

RESOLUTION NO. _____

Date Passed: June 13, 2016

A RESOLUTION AUTHORIZING THE SALE OF THE GOLF COURSE RESTAURANT PROPERTY

WHEREAS, the City of Rochelle is a body politic and corporate, organized and existing pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1, et. seq.; and

WHEREAS, the City has the power to sell surplus real estate owned by the City, pursuant to 65 ILCS 5/11-76-4.1; and

WHEREAS, the City and the Flagg Rochelle Community Park District own certain real estate commonly known as the Fairways Golf Course, located at 555 S. 7th Street, the legal description of which is attached hereto as **Exhibit A**, and which is presently zoned R-1 (single family, low density residential)(Golf Course Restaurant Property); and

WHEREAS, the property constitutes surplus public real estate while in the hands of the City, and

WHEREAS, C.C.S. Golf, LLC, has offered to purchase the Golf Course Restaurant Property for 80% of the appraised value of the property, and to develop it as a restaurant/bar/banquet facility, on the terms of a Redevelopment Agreement attached hereto as **Exhibit B**, which has been presented to the City Council, and which the City Council finds to be in the best interest of the City; and

WHEREAS, the value of the Golf Course Restaurant Property has been determined to be \$250,000.00 by written MAI certified appraisals available for public inspection in the office of the Community Development Director of the City; and

WHEREAS, the City Council finds that it would be in the best interest of the City to sell the Golf Course Restaurant Property for the appraised value, by private sale conducted by the City staff, and to publish notice of same as required by statute;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROCHELLE, OGLE COUNTY, ILLINOIS, as follows:

1. The City Manager is authorized and directed, by this action of the City Council, to take all steps necessary to: (i) enter into the Redevelopment Agreement attached hereto as **Exhibit B**, and (ii) consummate the sale of the Golf Course Restaurant Property on terms contained within the Redevelopment Agreement.

This ordinance shall become effective after its passage, approval and publication as provided by law.

PASSED AND APPROVED this 13th day of June, 2016.

Ayes: _____ Nays: _____ Abstain: _____

Mayor

Attested: _____

City Clerk

EXHIBIT A
(Legal Description of Golf Course Restaurant Property)

Part of the East-half of the Northwest Quarter of Section 25, Township 40 North, Range 1 East of the Third Principal Meridian, bounded and described as follows:

Commencing at the Northwest Corner of the East-half of the Northwest Quarter of said Section 25; thence South 1 degree 40 minutes 31 seconds East along the West Line of said East-half, a distance of 1658.88 feet; thence South 87 degrees 01 minutes 53 seconds East, a distance of 40.11 feet to a point on the Easterly Right-of-Way Line of a public road designated Illinois Route 251, said point being the Point of Beginning of the hereinafter described tract of land; thence continuing South 87 degrees 01 minutes 53 seconds East, a distance of 183.21 feet; thence South 78 degrees 02 minutes 22 seconds East, a distance of 105.01 feet; thence North 14 degrees 40 minutes 51 seconds East, a distance of 16.76 feet; thence South 74 degrees 42 minutes 49 seconds East, a distance of 120.00 feet; thence North 27 degrees 07 minutes 03 seconds East, a distance of 104.81 feet; thence North 29 degrees 45 minutes 21 seconds West, a distance of 127.34 feet; thence North 75 degrees 37 minutes 31 seconds West, a distance of 198.01 feet; thence South 13 degrees 35 minutes 28 seconds West, a distance of 131.12 feet; thence North 75 degrees 26 minutes 00 seconds West, a distance of 60.27 feet; thence South 47 degrees 23 minutes 26 seconds West, a distance of 115.65; thence South 88 degrees 19 minutes 27 seconds West, a distance of 24.64 feet to the Easterly Right-of-Way Line of said Illinois Route 251; thence South 1 degree 40 minutes 31 seconds East along said Right-of-Way Line, a distance of 15.03 feet to the Point of Beginning, containing 1.433 acres, more or less, subject to all easements, agreements, city codes and/or ordinances of record, if any, all situated in the City of Rochelle, the Township of Flagg, the County of Ogle, and the State of Illinois.

EXHIBIT B
(Redevelopment Agreement)

REDEVELOPMENT AGREEMENT

This Redevelopment Agreement (“Agreement”) dated as of this ____ day of _____, 2016 is made by and between the CITY OF ROCHELLE, an Illinois municipal corporation, having its offices at 420 North 6th Street, Rochelle, IL 61068 (“City”) and C.C.S. GOLF, LLC, an Illinois limited liability company (“Developer”). All capitalized terms are defined herein or otherwise have such definition as set forth in the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4 *et seq. as amended*, (the “Act”)

I RECITALS

WHEREAS, the City is a duly organized and existing municipality created under the provisions of the laws of the State of Illinois, and is now operating under the provisions of the Illinois Municipal Code, as supplemented and amended;

