

## 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 Donald C. Burke Jr. and Joseph Burke, Illinois residents with their principal mailing address at 604 Lincoln Highway, Rochelle, Illinois, 61068 (the "Sellers").

### RECITALS:

- A. Purchaser is a non-home rule political subdivision of the State of Illinois pursuant to Section 7 of Article VII of the 1970 Constitution of the State of Illinois.
- B. Seller believes that the purchase price for the Subject Property which is specified in this Agreement is equal to the fair market value of the Subject Property.

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, and the parties agree that an appraisal and survey is not required.

2. Subject Property. The property that is the subject of this Agreement (the "Subject Property") is located at 313 W. 5<sup>th</sup> Avenue, Rochelle, Illinois 61068, with PINs 24-24-337-007 and 34-34-337-008, and is depicted in Exhibit 1 and legally described in Exhibit 2, which exhibits are attached hereto, incorporated herein, and made a part of this Agreement.

3. Purchase Price. The purchase price for the Subject Property (the "Purchase Price") shall be **One Hundred and Ten Thousand Dollars (\$110,000.00)** and shall be paid at the time of Closing by wire-transfer to the title company serving as the closing agent.

4. Closing.

- a. Time is of the essence as to all dates in this Agreement and the Performance of all obligations under this Agreement.
- b. The closing of the transaction contemplated in this Agreement (the "Closing") at the offices of Kanzley Title Company, \_\_\_\_\_, Illinois, shall be accomplished through a customary "New York Style" closing escrow, provided that, at Purchaser's sole discretion, Purchaser has completed its Due Diligence and Examination or has waived the right to do so.
- c. 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. Seller shall also deliver to Purchase at Closing an Affidavit of Title in customary form. Seller shall deliver to the Escrow Agent the following:
  - i. A duly executed and acknowledged original Warranty Deed conveying title to the Subject Property free and clear of all mortgages and liens and;
  - ii. Evidence reasonably satisfactory to the Escrow Agent respecting the due organization of Seller and the due authorization and execution by Seller of this Agreement and the documents required to be delivered hereunder by Seller;

- iii. A closing statement (the “**Closing Statement**”) reflecting the Purchase Price, and the adjustments and prorations required hereunder and the allocation of income and expenses required hereby;
  - iv. Such transfer tax forms and stamps, as may be required by state and local authorities, in this transaction; and
  - v. Such additional documents as may be reasonably required by Purchaser and the Escrow Agent in order to consummate the transactions hereunder.
- d. **Closing Costs.** All state, county, and municipal transfer and conveyance taxes and/or documentary stamps and special real estate taxes and assessments shall be paid for by the Purchaser or shall be exempt because of Seller’s and/or Purchaser’s status as governmental entity respectively. The cost of recording the documents called for herein shall be paid for by Purchaser. The cost of the escrow shall be paid by the Purchaser. Costs for the issuance of the title policy insuring the Subject Property in the amount of the Purchase Price shall be paid for by the Seller. Costs for updating same and to insure the gap shall be paid for by Seller. Costs of extended coverage and endorsements beyond the standard title commitment shall be paid for by Purchaser.
5. **Possession.** Seller shall provide Purchaser with possession of the Subject Property immediately following the closing. Purchaser may at its sole cost and expense have the Subject Property evaluated for any anticipated construction, provided that neither Purchaser nor any agent of Purchaser unreasonably interferes with Seller or any parties use 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 Warranty Deed in form and substance satisfactory to counsel for Purchaser, subject only to the Permitted Exceptions and Deed Restrictions defined below.
7. **Title and Examination Period.**
- a. **Title.** Within twenty (20) days from the execution of this Agreement, the Parties, with the usual and customary apportionment of the title policy expenses, Purchaser shall order a current title commitment (“Title Report”) from Professional National Title Network Title Insurance Company for the latest ALTA Form Owner’s Title Insurance Policy for the Subject Property in the amount of the Purchase Price (the “Title Commitment”) and with extended coverage if Purchaser desires, together with copies of all documents referred to therein (the “Title Documents”). The Title Report shall be reviewed by Purchaser during the Examination Period.
  - b. **Examination Period.** Purchaser shall have ten (10) days after Purchaser’s receipt of the Title Report and Survey and Title Documents in which to review same 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, the 10<sup>th</sup> day 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 at Purchaser’s expense as a condition precedent to Purchaser’s obligation to close. 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 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. 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. Notwithstanding the foregoing, neither (i) the standard preprinted exceptions set forth in the Title Commitment, and (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 which will be satisfied prior to or simultaneously with the Closing, shall constitute Permitted Exceptions.

