

AGREEMENT FOR ECONOMIC DEVELOPMENT GRANT

THIS AGREEMENT FOR ECONOMIC DEVELOPMENT GRANT (this “Agreement”) is entered into this ____ day of _____, 2020, by and between CITY OF ROCHELLE, an Illinois municipal corporation (“City”), and ERRETT WAREHOUSING, LLC, SERIES TWO, an Illinois limited liability company (“Developer”).

PREAMBLES

WHEREAS, City is empowered pursuant to 65 ILCS 5/8-1-2.5 (the “Economic Development Grant Statute”) to appropriate and expend funds for economic development purposes, including, without limitation, the making of grants to commercial enterprises that are deemed necessary or desirable for the promotion of economic development within the corporate limits of City; and

WHEREAS, Developer is the owner of certain real property (the “Subject Property”) located within the corporate limits of City, which real property is generally located at 600 S. 7th Street and identified as PIN 24-25-154-002; and

WHEREAS, Developer proposes to demolish the CMU (Concrete Masonry Unit) portion of the existing, dilapidated building located on the Subject Property (leaving an approximately 6,000 square foot area in the NW corner comprised of a red iron building that is intended for reuse in the future) and then remove and dispose of any demolished materials (the “Project”) in accordance with the Legal Requirements (as hereafter defined); and

WHEREAS, Developer has received a quote from a demolition contractor stating that the Project may be completed for approximately \$75,000, a copy of which has been provided to and reviewed by City; and

WHEREAS, in order to induce Developer to undertake the Project, City has agreed to provide Developer with an economic development grant as more fully set forth in this Agreement; and

WHEREAS, the City has determined that City’s provision of such economic development grant 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 intents and purposes of the Economic Development Grant Statute.

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 upon payment by City to Developer of the economic development grant described in Section 4 hereof.

Section 3. The Project.

(a) The Project consists of Developer's demolition of a significant portion of the existing, dilapidated building located on 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 March 31, 2021. Completion of the Project shall be evidenced by City's inspection of the Subject Property and confirmation that all activities described in the demolition permit for the Project and other required City approvals 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 as set forth in this Subsection (b), then Developer shall not be entitled to receive the economic development grant described in Section 4 hereof.

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

(d) For purposes of City's site runoff requirements, including, but not limited to Sec. 22-243 of the Rochelle City Code (as the same exists as of the date of this Agreement), City agrees that 61,000 square feet of impervious area shall be used as the baseline or credit for calculating the need for new site runoff storage facilities and stormwater calculations in the event of further redevelopment of the entire Subject Property. The purpose of such baseline is to ensure that Developer shall be able to complete the Project, and thereafter construct new buildings, site covering and other impervious areas in the future, without a requirement to provide for new site runoff storage facilities so long as the impervious areas are not, in the aggregate, greater than 61,000 square feet. Developer acknowledges that any redevelopment of the site or construction of impervious areas shall require adherence to all current Special Flood Hazard Areas codes, building/zoning and special flood hazard area setbacks, parking and landscape buffers, and Stormwater Runoff requirements as set forth in the Rochelle Municipal Code.

Section 4. Economic Development Grant. As long as no event described in Section 11 hereof shall have occurred and be continuing, and Developer has completed the Project as described in Section 3(b) hereof, City shall pay Developer an economic development grant of

\$50,000.00 in two (2) installments, as follows: (a) \$25,000.00 on or before December 31, 2021, and (b) \$25,000.00 on or before December 31, 2022.

Section 5. 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, nor shall City be obligated to pay any contractor, subcontractor, mechanic, or materialman providing services in connection with the Project.

Section 6. 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 during the term 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 grant paid by City to Developer pursuant to this Agreement, the Project would not reasonably be anticipated to be completed.

Section 7. 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) 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 demolition 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 8. 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.

Section 9. 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 9 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 10. 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 10.

Section 11. 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 12. Cancellation. In the event that City or Developer shall be materially impaired 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 Economic Development Grant Statute, 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 13. 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 (3rd) 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 6th St.
 Rochelle, Illinois 61068

With a copy to: Dominick L. Lanzito

Peterson, Johnson & Murray – Chicago LLC
200 W. Adams – Suite 2125
Chicago, Illinois 60606

If to Developer: Errett Warehousing, LLC, Series Two
Attn: Tim Bruns
P.O. Box 212
Rochelle, Illinois 61068

Section 14. 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 15. 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 16. 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 17. 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 18. 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 19. 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 20. 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 21. 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 22. 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 23. Assignment. Developer may assign its rights and obligations under this Agreement to an Affiliated Entity, with the prior written consent of 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. Developer may assign its rights and obligations to any person or entity that is not an Affiliated Entity solely with the prior written consent of City, which consent shall not be unreasonably withheld provided such person or entity demonstrates, to the reasonable satisfaction of City, sufficient creditworthiness and experience to undertake the Project. 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 24. 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 25. 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 26. 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 27. 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 28. Electronic Signatures. Signatures delivered by electronic mail or facsimile shall be deemed original signatures for all purposes.

Section 29. 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.

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 Manager

Attest: _____
City Clerk

ERRETT WAREHOUSING, LLC, SERIES TWO,
an Illinois limited liability company

By _____

Its _____