WHEREAS, the City is authorized under the Act to undertake the redevelopment, including but not limited to, the approval of redevelopment plans and projects, of “blighted areas” and “conservation areas” within the City if the conditions specified in the Act are met, and is further authorized to implement tax increment allocation financing (“TIF”) to pay the costs of such redevelopment permitted under the Act;

WHEREAS, the City has determined that it is in the best interests of the City and that it desires to redevelop certain real properties located within the City and designated by the City as the Downtown and Southern Gateway Redevelopment Project Area which is legally described in Exhibit “A”, attached hereto and incorporated herein (“Redevelopment Project Area”), and pursuant to its Redevelopment Plan dated January 11, 2016, as such term is defined in the Act;

WHEREAS, on June 8, 2015, the City adopted Resolution Number R15-9 Expressing the Official Intent of the City regarding the Negotiation of a Redevelopment Agreement and the Reimbursement of Certain Expenditures in connection with the Downtown and Southern Gateway Redevelopment Project Area (“Inducement Resolution”);

WHEREAS, the City adopted Ordinance No. 15-4472 on August 24, 2015, authorizing the establishment of a “Tax Increment Financing Interested Parties Registry” and adopting rules for the registry;

WHEREAS, on August 24, 2015, the City Council adopted Ordinance No. 15-4473, which, in accordance with the terms and conditions of the Act, set the time and

date for a Joint Review Board Meeting, a Public Hearing and provided for the mailing of certain Notices, as such items are defined under and required by the Act;

WHEREAS, on October 20, 2015, the City convened a meeting of the Joint Review Board (“JRB”) to review the feasibility study and other planning documents related to the Redevelopment Project Area and Redevelopment Plan and the majority of the JRB members found the Redevelopment Project Area and Redevelopment Plan met the requirements of the Act and approved both the Redevelopment Project Area and the Redevelopment Plan;

WHEREAS, the City, in accordance with the Act, conducted a public hearing with respect to the Redevelopment Plan and the Redevelopment Project Area at a meeting of the City Council held on November 19, 2015;

WHEREAS, the City has found that the Redevelopment Project Area has not been subject to growth and development through investment by private enterprise and would not reasonably be anticipated to be developed without adoption of the Redevelopment Plan;

WHEREAS, pursuant to the Act, the City, by Ordinance No.’s 16-4509, 16-4510 and 16-4511 adopted by the City Council on January 11, 2016, approved the Redevelopment Plan and Project, designated the Redevelopment Project Area, specifically entitled the Downtown and Southern Gateway Redevelopment Project Area, and adopted tax increment financing for the Redevelopment Project Area;

WHEREAS, the City is the owner of certain real property within the Redevelopment Project Area, which is legally described in “Exhibit B”, attached hereto and incorporated herein (“Property”), and which is comprised of approximately 1.43 acres of real property commonly known as 555 S. 7th Street, Rochelle, IL, 61068 and with PIN #: 24-25-176-007, within the corporate limits of the City;

WHEREAS, the City desires to convey the Property to the Developer so that the Developer may redevelop the Property; and

WHEREAS, the Developer desires to redevelop the Property and the existing commercial building located thereon (along with site improvements), with a restaurant/bar/banquet facility (collectively referred to as the “Developer Project”). A list of the improvements to be made as part of the Developer Project is attached hereto as “Exhibit D” and incorporated herein.

WHEREAS, the City, after due and careful consideration, has concluded that the redevelopment of the Property will further the growth of the City, facilitate the redevelopment of the entire Redevelopment Project Area, increase the assessed valuation of real estate situated within the Redevelopment Project Area, increase the economic activity within the City, provide a substantial number of jobs to residents of the City, and otherwise be in the best interests of the City by furthering the health, safety, morals, and welfare of its residents and taxpayers;

WHEREAS, the City desires to enter into this Redevelopment Agreement with the Developer and agrees that the use of TIF is necessary to cause the redevelopment of the Property and thus necessary to defray certain costs of the Developer Project to the extent such costs qualify as Developer's Eligible Redevelopment Project Costs, as such term is defined herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and Developer agree as follows:

1.1

1.2 **SECTION I**

1.3 **INCORPORATION OF RECITALS**

The Recitals set forth above are an integral part of this Agreement and by this reference incorporated herein in this Section I.

1.4 **SECTION II**

1.5 **REPRESENTATIONS AND WARRANTIES**

2.1 **Representations and Warranties of Parties.** To induce one another to execute this Agreement and perform their respective obligations hereunder, Developer hereby represents and warrants to the City, and the City represents and warrants to the Developer, as follows:

A. Representations of Developer:

- i. Developer is a duly organized and existing limited liability company in good standing under the laws of the State of Illinois;
- ii. No litigation or proceedings are pending, or to the best of Developer's knowledge, are threatened against Developer, which :
 - (i) affect the ability of Developer to perform its obligations

pursuant to and as contemplated by the terms and provisions of this Agreement; or (ii) materially affect the operation or financial condition of Developer;

iii. To the best of Developer's knowledge, the execution, delivery and performance by Developer of this Agreement does not constitute, or will not, upon giving of notice or lapse of time, or both, constitute a breach or default under any other agreement to which Developer is a party to or may be bound under;

iv. The parties executing this Agreement on behalf of Developer have been duly authorized by all appropriate action to enter into, execute, and deliver this Agreement and perform the terms and obligations contained herein.

