

## REDEVELOPMENT AGREEMENT

This Redevelopment Agreement (the “Agreement”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between **Kennay Farms Distilling, LLC**, an Illinois limited liability company (“Kennay”), and the **City of Rochelle, Ogle County, Illinois**, an Illinois municipal corporation (the “City”), and is based on the following recitals:

### RECITALS

- A. The City is duly organized and existing under the laws of the State of Illinois as a non-home rule municipality.
- B. Kennay is an Illinois limited liability company in good standing with the Illinois Secretary of State.
- C. Kennay is the record owner of the commercial real estate commonly known as 416 Lincoln Highway, Rochelle, Ogle County, Illinois (the “Subject Property”), which is currently improved with a structure previously known as the Hub Theater (the “Building”).
- D. Kennay intends to redevelop the Subject Property by modifying the Building and developing within the Building a distillery.
- E. The City owns the sidewalk lying adjacent to and easterly of the easterly boundary of the Subject Property (the “Sidewalk”).
- F. The redevelopment of the Subject Property will require or involve:
  - 1. An upgrading of the electrical service involving a transformer. The City agrees to expand the electrical service to the Building by providing a new transformer and a concrete pad at its cost, and the City agrees that Kennay may at its cost install a second pad and stub line into the Building.
  - 2. Modifying the City’s water service to the Building under which the water system will be split inside the Building into a domestic service component and a sprinkler system component, and under which the water service into the Building will be increased from a two-inch pipe to a four-inch pipe, at Kennay’s sole cost.
  - 3. Modifying the storm water drainage system from the Building and on the Subject Property by which roof drains from the Building will be reconnected by hard pipe directly into the City’s storm water system.
  - 4. Removing the Building’s marquee and canopy and constructing a balcony over the Sidewalk in the front of the Building, for which the City has agreed to grant Kennay a 30-year easement, in a form substantially similar

to Exhibit 1, for the air rights above the right of way to enable Kennay to construct a balcony at a certain distance above the Sidewalk. Further, the balcony is constructed of either metal or other impervious composition to ensure that no debris or liquid can fall onto pedestrians below the balcony.

5. Providing for the exhaust fumes from the distilling process through the Building's existing chimney or by hard pipe a new exhaust system venting such exhaust at a level higher than the adjacent residential use areas.
6. The removal of the existing marquee and canopy, the construction of the proposed balcony, the expansion of the electrical service to the Building, modifying the City's water service and allowing it to be separated into distinct systems on the interior of the Building, modifying the storm water drainage to allow direct flow into the City's storm water sewer system, allowing for the exhaust fumes from the distilling process at a level higher than the adjacent residential use areas, and the installation of a balcony will not interfere with the public's use or enjoyment of the Sidewalk after construction has been completed.
7. Kennay and the City wish to cooperate to foster the redevelopment of the former Hub Theater by granting the licenses, easement, and permits specified pursuant to this Agreement or reasonably required by Kennay, subject to all requirements of federal, state, and local laws.
8. The City is entering into this Agreement pursuant to its non-home rule powers and its determination that the licenses, easement, and permits contemplated by this Agreement will enhance the city's businesses and redevelopment of its downtown area.
9. The City has determined that it is essential to the economic and social welfare of the City that the licenses, easement, and permits contemplated by this Agreement are necessary to foster economic development.
10. The City finds that the powers to be exercised hereunder are in furtherance of a public use and essential to the public interest.
11. The Mayor and City Council of the City have determined that entering into this Agreement is the best interests of the City.
12. Kennay has full right, power and authority to enter into this Agreement and acknowledges and consents to its terms and conditions.

**NOW, THEREFORE**, in consideration of TEN DOLLARS (\$10.00) and the promises, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Kennay agree as follows:

**SECTION ONE.  
RECITALS**

The foregoing Recitals are hereby incorporated herein as if fully set forth below as representations by Kennay and the City.

**SECTION TWO.  
LICENSE FOR BALCONY**

A. City's Grant of Easement. The City grants to Kennay a non-exclusive easement to install, maintain, and use a balcony constructed of metal or other impervious material to ensure that no debris or liquid can fall onto pedestrians or on the right of way below the balcony. in the front of the Building.

