

## ANNEXATION AGREEMENT

**THIS AGREEMENT** is made effective and entered into this 3rd day of August, 2022, by and among **MAEGARDNER, LLC**, an Indiana limited liability company ("**Developer**") and the **CITY OF OLATHE**, Johnson County, Kansas, a municipal corporation duly organized under the laws of the State of Kansas ("**City**") (collectively, the "**Parties**", and each, individually, a "**Party**").

**WHEREAS**, Developer is the owner of record of four parcels of real estate (Parcel Nos. 6F231421-2001; 6F231421-2005; 6F231421-1012; and 6F231421-3006) containing approximately 186± acres of land situated in Johnson County, Kansas, as more particularly described on **Exhibit A**, which is attached hereto and made a part of this Agreement (collectively, the "**Property**"); and

**WHEREAS**, the Property is located adjacent to the city limits of the City, but is not otherwise situated within the limits of any other municipality; and

**WHEREAS**, Developer (or its designee or a future grantee) desire to develop the Property, which may include commercial, office, manufacturing, warehouse/distribution, business park, and other appropriate purposes approved by the City, and further desire to submit to the City applications for the issuance of industrial revenue bonds and real property tax abatement (and sales tax exemption on building materials and equipment associated with such development), rezoning, site plans, plats, and other related documents for these purposes; and

**WHEREAS**, City desires to annex the Property and to ensure that the development of the Property is compatible with surrounding land uses; and that, subject to the provisions of this Agreement, adequate public facilities exist concurrent with the impact of such development; and that development of the Property will be consistent with the City's Comprehensive Plan, if applicable; and

**WHEREAS**, subject to and in accordance with the provisions of this Agreement, including all the conditions herein contained, Developer consents to having the Property annexed into the City and acknowledges that adequate public services must be available at the time the development is being constructed and occupied for use; and

**WHEREAS**, this annexation is anticipated to provide significant benefits to the City that might otherwise be unattainable, increasing the vitality of the City's economy, and expanding the local tax base; and

**WHEREAS**, the Parties desire to enter into an agreement to set the conditions of annexation of the Property pursuant to K.S.A. 12-534, prior to the act of annexation; and

**WHEREAS**, this Agreement sets forth the understandings and agreements of annexation between the Parties hereto, which are in accord with the annexation policy of the City; and

**NOW, THEREFORE**, the parties hereto agree to the annexation of the Property, subject to the following terms and conditions:

1. **Acknowledgement.** The above recitals are true and correct, are incorporated in this Agreement by reference thereto, and form a material part of this Agreement upon which the Parties have relied, including, but not limited to the assertions that the Developer owns the Property, and that the respective Parties are each empowered to enter into this Agreement and make binding commitments.
2. **Project Approvals.** The City understands that Developer intends to submit application(s) for issuance of industrial revenue bonds (for sales tax exemption and property tax abatement), rezoning, preliminary and final development plans, and preliminary and final plats, and any changes that may be needed to the Comprehensive Plan, to develop the Property for commercial, office, manufacturing, warehouse/distribution, business park, and/or other appropriate purposes consistent with the City's adopted design guidelines, all subject to the terms and conditions to be agreed upon during the application process (collectively, "**Project Approvals**").
3. **City Authority & Developer Authority.** Developer acknowledges that the Project Approvals are subject to the plenary legislative and quasi-judicial discretion of the Governing Body of the City. No assurances of Project Approvals have been made or relied upon by the Developer, and this Agreement shall in no way inhibit or affect the ability of the City or its officials from properly performing their legislative and quasi-judicial functions, including but not limited to, the outright denial of the annexation petition described in Paragraph 4, below, or the rezoning application described in Paragraph 6 below. The City acknowledges that should the Project Approvals not be obtained by Developer in accordance with the provisions of this Agreement, Developer may cause the Property to be de-annexed in accordance with the provisions of Paragraph 26 below.
4. **Petition.** In accordance with K.S.A. 12-520 (a)(7), because the Property adjoins the City and Developer desires to voluntarily annex the Property into the City, Developer will file a written petition for annexation of the Property with the City, on a form substantially similar to **Exhibit B** (attached hereto and incorporated herein by reference). Developer agrees to prepare, at Developer's sole expense, all materials necessary for the annexation,

including, without limitation, the annexation petition, associated legal description, and associated map for annexation.

