

**AMENDED AND RESTATED
ANNEXATION AGREEMENT**

This Amended and Restated Annexation Agreement ("Agreement") entered into as of the ___ day of _____, 2015, between the City of Rochelle, an Illinois Municipal Corporation ("the City"), and Creekside Land Holdings, LLC, an Illinois Limited Liability Company ("Developer"):

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 in connection with the annexation of territory, pursuant to the applicable provisions of the Illinois Municipal Code, including without limitation 65 ILCS 5/7-1-8 and 65 ILCS 5/11-15.1-1 *et. seq.*; and

WHEREAS, Developer is the owner of record of the fee interest in certain property consisting generally of 400 acres m.o.l. located generally northwest of Rochelle Township High School in Flagg Township, Ogle County, Illinois, the legal description of which is attached hereto as Exhibit A and incorporated herein ("the Property"); and

WHEREAS, the Property, in addition to 92.9 acres to the south of the Property, (collectively "Kings Crossing Property") was the subject of an Annexation Agreement (Annexation Agreement) between the City and Wyndham Foxford, L.L.C., an Illinois limited liability company, dated April 10, 2006, and recorded in the Office of the Ogle County Recorder as Document No. 0604710; and

WHEREAS, the Kings Crossing Property was subsequently annexed into the City and zoned PUD-R; and

WHEREAS, subsequent to the annexation of the Kings Crossing Property, a 5.00 acre parcel of property (the Mayer Property) was purchased by Wyndham Foxford, L.L.C., and became subject to the Annexation Agreement by an Amendment to Annexation Agreement ("First Amendment") between the City and Wyndham Foxford, L.L.C., dated June 1, 2009, and recorded in the Office of the Ogle County Recorder as document number 201001002089; and

WHEREAS, the Mayer property was subsequently annexed into the City and zoned PUD-R; and

WHEREAS, pursuant to the First Amendment, Wyndham Foxford, L.L.C., undertook the development of a portion of the Kings Crossing Property and the Mayer Property, known as Kings Crossing Phase I, which has been completed; and

WHEREAS, subsequent to the start of development of Kings Crossing Phase I, the parties to the Annexation Agreement agreed to further amend the Annexation Agreement and entered into a Second Amendment to Annexation Agreement ("Second Amendment"), dated October 26, 2009, and recorded in the Office of the Ogle County Recorder as document number 201001002091; and

WHEREAS, the Second Amendment provided that Wyndham Foxford, L.L.C., could pay a portion of the Stormwater Impact Fee for Phase I Development of the Kings Crossing Property by paying the Stormwater Impact Fee attributable to Lot 3 (3.45 acres) and Lot 4 (5.03 acres) at the time it was developed, and further provided that the Stormwater Impact Fee for those portions of the Kings Crossing Property which were owned by the Rochelle Elementary School District (48.99 acres), the Rochelle Township High School District (34.27 acres), and property designed for park purposes and/or stormwater detention on the Phase I Development plat (19.4 acres) would be waived; and

WHEREAS, the Stormwater Impact Fee for Lot 3 has been paid, but no other portion of the Stormwater Impact Fee has been paid; and

WHEREAS, subsequent to the Second Amendment, Developer purchased from Wyndham Foxford, L.L.C., all interests in the Kings Crossing Property and the Mayer Property, except those parcels which had already been developed, one parcel at the northwest corner of the intersection of 20th Street and Flagg Road, and parcels deeded to the Rochelle Elementary School District #231 and Rochelle Township High School District #212; and

WHEREAS, subsequent to the purchase by Developer, Developer and the City entered into a Third Amendment to the Annexation Agreement ("Third Amendment") dated January 23, 2012, and recorded in the Office of the Ogle County Recorder as document number 201201201865; and

WHEREAS, subsequent to the Third Amendment, the parties entered into a Fourth Amendment to the Annexation Agreement ("Fourth Amendment") dated September 11, 2012, and recorded in the Office of the Ogle County Recorder as document number 201208611, related to the development of certain parcels by the Rochelle Elementary School District; and

WHEREAS, certain obligations under the original Annexation Agreement have been completed either by Developer or Developer's predecessor, including the obligation to contribute \$37,538.45 for construction of water facilities along Flagg Road; and

WHEREAS, the parties wish to clarify and set forth the agreements reached between the parties with respect to obligations under the previous agreements and under the Rochelle Municipal Code, related to the development of the Property, and the parties wish to enter into this Agreement to further amend the Annexation Agreement and to restate the Annexation Agreement, as so amended, in its entirety; and

WHEREAS, the parties intend that this Agreement shall supersede the prior Annexation Agreement, and all prior amendments thereto (including the First, Second, Third, and Fourth Amendments), thereby reducing all agreements between the parties with respect to the Property to the agreements contained in this Agreement; and

WHEREAS, all notices, publication, 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 Agreement, including without limitation notices published in appropriate newspapers and notices to the Trustees of the Ogle-Lee Fire Protection District pursuant to the provisions of 65 ILCS 5/7-1-1; and

WHEREAS, a public hearing upon this Agreement was held by the corporate authorities on _____, following notice by publication on _____, 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 development of the Property on the terms set forth in this Agreement 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 City Council then holding office, an ordinance has heretofore been adopted authorizing the execution and delivery of this Agreement;

NOW THEREFORE, in consideration of the foregoing premises and the mutual agreements contained herein, the parties agree as follows:

**ARTICLE I
TERM**

Unless sooner terminated by agreement of the Parties, this Agreement shall terminate on April 10, 2026.

**ARTICLE II
ANNEXATION AND ZONING**

Section 1. Enactment of Annexation Ordinance. The City has enacted one or more valid and binding ordinances (collectively "the Annexation Ordinance") annexing the Property to the City.

Section 2. Adoption of Zoning Map Amendment. The City has previously adopted one or more ordinances zoning the Property. Concurrently with the execution of this Agreement, the City shall adopt one or more ordinances zoning Tract #1 of the Property, approximately 140 acres, (hereinafter "Tract #1") as PUD-R, zoning Tract #2 of the Property, approximately 240 acres, (hereinafter "Tract #2") as Rural Development - RD, and zoning Tract #3 of the Property, approximately 19.40 acres, (hereinafter "Tract #3") as PUD-R. Each Tract is legally defined on Exhibit A and depicted on Exhibit B, attached hereto. The standards for each zoning district shall be established by means of special use permits to be reviewed by the Planning and Zoning Commission and approved by the City Council pursuant to its legislative discretion. It is the intention of the parties that the Property, as so zoned, and rezoned from time to time, shall allow for a mixture of single-family, multiple-family and commercial uses pursuant to the terms of the special use permits. The zoning adopted pursuant to this Agreement shall remain in effect throughout the term of this Agreement and after the expiration of this Agreement unless thereafter amended upon application of Developer or otherwise in accordance with applicable law.

Section 3. [omitted]

Section 4. [omitted]

**ARTICLE III
CODES, FEES AND REIMBURSEMENTS**

Section 5. Applicability of Codes. The parties acknowledge that the original period set forth in the Annexation Agreement during which certain provisions of the Rochelle Municipal Code were to remain unchanged with respect to the Property, has expired, and that it is uncertain when future development will occur. Accordingly, unless hereafter agreed, the provisions of the Rochelle Municipal Code in effect at the time of any future development shall apply to the Property; provided, however, that a

previously subdivided lot shall not be rendered non-conforming solely because of a change in the Rochelle Municipal Code.

Section 6. Less Restrictive Provisions. If, during the term of this Agreement, the Rochelle Municipal Code is amended in a manner that imposes less restrictive requirements on the development of property within the City with respect to similarly situated Developers, then Developer may elect to proceed under such less restrictive requirements.

Section 7. City's Professional Fees. The City will pay for all actual and reasonable professional fees, costs or other expenses related to the Property incurred by the City in connection with the negotiation and approval of this Agreement and related matters, including without limitation reasonable legal fees, reasonable charges for staff time, planning and engineering consultant fees, and construction observation costs. To the extent inconsistent herewith, the provisions of Section 86-57 of the Rochelle Municipal Code are hereby waived.

Section 8. Impact Fees, Donations and Contributions. The City shall not charge Developer, or its assigns, any impact fee or lag time fee on development of the first fifteen (15) residences constructed within the Property in each calendar year during the term of this Agreement. The City may charge any impact fee and/or lag time fee then in effect under the Rochelle Municipal Code or applicable resolutions of the Rochelle City Council, on the development of the sixteenth (16th) residence, and every subsequent residence developed in each calendar year. Developer's contribution to the Flagg-Rochelle Park District shall be limited to construction of an eight foot wide shared use path through the Property to be located on a 12-foot section of right-of-way which will be dedicated to the Flagg-Rochelle Community Park District in fee simple.

Section 9. Limitations on Fees. Except as expressly set forth herein, no fee or charge of any description shall be imposed upon Developer or upon the development and use of the Property unless, as of the date of this Agreement, such fee or charge is in existence and being collected by the City on a uniform basis from all similarly-situated Developers, buyers and owners of property within the City. The City shall not increase the amount of any fee or charge for building permit fees, occupancy permit fees, plan review fees, inspection fees, utility fees, application fees or user fees during the term of this Agreement unless such increases are made generally applicable to all similarly-situated developers, users and owners of property within the City.