B. No Responsibility of City. The City shall not be deemed to have any possession, custody, control, or responsibility with respect to the balcony and the City expressly declines any responsibility for the care and control of the balcony. The City assumes no liability for related to the installation or maintenance of the balcony, and Kennay agrees to indemnify and hold the City harmless for any and all claims, lawsuits, or causes of actions related to any injuries arising out of or related to the balcony.

C. Term. The term of the easement granted to the Kennay shall be for a period of thirty (30) years. Provided that Kennay is not in breach of any of its obligations under this Agreement and maintains the balcony in accordance with the applicable City Codes and all other applicable building code regulations, the easement may be renewed for two (2) consecutive ten-year (10-year) terms. Such renewals shall be automatic unless either the City or Kennay provides written notice to the other party of the intent not to renew such easement, provided that such notice must be given at least thirty (30) days prior to the expiration of the immediately preceding term.

D. Assignability. The easement granted herein shall not be assignable by Kennay without the express written consent of the City, and the easement granted herein shall terminate upon the sale, conveyance, transfer or any other disposition of the Building without the prior written consent of the City.

E. Termination. The City may terminate the easement granted herein if Kennay is in breach of any of its obligations under this Agreement and remains in breach or default more than thirty (30) days after receipt of written notice of such default, or abandons use of the balcony for a period of more than one (1) year. In order to terminate the license granted herein, the City must provide Kennay with not less than thirty (30) days' written notice of breach or default.

F. Easement/Recordation. The easement granted herein may be recorded in the public records. Notwithstanding anything herein to the contrary, the easement granted herein for the installation, maintenance and use of the balcony is intended to create easement rights

only with use in relation to the Building and no agency, partnership, joint venture, lease, tenancy, leasehold or other right or interest of any kind or nature (other than an easement) is created or conferred pursuant to this Agreement.

**SECTION THREE.  
UTILITY SERVICE**

A. Electrical Service. The City, which owns and operates its electrical service utility, agrees that it will, at its expense and on a timely basis, increase the electrical service and provide a transformer to supply the appropriate electrical service to the Building for the distilling operation.

B. Underground Conduits. The City agrees that Kennay may at its expense install PVC conduits for potential underground electrical service and communications.

D. Water. The City agrees that Kennay may, at its expense, split the water service inside the Building into components for domestic water and a sprinkler system. To enable the Building to have a sufficient water supply and pressure, Kennay agrees that it will, at its sole expense, increase the size of the water line into the Building from a two-inch pipe to a four-inch pipe.

**SECTION FOUR.  
STORM WATER DRAINAGE**

The City authorizes Kennay to modify storm water drainage emanating from the Subject Property as a result of the installation of the balcony by allowing the direct discharge of storm water from the Building and the Subject Property directly into the City's storm water system, in a manner otherwise consistent with the storm water drainage ordinance of the City.

**SECTION FIVE.  
DISTILLERY EXHAUST**

The City agrees that the distillery operation shall use an exhaust system through the Building's existing chimney or a new hard pipe exhaust system, provided that the exhaust is at a vertical level higher than any currently existing adjacent residential area.

**SECTION SIX.  
DELIVERIES**

The City agrees to allow reasonable delivery of raw material into the Building and finished product and other matters from the Building in a reasonable manner.

**SECTION SEVEN.  
APPROVALS, PERMITS AND CONSENTS**

The City agrees to provide approvals, permits and consents to Kennay as reasonably required for Kennay's installation of the balcony and otherwise in conjunction with the redevelopment of the former Hub Theater, upon appropriate petitions and requests by Kennay.

**SECTION EIGHT.  
MAINTENANCE**

Except to the extent caused by the City's negligence or willful and wanton conduct, Kennay, at its sole cost and expense, shall maintain and repair the improvements to the Subject Property, including the balcony and otherwise taking the reasonable, necessary and appropriate measures to keep the Subject Property in a clean, attractive, safe, unobstructed, good and useable condition. The City grants Kennay and its agents and contractors access to, the right to enter, and the non-exclusive control of the Sidewalk as necessary to install the balcony and to otherwise fulfill its obligations under this Agreement.