B. Representations of City:

i. No litigation or proceedings are pending, or to the best of the City's knowledge, are threatened against City, which : (i) affect the ability of City to perform its obligations pursuant to and as contemplated by the terms and provisions of this Agreement; or (ii) materially affect the operation or financial condition of City;

ii. No litigation or proceedings are pending, or to the best of the City's knowledge, are threatened, (a) before any court or governmental agency having jurisdiction over enforcement of the Act and the subject matter contemplated by this Agreement regarding a determination that the contemplated Agreement, or payments contemplated to be made hereunder, are contrary to law, (b) before a court or governmental agency having jurisdiction thereof challenging the legitimacy of the Downtown and Southern Gateway Redevelopment Project Area and Plan.

iii. The execution, delivery and performance by the City of this Agreement does not constitute, or will not, upon giving of notice or lapse of time, or both, constitute a breach or default under any other agreement to which the City is a party to or may be bound under;

iv. The parties executing this Agreement on behalf of the City have been duly authorized by all appropriate action to enter into, execute, and deliver this Agreement and perform the terms and obligations contained herein.

2.2 Survival of Representations and Warranties. The parties agree that all of its representations and warranties set forth in this Section and elsewhere in this Agreement

are true as of the execution date of this Agreement and shall survive for the term of this Agreement. To the extent any of the representations and warranties cease to be true, Developer or the City, as applicable, shall immediately notify the other party of the same.

1.6 SECTION III

(a) DEVELOPER AND CITY OBLIGATIONS

3.1 **Sale of Property to Developer and Economic Development Grant.** Upon execution of this Agreement, the City shall take all necessary steps to convey ownership of the Property to the Developer for the purchase price of \$250,000.00 (“Purchase Price”). The parties acknowledge that the Flagg Rochelle Community Park District (“Park District”) jointly holds title to the Property with the City. The Park District hereby consents to the sale of the Property to the Developer for the Purchase Price and agrees to take any and all steps necessary to obtain the necessary Park District approvals to authorize the execution of any and all necessary documents to effectuate the sale of the Property to the Developer. The Park District’s agreement to the provisions of this Section 3.1 as well as to the provisions of Section 3.2(D) and (E) below, is acknowledged by its signature to this Agreement. Other than the consenting to the terms of this Section 3.1, agreeing to operate the golf course per the terms of Section 3.2(D) and (E) and its agreement to duly authorize the execution of any and all necessary documents, the Park District shall have no other rights or obligations under the terms of this Agreement. Concurrently with the sale of the Property to the Developer, the City shall provide the Developer with a City economic development grant in the amount of \$250,000.00. Developer shall have the right to obtain title insurance for the Property at Developer’s expense however, the City and Park District shall execute any title documents necessary for the issuance of title insurance.

To the extent Developer is declared by a Court of competent jurisdiction to be in Default of this Agreement for failing to complete the Developer Project, this Agreement shall be deemed null and void at the option of the City and ownership of the Property shall revert to the City. In such event, the Developer shall execute a quit claim deed conveying title to the Property back to the City.

Developer shall have the right to sell the Property at any time, however, the City is hereby granted a right of first refusal during the term of this Agreement. To the extent the Developer receives a bona fide offer to purchase from a third party which the Developer intends to accept, the Developer shall within three (3) days of the receipt of such offer give written notice to the City that the Developer intends to accept said offer. The City shall then have fourteen (14) calendar days to inform the Developer in writing of whether the City is exercising its right of first refusal to purchase the Property for the same price as offered by the third party. To the extent the City decides not to exercise its right of first refusal, the Developer shall be permitted to sell the Property to the third party on the terms of the offer. To the extent the City decides to exercise its right of first refusal, the Developer shall decline the offer from the third party and enter into

negotiations with the City for the sale of the Property back to the City at the same price as offered by the third party. If the City does not execute its right of first refusal and the Developer is allowed to sell the Property to a third party, to the extent the Developer has completed the Developer Project and has not received the full amount of TIF assistance set forth in Section 4.2 below, the Developer shall continue to be entitled to receive said TIF assistance after conveyance of the Property to the third party.

Subject to the provisions of Section 3.2(D) below, Developer is hereby granted a right of first refusal during the term of this Agreement to purchase the golf course parcel should the City and Park District desire to sell the golf course parcel. To the extent the City and Park District receives a bona fide offer to purchase the golf course from a third party which the City and Park District intend to accept, the City and Park District shall within three (3) days of the receipt of such offer give written notice to the Developer that the City and Park District intend to accept said offer. The Developer shall then have fourteen (14) calendar days to inform the City and Park District in writing of whether the Developer is exercising its right of first refusal to purchase the golf course for the same price as offered by the third party. To the extent the Developer decides not to exercise its right of first refusal, the City and Park District shall be permitted to sell the golf course to the third party on the terms of the offer. To the extent the Developer decides to exercise its right of first refusal, the City and Park District shall decline the offer from the third party and enter into negotiations with the Developer for the sale of the golf course to the Developer at the same price as offered by the third party.

