

**THIS AGREEMENT WILL TAKE EFFECT UPON ENTRY OF THE SALE ORDER, PROVIDED THAT THE PROVISIONS REGARDING THE BREAK-UP FEE SHALL BE ENFORCEABLE AND TAKE EFFECT IMMEDIATELY UPON THE EXECUTION OF THIS AGREEMENT BY BOTH PARTIES, REGARDLESS OF ENTRY OF THE SALE ORDER, UNLESS OTHERWISE ORDERED BY THE BANKRUPTCY COURT. UNDERLINED TERMS IN THE FOREGOING STATEMENT ARE DEFINED BELOW IN THE TEXT OF THIS AGREEMENT.**

PURCHASE AND SALE AGREEMENT

BETWEEN

ROCHELLE HOLDINGS XIII, LLC a Florida Limited Liability Company,  
AS CHAPTER 11 DEBTOR IN POSSESSION

as Seller

AND

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as Buyer and Stalking Horse Bidder

Property: @202.5 acres of vacant land located at  
4105 Golden Gem Parkway, Apopka, FL 32712

Dated as of: \_\_\_\_\_, 2022

## **PURCHASE AND SALE AGREEMENT**

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is entered into as of the Effective Date (defined below) between ROCHELLE HOLDINGS XIII, LLC, a Florida Limited Liability Company, as debtor in possession (the “**Debtor**” or “**Seller**”) and \_\_\_\_\_ (the “**Buyer**”). Buyer and Seller are sometimes collectively referred to below as the “**Parties**” and each individually as a “**Party**.”

### **RECITALS**

WHEREAS, Debtor is the owner of the real property located at 4105 Golden Gem Parkway, Apopka, Florida 32712, together with all improvements thereon and appurtenances thereunto, (the “**Land**”) which Land is described on **Exhibit “A”** hereto.

WHEREAS, The Land is vacant.

WHEREAS, On July 15, 2021, Debtor filed a voluntary petition for relief under Chapter 11, Title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Middle District of Florida – Orlando Division (the “**Bankruptcy Court**”). The case is pending in the Bankruptcy Court as Case No. 6:21-bk-03216-LVV (the “**Bankruptcy Case**”). Debtor’s bankruptcy estate is referred to herein as the “**Estate**.”

WHEREAS, On January 10, 2022, the Bankruptcy Court entered the Bid Procedures Order (as defined below), thereby authorizing the Debtor to sell the Property by auction pursuant to the Bid Procedures attached thereto as Exhibit A.

WHEREAS, Debtor believes that it is in the best interests of the Estate to enter into this Agreement to sell the Property (defined below) to Buyer upon the terms and conditions stated herein, and the Buyer wishes to purchase the Property from the Debtor, and to submit this Agreement for the purpose of being designated the Stalking Horse Bidder (as defined below) at the Auction, all subject to the approval of the Bankruptcy Court and as more particularly provided below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

### **AGREEMENT**

1. **Definitions.** In addition to all other defined terms contained in this Agreement, each term listed below shall have the meaning prescribed for that term:
  - a. “**Auction**” means the live online-only auction to be conducted pursuant to that certain Bid Procedures Order and the Bid Procedures.
  - b. “**Auctioneer**” means Robert Ewald and Ewald Auctions, Inc.
  - c. “**Back-Up Bid**” means the next highest bid submitted at the Auction after the Successful Bid, as determined by the Seller and the Auctioneer.
  - d. “**Back-Up Bidder**” means the bidder who submitted the Back-Up Bid.

- e. **“Bid Procedures Order”** means that certain *Order Approving Debtor Rochelle Holdings XIII, LLC’s Amended Motion for Bid and Sale Procedures, Marketing Procedures, and For Related Relief*, which the Bankruptcy Court entered on January 10, 2022 (Doc. No. 121) in the Bankruptcy Case.
- f. **“Bid Procedures”** means those certain Bid and Sale Procedures approved by the Bankruptcy Court for the sale and auction of the Property pursuant to the Bid Procedures Order.
- g. **“Closing”** shall mean the consummation of the conveyance of the Property (defined below) to Buyer and receipt of the Purchase Price (also defined below) by Seller, and the satisfaction or waiver of all other conditions for closing prescribed by this Agreement.
- h. **“Data Room”** means the online data room maintained by Auctioneer, which contains material information with respect to the Property.
- i. **“Effective Date”** means the date the Sale Order is entered by the Bankruptcy Court.
- j. **“Escrow Agent”** means Lawrence M. Kosto, Esq., and the law firm of Kosto & Rotella, P.A.
- k. **“Lien”** means “any interest in” the Property as used in Section 363(f) of the Bankruptcy Code and includes any lien (including any tax lien or judgment lien), pledge, security interest, mortgage or lis pendens, contracts, options or other rights to acquire any other interest in the Property, but does not include any easements or restrictions of record.
- l. **“Person”** means any natural person, corporation, company, partnership, proprietorship, joint venture, association, joint stock company, trust, foundation, fund, institution, society, union, club, or other group organized for any purpose, whether or not incorporated, wherever located and of whatever citizenship, or any receiver, trustee in bankruptcy or similar official, any liquidating agent for any of the foregoing, any trustee or executor in his capacity as such or any government or agency or political subdivision thereof.
- m. **“Section”** means each provision of this Agreement included under any underlined heading or title. Each Section shall include all clauses and paragraphs contained between the underlined heading for that Section and the underlined heading of the following Section.
- n. **“Stalking Horse Bid Amount”** means \$\_\_\_\_\_, the bid submitted by the Stalking Horse Bidder for the purchase of the Property.
- o. **“Stalking Horse Bidder”** means the Buyer submitting this Agreement as a Stalking Horse Bid.
- p. **“Successful Bid”** means the highest bid submitted at the Auction, as determined by the Seller and Auctioneer.
- q. **“Successful Bidder”** means the bidder at the Auction who is deemed by the Seller and Auctioneer to have submitted the Successful Bid.

