

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (the “Agreement”) is entered into between **KENNAY FARMS DISTILLING, LLC**, an Illinois limited liability company, % Richard R. Kennay, of 8991 S. Prairie Road, Ashton, Illinois 61006 (the “Purchaser”), and **City of Rochelle**, an Illinois municipality, of 420 N. 6th Street, Rochelle, Illinois 61068 (the “Seller”).

In consideration of and in reliance upon the mutual covenants and agreements set forth below, the parties to this Agreement agree as follows:

1. Agreement. Seller agrees to sell and, subject to the terms, conditions and contingencies set forth herein, Purchaser agrees to purchase the Subject Property defined below.

2. Subject Property. The property that is the subject of this Agreement (the “Subject Property”) consists of the following three parcels: (a) the parcel commonly known as 421 N. 6th Street, Rochelle, Illinois, under PIN 24-24-339-025; (b) the parcel commonly known as 417 N. 6th Street, Rochelle, Illinois, under PIN 24-24-339-024; and (c) the municipal parking lot described by PIN 24-24-339-003.

3. Purchase Price and Payment. The purchase price for the Subject Property (the “Purchase Price”) shall be **Two Hundred Five Thousand Dollars (\$205,000)** and shall be at the time of Closing by wire-transfer to the title company serving as the closing agent.

4. Closing. The closing of the transaction contemplated in this Agreement (the “Closing”) shall take place at the Rochelle, Illinois, office of Kenzley Title Group, Inc., on July 2, 2018 (the “Closing Date”), provided that, at Purchaser’s sole discretion, Purchaser has completed its Due Diligence and Examination or has waived the right to do so. At the Closing, Seller and Purchaser shall execute and deliver to each other and the title insurer such items as may be reasonably requested by the other or the title insurer to consummate the Closing, including but not limited to the execution of all necessary forms from the title insurer to effectuate Closing, including without limitation a GAP Undertaking, utility letters to obtain extended coverage, an Extended Coverage Affidavit, and an ALTA Statement. Seller shall also deliver to Purchase at Closing an Affidavit of Title in customary form.

5. Possession. Seller shall provide Purchaser with possession of the Subject Property at 4:30 p.m. on Friday, August 31, 2018, not subject to the rights of any tenancies or any parties in possession or other parties. Prior to that date and time, Seller agrees to relocate the existing tenants in order to provide complete possession to Purchaser at that time. However, after closing, Purchaser may at its sole cost and expense have the Subject Property evaluated for asbestos and other possible impediments to the demolition of the structures on the Subject Property, provided that neither Purchaser nor any agent of Purchaser unreasonably interferes with Seller or any parties in possession of any part of the Subject Property.

6. Conveyance. At the time of Closing, Seller shall transfer to Purchaser all of Seller’s right, title, and interest in and to all of the Subject Property, including all improvements, appurtenances, hereditaments, mineral right and other rights that pertain to the Subject Property, by delivering to Purchaser at Closing a fully executed, recordable, stamped Special Warranty

Deed in form and substance satisfactory to counsel for Purchaser, subject only to the Permitted Exceptions defined below.

7. Title and Examination Period.

- a. Title. Within ten (10) days from the execution of this Agreement, Seller shall obtain, at Seller's sole cost and expense, a current title commitment from Kenzley Title Group, Inc., serving as agent for Chicago Title Insurance Company for the latest ALTA Form policy for the Subject Property in the amount of the Purchase Price (the "Title Commitment"), together with copies of all documents referred to therein (the "Title Documents").
- b. Examination Period. Purchaser shall have ten (10) days after Purchaser's receipt of the Title Commitment and Title Documents in which to review Title Commitment and Title Documents together and in conjunction with one another (the "Examination Period"). In the event any item on the Title Commitment is unsatisfactory to Purchaser for any reason, Purchaser shall have until the end of the Examination Period to deliver to Seller, in writing, such objections as Purchaser may have to anything contained or set forth therein, including, without limitation, Purchaser's inability to obtain zoning, access, and contiguity title endorsements from the title company on terms acceptable to Purchaser, which endorsements Purchaser may elect to obtain as a condition precedent to Purchaser's obligation to close at Purchaser's expense. Any items shown on Title Commitment and Title Documents reviewed by Purchaser to which Purchaser does not object on or before the end of the Title Examination Period shall be deemed to be approved by Purchaser and shall be "Permitted Exceptions" (herein so called) for purposes of this Agreement. Seller shall use reasonable efforts to remedy or cure Purchaser's objections during the ten (10) day period following Seller's receipt thereof (the "Cure Period"). In the event Seller does not cure such objections prior to the expiration of the Cure Period, Purchaser shall have the right to terminate this Agreement by written notice to Seller within ten (10) days after the expiration of the Cure Period. In the event of such a termination by Purchaser, this Agreement shall be without any further force or effect. Notwithstanding the foregoing, neither (i) the standard preprinted exceptions set forth in the Title Commitment, nor (ii) any matters reflected on Schedule B of the Title Commitment as liens, mortgages, or assignment of rents, and items which are designated by the Title Company as matters to be satisfied prior to or simultaneously with the Closing, shall constitute Permitted Exceptions; rather all of the same shall be discharged and satisfied by Seller prior to or simultaneously with the Closing.
- c. Title Policy. This Agreement is contingent upon Purchaser obtaining at the Closing, at Seller's sole cost and expense, an ALTA Owner's Title Policy without Purchaser being required to pay any rates, execute or fund any indemnities or to obtain any special endorsements other than those endorsements specified in paragraph 7.a and any other endorsements requested by Purchaser (the "Title Policy"). The Title Policy shall include a standard form extended coverage