3.2 **Development and Operations.** Subject to the provisions of Section 8.2 below, Developer shall commence construction of the Developer Project within thirty (30) days of the date of conveyance of the Property to the Developer and shall have completed the Developer Project by January 1, 2017, unless otherwise agreed upon by the Parties. All construction shall comply with all federal, state and local regulations, codes, ordinances and laws of general applicability to the Developer Project (collectively, the “Legal Requirements”). All construction will be submitted through the City’s typical review and approval process for other development and construction projects occurring throughout the City.

- A. Specifically with regards to parking lot improvements, Developer shall purchase parking lot light fixtures and materials for the parking lot area identified in Exhibit E, attached hereto and incorporated herein (“Parking Lot”). The City shall be responsible for the installation of the Parking Lot lights and the costs of such installation.
- B. The City shall be responsible to resurface that portion of the Parking Lot located within the Property with a 2" lift within three (3) years from the date of this agreement, and to stripe the Parking Lot by no later than October 1, 2016. Thereafter, the City shall be responsible for a period of ten (10) years to restripe the Parking Lot on an as needed basis. After the expiration of said ten (10) years, the City and Developer shall share equally in the cost of Parking Lot maintenance.

- C. The Parties acknowledge and agree that the Parking Lot is partially located on the Property and partially located on a property adjacent to the Property which is owned by the City. The City and Developer shall enter into a mutually agreeable permanent cross parking easement agreement regarding the Parking Lot which shall provide for shared parking by both properties.
- D. The City and Park District agrees that it shall operate and keep open for business the golf course located adjacent to the Property for a minimum of 7 years (with appropriate maintenance of the golf course and filling in of the lagoon) from the date construction of the Developer Project is completed. The City and Park District agree that such operation shall be of an 18 hole golf course that is open to the public and that all operations and maintenance shall be to a commercially reasonable standard.
- E. The City and Park District agrees that Developer shall have the sole and exclusive right and authority to sell food and beverages of any kind on and for the golf course, including the right to utilize the City beverage cart during golf season and for golf outings. The Developer agrees that it will provide food and beverage sales year-round including utilization of the beverage cart during golf season for golf outings. The City and Park District shall not sell/provide, nor shall it allow any other person or business to sell/provide, any food or beverage of any kind for or on the golf course. The City acknowledges and agrees that there are currently two electric beverage coolers/refrigerators being utilized in the pro shop of the golf course from which beer, soda, Gatorade, candy and similar like items are being sold. To the extent the City has the authority to sell such coolers, said coolers shall be conveyed to Developer as a part of the Sale of the Property. To the extent the City does not have the authority to sell said coolers, the coolers shall be removed from use in the pro shop or anywhere else on the golf course.
- F. Developer agrees that it shall use its best good faith efforts to retain the services of local contractors (within Ogle County) to perform the Developer Project, but in no event shall Developer be required to utilize a local contractor if the costs of such local contractor is greater than that of a non-local contractor.
- G. The Parties acknowledge that the building located on the Property currently contains various items of kitchen equipment. The Parties agree that such kitchen equipment shall belong to the City and that prior to the conveyance of the Property to the Developer, the City shall remove any kitchen equipment items which the City desires to retain from the Property. Any personal property remaining in or on the Property after conveyance of the Property to the Developer shall be deemed abandoned by the City and the Developer shall have the right to keep or dispose of such personal property as Developer sees fit.
- H. The Parties acknowledge that the signage along 7th Street advertising the Property as well as the golf course is not located on the Property but rather on the adjacent parcel thereto owned by the City. Developer shall have sole control and ownership of the sign and the City shall grant to Developer an exclusive and perpetual easement allowing for the continued location of the sign or any

replacement sign. Developer and City agree to shared use of the sign on an equitable basis to advertise both golf events and restaurant events/features.

- I. The City shall be responsible, at its cost and expense, for having separate utility meters installed so as to separate utility cost for the pro shop from the Property.
- J. City shall issue the City liquor license(s) applied for by the Developer for the Property (which shall include 7:00 a.m. to 2:00 a.m hours Monday through Sunday, and no restrictions on outdoor sales and consumption of alcohol on the Property and the adjacent golf course parcel) as well as any City video gaming terminal license for the Property. Such licenses shall be issued by the City within 45 days of approval of this Agreement by the City. Should the City fail to issue either liquor or gaming license, the Developer shall have the option of declaring this Agreement null and void and/or seeking any other remedy it may have at law or in equity.