ARTICLE IV

PLANNED UNIT DEVELOPMENT PROCEDURES

Section 10. Development in Phases. The parties acknowledge that the development of the Property may occur in phases, the precise configurations of which are not presently known. The parties agree that the procedures for Planning and Zoning Commission review and City Council approval as set forth in the PUD Ordinance and in this Agreement shall be followed with respect to each phase of the development, and that no phase shall be developed without final City Council approval, by ordinance duly adopted.

Section 11. Special Use Permits. The precise configuration and terms of development for each phase of the development of the Property shall be set forth in special use permits to be issued by the City following application by the Developer, review by the Planning and Zoning Commission and the City Council and approval by the City Council pursuant to the standards and criteria set forth in the PUD Ordinance, and in a Final PUD Plat approved by the City Council following review by the Planning and Zoning Commission and the City Council.

Each special use permit issued pursuant to this Agreement shall contain an unconditional consent and agreement, in form and substance satisfactory to the City, pursuant to which the Developer agrees and consents to abide by all of the terms, conditions and limitations set forth in the special use permit, and to indemnify the City and its officials, employees and agents, from any liability for damages or injuries that may be sustained as a result of the City's review and approval, and the use of the Property, and to defend the City with regard to any claims for such damages or injuries, and related matters.

Section 12. Procedures for Approval of Special Use Permit. The procedures to be followed for review and approval of any application for a special use permit for the Property shall be as set forth in the PUD Ordinance, including without limitation the following:

- (a) a pre-application conference between the Developer and the City Staff, as described in Section 110-443(1) of the PUD Ordinance;
- (b) submission and review of a Concept Plan as described in Section 110-443(2) of the PUD Ordinance;
- (c) submission and review of a Preliminary Plat as described in Section 110-443(3) of the PUD Ordinance;

- (d) submission and review of a Final Plat as described Section 110-443(4) of the PUD Ordinance;

The parties may accelerate the review and approval process for any phase of the development by mutual agreement. At the discretion of the City Staff, any conferences or reviews provided for in any of the foregoing provisions of the PUD Ordinance may involve members of the City Council and/or the Plan Commission; provided, however, that any such meetings conform with the Open Meetings Act, 5 ILCS 120/1, et seq.

ARTICLE V GENERAL DEVELOPMENT CONDITIONS

Section 13. Residential Density. The residential density within the Property shall not exceed 2.94 dwelling units per gross acre.

Section 14. Excavation, Grading, and Preparation of the Property for Development. Prior to the construction of any improvements on the Property (public or private), Developer shall secure any required permits and approvals from any applicable federal or state agencies relating to archeological significance, endangered species, floodplain/floodway or wetlands. Developer shall have the right, prior to obtaining approval of final engineering drawings and prior to approval of the Final Plat of subdivision by the City, to undertake excavation, preliminary grading work, filling, and soil stockpiling on the Property in preparation for the development of the Property based solely on submittal of a grading plan and soil erosion and sedimentation control plan and drainage plan to the City, which plans shall be approved by the City provided said plans are in accordance with all applicable City codes and ordinances. Such work shall be undertaken without injury to the property of surrounding property owners. A letter of credit, bond or other security in an amount not to exceed 110% of the approved estimated cost of completing such excavation, preliminary grading work, filling, soil stockpiling and erosion control items, or less as determined by the City, to assure proper site restoration shall be required and submitted by Developer as a condition precedent to the commencement of such work, as the cost of performing and installing necessary grading and detention pond(s) for the phase of the development then being constructed. Said letter of credit, bond or other security will be released upon the completion and approval of such grading and retention pond(s), provided partial reductions shall be permitted based upon the percentage of the work completed.

Section 15. Construction Traffic Routes and Parking. City may designate routes of access to the Property for construction traffic to protect pedestrians and to minimize disruption of traffic and damage to paved street surfaces; provided, however, that the designated routes shall not unduly hinder or obstruct direct and efficient access to the Property for construction traffic. Developer shall keep all routes used for construction traffic free and clear of mud, dirt, debris, obstructions and hazards and

shall repair all damage caused by construction traffic. All construction vehicles, including passenger vehicles, and construction equipment shall be parked within the Property or in areas designated by the City.

Section 16. Building Permits. City shall issue building permits for which Developer or a subsequent owner of a lot in the Property applies within ten (10) business days of the City's receipt of the last of the documents required by the Rochelle Municipal Code to support such application. If the application is denied, the City shall provide the applicant with a written statement specifying the reasons for denial of the application and a list of additional materials and information required to obtain approval, including specifications of the requirements of law which the application or supporting documents fail to meet. City shall issue such building permits upon the applicant's compliance with those requirements. In the event (a) City intends to forward materials in support of any request or application to an independent consultant for review, and (b) such materials are to be forwarded because of the extraordinary number of requests and applications then being processed, City shall notify the applicant at the time of his submission of the required plans and materials that the same are being forwarded for independent review and in such event the applicant shall pay the cost of such review and the review period shall be extended for a reasonable time.

An applicant may apply for building permits for portions of the Property prior to the availability of storm sewer and sanitary sewer service to such portion of the Property, provided that the Developer or applicant installs those minimum life safety improvements as identified and required by City. In no event shall a building permit be issued until a functional water main and fire hydrant have been installed and located within 300 feet of the building(s) proposed to be constructed pursuant to the permit. Notwithstanding the foregoing, no temporary occupancy permits shall be issued for such portions of the Property until the availability and connection of such utilities is demonstrated to the satisfaction of the City.

Notwithstanding anything to the contrary contained in this Agreement, City agrees to issue necessary permits to the applicant, upon application by the applicant, prior to applicant's or Developer's submission of plans for any entire building to allow (i) grading or the installation of drainage and utility facilities on the Property, provided that the Developer or applicant submits a mass grading plan which complies with applicable City codes and ordinances, and (ii) construction of building foundations, provided the applicant submits exterior enclosure drawings and foundation drawings which comply with applicable City codes and ordinances; provided, however, that the issuance of any such permits shall not authorize nor be construed to authorize or to permit the construction of any portion of a building or an improvement, the plans for which have not been reviewed and approved by the City and Developer.

The City shall not limit the number of buildings or other permits that may be applied for within any opened phase due to any City imposed moratorium and shall in no event unreasonably withhold approval of said permits or approval for the final plat of any phase of development.

Section 17. Security for Public Improvements. Security to be provided by Developer for public improvements benefiting an individual phase of development within the Property shall be provided prior to the commencement of construction on such individual phase and shall be in accordance with the terms of this Agreement and the Rochelle Municipal Code, as modified by this Agreement. Developer shall provide such security in the form of a cash escrow, bond or irrevocable letter of credit. Bonds and letters of credit shall be in a form approved by the City Attorney and shall be issued by an entity approved by the Corporate Authorities. The amount of the security posted with the City shall at all times equal one hundred ten percent (110%) of the approved estimated cost of completing the required public improvements. Such security shall be reduced by the City from time to time, as public improvements within the Property have been completed and approved by the City Engineer and prior to acceptance of such improvements by the City.

Section 18. Dedication and Acceptance of Improvements. Developer shall dedicate to the City all public rights of way and improvements located thereon, sanitary sewers, storm sewers, water mains and sidewalks lying within public rights of way or public easements and located on the Property ("Improvements"), upon final acceptance by City. The sewer and water service lines (from the buffalo box to the residential or commercial unit, as the case may be) shall not be owned or maintained by the City. Nothing whatsoever shall constitute an acceptance by the City of any Improvement except only express acceptance by the City in compliance with the requirements of the Rochelle Municipal Code. Prior to acceptance of the Improvements by the City, Developer shall execute, or cause to be executed, all documents that the City shall request to transfer ownership of the Improvements to, and to evidence ownership of the Improvements by, the City, free and clear of all liens, claims, encumbrances, and restrictions unless otherwise approved by the City. The documents transferring ownership of the Improvements to, and to evidence ownership of the Improvements by, the City shall be acceptable in form and substance to the City Attorney. Developer shall simultaneously grant, or cause to be granted, to the City all insured easements or other property rights as the City may reasonably require to install, operate, maintain, service, repair, and replace the Improvements that have not previously been granted to the City, free and clear of all liens, claims, encumbrances, and restrictions, unless otherwise approved by the City. City shall not be obligated to accept any street until all construction traffic on the street has ceased and the street has been completed and, if necessary, restored and repaired. City shall not be obligated to keep any street cleared, plowed or otherwise maintained until the street has been accepted by the City in

accordance with this Agreement; provided, however, that the City shall plow any street after the binder has been applied and found acceptable by the City Engineer. Contractor shall replace or repair damage to public improvements installed within, under or upon the Subject Property resulting from construction activities by Contractor and its employees, agents, contractors and subcontractors prior to final acceptance by the City, but shall not be deemed hereby to have released any such other party from liability or obligations in this regard. Subject to the provisions of Sections 22 and 23 of this Article, from and after the acceptance of any public improvements by the City, such public improvements shall be maintained, reconstructed, repaired, and replaced by the City and all cost and expense of operation, maintenance, repair, reconstruction, and replacement of such public improvements shall be the sole responsibility of the City. If the Development is in phases, the City agrees to accept all improvements servicing such phase when said improvements are completed. It is further agreed as follows:

- (a) **Release of Underground.** Upon completion and inspection of underground improvements in each phase of development, and acceptance by the City Engineer, Owner shall be entitled to a release or appropriate reduction of any applicable Security Instrument, subject to a maintenance Security Instrument remaining in place for a two year period from the date of acceptance by the City, in conformance with the City Subdivision Control Ordinance.
- (b) **Release of Streets.** Upon completion of street and related road improvements in each Phase of Development, and acceptance by the City Engineer, Owner shall be entitled to a release or appropriate reduction of any applicable Security Instrument, subject to a maintenance Security Instrument remaining in place for a two year period from the date of acceptance by the City, in conformance with the City subdivision Control Ordinance.
- (c) **Transfer and Substitution.** Upon the sale or transfer of any portion of a Phase of Development Property, Owner shall be released from the obligations secured by the Security Instruments for public improvements upon the submittal and acceptance by the City of a substitute Security Instrument approved by the City, securing the costs of the improvements set forth by the Owner.