- c. Title Policy. This Agreement is contingent upon Parties obtaining at the Closing, the Parties, with the usual and customary apportionment of the title policy expenses, an 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, 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. The Purchaser will obtain a 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 ten (10) business days is the "Due Diligence Period," which runs contemporaneously with the Examination 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 requests. Seller further agrees to deliver to Purchaser the existing Phase I environmental report previously obtained by Seller for the Subject Property. If Purchaser determines, in Purchaser's sole and absolute discretion, that any of Purchaser's Examinations 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 shall have until the end of the Due Diligence period, the 10<sup>th</sup> day of the Due Diligence Period, to notify Seller in writing of Purchaser's termination of this Agreement. In the event of such a termination by Purchaser on or prior to the end of the Due Diligence period, 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, *provided*, however, that prior to Purchaser or any contractors or agents employed by Purchaser entering upon the Property, Purchaser shall provide reasonable notice to Seller along with an identification of the parties that will be entering the Property. Seller shall not unreasonably withhold access to the Property during the Due Diligence Period from the Purchaser or any contractors or agents employed by Purchaser. Purchaser shall indemnify Seller against any liens for such work performed by Purchaser or its contractors or other agents.. 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, contractors, or its agents, while conducting any test or inspection of the Subject Property.

9. Real Estate Taxes. Seller will prorate any taxes at 105% of the prior year's tax bill, unless this property is exempted from any property tax liability.

10. Seller's Representations. 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 notice respecting any proposed change to the Subject Property's zoning or land use planning classification.

- d. 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.
- e. 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.
- f. 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.
- g. 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.
- h. Seller is transferring the Property in "as is" condition, subject to the Seller's representations and warranties under this Agreement.

11. Purchaser's Representations. Purchaser hereby covenants, represents, and warrants to Purchaser as follows:

- a. That Purchaser has full power and authority to purchase the Subject Property and conduct its business in accordance with the terms of this Agreement, is a duly created, organized and validly existing legal entity, and has obtained all approvals necessary and required by the Purchaser's governing bodies.
- b. Purchase agrees to accept the Property in "as is" condition, subject to the Seller's representations and warranties under this Agreement.
- c. Purchaser has full power and authority to enter into this Agreement and Purchaser shall execute and deliver or caused to be executed and delivered all other documents and instruments reasonably required to carry out the terms hereof or otherwise effectuate the Closing.
- d. This Agreement has been duly authorized by Purchaser and is binding on Purchaser and enforceable against Purchaser in accordance with its terms. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will (a) result in a breach of or a default under any agreement to which Purchaser is a party or by which Purchaser is bound, or (b) violate any restriction, court order or agreement to which Purchaser is subject.

11. Representations by Both Parties. The representations and warranties set forth in paragraphs 10 and 11 shall be true and correct at the time of Closing as well as on the Execution Date. Each party shall promptly notify the other party in writing in the event either party has actual knowledge that any covenant, representation or warranty of the other party set forth above is not true and correct. In the event of a breach of a Representation or Covenant, the non-defaulting party shall indemnify and hold the other harmless from and against any and all loss, cost or expense, including legal fees resulting from its breach. The terms and conditions of this paragraph shall expressly survive the Closing and not merge with the provisions of any closing documents. The truth, in all material respects, of the representations and warranties of Seller set forth in this Agreement on the Effective Date shall be reaffirmed, as of the Closing Date, as though made on and as of the Closing Date.

13. 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, 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.

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.

14. 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 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.