3.3 **Plans and specifications.** The construction and use of the Developer Project shall conform to the Legal Requirements, including, but not limited to, the City's Code of Ordinances in effect as of the date of this Agreement, and any state, federal or agency regulations applicable to the Developer Project. All site, architectural and engineering drawings and specifications (the "Plans") for the Developer Project will be submitted by Developer at its sole cost and expense and will be reviewed and processed by the City or its agents pursuant to City Ordinance as amended from time to time and as forth below. Such Plans shall conform to all applicable federal, State and City laws and ordinances currently in force concerning the rights of accessibility for the physically disabled and concerning environmental issues.

3.4 **Real Estate Taxes.** Upon taking ownership of the Property, Developer shall pay all subsequent real estate tax bills for the Property when due and payable.

3.5 **Completion of Developer Project.** Subject to Section 3.7 below, Developer agrees to pay any and all costs and expenses of the Developer Project incurred by Developer.

3.6 **City's Right to Monitor and Inspect Property.** The City's right to inspect the Property shall not be greater than those which apply to other property generally throughout the City.

3.7 **Eligible Redevelopment Project Costs.** "Developer's Eligible Redevelopment Project Costs" are those costs, or portions thereof, for which the Developer shall be reimbursed through the provision of tax increment financing from the City, as provided for herein, and which are listed by line item in "Exhibit C", attached hereto and incorporated herein.

3.8 **Hearings and Approvals.** The City agrees to promptly hold all hearings, post or publish all notices, undertake all reviews and otherwise take all actions as expeditiously as possible to assist Developer in commencing and completing the Developer Project, including, without limitation, review of any site plans, plats, sign plans or building plans, and issuing approvals and permits for the same, administering and processing all payments in and from the STAF, and issuing any required occupancy permits or business licenses. Further, City agrees to grant to Developer any and all necessary City business/liquor/gaming/zoning permits and/or licenses associated with the Developer Project. Developer shall be responsible for all applicable application, license and permit fees and costs. To the extent the City fails to grant any license or permit applied for by the Developer, Developer shall have the right to terminate this Agreement.

SECTION IV
TAX INCREMENT FINANCING (“TIF”)

4.1 **Tax Increment Financing of Redevelopment Project Costs.** Developer has represented to the City that, but for tax increment financing, the Developer Project would not be economically viable. The Parties agree that TIF, implemented in accordance with the terms and provisions of the Act and this Agreement, will be a source of funding for the Developer Project in order to make the Developer Project economically viable. City agrees that it shall not take any action to terminate the Redevelopment Project Area or the imposition of TIF within the Redevelopment Project Area prior to its natural expiration after 23 years.

4.2 **Available Tax Increment.** Annually, the City shall calculate the amount of available tax increment, which shall be equal to the total tax increment generated solely by the Property (“Available Tax Increment”) for that year. The City agrees to provide Developer with an amount equal to fifty percent (50%) of the Available Tax Increment commencing upon increment being deposited in the Special Tax Allocation Fund (“STAF”), as such term is provided for by the Act, and for the subsequent life of the Redevelopment Project Area, up to a cumulative amount equal to and not to exceed Two Hundred Fifty Thousand and No/100th Dollars (\$250,000.00) of Developer Eligible Redevelopment Project Costs. Such amounts shall be provided to Developer annually within ninety (90) days of receipt of the tax increment in the STAF (“Annual Developer Payments”). The remaining 50% of the Available Tax Increment shall first be utilized by the City to reimburse itself for costs incurred by the City to form the Redevelopment Project Area.

Any tax increment generated by the other properties within the TIF district shall belong solely to the City and which tax increment shall also first be used by the City to reimburse itself for its costs incurred in forming the Redevelopment Project Area. The costs incurred by the City to form the Redevelopment Project Area is \$_____. To the extent the City fully reimburses itself for its costs incurred in forming the

Redevelopment Project Area prior to the Developer receiving \$250,000 in TIF assistance, then the Developer shall receive 100% of the Available Tax Increment until such time as the full assistance amount of \$250,000.00 has been paid to the Developer or the expiration of the Redevelopment Project Area, whichever occurs first.

4.3 **Authenticating the Developer Eligible Redevelopment Project Costs.** Prior to being provided tax increment in accordance with Section 4.2, Developer shall submit to the City reasonable evidence that certain of the Developer's Eligible Redevelopment Project Costs have been incurred and paid for by the Developer. By way of example and not limitation, paid invoices, receipts, contracts and other documentation shall be evidence such costs have been incurred by Developer, and the City reserves the right to require additional documentation in its sole discretion.

4.4 **Restrictions on Assignment:** Developer shall not assign its rights or obligations under this Agreement without the express prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Developer shall have the right to assign this Agreement at any time to any corporation, partnership or other business entity controlled by Developer or by the majority of the members or officers thereof or to any land trust of which Developer or other business entity controlled by Developer or the majority of the members or officers thereof is the beneficiary. For purposes of this Section, Developer shall not be deemed to be in control of another business entity unless Developer has an ownership interest in such business entity equal to or greater than 51%.

4.5 **Not Full Faith and Credit:** The obligations contained within this Agreement are not Full Faith and Credit obligations of the City.

