

## PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (the “Agreement”) is entered into between the City of Rochelle, an Illinois municipality, of 420 N. 6th Street, Rochelle, Illinois, 61068 (the “Purchaser”), and Rochelle Main Street, LLC, an Illinois limited liability company, with its principal place of business at 9500 W. Bryn Mawr Ave., Ste 340, Rosemont, Illinois, 60018 (the “Seller”).

### RECITALS:

- A. Purchaser is a political subdivision of the State of Illinois and is an organization described in Section 170(c)(1) of the Internal Revenue Code of 1986, as amended, and the applicable regulations promulgated thereunder (the “Code”).
- B. Seller believes that the purchase price for the Subject Property which is specified in this Agreement is substantially below the fair market value of the Subject Property. Seller intends that the difference between the purchase price and the fair market value to be a charitable contribution by Seller to Purchaser.

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 parcel:

Approximately 13.15 acres of land currently used for farmland but zoned for commercial/industrial use, and located at 920 S. Main Street, Flagg Township, Ogle County, Illinois, under PIN 24-25-476-011, as depicted in Exhibit 1 and legally described in Exhibit 2 hereto.

3. Purchase Price.

- a. The purchase price for the Subject Property (the “Purchase Price”) shall be **One (\$1.00) Dollar**. The Parties agree that the fair market value of the Subject Property (“FMV”) is \$570,000 as determined by a qualified appraisal that has been prepared by a qualified appraiser in accordance with Code Section 170(f)(11) and the regulations thereunder.
- b. Of the \$570,000 FMV, Purchaser will pay Seller only the sum of \$1.00. Purchaser acknowledges that \$1.00 does not represent the entire fair market value of the Subject Property. The remainder of the FMV (\$570,000 - \$1 = \$569,999) will be conveyed and accepted as a charitable donation by Seller to Purchaser. Purchaser will agree to issue an acknowledgement of the donation in accordance with Code Section 170(f)(8).
- c. Appraisal. Seller will pay for a qualified appraisal (“Appraisal”). The Appraisal shall be done by a qualified appraiser that complies with the requirements of Code Section 170, the regulations thereunder, and any other applicable rulings and other pronouncements of the Internal Revenue Service. A copy of the Appraisal will be provided to Seller and Purchaser prior to the Closing.
- d. IRS Form 8283. Upon the receipt of a Special Warranty Deed for the Subject Property at Closing, Purchaser shall sign and execute Part IV of the IRS Form 8283 prepared by Seller. Part IV of the

IRS Form 8283 will represent that Purchaser is a qualified organization under Code Section 170(c) and that it has received the donated property. Seller will file the IRS Form 8283 with its tax return for the year of the donation indicating that Seller has made a charitable donation of the Subject Property in the amount of \$569,999.

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 the date that is five (5) business days following the expiration of the Due Diligence Period, or such other date mutually acceptable to the parties (the “Closing Date”), provided that, at Purchaser’s sole discretion, Purchaser has not terminated the Agreement on or before the expiration of the Due Diligence Period, 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 and an ALTA Statement.

5. Possession. Seller shall provide Purchaser with possession of the Subject Property at immediately following the closing. Purchaser may at its sole cost and expense have the Subject Property evaluated for any anticipated construction.

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, and other rights that pertain to the Subject Property (but excluding any equipment or other property owned by tenant under the Lease), by delivering to Purchaser at Closing a fully executed, recordable, special warranty deed in form and substance satisfactory to counsel for Purchaser, subject only to the Permitted Exceptions defined below. At Closing, Seller shall also assign Seller’s interest as lessor in that certain Farm Lease dated November 14, 2017 between Seller and Tim Bruns as lessee, affecting the Land (the “Farm Lease”) to Purchaser pursuant to an Assignment of Lease reasonably acceptable to the parties (the “Assignments of Lease”), provided that there shall be no proration of any rent under the Farm Lease.

7. Title and Examination Period.

a. Title. Purchaser may elect to obtain a title commitment and title policy, at its sole cost and expense in such amount so desired by Purchaser. Purchaser shall use the Due Diligence Period to get comfortable with the condition of title and work with the Title Company to approve any title policy to be obtained by Purchaser. Seller agrees to that it will satisfy any liens, liens, mortgages, or assignment of rents which are of a definite and ascertainable amount (the “Required Removal Liens”) on or prior to Closing and provide documentation to the Title Company acceptable to the Title Company that it has the authority to convey the Subject Property, as well as the other title documents to be provided pursuant to this Agreement.

d. Title Charges. Notwithstanding anything herein to the contrary, Purchaser shall be responsible for paying the Owner’s 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, and one half Title Company’s closing fee if Purchaser has no mortgage financing of the Subject Property (or all of the title company’s closing fee if mortgage financing is involved), and the Illinois policy registration fee. Seller shall be responsible for the cost of removing any Required Removal Liens.