- r. **“Taxes”** means any federal, state, local, or foreign real property, personal property, sales, use, room, occupancy, ad valorem, or similar taxes, assessments, levies, charges, or fees levied with respect to the Property or to operations thereon, including, without limitation, any interest, penalty, or fine with respect thereto, but expressly excluding any: (a) federal, state, local, or foreign income, capital gain, gross receipts, capital stock, franchise, profits, estate, gift, or generation skipping tax; or (b) transfer, documentary stamps on the deed and any mortgage; intangible tax on any mortgage; recording, or similar tax, levy, charge, or fee incurred with respect to the transaction described in this Agreement; *provided*, that Seller shall request that the Bankruptcy Court include a provision in the Sale Order providing that the transfer of the Property shall be exempt from any documentary stamps on the deed and any mortgage, intangible tax on any mortgage, and any real estate transfer, sales, use, or other similar tax, pursuant to Section 1146(a) of the Bankruptcy Code, as set forth herein.

Any terms not defined in this agreement shall have the meaning as defined in Bid Procedures Order and the Bid Procedures; or 11 U.S.C. § 101. Defined terms may be used in the singular or the plural. When used in the singular preceded by “a,” “an,” or “any,” such term shall mean one or more members of the relevant class. When used in the plural, such term shall mean some or all, as applicable in the context, of the members of the relevant class.

2. **Sale and Purchase of Property.** Subject to the terms and conditions of this Agreement and to the Sale Order, and subject in all events to the approval of the Bankruptcy Court, on the Closing Date (defined below), Seller shall sell, assign, transfer, convey and deliver, or cause to be sold, assigned, transferred, conveyed and delivered, to Buyer, and Buyer shall purchase and acquire from Seller, Seller’s right, title, and interest in the following (collectively, the **“Property”**):
- a. The Land described in Exhibit “A” and located at 4105 Golden Gem Parkway, Apopka, Florida 32712, together with all of Seller’s right, title, and interest in and to any property rights, easements, rights-of-way, hereditaments, appurtenances, entitlements, development rights, permits, approvals, and rights and profits derived from, related to, or appurtenant to the Land.
3. **Court Approval.** The parties’ respective obligations to purchase and sell the Property pursuant to this Agreement are subject to: (a) Bankruptcy Court approval after notice and a hearing, (b) higher and better offers at the Auction if this Agreement is submitted by a Stalking Horse Bidder, and (c) the provisions, requirements, and limitations of the Sale Order (defined below).
4. **Purchase Price.** The **“Purchase Price”** equals the Stalking Horse Bid Amount plus a Buyer’s premium of three percent (3%) (the **“Buyer’s Premium”**). In this case, the Purchase Price is \$\_\_\_\_\_, which equals the Stalking Horse Bid Amount of \$\_\_\_\_\_, plus the Buyer’s Premium of \$\_\_\_\_\_ (3% of the Stalking Horse Bid Amount). Buyer will pay the Purchase Price to Seller in the following manner:
- a. Upon submission of this Agreement as its Stalking Horse Bid, Buyer paid a deposit of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) (the **“Initial Deposit”**), which is held by the Escrow Agent. On Buyer’s becoming the Successful Bidder or the Back-Up Bidder, as the case may be, the Initial Deposit shall become earnest money security for Buyer’s performance of this Agreement and shall constitute a portion of the **“Deposit.”**

- b. Within 24 hours of becoming the Successful Bidder or the Back-Up Bidder, Buyer shall deliver to Escrow Agent an additional deposit (the “**Additional Deposit**”) the amount of which is the difference between 10% of the Successful Bid amount or the Back-Up Bid amount, as the case may be, and the Initial Deposit (such that the sum of the Initial Deposit and the Additional Deposit together equal 10% of the Successful Bid or the Back-Up Bid, as the case may be). The Additional Deposit will be wire transferred to Escrow Agent to be held in escrow in accordance with this Agreement.
  - c. References in this Agreement to the “**Deposit**” mean the amount from time to time held by Escrow Agent pursuant to this Agreement. The Deposit will not accrue interest. At Closing, the Deposit will be delivered to Seller and applied toward payment of the Purchase Price due from Buyer.
  - d. At Closing, Buyer will pay to Seller the balance of the Purchase Price (adjusted for prorations and other adjustments required in this Agreement) by wire transfer of immediate funds.
  - e. Buyer will also pay at Closing the closing costs allocated in this Agreement to Buyer.
5. Time and Place of Closing. Unless (a) otherwise agreed to by the Seller and Buyer in writing, or (b) a stay is imposed by a court of competent jurisdiction, or (c) the Buyer under this Agreement is the Back-Up Bidder, the Closing shall occur no later than twenty-one (21) calendar days after entry of the Sale Order, or at such other time as may be ordered by the Bankruptcy Court (the “**Closing Date**”). Notwithstanding any provisions to the contrary contained herein, so long as Buyer is not in default hereunder or has otherwise not caused delay of Closing, if Closing has not occurred within ninety (90) days after entry of the Sale Order, then Buyer shall have the option to terminate this Agreement and receive back its Deposit, whereupon the Parties shall be released from any further obligations hereunder except for those that survive Closing. If Buyer invokes this option to terminate, then Seller shall have the right in its discretion to cause Closing to occur within twenty-one (21) days after receiving notice of Buyer’s election to terminate, in which event Buyer shall be obligated to close notwithstanding its previous election to terminate. If the Buyer under this Agreement is deemed the Back-Up Bidder, then the Closing Date shall occur no later than twenty-one (21) days after Seller notifies the Back-Up Bidder that the Successful Bidder has failed to close on the purchase of the Property. With respect to a Back-Up Bidder, this Agreement shall be deemed terminated, and the parties hereto shall be released from any and all obligations and liabilities hereunder, upon the Closing of the sale of the Property to the Successful Bidder.
- a. Closing will occur at the offices of Edward A. Kerben, Esq., (the “**Closing Agent**”), 725 N. Magnolia Ave., Orlando, Florida 32803. The Closing shall be an escrow closing through the Closing Agent.
  - b. Notwithstanding any other provision of this Agreement, time is of the essence with respect to the Closing Date. No grace period, notice, or tender shall be required as a condition to declaring Buyer in immediate default for failure to timely to close.
  - c. Buyer acknowledges receipt of a commitment for an ALTA owner’s title insurance policy from \_\_\_\_\_ (the “**Title Company**”), with an effective date of \_\_\_\_\_, Order No. \_\_\_\_\_ (the “**Title Commitment**”), together with copies of all documents referenced therein. At

