

[Recorder Use Only]

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**THIRD AMENDMENT TO ANNEXATION AGREEMENT  
[CREEKSIDE SUB UNIT 1 f/k/a Kings Crossing Subdivision]**

**Date:** January 23, 2012

**Parties:** THE CITY OF ROCHELLE, an Illinois municipal corporation

and

CREEKSIDE LAND HOLDINGS, LLC, an Illinois limited liability  
company

**Agreement**

**Amended:** Annexation Agreement  
Recorded 5/9/06 as Document #0604710

**Subject Property:** A portion of 492.2 acres located generally west and north of Rochelle  
Township High School in Flagg Township

**Legal Description:** see attached Exhibit A

**Property Tax #'s:** 24-11-300-001  
24-11-426-002  
24-14-100-005  
24-14-100-006

**Common Address:** N/A

**Return Original To:**

ALAN H. COOPER  
Law Offices of Alan H. Cooper  
233 East Route 38, Suite 202  
P. O. Box 194  
Rochelle, IL 61068

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### **THIRD AMENDMENT TO ANNEXATION AGREEMENT**

This Third Amendment ("Third Amendment") to the Annexation Agreement ("Agreement") dated April 10, 2006, between the CITY OF ROCHELLE, an Illinois municipal corporation ("the City"), and CREEKSIDE LAND HOLDINGS, LLC, an Illinois Limited Liability Company ("Developer") entered into this 23<sup>rd</sup> day of January, 2012:

#### **WITNESSETH**

**THAT WHEREAS**, the City is a non-home rule municipal corporation organized under the laws of the State of Illinois, and has the power to annex territory and to enter into annexation agreements and amendments to annexation agreements in connection with the annexation of territory, pursuant to the applicable provisions of the Illinois Municipal Code, including without limitations, 65 ILCS 5/7-1-8 and 65 ILCS 5/11-15.1-1 *et seq.*; and

**WHEREAS**, the City and Wyndham Foxford, L.L.C., entered into an Annexation Agreement on April 10, 2006, relating to the Subject Property, which was recorded as Document No. 0604710 in the Office of the Ogle County Recorder on May 9, 2006 ("Annexation Agreement"); and

**WHEREAS**, the Subject Property was subsequently annexed into the City and zoned PUD-R Planned Unit Development – Residential; and

**WHEREAS**, the Annexation Agreement was amended by an Amendment to Annexation Agreement dated June 1, 2009, which was recorded as Document No. 201001002089 in the Office of the Ogle County Recorder on March 22, 2010; and

**WHEREAS**, the Annexation Agreement was further amended by a Second Amendment to Annexation Agreement dated October 26, 2009, which was recorded as Document No. 201001002091 in the Office of the Ogle County Recorder on March 22, 2010; and

**WHEREAS**, Developer is the successor in interest to Wyndham Foxford, L.L.C., under the Annexation Agreement, as amended; and

**WHEREAS**, the parties acknowledge that the current economic environment has slowed development significantly and has made it extremely difficult for developers to obtain financing for the purpose of constructing improvements to their land; and

**WHEREAS**, Developer is nonetheless willing to use its cash assets and other resources to proceed with a portion of its development ("Creekside Sub Unit 1 Development"), including the construction of a 23-lot subdivision, an interior roadway, and public improvements, consistent with the plans submitted to and approved by the City, as shown on **Exhibit B** ("Creekside Sub Unit 1 Development Area"), attached hereto; and

**WHEREAS**, the construction of the Creekside Sub Unit 1 Development requires certain changes in the Annexation Agreement, as amended, which changes are incorporated in this Third Amendment; and

**WHEREAS**, all notices, publications, public hearings, and all other matters required by law have been given and performed by the corporate authorities of the City regarding the approval, execution and delivery of this Third Amendment, including without limitation notices published in appropriate newspapers; and

**WHEREAS**, a public hearing upon this Third Amendment was held by the corporate authorities on August 8, 2011, following notice by publication on July 24, 2011, as required by 65 ILCS 5/11-15.1-3; and

