

AGREEMENT TO DEFER UTILITIES EXTENSION

This Agreement to Defer Utilities Extension ("Agreement") entered into as of November __, 2020, between Pipe 77, LLC, an Illinois limited liability company ("Pipe 77"), and the City of Rochelle, Illinois municipal corporation ("City"):

WITNESSETH

THAT WHEREAS, Pipe 77 is the owner of a parcel of real property legally described as follows ("Property"):

Being a tract of land known as Lot 1 of Hartnett Subdivision, located in Part of the Southeast Quarter (SE1/4) Section Thirteen (13), Township Forty (40) North, Range One (1) East of the Third (3rd) Principal Meridian, Ogle County, Illinois, described as follows:

Beginning at the southwest corner of said Lot 1, said point being on the easterly right-of-way line of North Eighth Street; thence North 0 degrees 45 minutes 23 seconds East, along said easterly right-of-way line, a distance of 209.61 feet, being the west line of said Lot 1; thence North 88 degrees 21 minutes 43 seconds East, leaving said right-of-way line, a distance of 121.38 feet, being the north line of said Lot 1; thence South 2 degrees 20 minutes 13 seconds East, a distance of 209.53 feet, being the east line of said Lot 1; thence South 88 degrees 23 minutes 58 seconds West, a distance of 132.69 feet, being the south line of said Lot 1 to the Point of Beginning, containing 0.611 acres of land.

Tax Identification Number: formerly part of 24-13-326-003, which Property is improved with storage units; and

WHEREAS, the Property includes frontage of 209 feet along North 8th Street ("Frontage"), which does not contain easements for water, sewer, and gas as shown on the Plat; and

WHEREAS, the Property would require a water and sanitary sewer connection from North 7th Street, which contains right of way for utilities, water and gas, as shown on the Plat; and

WHEREAS, the Property was subdivided and was formerly part of 24-13-326-003, which had utility connections including, but not limited to water, sanitary sewer, gas, and electric; and

WHEREAS, after the subdivision the Property was no longer connected to water and sewer; and

WHEREAS, the provisions of the City Code which governs the subdivision, redevelopment, and use of the Property include Sections 98-103(b)(3) and 98-153(d) of the Rochelle Municipal Code, requiring the developer to extend the water main and sewer main to

the property line of the premises to be served, and Section 86-52, requiring the developer to post certain security for the construction of public improvements; and

WHEREAS, Pipe 77 has represented to the City that the present use of the Property does not require water or sewer service, and has requested that its obligation to extend the water main and sewer main from North 7th Street to the Property be deferred until the City requires it for future redevelopment of the Property or other use of the Property, other than indoor storage in the existing buildings, or Pipe 77 desires it for their use of the Property, whichever date comes first; and

WHEREAS, the parties have reached an agreement which would defer Pipe 77's obligation to extend the water main and sewer main across the Frontage of the Property until the City requires it for future redevelopment of the Property or other use of the Property, other than indoor storage in the existing buildings, or Pipe 77 desires it for their use of the Property, whichever date comes first; and

WHEREAS, there are existing buildings and other structures such as fences and a cement retaining wall (hereinafter sometimes collectively called the "Structures") on the Property.

NOW THEREFORE, in consideration of the above recitals and the agreements contained herein, the parties agree as follows;

1. Deferral of Obligations. Pipe 77's obligation to extend the water main and sewer main from North 7th Street to the Property is hereby acknowledged by the parties and is deferred until the City requires it for a future redevelopment of the Property or a use of the Property, other than indoor storage in the existing buildings, or Pipe 77 desires it for their use of the Property, whichever date comes first. At such time as the City requires it for future redevelopment of the Property or other use of the Property, other than indoor storage in the existing buildings, or Pipe 77 desires it for their use of the Property, whichever date comes first and the City notifies Pipe 77 that the extensions are required by reason of such use of the Property, Pipe 77 shall, at its sole cost, extend water and sewer mains within existing City right-of-way or within dedicated easements from North 7th Street to the Property from the east line of the Property, in accordance with all provisions of the Rochelle Municipal Code.