Buyer's request and at Buyer's expense, at Closing, Closing Agent will issue owner's and lender's title insurance policies at the promulgated rate applicable thereto.

- i. For purposes of this Agreement, the "**Permitted Exceptions**" include those exceptions described in, and other title matters disclosed in, the Title Commitment, together with: (i) taxes for the year of Closing and subsequent years (Seller shall pay taxes for previous years); (ii) all matters appearing on the Survey; and (iii) other matters affecting the Property and disclosed by this Agreement. Buyer accepts title for the Property subject to the Permitted Exceptions.
    - ii. If Buyer requests issuance of owner's or lender's title insurance policy, not later than five (5) days before Closing, Seller will provide to Buyer an updated Title Commitment bringing the effective date of the Title Commitment forward. If that updated Title Commitment reflects that title for the Property has since the previous effective date become subject to an adverse claim, defect, or other condition that is not a Permitted Exception (collectively, "**Subsequent Defects**"), unless Seller removes the Subsequent Defect such that the Title Company agrees to make no exception for it in the title insurance policy, Buyer will have the right in Buyer's discretion to terminate this Agreement by delivering written notice of termination to Seller before the Closing Date, in which event Escrow Agent shall return the Deposit to Buyer and the Parties shall be released from any further obligations under this Agreement, except for those that expressly survive termination of this Agreement. If Buyer fails before the Closing Date to deliver its notice of termination pursuant to this Section, Buyer shall be deemed to have waived the Subsequent Defects and elected to purchase the Property subject to them (and those Subsequent Defects shall become Permitted Exceptions).
  - d. If the Bankruptcy Court does not discharge or remove from the title for the Property any monetary lien, mortgage, judgment, or other encumbrance securing payment for a liquidated sum (a "**Monetary Lien**"), then Seller may elect at or before Closing to satisfy or otherwise remove that Monetary Lien from title for the Property. If Seller fails or elects not to remove a Monetary Lien, the Buyer shall have the right before Closing to terminate this Agreement and receive back the Deposit.
  - e. Buyer has reviewed and approved the Survey prepared by Allen & Company dated January 18, 2007, bearing Job No. 27002 (the "**Survey**"), *provided, that*, Buyer acknowledges that the survey includes land no longer owned by the Debtor, specifically, on or about April 17, 2012, the Debtor Rochelle Holdings XIII, LLC conveyed to Freeport Rapids Partners, G.P. approximately 2.5 acres, from that property, thereby reducing the amount of land the Debtor owned, from the approximately 205 acres originally purchased from the Rissers, to the approximately 202.5 acres the Debtor now owns, and that is subject to this Agreement.
6. Conveyance of Property. Subject to and in accordance with the provisions of this Agreement and the Sale Order, and subject to approval of the Bankruptcy Court, at Closing Seller shall execute and deliver to Buyer the following instruments for the purpose of transferring and conveying the Property to Buyer:
- a. Debtor's Warranty Deed (the "**Deed**") conveying the Property free and clear of all Liens in accordance with sections 363(b) and (f) of the Bankruptcy Code, with such Liens to attach to the proceeds of sale, but otherwise subject to the Permitted Exceptions.