**WHEREAS**, the corporate authorities (the Mayor and City Council) of the City of Rochelle, after due and careful consideration, have concluded that the annexation and development of the Subject Property on the terms set forth in the Annexation Agreement, as amended, and this Third Amendment would further the orderly growth of the City and serve the best interests of the citizens of the City; and

**WHEREAS**, by a favorable vote of at least two-thirds (2/3) of the corporate authorities then holding office, an ordinance has heretofore been adopted authorizing the execution and delivery of this Third Amendment;

NOW THEREFORE, in consideration of the foregoing premises and the mutual agreements set forth herein and other good and valuable consideration, the sufficiency of which is acknowledged by the parties, the parties hereby agree that the Agreement is hereby amended in the following particulars:

1. **Construction of Creekside Sub Unit 1.** Creekside Sub Unit 1 Development shall be constructed according to the Creekside Sub Unit 1 Plans, in accordance with the terms of the Annexation Agreement, as amended, as modified and amended by this Third Amendment.

2. **Amendments to Annexation Agreement.** With respect to the Creekside Sub Unit 1 Development, the following sections of the Annexation Agreement, as amended, shall be further amended in the following particulars (deletions shown by strikethrough, additions in red underline):

\* \* \* \* \*

“**Section 34. Costs of Upsizing.** Any upsizing of sanitary sewer, water, or storm sewer systems required by the City for long range planning over the amounts required herein (or, for Phase 1 Development and Creekside Sub Unit 1 Development only, over the demand amounts required by the subdivision) shall be paid by the City in accordance with the Rochelle Municipal Code. The costs to be paid by the City for such upsizing shall include only the costs of materials.”

\* \* \* \* \*

~~“**Section 36. Repayment to City.** Developer shall pay to City, prior to approval of any final plat for any phase of development of the Property, the sum of \$37,538.45, as reimbursement to the City for the City’s actual costs of constructing water facilities along Flagg Road from the west property line of the Rochelle Township High School Property to 20<sup>th</sup> Street.”~~

\* \* \* \* \*

**“Section 38. Construction of Water Mains.** Developer shall, at Developer’s sole cost, install a twelve-inch (12”) water main in a loop as follows: beginning at the present terminus of the City water main at or near the intersection of Flagg Road and 20<sup>th</sup> street, then west within the right-of-way on the north side of Flagg Road to a point at or near the intersection of Flagg Road and Queens Road, then north within the right-of-way along the east side of Queens Road to a point at or near the north property line of the Property, then east within a dedicated street located within the Property to a point more or less due north of City Well #11, then south to City Well #11, substantially in accordance with the drawing attached as **Exhibit G.** Notwithstanding the foregoing, construction of the twelve inch (12”) water main loop shall not be required as a part of Creekside Sub Unit 1 Development. Upon the commencement of construction by Developer of any future phase beyond Creekside Sub Unit 1 Development or upon the commencement of the construction of a school on the Subject Property other than the presently planned construction of a school by the Rochelle Elementary District #231, whichever is earlier (“Triggering Event”), Developer shall construct and install a 12” water main from the existing water main terminus along 20<sup>th</sup> Street east to City Well #11, substantially in accordance with the drawing attached as **Exhibit C** to this Third Amendment. The City shall reimburse Developer fifty percent (50%) of the cost of construction of this water main extension. In the event the City determines that said water main is necessary prior to the Triggering Event, the City may construct said water main, at its cost and expense, and Developer shall reimburse the City fifty percent (50%) of the cost of construction at the time the Triggering Event occurs.”

