

## **REDEVELOPMENT AGREEMENT**

This Redevelopment Agreement (the “Agreement”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and Story Book Gardens, LLC, an Illinois limited Liability Company, (Storybook Gardens LLC” or the “LLC”), and the **City of Rochelle, Ogle County, Illinois**, an Illinois municipal corporation (the “City”), and is based on the following recitals:

### **RECITALS**

**WHEREAS** the City is duly organized and existing under the laws of the State of Illinois as a non-home rule municipality.

**WHEREAS** Storybook Gardens LLC is an Illinois limited liability company in good standing with the Illinois Secretary of State.

**WHEREAS** the City is the record owner of the commercial real estate commonly known as 413 W. 4<sup>th</sup> Avenue, Rochelle, Ogle County, Illinois (the “Subject Property”), which is currently improved with a structure previously known as the Graber 1 (the “Building”).

**WHEREAS** Storybook Gardens LLC intends to redevelop the Subject Property by modifying the Building and developing within the Building a boutique hotel (the “Boutique Hotel”) and/or other authorized uses, including without limitation, any one or more of the following uses, a restaurant, retail sales outlet, commercial offices (hereinafter collectively referred to as “Other Authorized Uses”).

**WHEREAS** the redevelopment of the Subject Property will require or involve: 1) the repair/ of the roof with such repairs being generally identified on Exhibit A attached hereto and made a part hereof, 2) any reasonably required repair or replacement of the major mechanicals of the building, including electric, plumbing, HVAC and gas systems, 3) the installation of a fire suppression system consistent with the intended use of the building as a Boutique Hotel or the Other Authorized Uses, and 4) the modification of interior and exterior rooms, restrooms, surfaces, and methods of ingress and egress, to comply with all federal, state and local building codes and laws for the intended use as a Boutique Hotel or the Other Authorized Uses.

**WHEREAS** Storybook Gardens LLC and the City wish to cooperate to foster the redevelopment of the former Graber 1 by granting the licenses, easement, and permits specified pursuant to this Agreement or reasonably required by Storybook Gardens LLC, subject to all requirements of federal, state, and local laws.

**WHEREAS** 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.

**WHEREAS** 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.

**WHEREAS** the City finds that the powers to be exercised hereunder are in furtherance of a public use and essential to the public interest.

**WHEREAS** the Mayor and City Council of the City have determined that entering into this Agreement is the best interests of the City and its residents.

**WHEREAS** Storybook Gardens LLC 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 Storybook Gardens LLC agree as follows:

**SECTION ONE.  
RECITALS**

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

**SECTION TWO.  
SALE OF THE PROPERTY**

A. Sale of the City's Property. In order to facilitate the redevelopment of the Subject Property, the City will sell the Subject Property "as is" to Storybook Gardens LLC for the sum of ten thousand (\$10,000.00) dollars ("Purchase Price"). Upon execution of this Agreement, the City shall take all necessary steps to convey by Warranty Deed, marketable title to and possession of, the Subject Property to Storybook Gardens LLC for the Purchase Price on or before July 31, 2018. At or about closing the City shall provide a title insurance policy subject only to mutually acceptable title exceptions and shall be responsible for all other charges and expenses customarily paid by sellers of real estate in Rochelle, Illinois.

B. No Responsibility of City. The City shall not be deemed to have any possession, custody, control, or responsibility with respect to the Subject Property after the sale of the property and the City expressly declines any responsibility for any improvements to the Subject Property. Storybook Gardens LLC 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 Storybook Garden LLC's negligent development or negligent use of the Subject Property after the sale of the Subject Property is concluded.

C. Assignability. The rights granted herein shall not be assignable by Storybook Gardens LLC without the express written consent of the City.

D. Termination. The City may terminate this Agreement if Storybook Gardens LLC 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.