- e. Seller Not to Provide a Survey. The Purchaser will obtain an ALTA 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. Purchaser shall have the period commencing with the date upon which this Agreement has been executed by both Seller and Purchaser (the "Execution Date") and extending until 5 p.m. central standard time on May 27, 2020 (the "Due Diligence Period") to inspect the Subject Property as set forth in this Article 8. 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 Subject Property (including but not limited to Phase I, provided that any invasive tasting, including but not limited to a Phase II, shall be subject to Seller's written approval). 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. 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 on or prior to 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 except for those matters which expressly survive the termination of this Agreement. 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, 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 provided that Purchaser gives Seller reasonable prior oral notice before entering onto the Subject Property, for the purpose of performing Purchaser's Examinations, and subject to the rights of tenant under the Farm Lease. 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.
  
  - d. After performing Purchaser's Examinations, Purchaser shall promptly restore the Subject Property to the condition that existed prior to making such tests and inspections

(which obligation shall survive the Closing or any termination of this Agreement). Prior to Purchaser entering the Subject Property to conduct the inspections and tests described above, Purchaser shall obtain and maintain, or shall cause each of its contractors and agents to maintain (and shall deliver to Seller evidence thereof), at no cost or expense to Seller, general liability insurance, from an insurer reasonably acceptable to Seller, in the amount of One Million Dollars (\$1,000,000.00) combined single limit for personal injury and property damage per occurrence. Such policies shall name Seller as an additional insured party and shall provide coverage against any claim for personal liability or property damage caused by Purchaser or its agents, representatives or consultants in connection with such inspections and tests.

9. Real Estate Taxes. Unpaid real estate taxes, current installments of regular assessments, special assessments, sewer charges, and any similar taxes and charges (collectively, "Taxes") imposed in respect of the Subject Property which are not yet due and payable on the Closing Date shall be prorated to the Closing Date on the basis of 100% of the most recent ascertainable bill. Any and all delinquent Taxes shall be paid by Seller in full on or before Closing. All prorations shall be final. For purposes of proration, the Purchaser shall be deemed in title to the Subject Property on the Closing Date

10. Representations.

(a) Seller hereby covenants, represents and warrants to Purchaser as follows:

- a. Seller is the sole owner of the Subject Property and has the full 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.
- b. To the best of Seller's knowledge, the execution, delivery 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.
- c. 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 written notice respecting any proposed change to the Subject Property's zoning or land use planning classification.
- d. Seller 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 or disclosed in the Phase I provided by Seller to Purchaser.
- e. 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 that will be effective after the Closing, (iii) modify the Farm Lease without Purchaser's written consent, which shall not be unreasonably withheld, or (iii) otherwise encumber or pledge the Subject Property.

(b) Purchaser's Representations. Purchaser hereby covenants, represents and warrants to Purchaser as follows:

- a. Purchaser has the full 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.
- b. To the best of Purchaser's knowledge, the execution, delivery 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 Purchaser is a part or is bound, and will not violate any restriction, court order or agreement to which Purchaser is subject.

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 but shall not survive the Closing. Each party shall promptly notify the other party in writing in the event such party has actual knowledge that any covenant, representation or warranty of such warranty set forth above is not true and correct in any material respect.

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. There exists no material breach of any of Seller's covenants, representations, warranties or obligations contained herein;
- b. Any other express material conditions to Purchaser's obligation to proceed to Closing expressly set forth herein shall be and remain satisfied;

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 terminate this Agreement and both parties shall be released from any further liability hereunder. 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 party 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. 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:

Purchaser: 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](mailto:dlanzito@pjmchicago.com)

Seller:  
Rochelle Main Street, LLC  
c/o Venture One Real Estate LLC  
Attn: Roy Splansky  
9500 W. Bryn Mawr Ave., Ste 340  
Rosemont, Illinois, 60018  
Email: [rls@ventureonere.com](mailto:rls@ventureonere.com)

With copy to:

Mason, Wenk & Berman, L.L.C.  
630 Dundee Road, Suite 220  
Northbrook, IL 60062  
Facsimile: 847-656-6067  
Email: [kwenk@mwblawfirm.com](mailto:kwenk@mwblawfirm.com)

14. Non-Foreign Affidavit. Seller is not a foreign entity under Section 1445(b) of the United States Internal Revenue Code. 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 Special Warranty Deed, paying all costs and fees payable to the Title Company, the transfer tax, any other recording fees, and its own attorney fees. Seller shall be responsible for paying for lien release fees, if any, 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.

18. As-Is. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND/OR THE DOCUMENTS DELIVERED AT CLOSING, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, AND PURCHASER HEREBY ACKNOWLEDGES THAT NO REPRESENTATIONS HAVE BEEN MADE. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND/OR THE DOCUMENTS DELIVERED AT CLOSING, SELLER SPECIFICALLY DISCLAIMS, AND NEITHER SELLER NOR ANY OTHER PERSON IS MAKING, ANY REPRESENTATION, WARRANTY OR ASSURANCE WHATSOEVER TO PURCHASER AND NO WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EITHER EXPRESS OR IMPLIED, ARE MADE BY SELLER OR RELIED UPON BY PURCHASER WITH RESPECT TO THE STATUS OF TITLE TO OR THE MAINTENANCE, REPAIR, CONDITION, DESIGN OR MARKETABILITY OF THE SUBJECT PROPERTY, OR ANY PORTION THEREOF, INCLUDING BUT NOT LIMITED TO (A) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, (B) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (C) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, (D) ANY RIGHTS OF PURCHASER UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION, (E) ANY CLAIM BY PURCHASER FOR DAMAGES BECAUSE OF DEFECTS, WHETHER KNOWN OR UNKNOWN, LATENT OR PATENT, WITH RESPECT TO THE IMPROVEMENTS OR THE PERSONAL PROPERTY, (F) THE FINANCIAL CONDITION OR