Section 19. Common Areas. Unless said areas are to be dedicated for public ownership and maintenance at the City's request, Developer shall cause all portions of Subject Property depicted on a preliminary plat of subdivision as wetlands, screening berms and entry ponds, common open space area, storm water retention areas, and dry detention areas either to be retained by Developer or to be conveyed to a property owner association or associations consisting of the owners of all property located in areas designated by Developer.

Section 20. Conveyances. Any conveyance of real estate to the City pursuant to this Agreement shall be by warranty deed, plat of dedication or appropriate dedication on a recorded plat of subdivision or plat of PUD conveying good and merchantable fee simple title to the City. Any deed of conveyance shall be subject only to covenants, restrictions and easements of record (provided the same do not render the real estate unsuitable for the purposes for which it is being conveyed), the terms of this Agreement, general taxes for the year in which the conveyance is made, and such other exceptions as may be agreed by the City in writing.

Section 21. As-Built Plans. As soon as practicable following completion of all public Improvements, but prior to acceptance by the City, the Developer shall submit to the City a set of as-built plans, being sealed by an Illinois licensed professional engineer, and a sworn statement of the contractor performing work in connection with the completed Improvements, specifying the work performed on such Improvements and the cost thereof, and executed waivers of lien relating thereto. Developer shall cause as-built plans ("Plans") for the land improvements, not to include final pavement surface course or final lot grading, to be submitted to the City Engineer pursuant to the applicable provisions of the Rochelle Municipal Code. All Plans shall be submitted on a reproducible Mylar plan and in an electronic version compatible with Auto CAD computer software. The Plans shall show the exact location and elevation of all land improvements, as previously noted, and, if deemed necessary by the City building official, the elevation certificates of a proposed lowest floor, including the basement, or a floodproof certificate. The Plans shall be certified by a State of Illinois licensed professional engineer or surveyor, as required by applicable laws, ordinances or regulations.

Section 22. Developer's Guaranty and Maintenance of Improvements. In accordance with the provisions of the Rochelle Municipal Code, and as a contractual obligation under this Agreement, Developer hereby guarantees the prompt and satisfactory correction of all defects and deficiencies in the Improvements that occur or become evident within two years after approval and any required acceptance of the Improvements by the City pursuant to this Agreement. If any defect or deficiency occurs or becomes evident during the two-year period, then Developer shall, after ten (10) days' prior written notice from the City (subject to Force Majeure), correct it or cause it to be corrected. In the event the City Engineer determines that Developer is

not adequately maintaining, or has not adequately maintained, any Improvement, the City may, after ten (10) days' prior written notice to Developer, enter on any or all of the Property for the purpose of performing maintenance work on and to any affected Improvement. In the event that the City shall cause to be performed any work pursuant to this Section, the City shall have the right to draw from the performance securities deposited pursuant to Section 23 of this Article, or the right to demand immediate payment directly from Developer, based on costs actually incurred or on the City's reasonable estimates of costs to be incurred, an amount of money sufficient to defray the entire costs of the work, including without limitation legal fees and administrative expenses. Developer shall, after demand by the City, pay the required amount to the City.

The provisions of this Section shall also apply to damages to the Improvements caused by Developer or its contractors, subcontractors, or successors during the two-year guaranty period.

Section 23. Security After Acceptance. In accordance with the provisions of the Rochelle Municipal Code, and as a contractual obligation under this Agreement, immediately after any required acceptance by the City of the Improvements pursuant to this Agreement, Developer shall post cash, or an irrevocable letter of credit, or a surety bond, in the amount of ten percent (10%) of the actual total cost of the Improvements as security for the performance of Developer's obligations under this Agreement ("Security"). The Security shall be held by the City in escrow until the end of the two-year guaranty period set forth in this Agreement. If the City is required to draw on the Security by reason of Developer's failure to fulfill its obligations under this Agreement, then Developer shall within ten (10) days thereafter cause the Security to be increased to its full original amount.

Section 24. Stop Orders. Except as may be required pursuant to the City's stormwater management ordinance, the City shall issue no stop orders directing work stoppages on buildings or parts of the Subject Property without setting forth the alleged violations in writing, and Developer shall forthwith proceed to correct such violations as may exist; provided, however, that the City shall give notice to Developer of its intention to issue stop orders in advance of the actual issuance of such stop orders, except in the event an emergency is deemed to exist by the City, and allow Developer a reasonable opportunity to cure the alleged violation. So long as, following issuance of such advance written notice, Developer shall within a reasonable time thereafter commence and thereafter continue to diligently and in good faith work to effectuate such cure, the City shall not issue any such stop work order with respect to the alleged violation.

Section 25. Signs. Following the date of Agreement and through the date of the issuance of the final occupancy permit for the Subject Property, Developer shall be

entitled to construct, maintain and utilize up to four (4) offsite subdivision identification, marketing and location signs, in conformity with the provisions of the Rochelle Municipal Code, at locations within or without the corporate limits of the City as may be approved by the City at the time of preliminary plat approval (individually an "Offsite Sign" and collectively the "Offsite Signs"). Developer shall be responsible, at its expense, for obtaining all necessary and appropriate legal rights for the construction and use of each of the Offsite Signs. Each of the Offsite Signs may be double faced signs which shall not exceed twenty (20) feet in height with an area for each sign face not exceeding two hundred (200) square feet, subject to the requirements of any permitting authority other than the City. Each Offsite Sign may be illuminated. In addition to the Offsite Signs, Developer shall be permitted to construct, maintain and utilize signage upon the Subject Property as identified in Exhibit E attached hereto.

Section 26. Construction and Maintenance of Improvements Prior to Approval of Final Plat. Prior to formal final plat approval for any phase of the development, but following approval of final engineering plans for underground utilities, the Developer shall be permitted at the Developer's sole risk, to construct and maintain sanitary sewer lines, storm drainage system, water mains and roadway improvements for any such phase, except for 20th Street.

Section 27. Temporary Construction, Sales Trailers, and Offices. Prior to the commencement of the construction and final plat approval for each unit, the Developer shall submit to the City Zoning Administrator a plan showing the location of all proposed temporary construction and sales trailers/offices, including parking areas, fencing, signage and landscape treatment. Said plan shall also indicate the one general location within each portion of the Subject Property where all construction and material storage trailers other than the trailers for the sales office shall be located. The Developer shall be permitted two (2) sales trailers, two (2) construction trailers, and two (2) material storage trailers for the development of Subject Property. The Developer shall have the right to use the sales, construction, and material storage trailers for the purpose of its construction and sales activities until construction is completed on the Subject Property or the model homes are used for construction and/or sales activities, whichever first occurs. The Developer shall keep such area free of debris and rubbish and keep the area free of weeds and in a mowed condition, and the City may inspect such area from time to time to determine that Developer is in compliance with its obligations hereunder. Construction of temporary facilities shall be in compliance with the provisions of the City's building code. Paved drives and parking areas (weather permitting) shall be provided to accommodate vehicular access to all temporary sales trailers/office facilities. Developer agrees to hold the City harmless for any liability associated with the installation and operation of any temporary facilities.

Section 28. Model Areas. Prior to final plat and engineering approval for any phase of the development and in advance of completing the installation of sanitary,

storm drainage system, water mains and roadway improvements, Developer shall be permitted at Developer's sole risk: (a) to construct and maintain 6 model home areas and associated sales offices ("Model Areas") for the development of each project comprising a portion of the Subject Property, regardless of the number of separate projects that may be active during the term of this Agreement, (b) to construct and maintain other appurtenant facilities for each such Model Area; provided that any sales office marquee shall be subject to approval through the City's permit process and shall comply with the Rochelle Municipal Code. If, at the time the use of the models is commenced, weather conditions will not permit the paving of the access drive and parking areas for such models, access and parking may be stone or gravel and paving shall occur when weather conditions permit. Developer shall have the right to occupy and use said models, as well as their garages, for sale, sales promotions and offices for sales personnel, all as may be desirable or in any way connected with the sales of dwellings on the Subject Property. Construction of models shall be in compliance with the provisions of the City's Building Code.