- b. The Closing Statement (defined below).
  - c. Assignment of Developer Rights, Permits, Agreements, Approvals, Fees and Deposits, provided that such Assignment shall be without any representations or warranties by the Seller whatsoever.
  - d. Such other documents as may be customary, or as may be authorized or directed in the Sale Order, and documents reasonably required in order to perform this Agreement or to satisfy reasonable legal concerns. Each closing document shall be consistent with and implement applicable provisions of this Agreement and with the Sale Order.
7. Buyer's Documents. Subject to and in accordance with the provisions of this Agreement and the Sale Order, and subject to approval of the Bankruptcy Court, at Closing Buyer shall execute and deliver the following instruments:
- a. The Closing Statement.
  - b. Such other documents as may be customary, or as may be authorized or directed in the Sale Order, and documents reasonably required in order to perform this Agreement or to satisfy reasonable legal concerns. Each closing document shall be consistent with and implement applicable provisions of this Agreement and with the Sale Order.
8. Closing Expenses. Buyer will pay all costs of the Closing, and of transfer and conveyance of the Property, including without implied limitation documentary stamps required to be affixed to the deed, the cost of recording all instruments required to be recorded, the title insurance premiums and charges for related title services, costs and fees of the Closing Agent for closing services (up to, but not exceeding, \$1,000.00), the fees and expenses of the Escrow Agent (up to, but not exceeding, \$1,000.00), and the costs and fees for Buyer's own attorneys, accountants, and consultants; *provided*, that Seller shall request that the Bankruptcy Court include a provision in the Sale Order providing that the transfer of the Property shall be exempt from any documentary stamps on the deed and any mortgage; intangible tax on any mortgage; and any real estate transfer, mortgage recording, sales, use, or other similar tax, pursuant to Section 1146(a) of the Bankruptcy Code, as set forth herein.
9. Bankruptcy Court Approval. Buyer's obligation to purchase, and Seller's obligation to sell, the Property are expressly contingent on and subject to the final entry by the Bankruptcy Court of the Sale Order (defined below in this Section) conforming to the requirements of this Agreement.
- a. If on or before May 31, 2022, the Bankruptcy Court has not entered the Sale Order conforming to the requirements of this Agreement, then either of Seller or Buyer may terminate this Agreement by delivering written notice to the other of the election to terminate. In the event of such a termination, Escrow Agent will return the Deposit to Buyer.
  - b. Notwithstanding the foregoing, the appointment of a Chapter 11 trustee, or the conversion or dismissal of the Bankruptcy Case, shall NOT relieve the Buyer of its duties under this Agreement, absent further order of the Bankruptcy Court.
  - c. Seller shall use commercially reasonable efforts to obtain Bankruptcy Court approval of the sale of the Property to the Buyer in accordance with this Agreement, and such order

shall contain the following provisions (the “**Sale Order**”):

- i. a finding that Seller prepared and mailed a motion requesting entry of the Sale Order, and such motion and notice were proper and sufficient as to all parties entitled to it;
- ii. the sale and transfer of the Property to the Buyer is approved pursuant to Sections 105 and 363(f) of the Bankruptcy Code;
- iii. Buyer will receive title for the Property free and clear of all Liens pursuant to Section 363(f) of the Bankruptcy Code, with such Liens, attaching to the sale proceeds, and otherwise in accordance with the requirements of this Agreement;
- iv. a provision that the transfer of the Property from Seller to Buyer contemplated by this Agreement shall be exempt from any documentary stamps on the Deed and any mortgage, intangible tax on any mortgage, and any real estate transfer, mortgage reporting, sales, use, or other similar tax, pursuant to Section 1146(a) of the Bankruptcy Code; provided that, alternatively, such provision may be included in an order confirming the Debtor’s plan of liquidation.

10. Acceptance of the Property “As Is”. Buyer acknowledges Buyer was allowed thoroughly to investigate the Property, the title thereto and conditions thereon, and all components thereof before electing to participate in the Auction. In deciding to participate in the Auction and acquire the Property, Buyer has relied on Buyer’s investigation of the Property conducted before the Auction.

- a. Buyer shall have no right or discretion whatsoever to terminate this Agreement because of conditions affecting or information concerning the Property of which Buyer becomes aware after the Effective Date, regardless of the nature of those conditions or information. Further, Seller’s performing repairs or replacements to remedy conditions affecting the Property, or otherwise upgrading or improving any component of or condition affecting the Property, is not a condition of Buyer’s obligation to purchase the Property. Seller shall have no obligation to perform any such repairs or replacements, or to upgrade or improve any component of or condition affecting the Property.
- b. NOTWITHSTANDING ANY CONTRARY OR CONFLICTING PROVISION OF THIS AGREEMENT, BUYER SHALL AT CLOSING ACCEPT THE PROPERTY AS IS, WHERE IS, AND SUBJECT TO ALL FAULTS, DEFECTS, AND OTHER CONDITIONS, KNOWN AND UNKNOWN, PATENT AND LATENT. SELLER MAKES NO WARRANTIES OR REPRESENTATIONS RELATING TO THE PROPERTY, ITS CONDITION OR OPERATIONS, THE COST OR FEASIBILITY OF REPAIRING, RESTORING, OR UPGRADING THE PROPERTY, OR OTHER MATTERS EXCEPT THE WARRANTIES AND REPRESENTATIONS THAT ARE EXPRESSLY STATED IN THIS AGREEMENT. SELLER DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS, AND GUARANTIES; AND BUYER AGREES NO OTHER WARRANTIES, REPRESENTATIONS, OR GUARANTIES FROM SELLER SHALL BE IMPLIED. BUYER BEARS ALL RISKS OF DEFECTS, FAULTS, AND OTHER CONDITIONS OF THE PROPERTY. WITHOUT LIMITING THE FOREGOING, BUYER SHALL ACCEPT THE PROPERTY SUBJECT TO CONDITIONS, RESTRICTIONS, REQUIREMENTS, CONSTRAINTS, OBLIGATIONS, AND OTHER MATTERS IMPOSED BY OR ARISING FROM



PERMITS, APPROVALS, LICENSES, FRANCHISES, ORDERS, DEVELOPMENT ORDERS, CERTIFICATES, ACCEPTANCES, RESERVATIONS, VARIANCES, SPECIAL EXCEPTIONS, AND OTHER AUTHORIZATIONS AND REQUIREMENTS OF GOVERNMENTAL OR QUASI-GOVERNMENTAL AUTHORITIES.