PROSPECTS OF THE SUBJECT PROPERTY AND (G) THE COMPLIANCE OR LACK THEREOF OF THE REAL PROPERTY OR THE IMPROVEMENTS WITH GOVERNMENTAL REGULATIONS, IT BEING THE EXPRESS INTENTION OF SELLER AND PURCHASER THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE DOCUMENTS TO BE DELIVERED AT THE CLOSING, THE SUBJECT PROPERTY WILL BE CONVEYED AND TRANSFERRED TO PURCHASER IN ITS PRESENT CONDITION AND STATE OF REPAIR, "AS IS" AND "WHERE IS", WITH ALL FAULTS. THE TERMS AND CONDITIONS OF THIS PARAGRAPH WILL EXPRESSLY SURVIVE THE CLOSING.

19. Execution Date. As used herein, the "Execution Date" shall be deemed to be the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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

Seller:

Purchaser:

**ROCHELLE MAIN STREET, LLC, an Illinois limited liability company**

**CITY OF ROCHELLE**, an Illinois municipality

By: Venture One Properties, LLC

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

By \_\_\_\_\_

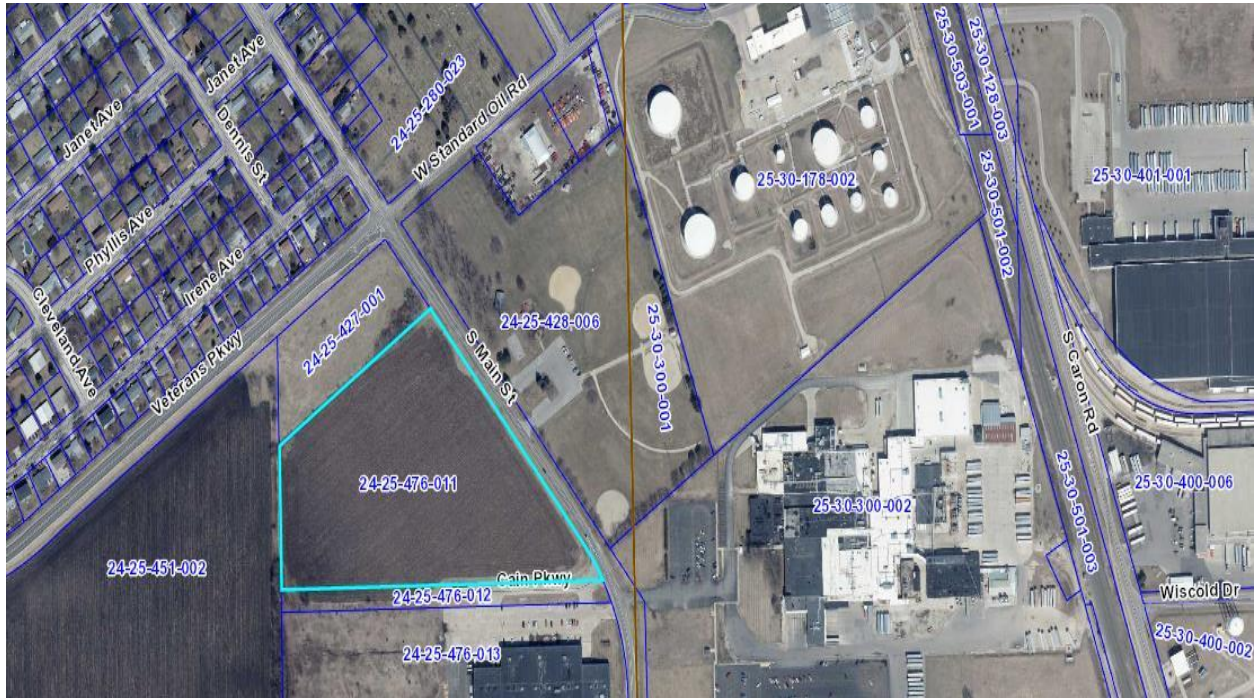
Name: \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**Exhibit 1**  
**Depiction of Parcel**



**Exhibit 2**  
**Legal Description**

**OF PROPERTY DESCRIBED AS:** Lot 5, EXCEPT the South 66 feet thereof as shown on the Plat of the Resubdivision of the of the Rochelle Tollway Industrial Park First Addition in part of the East-half of Section 25, Township 40 North Range 1 East of the Third Principal Meridian, as shown on the Plat thereof recorded December 17, 1980 in File “A” of Plats at page 59 as Document No. 490720 in the Recorder’s Office of Ogle County, Illinois, subject to all easements, agreements, city codes and/or ordinances of record if any, all situated in the City of Rochelle, the County of Ogle and the State of Illinois.