2. No Security Required. In light of the uncertainty as to when, when Pipe 77 will desire sewer and water for their use of the Property or when Pipe 77, at its discretion may change the use of the Property to something other than storage, Pipe 77 shall not be obligated to post security for 110% of the estimated cost of such extension, as required by Section 86-52 of the Rochelle Municipal Code. However, in the event that Pipe 77 (or any successor in interest or transferee) should: (i) require water and sewer for their use of the Property or (ii) the City requires it for future redevelopment of the Property or other use of the Property, other than indoor storage in the existing buildings fail to extend the water main and sewer main from North 7th Street to the Property promptly after notice by the City that such extension is required for future redevelopment of the Property or use of the Property, the City may extend the water main and sewer main (or all other necessary utilities) to the Property, and shall be entitled to recover a

judgment against Pipe 77 (or any successor in interest or transferee) for the City's costs in doing so, plus prejudgment interest and the City's attorney's fees and court costs. The City Engineer will not be required to acknowledge the certificate required for land improvements on the Final Plat of Subdivision as required by Section 86-154(7). The Final Plat of Subdivision will reflect the Deferment Agreement, which obviates the need for the City Engineer to certify that the public improvements will be completed upon subdivision.

3. Forbearance by City. The City shall forbear from taking any action to enforce Sections 98-103(b)(3), 98-153(d) and 86-52 of the Rochelle Municipal Code, with respect to the extension of the water main and sewer main to the East line of the Property from 7th Street, until Pipe 77 desires water and sewer for their use of the Property or (ii) Pipe 77 at its discretion changes the use of the Property to something other than storage.

4. Notices. Any notices contemplated by this Agreement shall be hand-delivered or mailed by certified mail to the following addresses:

City of Rochelle
Attn: City Manager
420 North 6th Street
Rochelle, IL 61068

Pipe 77, LLC
Attn: Thomas Hartnett II
225 Windover Park Drive
Rochelle, IL 61068

5. Existing Structures. The City agrees that notwithstanding the platting of the Property pursuant to the Plat the location of the existing Structures are not and will not be considered in violation of any setback requirements of the City.

6. Assignment. The provisions of this Agreement shall be binding on any subsequent owner of the Property, and shall run with the land (i.e., the Property). Pipe 77 shall give notice to any subsequent owner or transferee of the existence of this Agreement. This Agreement shall be recorded in the office of the Ogle County Recorder, at Pipe 77's expense.

7. Intent. Notwithstanding anything contained in this Agreement to the contrary the City agrees it is the intent of this Agreement that so long as Pipe 77 uses the Property for indoor storage Pipe 77 shall not be required to extend the water main and the sewer main to the Property. Notwithstanding anything contained in this Agreement to the contrary Pipe 77 agrees it is the intent of this Agreement that if Pipe 77 uses the Property for other than indoor storage and the City gives notice to Pipe 77 that extension of the sewer main and water main is required by reason of such future redevelopment of the Property or other use of the Property, other than indoor storage in the existing buildings, then in that event Pipe 77 shall be obligated to extend the water main and sewer main to the Property, at its sole cost and expense.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement in duplicate originals as of the date first set forth above.

PIPE 77, LLC, an Illinois
limited liability company

THE CITY OF ROCHELLE, an Illinois
municipal corporation

By: _____
Thomas J. Hartnett II, member

By: _____
City Manager

By: _____
Thomas J. Hartnett III, member

Dominick L. Lanzito
Peterson, Johnson & Murray Chicago, LLC
200 West Adams St., Suite 2125
Chicago, IL 60606

STATE OF ILLINOIS)
) ss.
COUNTY OF OGLE)

I, the undersigned notary public, do hereby certify that Jeff Fiegenschuh, the City Manager of the City of Rochelle, an Illinois municipal corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed and delivered the said instrument in said capacity, pursuant to authority of the governing body of the City.

Given under my hand and official seal, this _____ day of November, 2020.

NOTARY PUBLIC

(SEAL)

STATE OF ILLINOIS)
) ss.
COUNTY OF OGLE)

I, the undersigned notary public, do hereby certify that Thomas Hartnett the II and Thomas Hartnett the III, the members of Pipe 77, LLC, an Illinois limited liability company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed and delivered the said instrument in said capacity, pursuant to authority of the governing body and governing instruments of said limited liability company.

Given under my hand and official seal, this _____ day of November, 2020.

NOTARY PUBLIC

(SEAL)