\* \* \* \* \*

“**Section 40. Construction of Sanitary Sewers.** Developer shall, at its sole cost and expense, install sanitary sewers within the Property substantially in accordance with the drawing attached hereto as **Exhibit H**. Sewer lines for Lots 3 and 4 of Phase 1 shall discharge as shown on the Phase 1 Plans. Sewer lines for all of the Creekside Sub Unit 1 Development Area and for the Rochelle Elementary School property north of the Creekside Sub Unit 1 Development area shall be designed so as to discharge into a lift station to be constructed within the Creekside Sub Unit 1 Development Area in accordance with the Creekside Site Plan attached as Exhibit B to this Third Amendment. All other sewer lines within the Property shall be designed so as to discharge into the ~~Atkisson~~-Akesson Lift Station.”

\* \* \* \* \*

“**Section 41. General.** City shall, at Developer’s sole cost and expense, construct all electric facilities required from the terminus of existing electric facilities to the Property line and within the Property, in accordance with any approved final plat and the provisions of the Rochelle Municipal Code, except as may be expressly set forth in this Agreement or any special use permit issued pursuant thereto. Developer shall pay City the full estimated cost for the installation of electric facilities within the Property prior to the commencement of installation, to be refunded based on actual costs as each unit is occupied. Notwithstanding the foregoing, for the purposes of Creekside Sub Unit 1 Development, the City shall, at its cost and expense, construct and install electric

and fiber optic facilities to each lot within the Creekside Sub Unit 1 Development Area. Developer shall reimburse the City for the cost of installing electric and fiber optic facilities, on a per lot basis, for each unoccupied lot in the Creekside Sub Unit 1 Development Area on the date ten (10) years after the execution of this Third Amendment. Developer shall deposit with the City one or more payment bond(s), letter(s) of credit, or cash, as determined by Developer, as security for payments required in connection with the reimbursement for construction of electric and fiber optic facilities.”

\* \* \* \* \*

“**Section 42. Street Lights.** City, ~~at Developer’s sole cost and expense,~~ will install street lights within the Property. Developer shall pay for 100% of the actual cost of materials for installing street lights. The City shall pay for the cost of labor for installing street lights. The number and location of street lights shall be consistent with the Illuminating Engineering Society (IES) Code. Developer shall pay City the full cost for street light installation prior to the commencement of installation. The street lights referred to in this section shall also include, at a minimum, street lights within the rights-of-way along Flagg Road from the east property line of the Property to Queens Road, and along Queens Road from the south property line of the Property to the north property line of the Property.”

\* \* \* \* \*

“**Section 43. General.** Developer, at its sole cost and expense, shall design, construct and install all interior roadways and five (5) foot sidewalks necessary to service the Property as it shall be developed from time to time as set

forth in the Preliminary Engineering Plans approved by the City. Unless otherwise agreed, sidewalks shall be constructed along both sides of all streets. Notwithstanding the foregoing, Developer, at its sole cost and expense, shall design, construct and install four (4) foot sidewalks from the intersection of 20<sup>th</sup> Street and Creekside Drive, to the northerly right of way line of Flagg Road. All sidewalks shall be constructed according to the Rochelle Municipal Code and standards, including all accessibility ramps at the ends of streets and intersections. As a part of Creekside Sub Unit 1 Development, Developer, at its sole cost and expense, shall design, construct and install a ten foot (10') wide hot asphalt mix paved multi-use path on a twelve foot (12') aggregate base along the west side of 20<sup>th</sup> Street from Flagg Road to four hundred fifty feet (450') north of Creekside Drive and a ten foot (10') wide hot asphalt mix paved multi-use path from the path constructed along 20<sup>th</sup> Street across 20<sup>th</sup> Street and to the multi-use path that runs north and south adjacent to the Rochelle Township High School property, all as shown on **Exhibit C** to this Third Amendment. ~~Within ten (10) years from the date of this Third Amendment or when the property west of the Subject Property is developed, whichever is sooner, Developer shall construct a ten foot (10') wide hot asphalt mix paved multi-use path on a twelve foot (12') aggregate base within the existing multi-use path easement as shown on the King's Crossing Phase I Final Plat recorded as document number 1000551 in Book D of Plats at page 12 in the Office of the Ogle County Recorder. Developer shall not be required to construct or install a sidewalk or multi-use path along the east side of 20<sup>th</sup> Street north of Flagg Road.~~ Unless otherwise set forth in a special use permit issued pursuant to this Agreement, all roads and streets within the Property shall be public and shall be dedicated to the City. Developer shall construct, at Developer's sole cost and expense, all on-site public streets as needed to