E. Reliance upon representation of Storybook Gardens LLC. The City has relied upon and is entering into this Redevelopment Agreement and the sale of the Subject Property based upon Storybook Gardens LLC's representation that it intends to redevelop the property and utilize it as a Boutique Hotel and/or Other Approved Use. Should Storybook Gardens LLC's fail to redevelop the Subject Property as a Boutique Hotel and/or Other Approved Use within three years or fail to meet its obligations under this Redevelopment Agreement, then the City may take all necessary actions to enforce this agreement or enforce applicable codes against the Subject Property

### **SECTION THREE** **REPRESENTATIONS AND WARRANTIES**

**3.1 Representations and Warranties of Parties**. To induce one another to execute this Agreement and perform their respective obligations hereunder, Storybook Gardens LLC hereby represents and warrants to the City, and the City represents and warrants to the LLC, as follows:

A. Representations of Storybook Gardens LLC:

- i. Storybook Gardens LLC is a duly organized and existing limited liability company in good standing under the laws of the State of Illinois;
- ii. No litigation or proceedings are pending, or to the best of Storybook Gardens LLC's knowledge, are threatened against Storybook Gardens LLC, which: (i) affect the ability of Storybook Gardens LLC to perform its obligations pursuant to and as contemplated by the terms and provisions of this Agreement; or (ii) materially affect the operation or financial condition of Storybook Gardens LLC;
- iii. To the best of Storybook Gardens LLC's knowledge, the execution, delivery and performance by Storybook Gardens LLC of this Agreement does not constitute, or will not, upon giving of notice or lapse of time, or both, constitute a breach or default under any other agreement to which Storybook Gardens LLC is a party to or may be bound under;
- iv. The parties executing this Agreement on behalf of Storybook Gardens LLC have been duly authorized by all appropriate action to enter into, execute, and deliver this Agreement and perform the terms and obligations contained herein.

B. Representations of City:

- i. No litigation or proceedings are pending, or to the best of the City's knowledge, are threatened against City, which: (i) affect the ability of City to perform its obligations pursuant to and as contemplated by the terms and provisions of this Agreement; or (ii) materially affect the operation or financial condition of City;
- ii. No litigation or proceedings are pending, or to the best of the City's knowledge, are threatened, before any court or governmental agency having jurisdiction over enforcement of the Act and the subject matter contemplated by this Agreement regarding a determination that the contemplated Agreement;
- iii. The execution, delivery and performance by the City of this Agreement does not constitute, or will not, upon giving of notice or lapse of time, or both, constitute a breach or default under any other agreement to which the City is a party to or may be bound under;
- iv. The parties executing this Agreement on behalf of the City have been duly authorized by all appropriate action to enter into, execute, and deliver this Agreement and perform the terms and obligations contained herein and the City is empowered to perform the terms and obligations herein under the laws of the State of Illinois.
- v. The City has, or prior to closing will, deliver to the LLC, copies of any architect/engineering reports, appraisals, EPA reports or any report concerning the condition or use of the Subject Property in its possession. The City is not advising the LLC as to what it is required to do to redevelop the property, until such time as the LLC seeks permits for a particular use of the Subject Property.

**3.2 Survival of Representations and Warranties.** The parties agree that all of their respective representations and warranties set forth in this Section and elsewhere in this Agreement are true as of the execution date of this Agreement, and for three years from the date of closing on the Subject Property, shall survive the closing of this agreement. To the extent any of the representations and warranties cease to be true, Storybook Gardens LLC or the City, as applicable, shall immediately notify the other party of the same.

#### **SECTION FOUR. BUILDING IMPROVEMENTS**

A. Repair of the Roof. Weather permitting, Storybook Gardens LLC shall repair the roof of the Building to a weathertight condition within ninety (90) days of closing on the Subject Property.

B. Redevelopment of the Subject Property. Storybook Gardens LLC shall complete redevelopment of the Subject Property and operate the Subject Property as a Boutique Hotel and/or Other Permitted Use within three years of closing on the Subject Property.

**SECTION FIVE.  
BOUTIQUE HOTEL EXHAUST**

To the extent that the building is redeveloped as the Boutique Hotel, the City agrees that the boutique hotel operation shall use an exhaust system for its kitchen exhaust 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 properties.

**SECTION SIX.  
DELIVERIES OF BUILDING MATERIALS**

The City agrees to allow reasonable delivery of raw building materials into the Building for the redevelopment of the Subject Property in a reasonable manner. Should any of the deliveries require closure of a sidewalk or street for more than thirty (30) minutes, Storybook Gardens LLC shall give the City 14 days written notice of said event.

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

The City agrees to provide approvals, permits and consents to Storybook Gardens LLC as reasonably required for Storybook Gardens LLC's redevelopment of the Subject Property, as well as any business licenses and a licensing agreement for parking for the operation of the planned Boutique Hotel and/or other Permitted Use, upon appropriate petitions, with supporting documentation, and requests by Storybook Gardens LLC.