Notwithstanding any City ordinances to the contrary, for as long as the model area is used for selling dwelling units, Developer shall have the right to erect fencing on a temporary basis that entirely encloses the model area and directs model area traffic. It is further understood that successor Developer shall be entitled to signs and models in replacement of those to which Developer is entitled. It is understood that signs and fences provided for herein shall be subject to the approval of the City Zoning Administrator and that no signs or fences shall be placed upon the public right-of-way.

At such time as the City has approved building plans for any model of a dwelling unit (including extras or options), the same shall constitute a "master approval" of the plans for such model. Thereafter, subsequent building permit applications for any model which conforms to the plans for which a master approval has been made shall include documentation customarily required for building permit applications but shall not be required to include additional copies of building plans, unless roof framing and structural framing are changed due to a different methods of construction or material supply. Developer shall provide the City with sufficient copies of plans for which master approval has been given, for use in the field as dwelling units are constructed. Nothing contained herein shall relieve Developer from the obligations to pay permit fees for each dwelling unit for which a building permit is sought.

**ARTICLE VI
CERTIFICATES OF OCCUPANCY**

Section 30. Issuance. The City shall issue certificates of occupancy on a unit-by-unit and floor-by-floor basis provided such units and floors are completed and ready for their intended use and provided all building common areas, sprinkler systems, alarm systems, and egress routes have been substantially completed and are determined by the City to satisfy all applicable City requirements. The City shall issue certificates of occupancy for temporary structures which are not intended for permanent habitation so long as such structures are safe for such temporary uses as approved by the City.

Section 31. Approval Period. The City shall conduct an inspection, for purpose of issuance of a certificate of occupancy, of any building or structure constructed on the Property within five (5) business days of request therefore and shall either deny or issue certificates of occupancy for such building or structure within five (5) working days of completion of such inspection. The City agrees to diligently pursue completion of such inspection upon proper request therefore. If the request is disapproved, the City shall provide the applicant within such five (5) day period with a statement in writing of the reasons for denial of the request including specification of the requirements of law which the application and supporting documents fail to meet.

Section 32. Temporary Certificates of Occupancy. The City shall issue temporary certificates of occupancy when adverse weather conditions do not permit outside painting, landscaping, or the installation of final roadway improvements, provided the City determines that the issuance of such temporary certificates of occupancy is not detrimental to the public health and safety. Temporary certificates of occupancy shall be issued by the City for any finished part or portion of a building, structure or unit which is otherwise not completely finished, provided that: (i) said finished part or portion is designed for or capable of separate use or occupancy; (ii) such part or portion is safe for the use or occupancy intended; (iii) sprinkler systems, alarm systems and egress routes are completed in accordance with fire district codes; and (iv) sewer, streets, water, stormwater drainage (including required detention) and all other public improvements are properly installed to and available to serve, the building, structure or unit containing said finished part or portion.

**ARTICLE VII
GENERAL UTILITY PROVISIONS**

Section 33. Utility Easements. Developer shall provide to City, with no charge, all easements on property necessary to carry out the provisions of this Agreement, or any special use permit issued pursuant thereto, related to utilities (including, without limitation a ten-foot (10') wide easement for electric service from the east property line

of the Property to the west property line of the Property at a location to be determined but approximately on the southerly end of the residential portion of the development shown on Exhibit B). Upon request by Developer, and subject to limitations as provided by applicable law, City shall, at Developer's expense, acquire any off-site easements from third parties which are necessary to enable the City to provide water, sanitary sewer and electrical service to the boundaries of the Property in accordance with the provisions of this Agreement. If necessary, and upon request by Developer, City will promptly use its power of eminent domain to obtain such off-site easements from third parties at Developer's expense, and Developer shall promptly reimburse City, on an ongoing basis, for all costs and expenses of any such eminent domain proceeding. Prior to making any request for the City to use its powers of eminent domain, Developer shall use good-faith efforts to acquire the easement.

Notwithstanding any other provision of this Agreement including the indemnity provisions of Article XVII, it shall be a condition to the granting of any easement required to be granted pursuant to any provision of this Agreement that the grantee shall agree that, in the event of any use of such easement for construction or maintenance of the facility for which such easement was granted, (1) the grantee shall restore the property to substantially the same condition as existed prior to such construction or maintenance, and (2) the grantee, its agents, employees, or contractors shall hold the grantor and his or its successors in interest harmless from any third party claim for personal injury or property damage which arise or result from the activities of the grantee in connection with such construction or maintenance.

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, shall be paid by the City in accordance with the Rochelle Municipal Code and this Agreement. The costs to be paid by the City for such upsizing shall include all incremental cost increases resulting from pipe dimension increases, and all incremental cost increases resulting from trench construction based on increased depths and widths.

Section 35. Recapture (Water, Sewer and Street Lights). The provisions of the Recapture Agreement entered into by the parties to the Annexation Agreement on April 10, 2006, and recorded in the office of the Ogle County Recorder on May 9, 2006, as document #0604711 shall remain in effect. The parties agree to negotiate the parties' relative interests, including the Developer's right to recapture certain improvements that may benefit other property owners, at such time as said improvements are required by the City in connection with further development of the Property, and to execute and record an amended recapture agreement.

ARTICLE VIII WATER SERVICE

Section 37. General. The City represents that there currently exists a fully functional potable water supply system sufficient to serve the projects contemplated to be developed on the Subject Property. The City agrees that it will provide a fully functional potable water supply system sufficient to serve such projects, when constructed, at the time such system is needed. Nothing in this section shall be deemed to require the City to reserve water capacity in advance of the time it is needed.

Developer shall, at its sole cost and expense, construct and install all potable water facilities required from the terminus of existing water mains 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 otherwise expressly set forth in this Agreement or any special use permit issued pursuant thereto.

Section 38. Construction of Water Mains. The exact location and type of water mains to be constructed are to be reserved for negotiation when development occurs. The Developer's previous obligation (Section 38 of the Annexation Agreement) to construct a 12" water main loop from the then-existing terminus of the City water main at or near the intersection of Flagg Road and 20th Street, 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 C, shall not be required for the development of Tract #1, but may be required by the City when Developer seeks to re-zone Tract #2.

ARTICLE IX SANITARY SEWER SERVICE

Section 39. General. Developer shall, at its sole cost and expense, construct and install all sanitary sewer facilities required from the terminus of existing sanitary sewer 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. The City agrees that it will provide sanitary sewer facilities sufficient to service the projects contemplated to be constructed on the Property, at the time such system is needed. Nothing in this section shall be deemed to require the City to reserve sanitary sewer capacity in advance of the time it is needed.

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 D. All sewer lines within the Property shall be designed so as to discharge into the Akesson Lift Station. The City agrees to allow all City sewer lines to be installed in the parkways and not in the middle of the rights-of-way. The City shall charge an individual lot sewer connection fee in accordance with the then prevailing sewer connection fee; provided, however, that for the development of Tract #1, a sewer connection fee shall not be charged on the first fifteen (15) lots on which a residence is constructed on in any given calendar year and shall only be charged to subsequent lots on which a residence is constructed during that calendar year. Any upsizing that the City may require for the development of properties north and west of the Property will be incorporated into the final plat of each phase of development.

ARTICLE X ELECTRIC SERVICE; STREET LIGHTS

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; provided, however, that during development of Tract #1, Developer's obligation to pay for said costs to construct all electric facilities shall arise only after the fifteenth (15th) residence has been developed in any given calendar year and shall apply only to subsequent residences constructed during that calendar year; and provided further that City shall have no obligation to construct additional electric facilities at any time when there exist 15 or more lots to which electric facilities have been provided but which have not had residences constructed on them. Typical RMU refunds for electric installed by Developer will apply to any electrical services installed by Developer when exceeding the 15 dwelling units

Section 42. Street Lights. City will install street lights within the Property, during development of Tract #1. During the development of any other Tract, City, at Developer's sole cost and expense, will install street lights within the Property. The number and location of street lights shall be consistent with the Illuminating Engineering Society (IES) Code.

ARTICLE XI STREETS, SIDEWALKS AND TRAFFIC LIGHTS

Section 43. General. Developer, at its sole cost and expense, shall design, construct and install all interior roadways and four (4) 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. Sidewalks shall be constructed along both sides of all streets, except where Developer, with the express written consent of the Flagg-Rochelle Community Park District, constructs a shared use path incorporated into the Park District shared use path system. 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 20th 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 20th Street extension.

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. The City agrees that 20th Street north of its present northerly terminus will be constructed in accordance with Exhibit E. The Developer will donate an 80' right-of-way for the extension of 20th Street. The City agrees to build the first 900 feet, which consists of curb and gutter, street lights, gravel base, and 3" of asphalt at the City's expense, at such time as development within the Property requires the extension of 20th Street. Developer will complete the actual construction and the City will reimburse the Developer for the costs of constructing the first 900 feet of 20th Street. All interior streets in the balance of the subdivision will be built by the Developer, at its cost, and considered minor streets and will be 31 feet back-to-back streets with 12 inches of rock and 3 inches of asphalt.