endorsement over all general exceptions on terms acceptable to Purchaser.

- d. Title Charges. Notwithstanding anything herein to the contrary, Seller shall only be responsible for paying the Owners Title Policy premium, the title company's search and examination fee, fees and costs attributable to clearing objections to title, Seller's closing protection letter, one-half of the title company's closing fee if Purchaser has no mortgage financing of the Subject Property (or none of the title company's closing fee if mortgage financing is involved), and the Illinois policy registration fee.
 - e. Seller Not to Provide a Survey. While the Purchaser may obtain a plat of survey at its expense, the Seller will not be responsible for providing a survey of the Subject Property unless Seller has a prior survey, in which case Seller will provide a copy to Purchaser within ten (10) days from the execution of this Agreement).
8. Due Diligence.
- a. Duration. The period commencing with the date upon which this Agreement has been executed by both Seller and Purchaser (the "Execution Date") and extending for four (4) weeks is the "Due Diligence Period." However, Purchaser may waive its rights under this section by notice to Seller or its attorney prior to the expiration of the Due Diligence Period.
 - b. Purchaser's Rights and Obligations. During the Due Diligence Period, Purchaser shall have the right, at Purchaser's sole cost and expense, to examine any and all matters in connection with the Subject Property, including, without limitation, the physical and environmental condition of the Property (including but not limited to Phase I and, if warranted in Purchaser's sole discretion, Phase II environmental studies and reports. The matters set forth in the preceding sentence are hereinafter collectively referred to as the "Purchaser's Examinations." Seller agrees to reasonably cooperate with Purchaser during this process, including without limitation, executing any reasonably necessary documents related thereto, including without limitation the requisite Seller Questionnaire in connection with a Phase I environmental site assessment. If Purchaser determines, in Purchaser's sole and absolute discretion, that any of Purchaser's Examinations, or results relating thereto, are not, for any reason, satisfactory to Purchaser or are not conducive to Purchaser's plans or tentative plans for the use and/or development of the Subject Property, the Purchaser may terminate this Agreement by written notice to Seller delivered at any time within five (5) days after the expiration of the Due Diligence Period (the "Termination Date"). In the event of such a termination by Purchaser on or prior to the Termination Date, this Agreement shall thereafter be without any further force or effect. Purchaser shall not provide Seller or any agent or representative of Seller with copies of or information relating to any reports or documents generated by Purchaser's investigations or inspections of the Subject Property conducted during Purchaser's Due Diligence Period. In the event Purchaser does not exercise its right of termination and this

transaction closes, Purchaser agrees to accept the Subject Property in “AS IS” condition.

- c. Inspection License. In connection with Purchaser’s Examinations and Approvals, Purchaser, and such agents as Purchaser, in its sole and absolute discretion, may designate, are hereby granted the right, license, and privilege, during the Due Diligence Period, to enter upon the Subject Property at such reasonable times as Purchaser desires, for the purpose of performing Purchaser’s Examinations and Approvals. Purchaser shall hold Seller harmless and indemnify Seller (including payment of attorneys’ fees), its agents and employees for any injury to person or property to the extent arising out of the negligent acts or omissions of Purchaser, or its agents, while conducting any test or inspection of the Subject Property.

9. Real Estate Taxes. Seller represents that the Subject Property is presently exempt from real estate taxes. Purchaser will be responsible for real estate taxes assessed and due and payable following the closing.