5. **Annexation Procedure.** The City agrees to take any and all appropriate actions, at City's expense, as are required by the annexation laws of the state of Kansas applicable to annexing cities which are necessary with respect to the subject annexation petition, including, but not limited to, the publication of all required notices and the holding of all required hearings regarding the same.
6. **Zoning of the Property.** Within three hundred and sixty (360) days after the effective date of annexation of the Property, Developer shall submit an application for rezoning to M-2 (General Industrial District). The City agrees not to rezone any of the Property to a zoning district not described in this paragraph without the written permission of Developer during the term of this Agreement. Such rezoning application will include all necessary and proper documentation and support data and analysis and comply with all rezoning and platting procedures set forth in the City's land development regulations, including, but not limited to, the City's Unified Development Ordinance and applications for any and all other land use development approvals, orders and permits.

Developer acknowledges and agrees that the City shall not be responsible for any fees, costs, or expenses of any kind whatsoever resulting to Developer if the zoning and land use applications are denied by the City in accordance with the provisions of the City's land development regulations and Kansas law.

7. **Comprehensive Plan & Development Standards.** The Developer acknowledges that the City has adopted a Comprehensive Plan, and that such Comprehensive Plan includes a Future Land Use Map. The map is intended to serve as a general guide for future land use decisions. Many of the boundaries on the map are generalized for illustration purposes and may vary when applied to specific parcels and developments. Because it is difficult to predict market and other conditions for multiple decades, it is anticipated that the actual development of the community may differ in some respects from the illustrative vision found in the Future Land Use Map. Developer acknowledges that the proposed development should generally be consistent with the Future Land Use Map, if applicable. A determination on compliance with the Comprehensive Plan and the Future Land Use Map, if applicable, will be a part of the rezoning application. Developer further acknowledges that the City has adopted associated plans, a major street map, and subsequent amendments, including, but not limited to, standards for driveway access and setbacks for sewer lines, parking lots, and buildings for future development. Unless otherwise provided herein or in the Project Approvals, Developer acknowledges that development of the Property will be subject to City development standards as reasonably required by the City for all development projects within the City as expressly set forth in the Project Approvals.
8. **City Services.** Upon annexation, the Property shall utilize all applicable City services except as otherwise provided herein or agreed to by the Parties. The owner of the Property shall strongly consider use of City solid waste and recycling services to serve

the Property but shall not be required to use such City services (at such owner's sole discretion).

9. **Applicable City Laws & Regulations.** Upon annexation the Property shall be subject to all laws, codes, ordinances, fees, assessments, taxes, usage charges, rules, policies and regulations of the City, now existing or as may hereinafter be amended, enacted, and/or enforced, as applicable to all other property presently situated within the corporate limits of the City, and nothing herein shall be interpreted to limit the enforceability or application of such, except as provided herein. The anticipated fees, assessments and taxes applicable to the Property are specified as follows:
  - A. Park Excise Tax of \$0.07 per square foot of gross floor area – payable upon building permit issuance.
  - B. Intermediate Traffic Signal Excise Tax pursuant to Olathe Municipal Code, Section 3.35.030 – payable upon plat recording.
  - C. Transportation Improvement (Street Excise) Tax of \$0.215 per square foot of platted land - payable upon plat recording.
  - D. Sanitary Sewer System Development Fee of \$\_\_\_\_\_ (determined by water meter size), payable upon building permit issuance.
  - E. Building Permit fees of \$0.24 per square foot of building area.
  - F. Plan Review fees – 30% of building permit fees per building.
  - G. Stormwater Permit fee - \$170.00 per acre of disturbed land.
10. **Stormwater Management.** The Parties agree and acknowledge that upon annexation the Property shall be subject to the provisions of Title 17 of the Olathe Municipal Code, any amendments thereto, relating to stormwater management and the development or improvement of lands within a designated stream or stream corridor but only to the extent the Property would be subject thereto by the terms of said Title 17.
11. **Off-Site Improvements.** Developer will be responsible for construction of or contribution to the construction of off-site improvements required for the Property. Construction of improvements or contribution responsibility (including dedication of right-of-way for street purposes) is to be determined during the Project Approvals process.
12. **Annexation Ordinance.** This Agreement is expressly contingent on the passage of annexation ordinances covering all of the Property by the City's Governing Body and conformance with Kansas annexation laws. The City will not undertake annexation of only a portion of the Property. If for any reason annexation ordinances covering the Property are not passed by the City's governing body within forty-five (45) days following the filing of the petition for annexation pursuant to Paragraph 4 above, any annexation application for the Property shall be considered withdrawn and this Agreement shall be terminated and shall be of no force and effect thereafter except for those provisions which by their terms survive termination. If the City does not annex all of the Property, no party will be liable to any other for any costs that the other party has incurred in the negotiation of this Agreement, or in any other matter related to the

