent shall not be unreasonably withheld provided Affiliated Entity demonstrates, to the reasonable satisfaction of City, sufficient creditworthiness and experience to undertake the Project. An "Affiliated Entity" is any successor, parent, subsidiary or related limited liability company series of Developer or any partnership, corporation or limited liability company in which Developer or the members of Developer own at least a forty percent (40%) interest. In no event shall an assignment of this Agreement relieve the assignor of any liabilities or obligations which accrued prior to the date of assignment but remain unsatisfied or unperformed.

Section 26. No Joint Venture, Agency or Partnership Created. Nothing in this Agreement, nor any actions of the parties, shall be construed by the parties or any third person to create the relationship of a partnership, agency or joint venture between or among such parties.

Section 27. No Personal Liability. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any member of the Corporate Authorities or any official, officer, agent, employee or attorney of City, in his or her individual capacity. No official, officer, agent, employee or attorney of City shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery and performance of this Agreement.

Section 28. Signs. City, at City's sole cost and expense, may erect a sign of reasonable size and style in a location on the Subject Property reasonably acceptable to Developer during the redevelopment of the Project indicating that City provided economic development incentives to assist the Project.

Section 29. Designated Representatives. Unless applicable documents or procedures require action by Developer in a different manner, Developer hereby designates Tim Bruns as its authorized representative, who shall individually have the authority to make or grant supplemental agreements, certifications, requests, demands, approvals, consents, notices and other actions, and do all things required or described in this Agreement, for and on behalf of Developer and with the effect of binding Developer in connection therewith.

Section 30. Electronic Signatures. Signatures delivered by electronic mail or facsimile shall be deemed original signatures for all purposes.

Section 31. Effective Date. This Agreement shall be effective on the later of (i) the day on which this Agreement is authorized for execution pursuant to duly enacted City proceedings authorizing the execution of and adoption of this Agreement and (ii) the execution and delivery of this Agreement by each party hereto.

*(The remainder of this page is intentionally left blank).*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the above date at Fulton, Illinois.