**SECTION EIGHT.  
MAINTENANCE**

Except to the extent caused by the City's negligence or willful and wanton conduct, Storybook Gardens LLC, at its sole cost and expense, shall maintain and repair the improvements to the Subject Property, and otherwise taking the reasonable, necessary and appropriate measures to keep the Subject Property in a clean, attractive, safe, unobstructed, good and useable condition.

**SECTION NINE.  
INSURANCE**

Storybook Gardens LLC 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 one million dollars (\$1,000,000.00) 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 (hereinafter collectively called the "Insurance Policies"). The City will be named as an additional insured on Storybook Gardens LLC'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**

Storybook Gardens LLC 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 her/its operations in the City. Storybook Gardens LLC 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 Storybook Gardens LLC 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 Storybook Gardens LLC.

**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**

For three years from the date of closing on the Subject Property to the fullest extent permitted by law, Storybook Gardens LLC 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 Storybook Gardens LLC's negligent redevelopment or negligent use of the Subject Property .

**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

Copy to:

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

All notices to Storybook Gardens LLC shall be sent to:

Storybook Gardens LLC  
13501 E. Bethel Road  
Rochelle, Illinois 61068

Copy to:

Charles P. Cole, Jr.  
104 Oak Ave. Ste B  
Rochelle, Illinois 61068

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**

Storybook Gardens LLC shall provide a performance bond equal to 125% of the cost of the estimated redevelopment, 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 Storybook Gardens LLC and their respective successors and assigns.

**SECTION EIGHTEEN.  
GENERAL TERMS**

**18.1 Drafter Bias.** The parties acknowledge and agree that the terms of this Agreement are the result of on-going and extensive negotiations between the parties, both of whom are represented by independent counsel and that this Agreement is a compilation of said negotiations. As a result, in the event that a court is asked to interpret any portion of this contract, neither of the parties shall be deemed the drafter hereof and neither shall be given benefit of such presumption that may be set out by law.

**18.2 Partnership not intended nor Created.** Nothing in this Agreement is intended nor shall be deemed to constitute a partnership or joint venture between the Parties.

**18.3 Entirety and Binding Effect:** This document represents the entirety of the agreement between the Parties and shall be binding upon them and inure to the benefit of and be enforceable by and against their respective successors, personal representatives, heirs, legatees, and assigns.

**18.4 Survival of Provisions.** If any of the provisions of this agreement are found to be invalid pursuant to any statute or rule of law of the State of Illinois or of any judicial district in which it may be so brought to be enforced, then such provisions shall be deemed null and void to the extent that they may conflict herewith, however the remainder of this instrument and any other application of such provision shall not be affected thereby.

**18.5 Use of Headings.** The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the clauses to which they pertain.

**18.6 Amendments and Modifications.** Except as otherwise provided for herein, this Agreement may not be amended, modified, or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination, or waiver shall be effective for any purpose unless it is in writing, and bears the signatures of all of the Parties hereto.

**18.7 Defaults.** In the event of a default and/or litigation arising out of enforcement of this Agreement, the parties hereto acknowledge and agree that each party shall be responsible for their own costs, charges, expenses, and their reasonable attorney's fees arising as a result thereof.

**18.9 Counterparts:** This Agreement may be signed in any number of counterparts, each of which shall be an original, with the main effect as if the signatures thereto and hereto were upon the same instrument.

**18.10 Previous Agreements:** The foregoing is the agreement between the Parties hereto as it now exists at the execution hereof and it is expressly understood, agreed and distinctly acknowledged that all previous communications and negotiation between the Parties, either written or oral, that are not contained herein are hereby withdrawn, nullified, and void. The parties stipulate and agree that there are no representations, understandings, or warranties relating to the subject matter of this agreement except as are expressly set forth herein.

**SECTION NINETEEN  
LLC CONTINGENCIES**

This Agreement, including any promise, representation or warranty of the LLC herein, is expressly contingent upon the LLC's receipt of any reports of any architect, engineer, or contractor referred to in Article 3 Section 3.1B (v) of this Agreement. This Agreement, including any promise, representation or warranty of the LLC herein, is expressly contingent upon the LLC receiving from the City an acceptable Licensing Agreement relating to the right of the LLC to use the existing parking lot located immediately East of the Subject Property. In the event the contingencies set forth in this section of this Agreement are not satisfied and fulfilled by the closing of this Agreement then in that event the LLC may terminate this Agreement and it shall be null and void the same and as if, this Agreement had not been made.

**SECTION TWENTY.  
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: \_\_\_\_\_

STORYBOOK GARDENS LLC

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