DEVELOPER ACKNOWLEDGES THAT ANY AMOUNTS OF AVAILABLE TAX INCREMENT DUE UNDER THIS AGREEMENT TO DEVELOPER HERETO SHALL BE PAYABLE SOLELY FROM AVAILABLE TAX INCREMENT DEPOSITED INTO THE STAF. DEVELOPER FURTHER ACKNOWLEDGES THAT THE CITY'S OBLIGATIONS UNDER THE AGREEMENT SHALL CONSTITUTE LIMITED OBLIGATIONS OF THE CITY AND THAT SAID OBLIGATIONS DO NOT NOW AND SHALL NEVER CONSTITUTE A GENERAL INDEBTEDNESS OF THE CITY WITHIN THE MEANING OF ANY STATE OF ILLINOIS CONSTITUTIONAL OR STATUTORY PROVISION AND SHALL NOT CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE CITY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER.

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4.6 **Enterprise Zone:** In the event the City forms an enterprise zone which encompasses the Property, the City shall provide Developer with any authorization and approval necessary to allow Developer to receive a sales tax deduction on building materials purchased for the Development Project.

SECTION V
COMPLIANCE WITH LAW

5.1 Defense of TIF District: In the event that any court or governmental agency having jurisdiction over enforcement of the Act and the subject matter contemplated by this Agreement shall determine that this Agreement, or payments to be made hereunder are contrary to law, or in the event that the legitimacy of the Downtown and Southern Gateway Redevelopment Project Area and Plan is otherwise challenged before a court or governmental agency having jurisdiction thereof, the City and Developer shall reasonably cooperate with each other concerning an appropriate strategy acceptable to both parties to defend the integrity of the Downtown and Southern Gateway Redevelopment Project Area and Plan, and this Agreement. Furthermore, each party shall pay their respective legal fees, court costs and other expenses directly related to defense of the Downtown and Southern Gateway Redevelopment Project Area and Plan that each party shall incur as a result of defense of the Downtown and Southern Gateway Redevelopment Project Area and Plan. The City agrees to vigorously contest any such challenge, suit or determination as to the validity of this Agreement, the legitimacy or integrity of the Downtown and Southern Gateway Redevelopment Project Area and Plan, payments made under this Agreement or any other term or provision of this Agreement. In the event of an adverse lower court or agency ruling, payments shall be suspended during the pendency of any appeal thereof, but such payments shall be reinstated retroactively if such adverse ruling is reversed by the reviewing court or agency. The City shall not seek to set aside, or otherwise challenge, its obligations under this Agreement while any appeal is pending.

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5.2 Use of Land. Developer intends that the Property shall be utilized solely for construction/reconstruction of improvements to be used for commercial development purposes following the completion of construction/reconstruction.

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5.3 Compliance with Law. Neither Developer nor any of its contractors, subcontractors or material suppliers shall discriminate based upon race, color, religion, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military status, parental status or source of income in the construction of the Developer Project and shall comply with any and all applicable federal, state and local laws, statutes, ordinances or regulations with regard to non-discrimination in the construction of the Developer Project.

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II SECTION VI

INSURANCE DURING TERM OF AGREEMENT

Prior to commencement of a portion or all of the Developer Project, the Developer shall procure, at the Developer's cost and expense, and shall maintain in full force and effect until each and every obligation of the Developer contained in this Agreement has been fully paid or performed, a policy or policies of general commercial comprehensive

liability insurance and, during any period of construction, contractor's liability insurance and worker's compensation insurance, with liability coverage under each such policy to be not less than \$1,000,000 for each occurrence and including automobile insurance coverage. All such policies shall protect the Developer against any liability incidental to the use of or resulting from any claim for injury or damage occurring in or about the Developer Project or the improvements or the construction and improvement thereof. Developer agrees to defend, indemnify and hold harmless City for any liability other than that resulting in whole or in part from a negligent act or omission on the part of the City, its employees, agents or contractors.

SECTION VII

DEFAULT REMEDIES

7.1 **Defaults/Remedies:** If, subject to paragraph 7.2, either Party shall default under this Agreement or fail to perform or keep any term or condition required to be performed or kept by such Party, such Party shall, upon written notice from the other party proceed to cure or remedy such default or breach within fifteen (15) days after receipt of such notice, provided, however, that in the event such default is incapable of being cured within said fifteen (15) day period and the defaulting party commences to cure the default within said fifteen (15) day period and proceeds with due diligence to cure the same, such party shall not be deemed to be in default under this Agreement. In the case of a City default, the Developer shall have the remedy the right of specific performance in addition to any other remedy it may have at law or in equity. In the event of a default by Developer, the City will be under no obligation to continue Annual Developer Payments during the default period if such default is a material default and Developer is not promptly proceeding with the cure thereof. Provided the default by Developer is cured within a reasonable time, those Annual Developer Payments which would have been paid, if not for Developer default, will then be paid to Developer.