10. Seller’s Representations. Seller hereby covenants, represents and warrants to Purchaser as follows:

- a. The Subject Property will be zoned B-1 Commercial Central Business. Seller agrees to work in good faith to accommodate any change in zoning requested by Purchaser for its intended use of the Subject Property consistent with applicable City ordinances and procedures.
- b. The Subject Property is within the City of Rochelle corporate limits.
- c. The Subject Property is serviced by City of Rochelle potable water, sanitary sewer, storm water system, and by electrical service and NICOR natural gas.
- d. Seller has the authority and legal right to make, deliver and perform this Agreement, and has taken all necessary actions and obtained all required consents and approvals to authorize the execution, delivery and performance of this Agreement.
- e. To the best of Seller’s knowledge, the execution, deliver and performance of this Agreement is not prohibited by any requirement of law or under any contractual obligation of Seller, will not result in a breach or default under any agreement to which Seller is a part or is bound, and will not violate any restriction, court order or agreement to which Seller is subject.
- f. Seller has received no written notice of any pending or threatened litigation or proceedings (including eminent domain or similar proceedings), with respect to the use, condition, or operation of the Subject Property, and has not received any notice respecting any proposed change to the Subject Property’s zoning or land use planning classification.

- g. Seller has no knowledge of and has received no written notice of any violations of laws or claims with respect to any environmental condition of the Subject Property which have not been heretofore fully disclosed to Purchaser in writing or cured.
- h. Seller has no knowledge of the past or present presence in, on or under the Subject Property of any material or substance defined as a “hazardous waste” under the federal Resource Conservation and Recovery Act of 1976 (“RCRA”), as a “hazardous substance” under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), or asbestos, or any underground storage tanks.
- i. During the period from the Execution Date to and including the Closing Date, Seller shall not, without the prior consent of Purchaser in each instance, (i) transfer or alienate any interest in the Subject Property, (ii) enter into any lease, easement, contract, concession agreement, license agreement or other agreement (whether oral or written) relating to the Subject Property, (iii) modify any of the Leases or agreements, or (iv) otherwise encumber or pledge the Subject Property.
- j. Seller has received no written notice of any pending, threatened, or contemplated special assessments, special taxing districts, special service areas, or other special taxes which would affect the Subject Property, including, without limitation, any pending, threatened or contemplated increases of any currently existing special assessments or special taxes.

The representations and warranties set forth in this paragraph 10 shall be true and correct at the time of Closing as well as on the Execution Date. Seller shall promptly notify Purchaser in writing in the event Seller has actual knowledge that any covenant, representation or warranty of Seller set forth above is not true and correct.

11. Conditions Precedent to Closing. Notwithstanding anything herein to the contrary contained in this Agreement, Purchaser shall not be obligated to close hereunder unless:

- a. Seller, at Seller’s sole cost and expense, shall provide Purchaser or its designee the Title Policy consistent with the Title Commitment required under the terms of this Agreement from the Title Company on the Closing Date;
- b. There is no material change in the condition of the Subject Property, including any dumping of refuse or environmental contamination after the inspection of the Subject Property by Purchaser during the Due Diligence Period;
- c. There exists no material breach of any of Seller’s covenants, representations, warranties or obligations contained herein;
- d. The other material conditions to Purchaser’s obligation to proceed to Closing expressly set forth herein shall be and remain satisfied;

- e. The Purchaser's Examinations and Approvals shall remain satisfied as of the Closing Date;

In the event that any one or more of the foregoing contingencies shall not be satisfied or met by the Closing Date, Purchaser, at its option, may waive the satisfaction thereof or terminate this Agreement without liability to Seller.

12. Remedies.

- a. In the event Purchaser fails to comply with any or all of the obligations, covenants, warranties or agreements to be performed, honored or observed by Purchaser under and pursuant to the terms and provisions of this Agreement and such default is not cured within fourteen (14) days after Purchaser's receipt of written notice thereof (other than Purchaser's failure to tender the Purchase Price on the date of Closing, a default for which no notice is required), then Seller may terminate this Agreement. The remedy set forth in this subparagraph a. shall be the sole and exclusive remedy of Seller in the event Purchaser shall be in default hereunder.
- b. In the event Seller fails to comply with any or all of the obligations, covenants, warranties or agreements to be performed, honored or observed by Seller under and pursuant to the terms and provisions of this Agreement, and such default is not cured within fourteen (14) days after Seller's receipt of written notice thereof, then purchaser may: (i) terminate this Agreement and both parties shall be released from any further liability hereunder, or (ii) bring an action for specified performance against Seller to enforce the terms of this Agreement. The remedies set forth in this subparagraph b. shall be the sole and exclusive remedies of Purchaser in the event Seller shall be in default hereunder.
- c. The failure of either part to act upon a default of the other in any of the terms, conditions or obligations under this Agreement shall not be deemed a waiver of any subsequent breach or default under the terms, conditions or obligations hereof by such defaulting party.

