

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE CITY OF ROCHELLE  
AND THE FLAGG ROCHELLE COMMUNITY PARK DISTRICT  
(ROCHELLE GOLF COURSE PROPERTY)**

This Intergovernmental Agreement (“Agreement”) effective as of the 20<sup>th</sup> day of March, 2013, between the City of Rochelle, an Illinois municipal corporation, and the Flagg Rochelle Community Park District, an Illinois municipal corporation:

**WITNESSETH**

**THAT WHEREAS**, Article VII, Section 10 of the Constitution of the State of Illinois authorizes units of local government to contract and associate among themselves to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or ordinance; and

**WHEREAS**, the Intergovernmental Cooperation Act, as amended (5 ILCS 220/1 et seq.), authorizes units of local government to exercise their powers, privileges or authority jointly, and to enter into intergovernmental agreements for that purpose; and

**WHEREAS**, the City of Rochelle (“City”) and the Flagg Rochelle Community Park District (“Park District”) are units of local government which wish to enter into this Agreement for the purpose of jointly endeavoring to acquire certain real estate located within the City and the Park District, improved with a golf course, restaurant and ancillary facilities, consisting generally of approximately 74.286 acres m.o.l., the legal description of which is attached hereto as **Exhibit A**, together with all inventory, furniture, fixtures and equipment located thereon (all of which real property, fixtures and personal property are hereinafter collectively termed “Property”); and

**WHEREAS**, in the event the parties are successful in acquiring the Property, they wish to jointly lease the Property to one or more third parties for the purpose of operating the golf course and restaurant on the Property, or subleasing the Property for such purposes; and

**WHEREAS**, the parties wish to memorialize the terms of their agreement with respect to the acquisition and leasing of the Property, and the ultimate ownership and disposition of the Property;

**NOW THEREFORE**, in consideration of the mutual agreements and undertakings contained herein, the sufficiency of which are acknowledged, the parties agree as follows:

1. Purchase. The City and the Park District shall endeavor to jointly purchase the Property for a purchase price not to exceed \$800,000.00 within six (6) months from the effective date of this Agreement, on terms which are agreeable to the parties. The City and the Park District will each contribute one-half of the cost of purchasing the Property, including, without limitation, the purchase price, survey and title costs, and other closing costs customarily borne by

purchasers of real estate. Each party shall bear its own legal and professional fees related to the purchase.

2. Park District's Option. In the event the parties jointly purchase the Property, the Park District shall have an option to purchase the City's interest in the Property on the following terms:

a. Term of Option. The Park District's option period shall commence on the fifth (5<sup>th</sup>) anniversary date of the closing of the purchase of the Property contemplated herein, and shall expire at 5:00 o'clock p.m. on the thirtieth (30<sup>th</sup>) day following said commencement date.

b. Exercise of Option. The Park District shall exercise its option by delivering to the City written notice of its intent to exercise the option. Said notice shall be delivered to the City during the Park District's option period.

c. Purchase Price. Should the Park District timely exercise its option in the manner set forth herein, the purchase price for the Park District's purchase of the City's interest in the Property shall be an amount equal to the amount contributed by the City toward the purchase of the Property, without interest.

d. Closing Date. The closing date for the Park District's purchase of the City's interest in the Property shall be on or before sixty (60) days from the date that the Park District has exercised its option in the manner set forth herein.

e. Closing. At closing, the City shall convey the City's interest in the Property to the Park District, by special warranty deed, free and clear of all liens, claims, and encumbrances arising by, through or under the City, but not otherwise.

f. Title. No later than fifteen (15) days after the Park District's timely exercise of its option in the manner set forth herein, the City shall, at the City's cost, furnish to the Park District a written title policy commitment from a title insurance company acceptable to the Park District, in accordance with the provisions of this Agreement, for the City's interest in the Property.

g. Prorations. At the closing, the City and the Park District shall prorate general real estate taxes for the year of closing and, if applicable, the prior year to the extent not paid, based on 100% of the most recently ascertainable information.

h. Expenses. At the closing, all closing costs, fees and other expenses shall be allocated according to applicable law or local custom. Each party shall pay its own professional and attorneys' fees.