11. Prorations and Adjustments. The items of revenue and expense set forth in this Section shall be prorated between the Parties (the “**Prorations**”) as of 11:59 p.m. on the day preceding the Closing Date (the “**Cut-Off Time**”), or such other time expressly provided in this Section, so that the Closing Date is a day of income and expense for Buyer.
- a. Taxes. All Taxes (real and personal property) shall be prorated as of the Cut-Off Time between Seller and Buyer. If the amount of such Taxes is not ascertainable on the Closing Date, the proration for such Taxes shall be based on the most recent available bill.
  - b. Utilities. All utility services shall be prorated as of the Cut-Off Time between Seller and Buyer. The Parties shall use commercially reasonable efforts to obtain readings for all utilities as of the Cut-Off Time. If readings cannot be obtained as of the Closing Date, the cost of such utilities shall be prorated between Seller and Buyer by estimating such cost based on the most recent bill for such service. Seller shall receive a credit for all fuel stored at the Land based on the cost for such fuel. Seller shall receive a credit for all deposits transferred to Buyer or which remain on deposit for the benefit of Buyer with respect to any utility contract.
  - c. Insurance. Buyer shall not assume any of Seller’s existing insurance policies and shall have no obligations in connection therewith.
  - d. Other Adjustments and Prorations. All other items of income and expense as are customarily adjusted or prorated upon the sale and purchase of property similar to the Property shall be adjusted and prorated between Seller and Buyer accordingly.

The Parties jointly shall prepare prior to Closing a closing statement (the “**Closing Statement**”), which shall set forth their best estimate of the amounts of the items to be adjusted and prorated under this Agreement. The Closing Statement shall be approved and executed by the Parties at Closing, and such adjustments and prorations shall be final with respect to the items set forth in the Closing Statement.

12. Representations and Warranties of Seller. Seller represents and warrants to Buyer that Seller is the Chapter 11 debtor in possession and that, pursuant to the Bid Procedures Order, and subject to the entry of the Sale Order, and that without any contrary order being obtained by any party in interest, Seller has the power to convey the Property to Buyer pursuant to this Agreement, subject to Bankruptcy Court approval.
13. Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller, which representations and warranties shall survive Closing, as follows:
- a. This Agreement is, and the other documents and instruments contemplated hereby will be, when executed and delivered by Buyer, the valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms.

- b. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will result in a violation by Buyer of any federal, state, local or other law or governmental requirement of any kind, and any rules, regulations, permits, licenses and orders promulgated thereunder.

14. Default and Remedies.

- a. If the Closing fails to occur because of a default, misrepresentation or breach of warranty by Buyer, Seller shall be entitled to retain the Deposit as Seller's sole remedy at law or in equity for Buyer's failure to close on the purchase of the Property. In any such event, Buyer shall continue to be liable under any provisions of this Agreement that expressly survive the termination of this Agreement.
- b. If the Closing fails to occur solely because of a default by Seller under the provisions of this Agreement, the Sale Order, or any other order of the Bankruptcy Court applicable to the sale of the Property hereunder, then Buyer may, as its exclusive remedy (i) receive a return of its Deposit and terminate this Agreement by notice to Seller; or (ii) Buyer may seek specific performance of this Agreement pursuant to Section 11 of the Bid Procedures Order. For the sake of clarity, this provision shall apply only in the event the Buyer becomes the Successful Bidder or the Back-Up Bidder, and if the Back-Up Bidder, then only if the Back-Up Bidder is given an opportunity to close.

15. Seller's Right to Cure. Notwithstanding any contrary provision of this Agreement, Seller shall not be deemed (a) in default of any covenant or obligation hereunder, (b) to have given a false, incorrect, or misleading representation or warranty hereunder, (c) or otherwise to have violated the terms of this Agreement, (all of the foregoing events of default being referred to in this Section as a "**Default**") unless Buyer first notifies Seller in writing of the Default and Seller fails within fourteen (14) days after receipt of that notice to cure the Default (a cure including without limitation, if applicable, effecting the changes necessary to render a warranty or representation correct). If Seller cures the alleged Default within the permitted period, then Seller shall be deemed not to be in default hereof.

16. Casualty Loss; Condemnation.

- a. Termination. If, prior to Closing, all or any material portion of the Property is subject to a taking by a public authority (a "**Material Taking**"), then Seller shall promptly notify Buyer of such Material Taking. Buyer shall have the right to terminate this Agreement by written notice given to Seller within ten (10) days after Seller's notification to Buyer of a Material Taking. If Buyer elects to terminate this Agreement as aforesaid, then the Deposit shall be returned to Buyer and Buyer and Seller shall thereafter be relieved of further liability hereunder, except to the extent survival of any obligation or liability is expressly provided herein.
- b. Non-Termination. In the event that (i) Buyer does not elect to terminate this Agreement pursuant to Section 16(a); or (ii) prior to Closing any non-material portion of the Property is subject to a taking by a public authority (a "**Non-Material Taking**"); the Buyer shall accept the Property in its then condition and proceed with the Closing without any abatement of the Purchase Price whatsoever, in which event, at Closing, all of the insurance proceeds (including, without limitation, any assignable business interruption insurance proceeds payable for losses incurred after Closing, but not before Closing), condemnation

award, or right to such proceeds or condemnation award, shall be assigned by Seller to Buyer, and any monies theretofore received by Seller that have not been used by Seller on account of any reasonably necessary repairs or restorations in connection with such damages or other casualty or condemnation shall be paid over to Buyer.

