
AGREEMENT TO DEFER UTILITIES EXTENSION

This Agreement to Defer Utilities Extension ("Agreement") entered into as of September 15, 2015, between Haywell, LLC, an Illinois limited liability company ("Haywell"), and the City of Rochelle, an Illinois municipal corporation ("City"):

WITNESSETH

THAT WHEREAS, Haywell is the owner of a 1.67-acre parcel of real property described as follows ("Property"):

Lot 1 in Hayden Addition Unit 1, being a part of the northwest quarter of Section 23, Township 40 north, Range 1 east of the 3rd p.m., in Ogle County, Illinois ("Property"), as shown on the Final Plat of Hayden Addition Unit 1 recorded in the office of the Ogle County Recorder on September 16, 2014, as document 201405097, ("Plat"), a true copy of which is attached hereto,

Tax Identification Number 24-23-100-004

which Property is improved with self-storage units; and

WHEREAS, the Property includes frontage of 305 feet along 20th Street ("Frontage"), which contains easements for utilities, water and gas, as shown on the Plat; and

WHEREAS, the Property is subject to the terms of an annexation agreement between the City and AKCK, LLC, as assignee and transferee of Squires Landing, LLC, dated May 23, 2005, and recorded in the office of the Ogle County Recorder on June 6, 2005, as document 0605654 ("Annexation Agreement"), covering a 150-acre tract which includes the Property; and

WHEREAS, the Annexation Agreement provides that City ordinances in effect as of the date thereof shall continue in effect with respect to development of the 150-acre tract, including the Property; and

WHEREAS, the provisions of the City ordinances which have governed development of the Property include Sections 98-103(b)(3) and 98-153(d) of the Rochelle Municipal Code, requiring the developer to extend the water main and sewer main to the property line of the premises to be served, and Section 86-52, requiring the developer to post certain security for the construction of public improvements; and

WHEREAS, Haywell has represented to the City that the present use of the Property does not require water or sewer service, and has requested that its obligation to extend the water main and sewer main across the Frontage of the Property be deferred until the City requires it for future development; and

WHEREAS, the parties have reached an agreement which would defer Haywell's obligation to extend the water main and sewer main across the Frontage of the Property until the City requires it for future development, on the terms set forth herein;

NOW THEREFORE, in consideration of the above recitals and the agreements contained herein, the parties agree as follows;

1. Deferral of Obligations. Haywell's obligation to extend the water main and sewer main across the Frontage of the Property is hereby acknowledged by the parties and is deferred until such time as the City requires it for future development. At such time as the City notifies Haywell that the extensions are required for future development, Haywell shall, at its sole cost, extend water and sewer mains within existing City right-of-way or within dedicated easements along the Frontage of the Property from the north line of the Property to the south line of the Property, in accordance with all provisions of the Rochelle Municipal Code; provided, however, that Haywell's obligation shall remain deferred until property adjacent to the Property on both the south and north require the extension of the water main and sewer main along the Frontage of the Property in order to provide water and sewer service to either or both of the adjacent properties.

2. No Security Required. In light of the uncertainty as to when the development of the adjacent properties will require extension of the water main and sewer main along the Frontage of the Property, Haywell shall not be obligated to post security for 100% of the estimated cost of such extension, as required by Section 86-52 of the Rochelle Municipal Code. However, in the event that Haywell (or any successor in interest or transferee) should fail to extend the water main and sewer main across the Frontage of the Property promptly after notice by the City that such extension is required for future development, the City may extend the water main and sewer main across the Frontage of the Property, and shall be entitled to recover a judgment against Haywell (or any successor in interest or transferee) for the City's costs in doing so, plus prejudgment interest and the City's attorney's fees and court costs.

3. Forbearance by City. The City shall forbear from taking any action to enforce Sections 98-103(b)(3), 98-153(d) and 86-52 of the Rochelle Municipal Code, with respect to the extension of the water main and sewer main along the Frontage of the Property, until such time as the City determines that the extension is required in order to provide water and sewer service to the adjacent properties.

4. Notices. Any notices contemplated by this Agreement shall be hand-delivered or mailed by certified mail to the following addresses:

City of Rochelle
Att'n: City Manager
420 North 6th Street
Rochelle, IL 61068

Haywell, LLC
Att'n: Tim Hayden
P. O. Box 67
Rochelle, IL 61068

5. Assignment. The provisions of this Agreement shall be binding on any subsequent owner of the Property, and shall run with the land (*i.e.*, the Property). Haywell shall give notice to any subsequent owner or transferee of the existence of this Agreement. This Agreement shall be recorded in the office of the Ogle County Recorder, at Haywell's expense.

Remaining Terms. All remaining terms of the Annexation Agreement shall remain in full force and effect with respect to the Property.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement in duplicate originals as of the date first set forth above.

HAYWELL, LCC, an Illinois
limited liability company

THE CITY OF ROCHELLE, an Illinois
municipal corporation

By: _____
Timothy J. Hayden, member

By: _____
City Manager

By: _____
Geri D. Hayden, member

Alan H. Cooper
COOPER & LYONS
233 East Route 38, Suite 202
P.O. Box 194
Rochelle, IL 61068
(815) 562-2677

STATE OF ILLINOIS)
) ss.
COUNTY OF OGLE)

I, the undersigned notary public, do hereby certify that David S. Plyman, the City Manager of the City of Rochelle, an Illinois municipal corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed and delivered the said instrument in said capacity, pursuant to authority of the governing body of the City.

Given under my hand and official seal, this _____ day of September, 2015.

(SEAL)

NOTARY PUBLIC

STATE OF ILLINOIS)
) ss.
COUNTY OF OGLE)

I, the undersigned notary public, do hereby certify that Timothy J. Hayden and Geri D. Hayden, the members of Haywell, LLC, an Illinois limited liability company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed and delivered the said instrument in said capacity, pursuant to authority of the governing body and governing instruments of said limited liability company.

Given under my hand and official seal, this _____ day of September, 2015.

(SEAL)

NOTARY PUBLIC