3. Park District's Right to Require Purchase. The parties acknowledge that they intend to lease the Property and that the lease may allow the Tenant to sublease the Property. If the Tenant enters into a sublease of the Property which gives the subtenant the option to extend the term beyond five (5) years, the Park District shall have the additional option of requiring City to purchase the Park District's interest in the Property on the same terms as under Section 4 of this

Agreement; provided, however, that any sale under this Section 3 shall be subject to any rights of the subtenant under the sublease. The Park District's option shall commence upon the execution of any such sublease and shall continue during the term of the Tenant's lease.

4. City's Option. In the event the Park District fails to purchase the City's interest in the Property or to require the City to purchase the Park District's interest in the Property pursuant to paragraphs 2 or 3 of this Agreement, the City shall have an option to purchase the Park District's interest in the Property on the following terms:

a. Term of Option. The City's option period shall commence on the earlier of: (i) the date thirty-one (31) days after the fifth anniversary date of the closing of the purchase of the Property by the parties, if the Park District has not theretofore exercised its option hereunder; or (ii) if the Park District has exercised its option hereunder, but no closing of the purchase by the Park District of the City's interest in the Property has occurred by the closing date set forth hereunder, then on the date following said closing date. The City's option period shall expire at 5:00 o'clock p.m. on the thirtieth (30<sup>th</sup>) day following said commencement date.

b. Exercise of Option. The City shall exercise its option by delivering to the Park District written notice of its intent to exercise the option. Said notice shall be delivered to Park District during the City's option period.

c. Purchase Price. Should the City timely exercise its option in the manner set forth herein, the purchase price for the City's purchase of the Park District's interest in the Property shall be an amount equal to the amount contributed by the Park District toward the purchase of the Property, without interest.

d. Closing Date. The closing date for the City's purchase of the Park District's interest in the Property shall be on or before sixty (60) days from the date that the City has exercised its option in the manner set forth herein.

e. Closing. At closing, the Park District shall convey the Park District's interest in the Property to the City, by special warranty deed, free and clear of all liens, claims and encumbrances arising by, through or under the Park District, but not otherwise.

f. Title. No later than fifteen (15) days after the City's timely exercise of its option in the manner set forth herein, the Park District shall, at the Park District's cost, furnish to the City a written title policy commitment from a title insurance company acceptable to the City, in accordance with the provisions of this Agreement, for the Park District's interest in the Property.

g. Prorations. At the closing, the City and the Park District shall prorate general real estate taxes for the year of closing and, if applicable, the prior year to the extent not paid, based on 100% of the most recently ascertainable information.

h. Expenses. At the closing, all closing costs, fees and other expenses shall be allocated according to applicable law or local custom. Each party shall pay its own professional and attorneys' fees.

5. Parties Not to Operate. The City and the Park District acknowledge that neither wishes to engage in the operation of either a golf course facility or a restaurant on the Property. The parties therefore agree to use their best efforts to enter into one or more lease(s) of the golf course, the restaurant, or both, for the operation of either or both of them, on such terms as are mutually agreeable to the parties.

6. Insurance. The City shall carry standard fire and extended coverage insurance on the Property, with limits of no less than \$1,000,000.00/\$1,000,000.00, and with the Park District as an additional loss payee, except to the extent any portion of the Property is so insured by a lessee. The parties further agree that any lease of any portion of the Property or of the entire Property shall include a clause requiring the lessee to obtain property liability insurance on the portion of the Property leased, including without limitation insurance for restaurant and dram-shop liabilities, where applicable.

7. Termination. In the event that neither party exercises its option contained in this Agreement, the parties shall mutually agree on a disposition of the Property, and if the parties are unable to so agree, then the parties shall list the Property for sale and sell the Property to the first qualified buyer offering to purchase the Property for a commercially reasonable purchase price on commercially reasonable terms. In the event of a sale, the City shall purchase the Park District's interest in the property for one-half of the final net proceeds of the intended sale, after closing costs, fees, and prorations, prior to the closing of the sale to the ultimate purchaser.