- c. Notice; Materiality. Seller shall give Buyer prompt notice of any damage to or destruction of the Property or of the institution of any proceedings for condemnation of all or any portion of the Property. For the purposes of this Section, damage to, or the taking of, a portion of the Property shall be deemed to be “material” if the estimated cost of restoration or repair of the damage or diminution of the value of the remaining Property on account of a taking, as the case may be, exceeds Five Million Dollars (\$5,000,000.00).
  - d. Survival. The terms of this Section shall survive Closing and the delivery of the Deed.
17. Buyer's Broker - Indemnification. Buyer shall indemnify and hold the Seller harmless from the claims of any broker or finder claiming through the Buyer. The provisions of this Section shall survive the Closing and any termination of this Agreement.
18. Escrow Instructions. This Agreement shall constitute the escrow instructions for Escrow Agent. Escrow Agent will hold and dispose of the Deposit in accordance with the following provisions and with other applicable provisions of this Agreement.
- a. If any dispute arises concerning disposition of the Deposit, Escrow Agent may retain the Deposit until receipt by Escrow Agent of written instructions signed by both Parties directing the manner in which Escrow Agent should dispose of the Deposit. Escrow Agent may at any time, but is not required to, bring an action to interplead the Deposit pending a final determination of the disputants' rights.
  - b. Escrow Agent shall incur no liability to any person whomsoever in connection with the Deposit or actions taken or omissions occurring in connection with this Agreement, except liability for Escrow Agent's gross negligence or willful misconduct. Accordingly, Escrow Agent shall not incur any liability with respect to (i) any action taken or omitted in good faith, including upon advice of its legal counsel given with respect to any questions relating to the duties and responsibilities of the Escrow Agent under this Agreement, or (ii) any action taken or omitted in reliance on any instrument, not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and accuracy of any information contained therein, which Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by a person or persons having authority to sign or present such instrument, and to conform with the provisions of this Agreement.
  - c. Escrow Agent shall have no liability for the failure of any institution in which Escrow Agent deposits the Deposit. The Deposit will not accrue interest while controlled by Escrow Agent.
  - d. The Parties, jointly and severally, agree to indemnify, defend, and hold Escrow Agent harmless from all fines, penalties, claims, damages, losses, expenses (including without limitation court costs and attorneys' fees incurred by Escrow Agent before all tribunals), obligations, or liabilities arising in connection with the handling or disposition of the Deposit.

- e. If conflicting demands relating to this Agreement are made upon the Escrow Agent, the Parties hereto expressly agree that the Escrow Agent shall have the absolute right to do either or both of the following: (i) withhold and stop all actions in performance of this escrow and await settlement of the controversy by final appropriate legal proceedings or as otherwise mutually directed in writing by Buyer and Seller; or (ii) file suit in declaratory relief or interpleader and obtain an order from the Bankruptcy Court requiring the parties to interplead and litigate in such court their several claims and rights amongst themselves. Upon the filing of any such declaratory relief or interpleader suit and depositing with the Bankruptcy Court all funds deposited by the parties under this Agreement, the Escrow Agent shall thereupon be fully released and discharged from any and all obligations to further perform the duties or obligations imposed upon it by this Agreement.

19. Notices. All notices, elections and other communications permitted or required in this Agreement (“**Notice**”) will be in writing, signed by the Party making the Notice, and will be: (i) delivered personally, or (ii) sent by reputable overnight delivery service or by registered or certified mail, return receipt requested, or (iii) transmitted by facsimile or email (with a copy via one of the other aforesaid means) to the other Party at the addresses provided in this Agreement. The date of Notice will be the date of personal delivery, consignment for overnight delivery, mailing, or email or facsimile transmission, as the case may be, unless otherwise specified herein. Notices delivered by or to the attorney for a Party through one of the methods listed above will be deemed given by or to, as the case may be, the applicable Party.

a. Notice to Seller will be delivered to: Rochelle Holdings XIII, LLC, 260 Wekiva Springs Road, Suite 2030, Longwood, FL 32779 ; email to: mhill@pralawfirm.com.

b. A copy of any Notice to Seller will be simultaneously delivered to Seller’s attorneys, Lawrence M. Kosto, Esq., Kosto & Rotella, P.A., 619 E. Washington Street, Orlando, FL 32801; email to: lkosto@kostoandrotella.com; telephone at (407) 425-3456.

c. Notice to Buyer will be delivered to:

\_\_\_\_\_  
\_\_\_\_\_.

d. A copy of any Notice to Buyer will be simultaneously delivered to Buyer’s attorney:

\_\_\_\_\_  
\_\_\_\_\_.

e. Notice to Escrow Agent will be delivered to: Lawrence M. Kosto, Esq., Kosto & Rotella, P.A., 619 E. Washington Street, Orlando, FL 32801; email to: lkosto@kostoandrotella.com; telephone at (407) 425-3456

20. Successors and Assigns. Buyer will have such rights to assign this Agreement as are granted by the Sale Order, subject to the conditions and requirements of the Sale Order. If the Sale Order is silent concerning Buyer’s right to assign this Agreement, Buyer will have no right to assign this Agreement without first receiving Seller’s consent to assign, provided that Buyer may assign this Agreement to an affiliate of Buyer.

a. In the event of Buyer’s assignment of this Agreement, Buyer shall remain liable in all respects for performance of, and all obligations and liabilities arising from, this Agreement.