implement the development of the Property not contracted for by any unit of government. City shall accept the construction of streets upon final inspection and approval by the City Engineer. The location of all public roadways and private roadways (if any) shall be situated on the Property, as determined from time to time by the parties; provided, however, that final roadway dedications shall include the following: an extension of 20<sup>th</sup> Street northward from Flagg Road with a stub on the north property line of the Property; at least one other street stubbed on the north property line of the Property; and at least three east-west roads from Queens Road to the 20<sup>th</sup> Street extension. All ~~bike-multi-use~~ paths to be constructed by Developer shall be paved with hot asphalt mix and eight ten(810) feet wide on a ~~ten-twelve (1012)~~ foot wide aggregate base. ~~The City may direct the Developer to construct the bikepath to 10' wide, with the City paying the incremental difference between 8' and 10'.~~”

\* \* \* \* \*

**“Section 44. Street Construction Standards.** All public roadways to be dedicated to the City shall be constructed in accordance with the standards set forth in the Rochelle Municipal Code. Notwithstanding the foregoing, as a part of Creekside Sub Unit 1 Development, Developer shall construct Creekside Drive and said roadway shall be constructed 31’ back-to-back on a minimum 60’ right of way. Creekside Drive shall end in a temporary hammerhead turnaround at the south end of Creekside Drive adjacent to Lot 23, until such time as Lot 23 is developed, as shown on Exhibit B. Creekside Drive is not anticipated to service light industrial uses and need not be constructed to Class II IDOT standards. As a part of Creekside Sub Unit 1 Development only, utilities shall be constructed within the parkway as shown on Exhibit B. As a part of Creekside Sub Unit 1

Development only, trees shall be planted in the front yards of each lot outside of the parkway. Trees shall be planted within an easement granted to the City and shall be a minimum of five feet (5') from and outside the right-of-way line of the individual lots. Furthermore, trees, bushes, or other landscaping and/or obstacles shall not be placed in the vision triangle as measured twenty-five feet (25') from intersection rights-of-way. All trees shall be maintained by the property owner.

All roadways that may be reasonably anticipated to service light industrial uses with semi-truck traffic shall be constructed to Class II IDOT standards.”

\* \* \* \* \*

**3. Detention Pond.** As a part of Creekside Sub Unit 1 Development, Developer shall improve and alter an existing detention pond within the Creekside Sub Unit 1 Development Area, shown as Detention Area A on the King’s Crossing-Phase I Final Plat recorded as document number 1000551 in Book D of Plats at page 12 in the Office of the Ogle County Recorder, in accordance with the plans shown on **Exhibit B**, attached hereto and made a part hereof.

**4. Credit for Cost of Installing Multi-Use Path.** The parties acknowledge that Exhibit D to the Annexation Agreement required Developer to dedicate 27.23 acres of land to the Flagg-Rochelle Park District. The parties further acknowledge that this dedication was to occur in relation to the development of the entire 492.2 acres of the Subject Property. The parties agree that Developer shall dedicate such property on a proportional basis to the number of acres that are being developed during any one phase. As part of the development of Creekside Sub Unit 1, Developer shall provide cash in lieu of dedicating land to the Flagg-Rochelle Park District, in the amount of \$20,006.25, based on the proportional amount of land required to be dedicated by the Annexation Agreement (27.23 acres) in relation to the amount of land Developer is developing as a part of Creekside Sub Unit 1 (19.40 acres). Developer shall receive a credit against this

fee in the amount of the total cost of constructing the required multi-use paths under this Third Amendment.