8. Agreement Survives Closing. The terms of this Agreement shall survive the closing of the purchase by the parties of the Property, but shall terminate upon the closing of any sale by one of the parties to the other party of all of the selling party's interest in the Property, or the sale by both parties to any third party of all of the parties' interests in the Property.

9. Notices. All notices required hereunder shall be in writing and shall be deemed to have been delivered if hand-delivered or deposited in the United States mail, return receipt requested, with postage prepaid and addressed as follows:

If to CITY at:  
City Manager  
City of Rochelle  
420 N. 6<sup>th</sup> Street  
Rochelle, Illinois 61068

With a copy to:  
City Attorney  
City of Rochelle  
420 N. 6<sup>th</sup> Street  
Rochelle, Illinois 61068

If to PARK DISTRICT at:  
Executive Director

Flagg Rochelle Community Park District  
735 N. 2<sup>nd</sup> Street  
Rochelle, Illinois 61068

With a copy to:  
Park District Attorney  
Flagg Rochelle Community Park District  
735 N. 2<sup>nd</sup> Street  
Rochelle, Illinois 61068

10. Successors and Assigns. No part of this Agreement shall be assigned by either party without the prior, written consent of the other party, and any assignment made without such consent shall be void.

11. Severability. It is the intention of the parties hereto that the provisions of this Agreement shall be severable with respect to declaration of invalidity of any provision contained herein.

12. Governing Law. The laws of the State of Illinois shall govern the validity, performance, and enforcement of this Agreement. The exclusive venue for any litigation between the parties arising out of this Agreement shall be in the Circuit Court of the Fifteenth Judicial Circuit, Ogle County, Illinois.

13. Amendments. No amendments, modifications, or supplements to this Agreement shall be effective unless in writing and executed and delivered by both parties to this Agreement.

14. Time of Essence. Time is of the essence in the performance of each and every covenant and condition of this Agreement.

15. Recordable Memorandum. At the closing of the initial purchase of the Property by the parties, the parties shall execute a memorandum of this Agreement, and in particular the options granted herein, in recordable form, and cause the same to be recorded in the Office of the Ogle County Recorder.

16. Failure to Purchase. If, for any reason, the parties fail to purchase the Property within six (6) months from the effective date of this Agreement, or any extension thereof agreed in writing between the parties, this Agreement, and each covenant and condition herein, shall be null and void.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as of the date first above written.

[SIGNATURE PAGE FOLLOWS]

CITY OF ROCHELLE, an Illinois municipal corporation

By: \_\_\_\_\_  
DAVID S. PLYMAN  
City Manager

Attest: \_\_\_\_\_  
BRUCE MCKINNEY  
City Clerk

FLAGG ROCHELLE COMMUNITY PARK DISTRICT, an Illinois municipal corporation

By: \_\_\_\_\_  
ROGER BUNGER  
President

Attest: \_\_\_\_\_  
CHRISTA SEEBACH  
Secretary

**CITY**

STATE OF ILLINOIS        )  
  ) ss.  
COUNTY OF OGLE         )

I, the undersigned notary public, do hereby certify that David S. Plyman and Bruce McKinney, the City Manager and City Clerk, respectively of the City of Rochelle, an Illinois municipal corporation, 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 of the City.

Given under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC

**PARK DISTRICT**

STATE OF ILLINOIS        )  
  ) ss.  
COUNTY OF OGLE         )

I, the undersigned notary public, do hereby certify that Roger Bunger and Christa Seebach, the President and Secretary, respectively of the Flagg-Rochelle Park District, an Illinois municipal corporation, 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 of the City.