**SECTION NINE.  
INSURANCE**

Kennay 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 Subject Property. The City will be named as an additional insured on Kennay'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 Agreement by the City Counsel.

**SECTION TEN.  
COMPLIANCE WITH LAW**

Kennay will at its own expense comply with all federal, state and local laws, ordinances of the City and the State of Illinois, and rules and regulations now or later in force which may be applicable to its operations in the City. Kennay 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 Agreement.

**SECTION ELEVEN.  
WAIVER**

No waiver by either the City or Kennay of any default on the part of the other party in the performance of any of the terms, covenants, or conditions of this Agreement to be performed, kept, or observed by the defaulting party shall be or be construed to be a waiver by the non-defaulting party of any other or subsequent default in the performance of any terms, covenants, or conditions of this Agreement to be performed, kept or observed by the defaulting party.

**SECTION TWELVE.**

**AMENDMENT**

This Agreement may be modified or amended in whole or in part only by a written instrument executed by the City and Kennay.

**SECTION THIRTEEN.  
ATTORNEYS' FEES AND COSTS**

In the event of any litigation arising out of or with respect to this Agreement, the prevailing party will have the right to be paid all costs and expenses including, but not limited to, reasonable attorneys' fees, expert witness fees and all other costs, including all such costs with respect to any appellate proceedings.

**SECTION FOURTEEN.  
INDEMNIFICATION**

To the fullest extent permitted by law, Kennay shall defend, indemnify and hold the City 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) Kennay's use of the Subject Property; (ii) any failure by Kennay to perform any maintenance obligation required herein; or (iii) arising out of or resulting from of Kennay's breach of any provision of this Agreement.

**SECTION FIFTEEN.  
NOTICE**

All notices and other communications shall be in writing and shall be deemed properly served if delivered in person to the party to whom it is addressed two (2) days after deposit in the U. S. mail if sent postage prepaid by United States registered or certified mail, return receipt requested, addressed as follows:

All notices to the City of Rochelle shall be sent to:

City Manager  
City of Rochelle  
420 North 6<sup>th</sup> Street  
Rochelle, Illinois 61068

Peterson, Johnson & Murray-Chicago LLC  
Attn: Dominick Lanzito  
200 West Adams – Ste. 2125  
Chicago, Illinois 60606

All notices to Kennay shall be sent to:

Kennay Farms Distilling, LLC

Attn: Richard and Doris Kennay  
8991 S. Prairie Road  
Ashton, Illinois 61006

Ehrmann, Gehlbach, Badger Lee & Considine, LLC  
Attn: Gary Gehlbach  
215 E. 1<sup>st</sup> Street – Ste. 100  
Dixon, Illinois 61021

or to such other address as a Party may designate for itself by notice given from time to time to the other Party in the manner provided herein.

**SECTION SIXTEEN.  
PERFORMANCE BOND AND MAINTENANCE**

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

**SECTION SEVENTEEN.  
BINDING EFFECT**

This Agreement shall be binding upon and inure to the benefit of the City and Kennay and their respective successors and assigns.

**SECTION EIGHTEEN.  
ENTIRE AGREEMENT**

This Agreement and the exhibits to this Agreement contain all the representations and the entire agreement between the parties with respect to the subject matter of this agreement. Any prior correspondence, memoranda or agreements are superseded in total by this Agreement and the exhibits to this Agreement. No party has relied on any representations, written or verbal, of any other party other than those express written representations made within this Agreement.

**SECTION NINETEEN.  
EXHIBITS**

All exhibits attached hereto are incorporated by reference and made a part of this Agreement.

The parties have executed this agreement as of the day and year first above written.

THE CITY OF ROCHELLE, an Illinois  
municipality

\_\_\_\_\_

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

Its: \_\_\_\_\_

KENNAY FARMS DISTILLING, LLC, an Illinois  
limited liability company

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

Richard R. Kennay, Member and Authorized Agent