CITY OF ROCHELLE,  
an Illinois municipal corporation

By \_\_\_\_\_  
City Manger

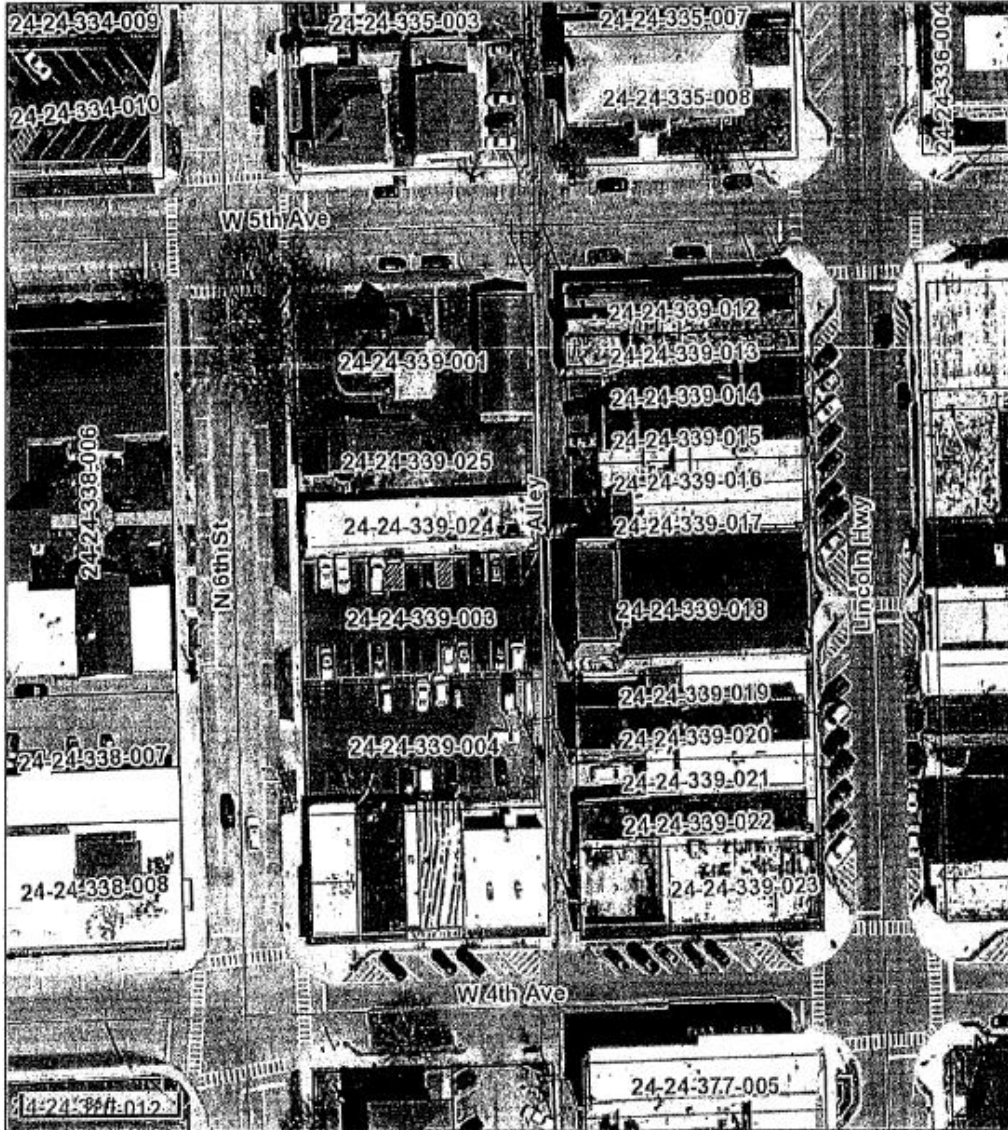
Attest: \_\_\_\_\_  
City Clerk

KENNAY FARMS DISTILLING, LLC, an Illinois  
limited liability company

By \_\_\_\_\_  
Its \_\_\_\_\_

Exhibit A

Map of Subject Property



Overview



Legend

- Municipalities
- Townships
- Roads
- Tax Parcels

THIS WEBSITE IS NOT A SUBSTITUTE FOR A SURVEY.

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Developed by Schneider  
OLEOSPATIAL

Exhibit B  
Letter to City

Exhibit C

Form of Request for Reimbursement Request for Reimbursement

[Date]

City of Rochelle  
Attn: City Manager  
420 North 6<sup>th</sup> St.  
Rochelle, Illinois 61068

Re: Redevelopment Agreement, dated \_\_\_\_\_, by and between the City of Rochelle and Kennay Farms Distilling, LLC (“Developer”)

Dear City Manager:

You are requested to disburse funds from the Kennay Farms Distilling Subaccount pursuant to Section 4 of the Redevelopment Agreement described above in the amount(s), to the person(s) and for the purpose(s) set forth in this Request for Reimbursement. The terms used in this Request for Reimbursement shall have the meanings given to those terms in the Redevelopment Agreement.

1. Request for Reimbursement No.: \_\_\_\_\_
2. Payment due to: \_\_\_\_\_
3. Amount to be disbursed: \_\_\_\_\_
4. The amount requested to be disbursed pursuant to this Request for Reimbursement will be used to reimburse the Developer for those Redevelopment Project Costs detailed in Schedule 1 attached to this Request for Reimbursement.
5. The undersigned certifies that:
  - (i) the amounts included in 3 above were necessary and made or incurred in accordance with the terms and conditions of the Redevelopment Agreement;

- (ii) the amounts paid or to be paid, as set forth in this Request for Reimbursement represents a part of the funds due and payable for Redevelopment Project Costs;
- (iii) the expenditures for which amounts are requisitioned represent proper Redevelopment Project Costs, have not been included in any previous Request for Reimbursement, have been properly recorded on Developer's books and are set forth on the attached Schedule 1 with paid invoices attached for all sums for which reimbursement is requested;
- (iv) the moneys requisitioned are not greater than those necessary to meet obligations due and payable or to make reimbursement for funds actually advanced for Redevelopment Project Costs; and
- (v) Developer is not in default under the Redevelopment Agreement and nothing has occurred to the knowledge of Developer that would prevent the performance of its obligations under the Redevelopment Agreement.

6. Attached to this Request for Reimbursement is Schedule 1, together with copies of invoices or bills of sale and Mechanic's Lien Waivers covering all items for which reimbursement is being requested.

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

Developer:

KENNAY FARMS DISTILLING, LLC, an Illinois limited liability company

By \_\_\_\_\_  
 Its \_\_\_\_\_

Approved: \_\_\_\_\_

CITY OF ROCHELLE, an Illinois municipal corporation

\_\_\_\_\_  
 City Manager