Section 45. Perimeter and Offsite Road Improvements; Signalization. Developer shall contribute to the cost of perimeter and offsite road improvements and signalization necessitated in whole or in part by the improvements to be constructed on the Property, as follows: (i) Developer shall improve Flagg Road from the east boundary line of the Property to the west boundary line of the Property; (ii) the Flagg Road improvements shall include a dedication of a fifty-foot (50') right-of-way on the north side of Flagg Road along the length of the improvements which are contiguous to the Property, construction of improvements consistent with the three-lane cross section situated in front of Rochelle Township High School, and intersection improvements at the 20th Street and Flagg Road intersection designed and built with turn lanes and a contribution to signalization pursuant to a traffic study to be provided by Developer at Developer's expense, which the parties acknowledge could include all four legs of the

intersection; (iii) Developer shall improve that portion of Queens Road which is contiguous to the Property; (iv) the Queens Road improvements shall include a dedication of a fifty-foot (50') right-of-way on the east side of Queens Road along the length of the improvements, construction of improvements consistent with the three-lane cross-section situated in front of the Rochelle Township High School, and a contribution to the cost of intersection improvements at Flagg Road and Queens Road, which are to be designed and built with turn lanes based on a traffic study by Developer's consultant. The amount of Developer's contribution shall be proportionate to the portion of the traffic attributable to the residential and commercial portions of the development, not including school traffic, as determined by the traffic study. The traffic study shall also include a recommended percentage of funds to be contributed by the Developer to the County for future signalization at this intersection.

None of the foregoing perimeter or offsite road improvements and signalization shall be required in connection with the development of Tract #1. The City may require all or some of them to be constructed in connection with the development of Tract #2.

Section 46. Recapture (Roads). The provisions of the Recapture Agreement entered into by the parties to the Annexation Agreement on April 10, 2006, and recorded in the office of the Ogle County Recorder on May 9, 2006, as document #0604711 shall remain in effect. To the extent the Developer is, or will be, required to make offsite road improvements and intersection signalization improvements which benefit adjacent property owners, the Developer shall have a right to recapture the costs of making said improvements. The parties agree to negotiate the relative rights of the parties at such time as offsite road improvements and intersection signalization is required of Developer, and to execute and record an amended recapture agreement.

ARTICLE XII STORMWATER PROVISIONS

Section 47. General. Except as expressly set forth herein, Developer shall provide all necessary storm sewers, retention systems and compensatory storage in compliance with all provisions of the Rochelle Stormwater Management Ordinance included within the Rochelle Municipal Code, including without limitation provisions relating to stormwater drainage and detention, stream and wetland protection, soil erosion and sediment control, flood way and flood plain protection, and shall comply with all other applicable law, rules and regulations related to stormwater management; provided, however, that said retention may be provided on a "site-by-site" basis as the various portions of the Property are developed. The retention system shall be maintained by the Owner or the Landowners' Association in accordance with covenants recorded against the Property for that purpose in a safe, sanitary and sightly manner. In determining whether any lot satisfies zoning standards, any part thereof within a retention system may be included as part of the area of said lot.

Section 48. Stormwater Management; Drainage District Review. Developer shall pay all sums, as a contractual obligation under this Agreement, provided in the Rochelle Municipal Code as a Stormwater Impact Fee for the Property, except for any portion of the Property waived by the Second Amendment. The City waives payment of the Stormwater Management Fee for the remaining Property. Developer shall at all times comply with all requirements of applicable ordinances, statutes, rules and regulations then in effect relating to stormwater management, including without limitation provisions of the Rochelle Municipal Code and requirements of the Federal Emergency Management Agency (FEMA), if appropriate.

Developer shall at all times comply with all requirements of applicable ordinances, statutes, rules and regulations then in effect relating to stormwater management, including without limitation provisions of the Rochelle Municipal Code and requirements of the Federal Emergency Management Agency (FEMA) and the Illinois Department of Natural Resources (IDNR), if appropriate.

Developer shall have all stormwater and drainage plans reviewed and approved by the Kyte River Drainage District ("District") and shall reimburse the District for the District's reasonable costs of review. In the event the District fails to complete its review and approval within thirty (30) days following submission of Developer plans to the District, the District shall be deemed to have given its approval to the plans. In all events, final approval of stormwater and drainage plans for the Property remains with the City.

Section 49. Regional Detention; Reimbursement by City. The parties shall comply with the provisions of Article XIII, Chapter 22 of the Rochelle Municipal Code, with respect to calculating and accommodating stormwater flows from upstream tributary areas. In the event City should choose to require a regional stormwater storage facility on the Property, City shall reimburse Developer for the cost of oversizing to accommodate the additional storage volume needed for the upstream tributary area; provided, however, that City shall in no event require Developer to use additional acreage for regional stormwater purposes, beyond that needed for the Property. City's reimbursement to Developer shall be calculated using Developer's actual cost for any additional excavation and landscaping required for such oversizing.

ARTICLE XIII SPECIAL SERVICE AREA FOR MAINTENANCE

Section 50(a). Release of Previous Special Service Area. The Developer agrees to release the City from its \$20 million SSA obligation under the Annexation Agreement.

Section 50(b). Failure to Maintain Common Areas. In the event the City reasonably determines that either the Owner or the Landowners' Association has failed to properly maintain the Common Areas, City may, but is not required to, enter or authorize others to enter onto the Property and to maintain or cause others to maintain the Common Areas not dedicated to City, and in such event the City shall be paid for same pursuant to the imposition of a special service area tax or assessment as set forth herein.

Section 51. Special Service Area. Developer hereby consents to the establishment of a special service area, pursuant to the provisions of Illinois law, including 35 ILCS 200/27-5, *et. seq.*, consisting of the Property ("Special Service Area"). Neither the Developer nor any lot owner in the Property shall object or cause anyone else to object to the creation of the Special Service Area. The Special Service Area shall be created prior to any building being conveyed within the development, but shall be maintained in inactive status unless and until activated by the City in accordance with the provisions of this Article. The Special Service Area shall not be activated unless and until the City determines that neither the Developer nor the Landowners' Association has properly maintained the Common Areas on an ongoing basis. The Special Service Area shall continue indefinitely unless the City determines otherwise or as otherwise limited by law.

Section 52. Special Taxes/Assessments. For the foregoing purpose, the City may levy Special Service Area taxes to the fullest extent provided by law required to maintain the Common Areas and pay all costs of operation, upkeep, maintenance, repair, replacement, alteration, safekeeping, and improvements for the foregoing, including recovering costs for prior years' as well as current and future years' maintenance, and to recover costs for any and all administrative and legal actions to put into effect or to defend the ability of City to establish and collect taxes from the Special Service Area. The Special Service Area shall be for perpetual duration with a maximum rate of 2.5 percent (2.5%) of the assessed value, as equalized on the property in the Special Service Area, excluding all personal property. The actual tax to be levied shall be determined annually based on the best estimate of incurred or expected cost for the City to maintain the Common Area and for other costs described herein. The Developer and the Landowners' Association shall be jointly and severally responsible for the City's expense in creating the Special Service Area in an amount not to exceed \$3,500.00.

ARTICLE XV ENFORCEMENT OF COVENANTS

Section 54. Required Provisions. The Covenants shall include, at a minimum, the following provisions: (i) membership in the Landowners' Association shall be mandatory for each and every owner and successive owner of any portion of the Property; (ii) the Landowners' Association shall be responsible for the care,

conservation, maintenance and operation, in a first-rate condition and in accordance with predetermined standards, of the Common Areas; (ii) the Landowners' Association shall be responsible for casualty and liability insurance and the City shall be named as an additional insured on all policies of liability insurance obtained by the Landowners' Association; (iv) the owners of the Property, or the Landowners' Association, shall be responsible for real estate taxes for the Common Areas; (v) the owners of the Property shall pay their pro rata share of all costs and expenses incurred by the Landowners' Association by means of assessments levied by the Landowners' Association which shall become a lien on the Property in accordance with the statutes of the State of Illinois; (vi) the Landowners' Association shall have the right to adjust the assessment to meet changed needs, except any assessment imposed by City, and the membership vote required to authorize an adjustment shall not be fixed at more than 51% of the members voting on the issue; and (vii) the Landowners' Association shall be created and established prior to the sale of any portion of the Property.

Section 55. Enforcement by City. City may, at its option, enforce any and all covenants, conditions, restrictions, and easements in the Subdivision Covenants. In such event, the Landowners' Association (or Developer if no Landowners' Association has been established) shall reimburse City for all of City's costs and expenses, including without limitation attorney's fees, incurred by City in connection with said enforcement.

ARTICLE XVI REMEDIES

Section 56. Remedies Available; No Election. Subject to the indemnity provisions of Article XVII, upon a breach of this Agreement, any of the Parties, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance or both. No action taken by any party hereto pursuant to the provisions of this Article or pursuant to the provision of any other Article of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non exclusive of any other remedy either set forth herein or available to any party at law or in equity.

