

[Recorder Use Only]

**FOURTH AMENDMENT TO ANNEXATION AGREEMENT
[Creekside f/k/a Kings Crossing Subdivision]**

Date: September 11, 2012

Parties: THE CITY OF ROCHELLE, an Illinois municipal corporation

and

CREEKSIDE LAND HOLDINGS, LLC, an Illinois limited liability
company

and

ROCHELLE COMMUNITY CONSOLIDATED SCHOOL DISTRICT
#231

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: 24-14-100-012

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
E:\MyFiles\city taylor pptides\creekside.4thamendmenttoannexagr.docx

FOURTH AMENDMENT TO ANNEXATION AGREEMENT

This Fourth Amendment ("Fourth Amendment") to the Annexation 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"), and ROCHELLE COMMUNITY CONSOLIDATED SCHOOL DISTRICT #231 ("School District"), entered into this 11th day of September, 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, the Annexation Agreement was further amended by a Third Amendment to Annexation Agreement dated January 23, 2012, which was recorded as Document No.

201201201865 in the Office of the Ogle County Recorder on March 13, 2012; and

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

WHEREAS, School District is the purchaser of a portion of the acreage included in the Subject Property, the legal description of which is attached hereto as **Exhibit A** ("School District Property"), upon which the School District is building an elementary school; and

WHEREAS, the parties wish to enter into this Fourth Amendment for the purpose of setting forth agreements reached between them with respect to certain obligations under the Annexation Agreement, as amended, and under the Municipal Code of the City of Rochelle, related to the construction of water mains on the School District Property; 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 Fourth Amendment, including without limitation notices published in appropriate newspapers; and

WHEREAS, a public hearing upon this Fourth Amendment was held by the corporate authorities on September 10, 2012, following notice by publication on August 26, 2012, 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 Fourth 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 Fourth 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 Annexation Agreement, as amended is hereby further amended in the following particulars:

1. Water Main. Notwithstanding any provisions of the Annexation Agreement, as amended, or of the Rochelle Municipal Code (including without limitation Section 98-103(b)(3)), the School District's obligation to extend water mains within the School District Property shall be as follows:

(a) the School District shall loop an 8-inch water main as depicted in **Exhibit B** attached hereto;

(b) for future water main installation, the School District shall provide, when required by the City, a fifteen foot wide easement from the capped stub, which it will construct near the southwest end of its water loop, to the west line of its property, all as depicted in **Exhibit B**;

(c) in the event a final plat of the property to the west (commonly known as the “Metzger property”), or any part of it, is recorded within 5 years from the opening of the new school, the School District shall be responsible, at its cost, for extending the eight inch water line from the aforesaid stub to the west line of the School District’s property. The School District shall then have no further responsibility for the extension of water lines for the benefit of other property owners. However, in the event no final plat of the Metzger property, or any part of it, is recorded within 5 years of the opening of the new school, the City shall be responsible for extending the 8 inch water line within the easement provided by the School District, from the stub to the west line of the School District’s property. For purposes of this Section, “the opening of the new school” shall be considered to occur on the date classes are first held in the new school.

2. Sewers. The School District shall have no responsibility to extend sewer service to any of the boundary lines of the School District Property for the benefit of any other property owners.

3. Annexation Agreement in Effect. Except as amended by this Fourth Amendment, the terms of the Annexation Agreement, as amended, shall remain in full force and effect. In particular, this Agreement shall not modify any obligations of the Developer under the

Annexation Agreement, as amended, with respect to the portion of the Subject Property which was not conveyed to the School District.

4. No Third-Party Rights. This Fourth Amendment is solely for the benefit of the parties hereto, and no third parties shall have any rights hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Fourth Amendment to the Annexation Agreement as of the 11th day of September, 2012.

CITY OF ROCHELLE, an Illinois municipal corporation ("the City")

CREEKSIDE LAND HOLDINGS, LLC, an Illinois limited liability company ("the Developer")

By: _____
DAVID S. PLYMAN, City Manager

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

Attest: _____
BRUCE MCKINNEY, City Clerk

By: _____
TIM HAYDEN, its manager

ROCHELLE COMMUNITY CONSOLIDATED SCHOOL DISTRICT #231

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

By: _____
TODD PRUSATOR, Superintendent

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

STATE OF ILLINOIS)
COUNTY OF OGLE)

The foregoing instrument was acknowledged before me by Todd Prusator, Superintendent of ROCHELLE COMMUNITY CONSOLIDATED SCHOOL DISTRICT #231, this _____ day of _____, 2012.

NOTARY PUBLIC

EXHIBIT A
(School District Property Legal Description)

Part of the East Half of the Northwest Quarter of Section Fourteen (14), Township Forty (40) North, Range One (1) East of the Third Principal Meridian, described as follows:

Beginning at the Northwest corner of said East Half of the Northwest Quarter; thence North 88 degrees 22 minutes 49 seconds East, along the North line of said East Half of the Northwest Quarter, 1260.01 feet; thence South 01 degrees 27 minutes 14 seconds East, parallel with the West line of said East Half of the Northwest Quarter, 1447.67 feet; thence along a curve concave to the East, having a radius of 1040.00 feet, an arc length of 231.06 feet, a chord bearing of South 07 degrees 49 minutes 07 seconds East, a chord distance of 230.58 feet; thence South 14 degrees 11 minutes 00 seconds East, 17.43 feet; thence South 88 degrees 32 minutes 46 seconds West, 1289.40 feet to a point in the West line of said East Half of the Northwest Quarter; thence North 01 degrees 27 minutes 14 seconds West, along said West line, 1690.18 feet to the Point of Beginning; situated in the County of Ogle and State of Illinois.

EXHIBIT B
(Water Main Map)