Given under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC

## EXHIBIT A

### (Legal Description of Property)

#### PARCEL 1

Part of Section 25, Township 40 North, Range 1 East of the Third Principal Meridian, Ogle County, Illinois, bounded and described as follows, to-wit: Beginning at the Northwest corner of Lot 1 in Block 1 of Earl Cleveland Subdivision, according to the Plat thereof recorded as Document No. 310159 in Book H of Plats at page 25 in the Office of the Ogle County Recorder; thence North 88 degrees 50 minutes 22 seconds East (assumed datum) along the North line of said Subdivision, a distance of 789.83 feet; thence North 54 degrees 40 minutes 57 seconds East along the Northerly line of said Subdivision and the Northerly line of Earl Cleveland Subdivision No. 2, a distance of 1698.80 feet to the Northeasterly corner of Lot 6 in Block 1 of said Subdivision; thence North 39 degrees 48 minutes 32 seconds West along the Southwesterly line of South Main Street, a distance of 417.37 feet; thence continuing North 38 degrees 12 minutes 09 seconds West along said Southwesterly line, a distance of 110.00 feet to a point 56 feet Northwesterly of the Southeast corner of Lot 6 in Block 2 of Southworth's Addition to the City of Rochelle; thence South 50 degrees 52 minutes 39 seconds West, parallel to the Northwesterly line of said Lot 6, a distance of 140.02 feet; thence North 38 degrees 12 minutes 09 seconds West, parallel to the Southwesterly line of said South Main Street, a distance of 74.69 feet; thence South 50 degrees 52 minutes 39 seconds West, parallel to the Northwesterly line of said Lot 6, a distance of 81.74 feet; thence North 38 degrees 12 minutes 09 seconds West, parallel to the Southwesterly line of said South Main Street, a distance of 61.19 feet to a point on the Northwesterly line of said Lot 6; thence North 50 degrees 52 minutes 39 seconds East along said Northwesterly line, a distance of 52.37 feet to a point 169 feet Southwesterly of the Southwesterly line of South Main Street; thence North 38 degrees 12 minutes 09 seconds West, parallel to said Southwesterly line, a distance of 197.86 feet to a point on the Northwesterly line of Lot 3 in Block 2 of said Southworth's Addition; thence South 50 degrees 52 minutes 37 seconds West along said Northwesterly line, a distance of 75.00 feet; thence North 38 degrees 12 minutes 09 seconds West, parallel to the Southwesterly line of said South Main Street, a distance of 131.84 feet to a point on the Southeasterly line of Avenue D; thence South 50 degrees 51 minutes 33 seconds West along said Southeasterly line, a distance of 49.64 feet to the Northwesterly corner of Lot 1 in Block 2 of said Southworth's Addition; thence North 38 degrees 12 minutes 09 seconds West, parallel to the Southwesterly line of said South Main Street, a distance of 66.00 feet to a point on the Northwesterly line of said Avenue D; thence North 50 degrees 51 minutes 33 seconds East, along said Northwesterly line, a distance of 94.02 feet to a point 68 feet Southwesterly of the Southeasterly corner of Lot 3 in Block 1 of said Southworth's Addition; thence North 38 degrees 06 minutes 58 seconds West, parallel to the Southwesterly line of said South Main Street, a distance of 335.29 feet; thence South 50 degrees 18 minutes 41 seconds West, parallel to the Northwesterly line of said Block 1, a distance of 51.10 feet; thence North 38 degrees 41 minutes 37 seconds West, a distance of 73.00 feet to a point 252 feet Southwesterly of the Southwesterly line of said South Main Street; thence North 50 degrees 18 minutes 41 seconds East, a distance of 16.91 feet; thence North 38 degrees 06 minutes 58 seconds West, parallel to said Southwesterly line of South Main Street, a distance of 45.96 feet; thence North 35 degrees 37 minutes 42 seconds West, parallel to said South Main Street, a

distance of 193.54 feet to a point on the centerline of Kyte Creek; thence South 51 degrees 14 minutes 54 seconds West, along said centerline, a distance of 76.85 feet; thence North 37 degrees 42 minutes 12 seconds West, a distance of 168.00 feet; thence South 53 degrees 51 minutes 48 seconds West, a distance of 55.00 feet to a point on the East line of the vacated alley along the East side of Block 1 in Atwater's Addition to the City of Rochelle; thence North 01 degrees 32 minutes 06 seconds West, along said East line, a distance of 94.40 feet to a point on the Easterly extension of the North line of Lot 7 in said Block 1; thence South 88 degrees 27 minutes 54 seconds West along said North line and its extension, a distance of 140.39 feet to the Northwest corner of said Lot 7; thence South 01 degrees 32 minutes 06 seconds East, along the West line of said Block 1, a distance of 282.24 feet to a point on the centerline of said Kyte Creek; thence South 78 degrees 41 minutes 46 seconds West along said centerline, a distance of 111.35 feet; thence South 84 degrees 57 minutes 15 seconds West along said centerline, a distance of 260.12 feet; thence North 71 degrees 56 minutes 04 seconds West along said centerline, a distance of 141.07 feet; thence North 86 degrees 12 minutes 01 seconds West along said centerline, a distance of 132.04 feet to a point on the Easterly right of way line for F.A. Route 740 (Illinois Route 251); thence South 01 degrees 40 minutes 31 seconds East along said right of way line, a distance of 75.00 feet; thence South 02 degrees 37 minutes 00 seconds West along said right of way line, a distance of 270.76 feet; thence South 01 degrees 40 minutes 31 seconds East along said right of way line, a distance of 1713.02 feet to the point of beginning; situated in the County of Ogle and State of Illinois; (74.320 acres m.o.l.)