5. **Setbacks.** The minimum setbacks required within the Creekside Sub Unit 1 Development Area shall be as follows: (a) twenty five feet (25') from the front of the lot; (b) eight feet (8') from the side of the lot; (c) twenty five feet (30') from the rear of the lot; and (d) twenty five feet (25') from the corner of the lot.

6. **Phase I Completion.** The parties acknowledge that as of the date of this Third Amendment, Phase I has been partially completed by Developer's predecessor. With respect to the improvements and obligations of the Developer under Phase I Development as expressed in the Phase I Development Plans and in the Annexation Agreement, as previously amended, Developer shall have no obligation to complete or guarantee such Phase I improvements. The parties acknowledge in particular that the north side of the Flagg Road and 20<sup>th</sup> Street intersection has been improved. In particular, Developer shall have no obligation to contribute to the temporary signal-control devices at the intersection of Flagg Road and 20<sup>th</sup> Street. Notwithstanding the foregoing, Developer acknowledges that at such time as the intersection of Flagg Road and 20<sup>th</sup> Street is improved to include permanent signal-control devices, Developer shall be obligated to pay twenty-five percent (25%) of the permanent signal-control devices.

7. **Reimbursement of City Fees.** Developer shall reimburse City \$5,000.00 for the City's engineering and legal fees incurred to the date of this Third Amendment.

8. **Impact Fees and Lag Time Fees.** Developer represents that it has an agreement in principal with Rochelle Township High School District #212, Rochelle Elementary District #231, and Flagg-Rochelle Community Park District waiving the collection of impact fees and lag time fees applicable to the Creekside Sub Unit 1 Development for a period of at least one (1) year. The parties acknowledge that the City will continue to collect impact fees and lag time fees from Developer applicable to the Creekside Sub

Unit 1 Development, per the Rochelle Municipal Code and the Annexation Agreement, as modified and amended, until such time as it is notified in writing by each of the above-named districts to not collect impact fees and lag time fees applicable to the Creekside Sub Unit 1 Development. It is further understood by the parties that such waiver by the districts will equally apply to all residential developments.

**9. Agreement to Remain in Effect.** To the extent not changed or modified by this Third Amendment, the terms and provisions of the Annexation Agreement, as amended, shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have executed this Third Amendment to the Annexation Agreement as of the 8th day of August, 2011.

**CITY OF ROCHELLE**, an Illinois municipal corporation (“the City”)

**CREEKSIDE LAND HOLDINGS, LLC**, an Illinois limited liability company (“the Developer”)

By: \_\_\_\_\_  
City Manager

By: HAYDEN FAMILY, LLC, an Illinois limited liability company, an authorized member

Attest: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
TIM HAYDEN, its manager

And by: GENSLER FAMILY, LLC, an Illinois limited liability company, an authorized member

By: \_\_\_\_\_  
JAMES M. GENSLER, its manager

STATE OF ILLINOIS        )  
COUNTY OF OGLE         )

The foregoing instrument was acknowledged before me by David S. Plyman, City Manager, and Bruce McKinney, City Clerk, of the City of Rochelle, an Illinois municipal corporation, this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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

STATE OF ILLINOIS        )  
COUNTY OF OGLE         )

The foregoing instrument was acknowledged before me by Tim Hayden, the manager of HAYDEN FAMILY, LLC, an Illinois limited liability company, which is an authorized member of CREEKSIDE LAND HOLDINGS, LLC, an Illinois limited liability company, this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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

STATE OF ILLINOIS        )  
COUNTY OF OGLE         )

The foregoing instrument was acknowledged before me by James M. Gensler, the manager of GENSLER FAMILY, LLC, an Illinois limited liability company, which is an authorized member of CREEKSIDE LAND HOLDINGS, LLC, an Illinois limited liability company, this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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

**EXHIBIT A**

**(Legal Description – Subject Property)**

**EXHIBIT B**

**(Creekside Site Plan)**

**EXHIBIT C**

**(Creekside Utility Map)**