- b. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective heirs, personal representatives, successors and assigns.
  - c. If either Party consists of more than one person, all such persons shall be jointly and severally liable under this Agreement.
- 21. Counterparts. This Agreement may be executed in multiple counterparts. The signature of any Party to a counterpart shall be deemed to be the signature to, and may be appended to, any other counterpart. A Party shall be bound by this Agreement by executing a counterpart hereof, then transmitting the executed counterpart to the other Parties via email in .pdf or similar format.
- 22. Attorneys' Fees. If either Party initiates or is made a Party to legal proceedings (whether judicial, administrative, declaratory, in arbitration, or otherwise) in connection with this Agreement, then the nonprevailing Party in those proceedings will pay the costs and attorney's fees, including the costs and attorney's fees of appellate proceedings, incurred by the prevailing Party.
- 23. Rules of Construction.
  - a. As used in this Agreement: (i) words in the singular shall be held to include the plural and vice versa, (ii) words of one gender shall be held to include the other genders as the context requires, (iii) the terms "hereof", "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement and not to any particular provision of this Agreement, (iv) references to Section, paragraph, Exhibit and Schedule are references to the Sections, paragraphs, Exhibits and Schedules of this Agreement, unless otherwise specified, (v) section headings in this Agreement are solely for convenience of reference, and are not intended to be a part of or to affect the meaning or interpretation of this Agreement, (vi) the word "including" and words of similar import when used in this Agreement, shall mean "including, without limitation," unless otherwise specified, and (vii) the word "or" shall not be exclusive.
  - b. Each Party and its counsel have reviewed this Agreement. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or of any amendments or exhibits to this Agreement.
  - c. Time is of the essence of this Agreement. Except with respect to the Additional Deposit, which must be provided within 24-hours after completion of the Auction, the time in which any act is to be done under this Agreement is computed by excluding the first day and including the last day, unless the last day is not a Business Day in which case that day is also excluded. Unless otherwise expressly provided for herein to the contrary, time periods of five days or less will be Business Days and time periods of five days or more will be calendar days. "**Business Days**" means all days other than Saturday, Sunday, and federal holidays. Federal holidays will include the day immediately following Thanksgiving Day, the day immediately following Christmas Day, and the day immediately following New Years Day. Each time period shall expire at 5:00 P.M. (Orlando, Florida time) on the last day of the applicable time period.
- 24. Miscellaneous.
  - a. This Agreement may not be amended except by an instrument in writing signed on behalf

of each Party.

- b. The Deposit, Purchase Price, and other payments due from Buyer under this Agreement shall be remitted in immediate funds by federal wire transfer in accordance with wire transfer instructions provided by the required recipient, Seller, Escrow Agent, or Closing Agent.
- c. This Agreement, together with the Schedules and other agreements referred to in this Agreement, constitute the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the Parties regarding such subject matter.
- d. Regardless of whether the transactions contemplated by this Agreement are consummated, each Party shall pay its or their own costs and expenses, including Legal Costs and investment banking, accounting, consulting, and other professional fees, incurred in connection with the negotiation, preparation, investigation and performance by such Party of this Agreement and the transactions contemplated under this Agreement, except as otherwise provided for herein.
- e. This Agreement shall not be recorded by Buyer. Any attempt to record this Agreement or any memorandum hereof or any reference hereto by Buyer or any agent or representative of Buyer shall, at the sole option of Seller, constitute a material default by Buyer, in which event Escrow Agent shall deliver the Deposit to Seller and Buyer shall execute and deliver such documents, and take such other actions, as Seller may require in order to evidence of record that Buyer has no right, title, claim, or interest in the Property.
- f. Notwithstanding any other provision of this Agreement, any representation, warranty, or covenant of Seller contained in this Agreement that by its terms survives Closing or the termination of this Agreement, shall not survive the closing of the Bankruptcy Case.
- g. Seller and Buyer will, without additional consideration, sign, acknowledge, and deliver any other documents and take any other action necessary or appropriate and reasonably requested by the other to carry out the intent and purpose of this Agreement.
- h. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from county public health units.
- i. The determination that any covenant, agreement, condition or provision of this Agreement, which is not necessary to the enjoyment by either party of the benefit contemplated herein, is invalid and shall not affect the enforceability of the remaining covenants, agreements, conditions or provisions hereof and, in the event of any such determination, this Agreement shall be construed as if such invalid covenant, agreement, condition or provision were not included herein.
- j. No failure or delay of either Party in the exercise of any right given to such Party hereunder shall constitute a waiver thereof unless the time specified herein for exercise of such right

has expired, nor shall any single or partial exercise of any right preclude any other or further exercise thereof or of any other right. The waiver of any breach hereunder shall not be deemed to be a waiver of any other or any subsequent breach hereof.