7.2 **Event of Default.** For purposes of the Agreement, the occurrence of any one or more of the following shall constitute an "Event of Default":

- (a) If, at any time, any material term, warranty, representation or statement made or furnished by City or Developer (including the representations and warranties of Developer and City described in subsection 2.1 hereof) is not true and correct in any material respect because of which either Party is unable to fulfill its obligations hereunder; or
- (b) Failure by Developer or City to meet any of the conditions or covenants contained in this Agreement; or
- (c) If any petition is filed by or against City or Developer under the Federal Bankruptcy Code or any similar state or federal law, whether now or hereinafter existing (and in the case of involuntary proceedings, failure to cause the same to be vacated, stayed or set aside within ninety (90) days after filing); or

- (d) If City fails to make payment in full to Developer of Developer Annual Payments within (90) days of receipt of such increment in the STAF; or
- (e) Any assignment, pledge, encumbrance, transfer or other disposition which is prohibited under this Agreement.
- (f) If any mortgage foreclosure action is filed against the Developer.

7.3 **Waiver and Estoppel.** Any delay by City or Developer in instituting or prosecuting any actions or proceedings or otherwise asserting its rights shall not operate as a waiver of such rights or operate to deprive City or Developer of or limit such rights in any way. No waiver made by City or Developer with respect to any specific default shall be construed, considered or treated as a waiver of the rights of City or Developer with respect to any other defaults;

(a)

III **SECTION VIII**

(a) PERFORMANCE

8.1 **Time of the Essence.** Time is of the essence of the Agreement.

8.2 **Permitted Delays.** Neither City nor Developer shall be considered in breach of its obligations with respect to the commencement and completion of the Developer Project or provision of tax increment financing, because of the impossibility of performance or the limitations of Illinois law, or in the event of delay in the performance of such obligations due to unforeseeable causes beyond such Party's control and without such Party's fault or negligence, including any delays or due to court order, acts of God, acts of the public enemy, acts of the United States, acts of the other party, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, embargoes, economic exigencies, shortages of labor or materials and severe weather or delays of subcontractors due to such causes. The time for the performance of the obligations shall be extended for the period of the enforced delay if City or Developer, as the case may be, seeking the extension shall notify in writing the other within twenty (20) days after the beginning or any such delay and shall use diligence in attempting to complete performance of its obligations.

(a) **SECTION IX**

(i) **GENERAL**

9.1 **Drafter Bias:** The parties acknowledge and agree that the terms of this Agreement are the result of on-going and extensive negotiations between the parties, both of whom are represented by independent counsel and that this Agreement is a compilation of said negotiations. As a result, in the event that a court is asked to interpret any portion of this contract, neither of the parties shall be deemed the drafter hereof and neither shall be given benefit of such presumption that may be set out by law.

9.2 **Partnership not intended nor Created:** Nothing in this Agreement is intended nor shall be deemed to constitute a partnership or joint venture between the Parties.

9.3 **Entirety and Binding Effect:** This document represents the entirety of the agreement between the Parties and shall be binding upon them and inure to the benefit of and be enforceable by and against their respective successors, personal representatives, heirs, legatees, and assigns.

9.4 **Survival of Provisions:** If any of the provisions of this agreement are found to be invalid pursuant to any statute or rule of law of the State of Illinois or of any judicial district in which it may be so brought to be enforced, then such provisions shall be deemed null and void to the extent that they may conflict herewith, however the remainder of this instrument and any other application of such provision shall not be affected thereby.

9.5 **Use of Headings:** The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the clauses to which they pertain.

9.6 **Amendments and Modifications:** Except as otherwise provided for herein, this Agreement may not be amended, modified, or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination, or waiver shall be effective for any purpose unless it is in writing, and bears the signatures of all of the Parties hereto.

9.7 **Defaults:** In the event of a default and/or litigation arising out of enforcement of this Agreement, the parties hereto acknowledge and agree that each party shall be responsible for their own costs, charges, expenses, and their reasonable attorney's fees arising as a result thereof.

9.8 **Notices:** All Notices and requests pursuant to this Agreement shall be sent as follows:

To the Developer: C.C.S. Golf, LLC
Attn: John Scanlan
6536 Hales Corner Road
Stillman Valley, IL 61084

With copies to: Barrick, Switzer, Long, Balsley & Van Evera, LLP
Attn: Roxanne Sosnowski
6833 Stalter Drive
Rockford, IL 61108

To the City: City of Rochelle
420 North 6th Street
Rochelle, IL 61068
Attn: Mayor

With copies to: City Attorney Alan Cooper
233 E. Route 38, Suite 202
P.O. Box 194
Rochelle, IL 61068

Or at such other addresses as the Parties may indicate in writing to the other either by personal delivery, courier or by certified mail, return receipt requested, with proof of delivery thereof. Mailed Notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

9.9 **Counterparts**: This Agreement may be signed in any number of counterparts, each of which shall be an original, with the main effect as if the signatures thereto and hereto were upon the same instrument.