Section 57. Notice and Opportunity to Cure. In the event of a material breach of this Agreement (other than non-payment of sums owed), the Parties agree that the party alleged to be in breach shall have thirty (30) days after written notice of said breach to correct the same prior to the non-breaching party's seeking of any remedy provided for herein, (provided, however, that said thirty (30) day period shall be extended if the defaulting party has initiated the cure of said default and is diligently proceeding to cure the same).

Section 58. Failure to Cure. If any of the Parties shall fail to perform any of its obligations hereunder (other than non-payment of sums owed), and the party affected by such default shall have given written notice of such default to the defaulting party, and such defaulting party shall have failed to cure such default within thirty (30) days of such default notice (provided, however, that said thirty (30) day period shall be extended if the defaulting party has initiated the cure of said default and is diligently proceeding to cure the same), then, in addition to any and all other remedies that may be available, either in law or equity, the party affected by such default shall have the right (but not the obligation) to take such action as in its reasonable discretion and judgment shall be necessary to cure such default. In such event, the defaulting party hereby agrees to pay and reimburse the party affected by such default for all reasonable costs and expenses (including attorney's fees and litigation expenses) incurred by it in connection with action taken to cure such default.

Section 59. No Waiver. The failure of the Parties to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

Section 60. Force Majeure. If the performance of any obligation to be performed hereunder by any Party is delayed as a result of circumstances which are beyond the reasonable control of such Party (which circumstances may include acts of God, war, acts of civil disobedience, strike or similar acts), the time for such performance shall be extended by the amount of time of such delay.

ARTICLE XVII LIABILITY AND INDEMNITY OF CITY

Section 61. City Review. Developer acknowledges and agrees that the City is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the City's review and approval of any plans for the Property or the Improvements, or the issuance of any approvals, permits, certificates, or acceptances for the development or use of the Property or the Improvements, and that the City's review and approval of those plans and the Improvements and issuance of those approvals, permits, certificates, or acceptances does not, and shall not, in any way, be deemed to insure Developer, or any of its heirs, successors, assigns, tenants, and licensees, or any other person, against damage or injury of any kind at any time. The Developer shall not be liable for any damages or injuries that may be sustained as the result of the City's construction of 20th Street.

Section 62. City Procedure. Developer acknowledges and agrees that notices, meetings, and hearings have been properly given and held by the City with respect to the approval of this Agreement and agrees not to challenge the City's approval on the grounds of any procedural infirmity or of any denial of any procedural right.

Section 63. Indemnity. Developer agrees to, and does hereby, hold harmless, defend and indemnify the City, the Corporate Authorities, the Plan Commission, and all City elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from any and all claims that may be asserted at any time against any of them in connection with (i) the City's review and approval of any plans for the Property or the Improvements; (ii) the issuance of any approval, permit, certificate, or acceptance for the Property or the Improvements; and (iii) (subject to the provisions of Section 18) the development, construction, maintenance, or use of any portion of the Property or the Improvements.

Section 64. Defense Expense. Developer shall, and does hereby agree to, pay all expenses, including without limitation legal fees and administrative expenses, incurred by Developer in defending City with regard to any and all of the claims referenced in Sections 56 and 58 of this Agreement.

Section 65. Nature, Survival, and Transfer of Obligations. All obligations assumed by Developer under this Agreement shall be binding on Developer, on any and all of Developer's successors, and assigns, and on any and all of the respective successor legal or beneficial owners of all or any portion of the Property. To assure that Developer's successors, and assigns, and successor owners of all or any portion of the Property have notice of this Agreement and the obligations created by it, Developer shall:

- (a) Deposit with the City Clerk, contemporaneously with the City's approval of this Agreement, any consents or other documents necessary to authorize the City to record this Agreement in the office of the Recorder of Ogle County; and
- (b) Notify the City in writing at least 30 days prior to any date after which Developer transfers a legal or beneficial interest in any portion of the Property to any Person not a party to this Agreement; and
- (c) Incorporate, by reference, this Agreement into any and all real estate sales contracts entered into for the sale of all or any portion of the Property to any person, firm or entity not a party to this Agreement; and
- (d) Require, prior to the transfer of all or any portion of the Property, or any legal or equitable interest in the Property to any person, firm or entity not a

party to this Agreement, the transferee to execute an enforceable written agreement, in substantially the form attached to this Agreement as **Exhibit I** agreeing to be bound by this Agreement ("Transferee Assumption Agreement"), and to provide the City, after request, with reasonable assurance of the financial ability of the transferee to meet those obligations as the City may require;

provided, however, that the requirements stated in clauses (b), (c) and (d) shall not apply to any contract for, or transfer of, an individual lot or group of lots for which all Improvements have been completed and approved and, if required, accepted pursuant to Section 16 of this Agreement. The City agrees that after a successor becoming bound to the personal obligation created in the manner provided in this Agreement and providing the financial assurances required in this Section, the personal liability of Developer shall be released to the extent of the transferee's assumption of liability. The failure of Developer to provide the City with a fully executed copy of a Transferee Assumption Agreement required above by the transferee to be bound by this Agreement and, if requested by the City, with the transferee's proposed assurances of financial capability before completing the transfer shall result in Developer remaining fully liable for all of Developer's obligations under this Agreement but shall not relieve the transferee of its liability for those obligations as a successor to Developer.

ARTICLE XVIII REPRESENTATIONS AND WARRANTIES

Section 66. Representations and Warranties of Developer. Developer represents and warrants to the City:

- (a) that Developer includes all of the legal title holders and owners of record of the Property;
- (b) that Developer proposes to develop the Property in the manner contemplated in this Agreement;
- (c) that Developer has full power and authority to execute this Agreement and to bind the Property as herein provided;
- (d) that Developer has provided the legal descriptions of the Property set forth herein and in the attached Exhibits and that said legal descriptions are accurate and complete;
- (e) that there is no litigation pending by or against Developer that would substantially impair its ability to perform its obligations contemplated by this Agreement.

Section 67. Representations and Warranties of City. The City represents and warrants to Developer:

- (a) that the City Manager and Clerk of the City have been lawfully authorized by the City Council of the City to execute this Agreement on behalf of the City;
- (b) that the City has given or caused to be given and published or caused to be published all notices required by law to be given or published in connection with this Agreement or any other action of the corporate authorities required to be taken as a precondition to execution of this Agreement or annexation of the Property, and that all public hearings required in connection with this Agreement and the annexation of the Property have been held;
- (c) that there is no litigation pending by or against the City that would substantially impair its ability to perform its obligations contemplated by this Agreement.

**ARTICLE XIX
MUTUAL ASSISTANCE; CONTINUATION OF CURRENT USES**

Section 68. General. The Parties shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement; to aid and assist each other in carrying out the terms and objectives of this Agreement and the intentions of the Parties as reflected by said terms, including, without limitation, the giving of such notices, the holding of such public hearings, the enactment by the City of such resolutions and ordinances and the taking of such other actions as may be necessary to enable the Parties' compliance with the terms and provisions of this Agreement and as may be necessary to give effect to the terms and objectives of this Agreement and the intentions of the Parties as reflected by said terms.

Section 69. Governmental Assistance. All Parties shall cooperate fully with each other in seeking from any or all appropriate governmental bodies (whether Federal, State, County or local) financial or other aid and assistance required or useful for the construction or improvement of property and facilitate in and on the Property or for the provision of services to residences of the Property, including, without limitation, grants and assistance for public transportation, roads and highways, water and sanitary sewage facilities and storm water disposal facilities.

Section 70. Continuation of Current Uses. The Property is presently being used for farming and general agricultural uses. In reviewing this Agreement, the City has given due consideration to the continuation of such current uses. Accordingly, and

notwithstanding any provisions of the City Code, the Zoning Ordinance, or any other code, ordinance or regulation, now in effect or adopted during the term of this Agreement, and notwithstanding the City's subsequent zoning of the Property pursuant to the terms hereof, the current uses of the Property shall be permitted to continue. The parties acknowledge that the entirety of Tract #2 will be farmed until such time as the Developer wishes to develop Tract #2. Developer shall be allowed to install and operate an irrigation well on Tract #2 for agricultural purposes. Any such well shall be capped prior to the beginning of development of Tract #2.

ARTICLE XX MISCELLANEOUS PROVISIONS

Section 71. Amendment. This Agreement, and the exhibits attached hereto, may be amended only by the mutual consent of the Parties, by adoption of an ordinance by City approving said amendment as provided by law, and by the execution of a written amendment by the Parties or their successors in interest. Notwithstanding the foregoing, if any portion of the Subject Property is sold, then only the signatures of (i) the owner of record of that particular portion and (ii) the City shall be required to amend this Agreement as to the portion so sold. Further, it is agreed that in the event Developer or any of Developer's successors in interest propose to amend any of the zoning ordinances referred to in Article II of this Agreement, then any such proposed rezoning or amendment to such zoning ordinances shall not require the amendment of this Agreement. However, with respect to the requirement of the Developer's signature, only the written approval of the legal titleholder of the interest in the property affected by the amendment shall be required to effect an amendment to this Agreement.