- k. Whenever provision is made in this Agreement for one Party to indemnify the other Party with respect to any claim or risk, such provision shall be interpreted to mean that the Party (in this Section “**Indemnitor**”) indemnifying the other Party (in this Section “**Other**”) agrees to indemnify, defend, and hold harmless the Other from and against any and all fines, penalties, losses, expenses, obligations, claims, suits, actions, damages, or liabilities, including reasonable attorneys’ fees, which the Other may incur or to which it may become subject as a result of or in connection with, and to the extent caused by, the described claim or risk.
- l. The Parties neither intend to confer any benefit hereunder on any Person other than the parties hereto, nor shall any such third party have any rights hereunder.
- m. This Agreement shall be governed by, construed, interpreted and the rights of the Parties determined in accordance with the laws of the State of Florida without reference to its choice or conflicts of laws principles. Each Party: (i) irrevocably submits to the jurisdiction of the Bankruptcy Court; (ii) waives any objection to laying venue in any such action or proceeding in the Bankruptcy Court; (iii) waives any objection that the Bankruptcy Court is an inconvenient forum or does not have jurisdiction over any Party; and (iv) agrees that service of process upon such Party in any such action or proceeding shall be effective if given in accordance with the notice provisions of this Agreement.
- n. BUYER AND SELLER HEREBY EACH WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS AGREEMENT.
- o. Stalking Horse Bid Provisions. The following provisions apply if this Agreement is entered into by a Stalking Horse Bidder. The Parties have negotiated, and the Bankruptcy Court has approved, a Break-Up Fee of 1.1% of the Stalking Horse Bid Amount (the “**Break-Up Fee**”) to be paid to the Stalking Horse Bidder at Closing from the proceeds of the Sale in the event the Property is conveyed to a Successful Bidder or a Back-Up Bidder, as the case may be, who is not the Stalking Horse Bidder. For the sake of clarity, the Stalking Horse Bidder shall not be entitled to the Break-Up Fee if the Stalking Horse Bidder is required to close on the Sale as either the Successful Bidder or the Back-Up Bidder. The Parties have determined that the Break-Up Fee bears a reasonable relationship to the costs the Stalking Horse Bidder has incurred and will incur in due diligence and other investigation related to the Property that led up to the Stalking Horse Bidder’s willingness to enter into this Agreement as the Stalking Horse Bidder; and further that the Break-Up Fee represents reasonable and adequate compensation to the Stalking Horse Bidder in consideration of submission of this Stalking Horse Bid and such bid being subject to higher and better offers at the Auction.
- p. Buyer acknowledges receipt of the Bid Procedures Order, and represents that it has either had its counsel review and advise Buyer regarding the terms of the Bid Procedures Order, or that Buyer has had the opportunity to have counsel review the Bid Procedures Order. Buyer agrees to be bound by the terms and conditions of the Bid Procedures Order and the Bid Procedures approved thereby. Any omission from this Agreement of any condition,

obligation, or requirement contained in the Bid Procedures Order shall not relieve Buyer of such condition, obligation, or requirement. Buyer acknowledges that it is entering into this Agreement, and upon the Closing shall take the Property, subject to the terms, conditions, and requirements of the Bid Procedures Order, and the Sale Order.

25. Exhibits. The following Exhibits referenced elsewhere in this Agreement are attached hereto and incorporated herein by reference:

- a. **Exhibit "A"** - Description or Depiction of the real property.

[The Parties have signed on the following page.]



**[Signature page to Purchase and Sale Agreement]**

**BUYER:**

\_\_\_\_\_

**SELLER:**

ROCHELLE HOLDINGS XIII, LLC a Florida  
limited liability company

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Print name: NAME

Title: President

Date: \_\_\_\_\_, 2022

Date: \_\_\_\_\_, 2022

## **EXHIBIT A**

### **LEGAL DESCRIPTION**

Property Described in the land records of Orange County, Florida as:

**A portion of the West 1/2 of Section 13, Township 20 South, Range 27 East, Orange County, Florida, being more particularly described as follows;**

**COMMENCING at the South 1/4 corner of Section 13, Township 20 South, Range 27 East, Orange County, Florida; thence run North 89°49'52" West, along the South line of the Southwest 1/4 of said Section 13, for a distance of 1356.86 feet; thence departing said South line, run North 00°08'41" East, for a distance of 2147.97 feet; thence run North 89°58'09" West, along the North line of the South 800 feet of the Northwest 1/4 of the Southwest 1/4 of said Section 13, for a distance of 1321.42 feet to a point on the Easterly right of way line of Golden Gem Road, as recorded in Official Records Book 61, Page 315 of the Public Records of Orange County, Florida; thence departing said North line, run North 00°17'25" East, along said Easterly right of way line, for a distance of 544.78 feet; thence run North 01°08'04" East, along said Easterly right of way line, for a distance of 2603.70 feet; thence departing said Easterly right of way line, run South 89°27'40" East, along the North line of the Northwest 1/4 of said Section 13, for a distance of 1324.32 feet; thence departing said North line, run South 00°34'14" West, along the West line of the Northeast 1/4 of the Northwest 1/4 of said Section 13, for a distance of 853.16 feet; thence departing said West line, run South 89°47'15" East, for a distance of 160.19 feet; thence run South 00°12'45" West, for a distance of 30.00 feet; thence run South 89°47'15" East, along a line parallel with the South line of the Northeast 1/4 of the Northwest 1/4 of said Section 13, for a distance of 476.16 feet; thence run South 00°17'10" West, for a distance of 395.99 feet; thence run South 89°47'15" East, along the South line of the Northeast 1/4 of the Northwest 1/4 of said Section 13, for a distance of 668.51 feet to a point on the East line of the West 1/2 of said Section 13; thence departing said South line, run South 00°00'00" East, along said East line, for a distance of 1042.54 feet; thence departing said East line, run North 90°00'00" West, for a distance of 500.00 feet; thence run South 00°00'00" East, for a distance of 1776.11 feet; thence run South 90°00'00" East, for a distance of 500.00 feet to a point on the aforesaid East line of the West 1/2 of Section 13; thence run South 00°00'00" East, for a distance of 1185.59 feet to the POINT OF BEGINNING.**

**LESS AND EXCEPT that portion described in Warranty Deed recorded in Official Records Book 10369, Page 190, Public Records of Orange County, Florida.**