15. 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 which provides proof of delivery, or (iv) given by electronic transmittal to an email, provided 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 email addresses listed below:

Purchaser: Jeff Fiegenschuh, City Manager  
City of Rochelle  
420 N. 6th Street  
Rochelle, IL 61068  
jfigenschuh@rochelleil.us

With copy to: Dominick Lanzito  
Ottosen DiNolfo Hasenbalg & Castaldo, Ltd.  
2441 Warrenville Road, Suite 310  
Lisle, Illinois 60532  
dlanzito@ottosenlaw.com

Seller: Donald C Burke Jr. and Joseph Burke  
604 Lincoln Highway  
Rochelle, IL 61068  
dburke1963@outlook.com

With copy to: Attorney

Service of any such notice or other communications shall be deemed effective on the day of actual delivery (whether accepted or refused), provided that if any notice or other communication to be delivered by email as provided above cannot be transmitted because of a problem affecting the receiving party's computer, the deadline for receiving such notice or other communication shall be extended through the next business day, as shown by the addressee's return receipt if by certified mail, and as confirmed by the courier service if by courier; provided, however, that if such actual delivery occurs after 5:00 p.m. (local time where received) or on a non-business day, then such notice or communication so made shall be deemed effective on the first business day after the day of actual delivery. Except as expressly provided above with respect to certain email, no communications via electronic mail shall be effective to give notice.

16. 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.

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

18. 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 warranty deed, and its own attorney fees. Seller shall be responsible for paying the title commitment, lien release fees associated with the title report, and its own attorney's fees. The Parties shall pay the closing costs in accordance with paragraph 4(d) above.
- 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.

19. 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 to the email addresses of counsel for Seller and counsel for Purchaser. Following the exchange of executed counterparts by electronic transmittal, promptly the parties shall mail 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.

20. Execution Date. As used herein, the "Execution Date" shall be deemed to be the \_\_\_\_\_ day of \_\_\_\_\_, 2025. This date shall be the date on which the last party to this Agreement signs below.

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



Sellers:

**Donald C. Burke, Jr.**  
an Illinois resident

**Joseph Burke**  
an Illinois resident

\_\_\_\_\_  
Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

Purchaser:

**CITY OF ROCHELLE,**  
an Illinois municipality

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

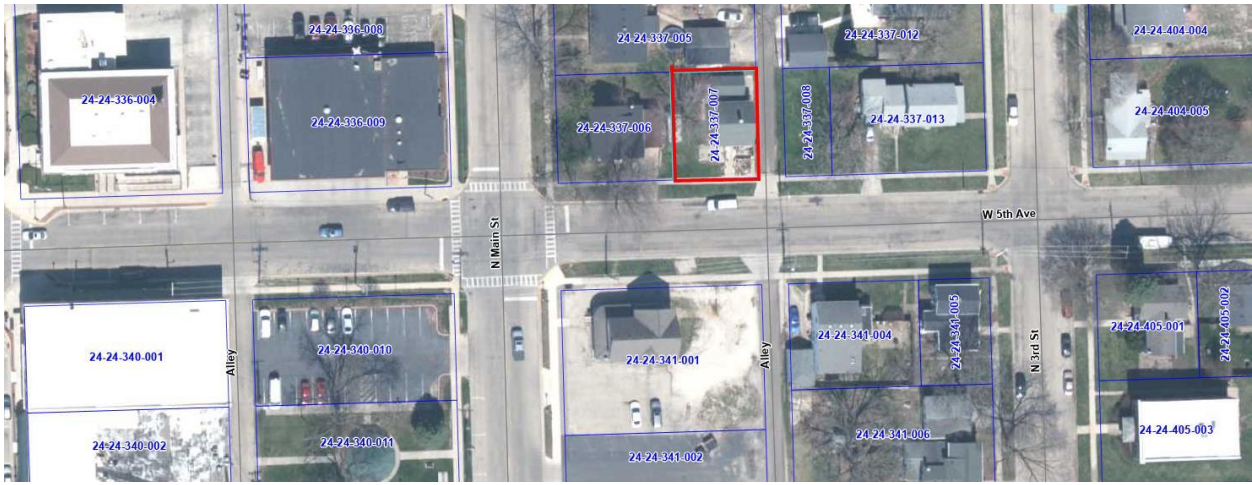
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Reviewed by:

**Attorney**

**Exhibit 1**  
**Depiction of Parcels**



**Exhibit 2**  
**LEGAL DESCRIPTION**  
**(Subject Property)**

**313 W. 5<sup>th</sup> Avenue, Rochelle, Illinois**

**PINs 24-24-337-007 and 34-34-337-008**

**[Legal description to be inserted when available]**