Section 72. Severability. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property is held invalid, such invalidity shall not affect the application or validity of any other provision, covenant or portion of this Agreement, and to that end, all provisions, covenants, agreements and portions of this Agreement are declared to be severable. If for any reason the annexation or zoning of the Tract is ruled invalid, in whole or in part, the City Council, as soon as possible, shall take such actions (including the holding of such public hearings and the adoption of such ordinances and resolutions) as may be necessary to give effect to the spirit and intent of this Agreement and the objectives of the Parties, as disclosed by this Agreement, provided that the foregoing shall be undertaken at the expense of Developer.

Section 73. Entire Agreement. This Agreement sets forth and fully integrates all agreements, understandings and covenants between the Parties with respect to the subject matter hereof, and is intended to supersede and discharge all prior oral or

written or contemporaneous oral agreements, negotiations and understandings between the Parties.

Section 74. Successors and Assigns. This Agreement shall inure to the benefit of, and be binding upon, successors of Developer and its, grantees, lessees, and assigns, and upon successor corporate authorities of City and successor municipalities, and shall constitute a covenant running with the land. This Agreement may be assigned by Developer with City approval, which shall not be unreasonably withheld, and in accordance with the requirements otherwise set forth in this Agreement, and upon said assignment and acceptance by an assignee, the assignor shall have no further obligations hereunder. If a portion of the Property is sold (not including the sale of an individual single family residence), the purchaser shall be deemed to have accepted any and all rights and obligations under this Agreement which affect the portion of the Property sold or conveyed but thereafter Developer shall have continuing obligations under this Agreement as it relates to the portion of the Property not conveyed, unless otherwise agreed to between the Parties in writing.

Section 75. Construction. This Agreement shall not be construed more strictly against one party than against any other, merely by virtue of the fact that it may have been prepared primarily by counsel for one of the Parties, it being recognized that all Parties have contributed substantially and materially to the preparation of this Agreement.

Section 76. Notices. Any notice required or permitted by the provisions of this Agreement shall be in writing and sent by certified mail, return receipt requested, or personally delivered, to the Parties at the following addresses, or at such other addresses as the Parties may, by notice, designate:

If to City: Rochelle City Clerk
 420 North 6th St.
 Rochelle, IL 61068

With copy to: Rochelle City Manager
 420 North 6th St.
 Rochelle, IL 61068

With copy to: City Attorney
 City of Rochelle
 420 N. 6th St.
 Rochelle, IL 61068

If to Developer: Creekside Land Holdings, L.L.C.
 Attn: Tim Hayden

P.O Box 67
Rochelle, IL 61068
Fax: 815/562-7085

With copy to: Robert T. Chadwick
Fearer, Nye & Chadwick
420 Fourth Avenue
Rochelle, IL 61068
Fax: 815/562-2158

Notices shall be deemed given on the fifth (5th) business day following deposit in the U.S. Mail, if given by certified mail as aforesaid, and upon receipt, if personally delivered.

Section 77. Time of Essence. Time is of the essence of this Agreement and of each and every provision hereof.

Section 78. Approval of City. Wherever any approval or consent of City, or of any of its departments, officials or employees, is called for under this Agreement, the same shall not be unreasonably withheld, conditioned, or delayed. If such consent or approval is denied, such denial shall be in writing, and shall specify the reason or reasons for such denial.

Section 79. Partial Invalidity. If any provision of this Agreement is held invalid by a court of competent jurisdiction or in the event such a court shall determine that the City does not have the power to perform any such provisions, such provisions shall be deemed to be excised herefrom and the invalidity thereof shall not affect any of the other provisions contained herein. Such judgment or decree shall relieve the City from performance under such invalid provision of this Agreement.

Section 80. Non-Merger. The provisions contained herein shall survive the annexation of the Property and shall not be merged or expunged by the annexation of the Property or any part thereof to the City.

Section 81. Jurisdiction and Venue. This Agreement shall be construed under the laws of the State of Illinois. The parties agree that venue shall be proper only in the Circuit Court for the Fifteenth Judicial Circuit, Ogle County, Illinois.

Section 82. Counterparts. This Agreement may be executed in any number of counterparts and duplicate originals, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written.

CITY OF ROCHELLE

CREEKSIDE LAND HOLDINGS,
L.L.C., an Illinois municipal corporation

By: _____
City Manager

By: _____
Tim Hayden

Attest: _____
City Clerk

Its: Authorized Member

STATE OF ILLINOIS)
) SS.
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 _____, 2015.

NOTARY PUBLIC

STATE OF ILLINOIS)
)
COUNTY OF OGLE) SS.

The foregoing instrument was acknowledged before me by Tim Hayden, an authorized member of CREEKSIDE LAND HOLDINGS, L.L.C., an Illinois limited liability company, this ____ day of _____, 2015.

NOTARY PUBLIC

R:\MyFiles\city taylor ppties\creekside.amendedandrestatedannexationagreement.docx

EXHIBIT A
(Legal Description)

TRACT 1

Part of the South Half of Section 11, Beginning at the Southeast corner of the Southwest Quarter of said Section 11; thence South 88 degrees 22 minutes 40 seconds West on and along the south line of said Section 11, a distance of 1287.70 feet; thence North 13 degrees 37 minutes 31 seconds West a distance of 637.23 feet; thence North 76 degrees 25 minutes 00 seconds East a distance of 968.90 feet; thence North 67 degrees 14 minutes 12 seconds East a distance of 496.65 feet; thence North 35 degrees 47 minutes 34 seconds West a distance of 630.39 feet; thence North 08 degrees 57 minutes 57 seconds West a distance of 456.83 feet; thence North 88 degrees 22 minutes 57 seconds East a distance of 586.35 feet; thence North 01 degrees 37 minutes 04 seconds West a distance of 83.29 feet; thence North 88 degrees 22 minutes 12 seconds East a distance of 2141.93 feet to the East line of the West 140 acres of the Southeast Quarter of said Section 11; thence South 01 degrees 31 minutes 03 seconds East on and along last named line a distance of 2045.24 feet; thence South 88 degrees 22 minutes 40 seconds West a distance of 200.00 feet; thence South 01 degrees 41 minutes 47 seconds East a distance of 16.00 feet to the South line of said Section 11; thence South 88 degrees 22 minutes 40 seconds West on and along last named line a distance of 2103.02 feet to the Point of Beginning, containing 139.70 acres, more or less, all in Township 40 North, Range 1 East of the Third Principal Meridian; situated in the Township of Flagg, the County of Ogle and the State of Illinois.

TRACT 2

The South Half (1/2) of the Northwest Quarter (1/4), all of the Southwest Quarter (1/4) and the West 140 acres of the Southeast Quarter (1/4) of Section 11; EXCEPTING THEREFROM a part of the West 140 acres of the Southeast Quarter (1/4) of said Section 11, described as follows: Commencing at the Southeast corner of the Southeast Quarter (1/4) of said Section 11; thence South 89 degrees 45 minutes 45 seconds West along the South line of said Southeast Quarter (1/4), a distance of 327.73 feet to the Southeast corner of the West 140 acres of the Southeast Quarter (1/4) of said Section 11, said point being the point of beginning of the hereinafter described tract of land; thence continuing South 89 degrees 45 minutes 45 seconds West along said South line, a distance of 199.95 feet; thence North 00 degrees 14 minutes 15 seconds West perpendicular to the last described course, a distance of 16.00 feet; thence North 89 degrees 45 minutes 45 seconds East parallel with the South line of said Southeast Quarter (1/4), a distance of 200.00 feet to the East line of the West 140 acres of said Southeast Quarter (1/4); thence South 00 degrees 04 minutes 18 seconds East along said East line, a distance of 16.00 feet to the point of beginning, ALSO EXCEPTING THEREFROM Part of the South Half of Section 11, Beginning at the Southeast corner of the Southwest Quarter of said Section 11; thence South 88 degrees 22 minutes 40 seconds West on and along the south line of said Section 11, a distance of 1287.70 feet; thence North 13 degrees 37 minutes 31