9.10 **Previous Agreements**: The foregoing is the agreement between the Parties hereto as it now exists at the execution hereof and it is expressly understood, agreed and distinctly acknowledged that all previous communications and negotiation between the Parties, either written or oral, that are not contained herein are hereby withdrawn, nullified, and void.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE VOLUNTARILY SET THEIR HANDS AND SEALS ON THIS AGREEMENT, AND BY DOING SO HAVE ACKNOWLEDGED THAT THEY HAVE READ THE FOREGOING INSTRUMENT IN ITS ENTIRETY AND ACKNOWLEDGE THAT THE SAME IS A

LEGALLY BINDING AGREEMENT, AND THAT THEY HAVE CONSCIOUSLY EXECUTED THE SAME AS THEIR OWN FREE AND VOLUNTARY ACT AND DO HEREBY SUBMIT TO AND ACKNOWLEDGE THE TERMS AND CONDITIONS HEREIN.

C.C.S. GOLF, LLC, an Illinois limited Liability company.

CITY OF ROCHELLE, an Illinois Municipal Corporation.

By: _____

By: _____

Its: _____

Its: Mayor

ATTEST:

City Clerk

ACKNOWLEDGED AND AGREED to by the undersigned for the sole purpose of being bound by the applicable terms and conditions set forth in this Agreement.

FLAGG ROCHELLE COMMUNITY PARK DISTRICT

By: _____

Its: _____

EXHIBIT A
LEGAL DESCRIPTION OF REDEVELOPMENT PROJECT AREA

EXHIBIT B
LEGAL DESCRIPTION OF PROPERTY

OF PROPERTY DESCRIBED AS: Part of the East-half of the Northwest Quarter of Section 25, Township 40 North, Range 1 East of the Third Principal Meridian, bounded and described as follows:

Commencing at the Northwest Corner of the East-half of the Northwest Quarter of said Section 25; thence South 1 degree 40 minutes 31 seconds East along the West Line of said East-half, a distance of 1658.88 feet; thence South 87 degrees 01 minutes 53 seconds East, a distance of 40.11 feet to a point on the Easterly Right-of-Way Line of a public road designated Illinois Route 251, said point being the Point of Beginning of the hereinafter described tract of land; thence continuing South 87 degrees 01 minutes 53 seconds East, a distance of 183.21 feet; thence South 78 degrees 02 minutes 22 seconds East, a distance of 105.01 feet; thence North 14 degrees 40 minutes 51 seconds East, a distance of 16.76 feet; thence South 74 degrees 42 minutes 49 seconds East, a distance of 120.00 feet; thence North 27 degrees 07 minutes 03 seconds East, a distance of 104.81 feet; thence North 29 degrees 45 minutes 21 seconds West, a distance of 127.34 feet; thence North 75 degrees 37 minutes 31 seconds West, a distance of 198.01 feet; thence South 13 degrees 35 minutes 28 seconds West, a distance of 131.12 feet; thence North 75 degrees 26 minutes 00 seconds West, a distance of 60.27 feet; thence South 47 degrees 23 minutes 26 seconds West, a distance of 115.65; thence South 88 degrees 19 minutes 27 seconds West, a distance of 24.64 feet to the Easterly Right-of-Way Line of said Illinois Route 251; thence South 1 degree 40 minutes 31 seconds East along said Right-of-Way Line, a distance of 15.03 feet to the Point of Beginning, containing 1.433 acres, more or less, subject to all easements, agreements, city codes and/or ordinances of record, if any, all situated in the City of Rochelle, the Township of Flagg, the County of Ogle, and the State of Illinois.

EXHIBIT C
ELIGIBLE REDEVELOPMENT PROJECT COSTS

Developer will generally gut the interior of the building down to the studs and refinish the interior. Repairs include, but are not limited to:

| | |
|--------------------------------------|------------------|
| 1. Roof Repair | \$59,682 |
| 2. Repair/remodel men's bathroom | \$31,866 |
| 3. Repair/remodel women's bathroom | \$31,016 |
| 4. Repair/remodel employee bathroom | \$7,105 |
| 5. HVAC system for main room and bar | \$69,300 |
| 6. Electrical | \$42,000 |
| 7. Carpentry | \$31,000 |
| 8. Suspended Ceiling | \$15,000 |
| 9. Floor Tile | \$30,000 |
| 10. Floor Tile installation | \$30,000 |
| 11. Electrical Fixtures | \$21,500 |
| 12. Wall Tile and Trim | \$47,000 |
| 13. Repair/remodel kitchen | \$160,000 |
| TOTAL | \$709,580 |

EXHIBIT D
DEVELOPER PROJECT

Developer will generally gut the interior of the building down to the studs and refinish the interior. Repairs include, but are not limited to:

1. Acquisition of Property
2. Roof repair
3. Repair/remodel men's bathroom
4. Repair/remodel women's bathroom
5. Repair/remodel employee bathroom
6. HVAC system for main room and bar
7. Electrical
8. Carpentry
9. Suspended Ceiling
10. Floor tile
11. Floor tile installation
12. Electrical fixtures
13. Wall tile and trim
14. Repair/remodel kitchen
15. Parking lot light fixtures and materials

EXHIBIT E- PARKING LOT DRAWING