**Excepting Therefrom:**

Part of the Northwest Quarter (1/4) of Section 25, Township 40 North, Range 1 East of the Third Principal Meridian, City of Rochelle, Ogle County, Illinois, bounded and described as follows, to-wit:

Beginning at the intersection of the North line of Lot Seven (7) in Block One (1) of Atwater's Addition to the City of Rochelle, extended Easterly to the East line of the vacated alley lying East of and adjacent to said Block One (1); thence South 01 degrees 32 minutes 07 seconds East, along said East line, a distance of 14.13 feet; thence North 33 degrees 59 minutes 35 seconds West, a distance of 16.74 feet to a point on the North line of said Lot Seven (7), extended Easterly; thence North 88 degrees 27 minutes 48 seconds East, along said extended line, a distance of 8.99 feet to the point of beginning; situated in the Township of Flagg, the County of Ogle and State of Illinois; (0.001 acres m.o.l.)

**Also Excepting Therefrom:**

Part of the Northwest Quarter (1/4) of Section Twenty-Five (25), Township Forty (40) North, Range One (1) East of the Third Principal Meridian, Ogle County, Illinois, bounded and described as follows, to wit:

Beginning at the intersection of the North line of Lot Seven (7) in Block 1 of Atwater's Addition to the City of Rochelle extended Easterly to the East line of the vacated alley lying East of and adjacent to said Block 1; thence South 01 Degrees 32 Minutes 07 Seconds East along said East line, a distance of 14.13 feet; thence South 01 degrees 32 minutes 07 seconds East, along said

East line, a distance of 80.27 feet; thence North 53 degrees 51 minutes 48 seconds East, a distance of 43.11 feet to the Point of Beginning; thence continuing 53 degrees 51 minutes 48 seconds East, a distance of 11.89 feet; thence South 37 degrees 42 minutes 12 seconds east, a distance of 168.00 feet to a point on the centerline of Kyte Creek; thence South 59 degrees 28 minutes 48 seconds West, along said centerline, a distance of 22.79 feet; thence North 33 degrees 59 minutes 35 seconds West, a distance of 165.82 feet, to the Point of Beginning; situated in the Township of Flagg, County of Ogle, and State of Illinois. (0.066 acres m.o.l.)

## **PARCEL 2**

Part of the Northwest Quarter (1/4) of Section Twenty-Five (25), Township Forty (40) North, Range One (1) East of the Third Principal Meridian, City of Rochelle, Ogle County, Illinois, bounded and described as follows, to wit:

Commencing at the intersection of the North line of Lot Seven (7) in Block 1 of Atwater's Addition to the City of Rochelle extended Easterly to the East line of the vacated alley lying East of and adjacent to said Block 1; thence South 01 degrees 32 minutes 07 seconds East along said East line, a distance of 14.13 feet to the Point of Beginning; thence continuing South 01 degrees 32 minutes 07 seconds East, along said East line, a distance of 80.27 feet; thence North 53 degrees 51 minutes 48 seconds East, a distance of 43.11 feet; thence North 33 degrees 59 minutes 35 seconds West, a distance of 66.12 feet to the Point of Beginning; situated in the Township of Flagg, County of Ogle, and State of Illinois. (0.033 acres m.o.l.)