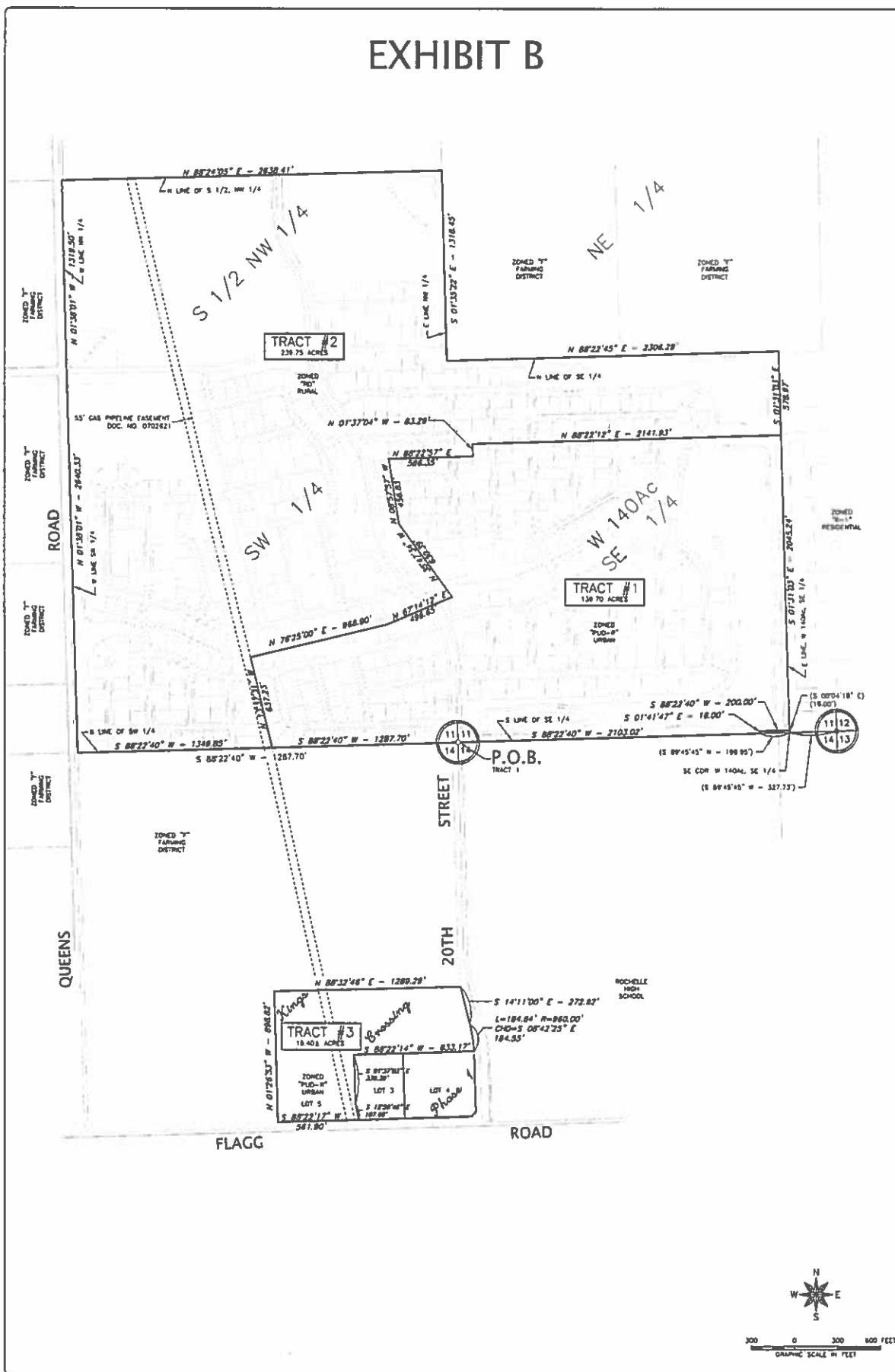
seconds West a distance of 637.23 feet; thence North 76 degrees 25 minutes 00 seconds East a distance of 968.90 feet; thence North 67 degrees 14 minutes 12 seconds East a distance of 496.65 feet; thence North 35 degrees 47 minutes 34 seconds West a distance of 630.39 feet; thence North 08 degrees 57 minutes 57 seconds West a distance of 456.83 feet; thence North 88 degrees 22 minutes 57 seconds East a distance of 586.35 feet; thence North 01 degrees 37 minutes 04 seconds West a distance of 83.29 feet; thence North 88 degrees 22 minutes 12 seconds East a distance of 2141.93 feet to the East line of the West 140 acres of the Southeast Quarter of said Section 11; thence South 01 degrees 31 minutes 03 seconds East on and along last named line a distance of 2045.24 feet; thence South 88 degrees 22 minutes 40 seconds West a distance of 200.00 feet; thence South 01 degrees 41 minutes 47 seconds East a distance of 16.00 feet to the South line of said Section 11; thence South 88 degrees 22 minutes 40 seconds West on and along last named line a distance of 2103.02 feet to the Point of Beginning, containing 239.75 acres, more or less, all in Township 40 North, Range 1 East of the Third Principal Meridian; situated in the Township of Flagg, the County of Ogle and the State of Illinois.

TRACT 3

Lot Five (5) as designated upon the Final Plat of Kings Crossing-Phase 1, being located in part of the North Half (1/2) of Section 14, Township 40 North, Range 1 East of the Third Principal Meridian, City of Rochelle, Ogle County, Illinois, according to the Plat thereof recorded in Plat File D on Page 12 as Document No. 201001000551; situated in the Township of Flagg, the County of Ogle and the State of Illinois.

EXHIBIT B
(Concept Drawing)

EXHIBIT B



**EXHIBIT C
(Water Main)**

HEMLOCK ROAD

12" MAIN

EXISTING 12" WATERMAIN	
PROPOSED 12" WATERMAIN	
KINGS CROSSING DEVELOPMENT BOUNDARY	

ROAD

KINGS CROSSING DEVELOPMENT BOUNDARY HILL GOLF

PROPOSED 12" WATERMAIN
GREENS

PROPOSED 12" WATERMAIN

PROPOSED 12" WATERMAIN

PROPOSED 12" WATERMAIN

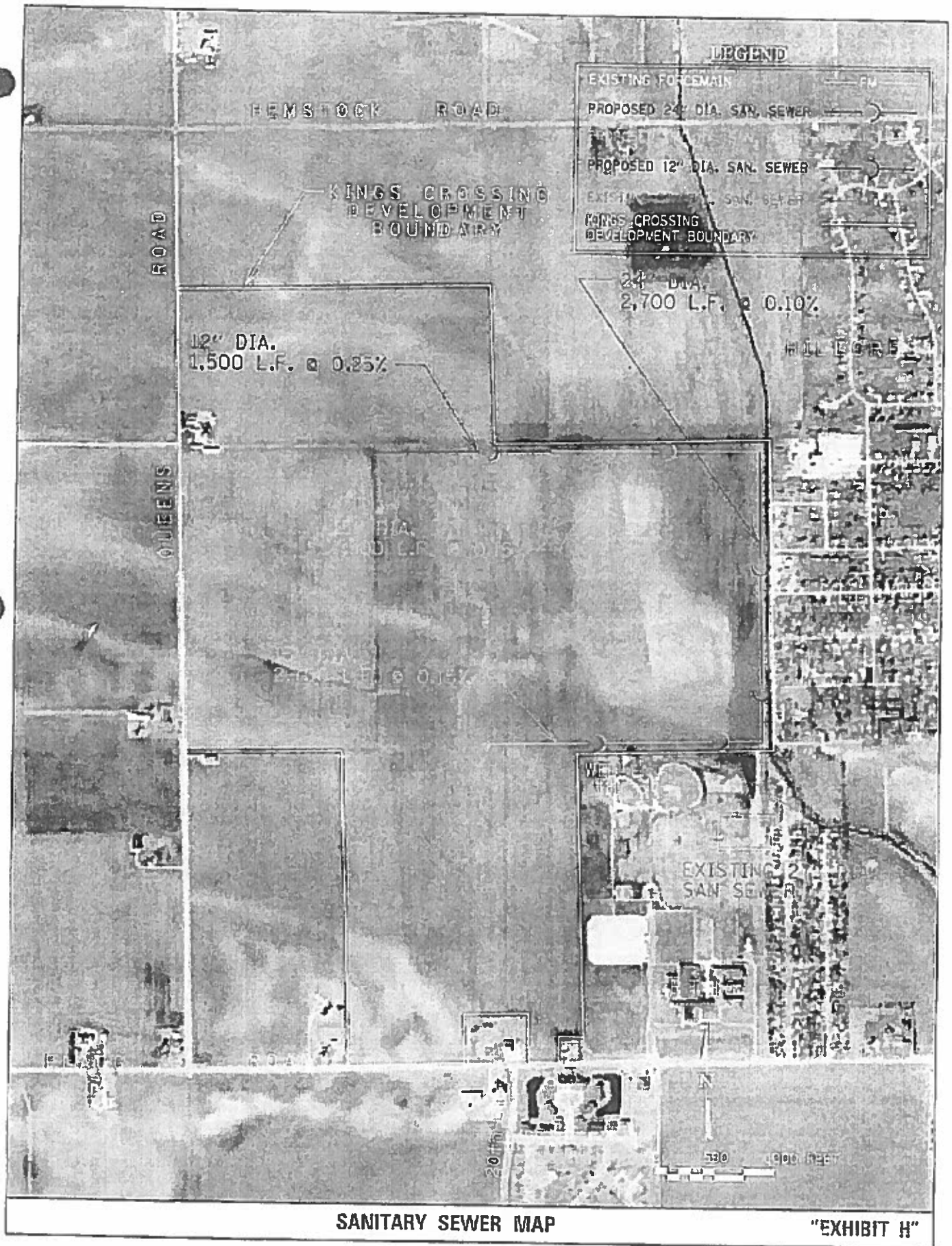
20' FT



WATERMAIN MAP

"EXHIBIT G"

EXHIBIT D
(Sanitary Sewer)



SANITARY SEWER MAP

"EXHIBIT H"

EXHIBIT E
(Street Construction Standards)