13. Notices.

Any notice required or desired to be given under this Agreement shall be in writing and (i) personally served, (ii) given by certified mail, return receipt requested, (iii) given by overnight express delivery, or (iv) given by electronic transmittal transmission, with any such electronic transmittal transmission confirmed by next business day overnight deliver or messenger delivery. Any notice shall be addressed to the party to receive such notice at the following address or at such other address as the party may from time to time direct in writing or give by electronic transmittal at the electronic transmittal telephone number listed below:

Seller: Jeff Fiegenschuh, City Manager
City of Rochelle
420 N. 6th Street

Rochelle, IL 61068

With copy to: Dominick Lanzito
Peterson, Johnson & Murray-Chicago LLC
200 W. Adams Street, Suite 2125
Chicago, IL 60606
(312) 724-8035
E-mail: dlanzito@pjmchicago.com

Purchaser: Kennay Farms Distilling, LLC
% Richard R. Kennay
8991 S. Prairie Road
Ashton, IL 61006
Cell (815) 751-4381
E-mail: rrkennay@gmail.com

With copy to: Gary R. Gehlbach, Esq.
Ehrmann Gehlbach Badger Lee & Considine, LLC
215 E. First St., Suite 100
P.O. Box 447
Dixon, IL 61021
Telephone: (815) 288-4949
Fax: (815) 288-3068
E-mail: gehlbach@egblc.com

14. Non-Foreign Affidavit. Seller is not a foreign entity and withholding of federal income tax from the amount realized will not be made by Purchaser. At Closing, Seller shall deliver to Purchaser a Non-Foreign Affidavit and Certification prepared in conformance with IRS regulations.

15. No Broker. Each of Seller and Purchaser represents that neither has retained any broker with respect to this transaction.

16. Miscellaneous Provisions.

a. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

b. Entire Agreement. All understandings and agreements, whether written or oral, heretofore had between the parties hereto are merged in this Agreement, which alone fully and completely expresses their agreement. Neither party is relying upon any statement or representation not embodied in this Agreement, made by the other. This Agreement may not be changed except by an instrument in writing signed by both parties.

c. Attorneys' Fees. If either party obtains a judgment against the other party by reason of a breach of this Agreement, a reasonable attorneys' fee as fixed by the

court shall be included in such judgment.

- d. Costs. Purchaser shall bear the fees and costs of its Due Diligence, recording the trustee’s deed, and its own attorney fees. Seller shall be responsible for paying all costs and fees payable to the Title Company, the transfer tax, any other recording fees, lien release fees, and its own attorney’s fees.
- e. Assignment. Purchaser shall not assign its right, title, interest, or obligations under this Agreement without Seller’s prior written consent.
- f. Severability. If any term, clause or provision of this Agreement is held to be illegal, invalid or unenforceable, or the application thereof to any person or circumstance shall to any extent be illegal or unenforceable under present or future laws effective during the term hereof or of any provisions hereof which survive closing, then and in any such event, it is the express intention of Seller and Purchaser that the remainder of this Agreement, or the application of such term, clause or provision other than to those as to which it is held illegal, invalid or unenforceable, shall not be affected thereby, and each term, clause or provision of this Agreement and the application thereof shall be legal, valid and enforceable to the fullest extent permitted by law.

17. Execution in Multiple Counterparts and by Electronic transmittal. This Agreement may be executed using counterparts and shall be fully effective and enforceable upon exchange of such executed counterparts by electronic transmittal. Immediately following the exchange of executed counterparts by electronic transmittal, the parties shall transmit signed original counterparts to each other but the failure of either party to comply with this requirement shall not render this Agreement void or otherwise unenforceable.

19. Execution Date. As used herein, the “Execution Date” shall be deemed to be the _____ day of June, 2018.

In witness whereof, the parties hereto have executed this Agreement as of the Execution Date.

Seller:

Purchaser:

CITY OF ROCHELLE, an Illinois municipality

KENNAY FARMS DISTILLING, LLC, an Illinois limited liability company

By: _____
Jeff Fiegenschuh, City Manager

By: _____
Richard R. Kennay, Member and Authorized Agent

Dated this _____ day of June, 2018.

Dated this _____ day of June, 2018.

Prepared by:

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