potential annexation of the Property and this provision shall survive termination of this Agreement. This Agreement is intended to be recorded, by the City, in the land records of Johnson County, Kansas at Developer's expense, but not until after the passage of the annexation ordinance.

13. **Cooperation.** The Parties agree that the development of the Property is in the best interests of both Parties and requires their ongoing cooperation. Developer hereby agrees to fully comply with all City requirements and to assist the City to the fullest extent possible. The City hereby states its intent to cooperate with the Developer in the resolution of mutual problems and its willingness to facilitate the development of the Property, as contemplated by the provisions of this Agreement, including obtaining necessary off-site easements to extend any public infrastructure needed for the development of the Property, unless prohibited by law. The City shall assist the development of the Property by expeditiously processing the submission of proper plans, complete applications, and plats (to the extent applicable) as may be uniformly required under any City ordinance, resolution, regulation, or policy and not unduly hinder or delay the development of the Property. Such intention does not preclude City staff from making professional recommendations regarding the Project Approvals which are in conflict with Developer's requests and/or desires pertaining to any of the Project Approvals.
14. **Entire Agreement.** This Agreement reflects an understanding between the Parties concerning the major points of development of the Property after annexation. Any prior negotiations, comments, plans or understandings not expressly set forth herein are of no further force and effect to the extent they may be inconsistent with the terms hereof. However, it is intended and expected that additional details will be addressed from time to time as part of the ordinary development review and permitting processes. This Agreement is not intended to modify, limit or restrict the ordinary review authority of the City and its staff, commissions, committees, and/or governing body to impose conditions on, or deny, certain aspects of the proposed development of the Property as deemed appropriate in the City's sole discretion.
15. **Limited Beneficiaries.** This Agreement is solely for the benefit of the Parties hereto, and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party which is not a Party hereto. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person or entity any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof, other than the Parties hereto and their respective designates, representatives, successors and/or assigns.
16. **Authority; Successors & Assigns.** Each Party hereby stipulates that it is duly authorized to enter into this Agreement and be bound by the terms and conditions set forth herein. The terms of this Agreement shall be binding upon the successors and assigns and legal representatives of the Parties hereto. Developer may assign its interests in this Agreement and any rights herein to an entity not a party hereto who purchases all of the Property from Developer or the Developer's interests herein without the consent of the



City, or to any assignee who is an affiliate of Developer in which Developer or its principals own or control at least 50% of such assignee. In all other circumstances, Developer may only assign this Agreement and any rights herein to an entity not a party hereto with the prior written consent of the City, which consent shall not be unreasonably withheld.

17. **Exhibits.** The exhibits to this Agreement are hereby incorporated into this Agreement and are an integral part of this Agreement.
18. **Breach & Enforcement.** The Parties agree and hereby stipulate that any Party may, by civil action, mandamus, injunction, specific performance, or other proceedings, enforce and compel performance of this Agreement, or declare this Agreement null and void, in addition to other remedies available. Upon breach by Developer, the City may refuse the issuance of any permits or other approvals or authorizations relating to development of the Property.
19. **Applicable Law.** The laws of the State of Kansas shall govern the interpretation and enforcement of this Agreement. In any action to enforce or interpret the terms of this Agreement, venue shall be in Johnson County, Kansas.
20. **Severability.** If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any Party to the Agreement or substantially increase the burden of any Party to the Agreement, shall be held to be unconstitutional, invalid or unenforceable to any extent by a court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of the Agreement.
21. **Compliance with Applicable Laws.** If State or Federal laws are enacted after execution of this Agreement which are applicable to and preclude the Parties' compliance with the terms of this Agreement, this Agreement shall be modified or revoked as is necessary to comply with the relevant State or Federal laws and the intent of the Parties hereto; provided, however, that the City agrees that it shall not modify this Agreement in any manner which would in any way be inconsistent with the intent of the Parties to provide for development of the property in accordance with the terms and conditions hereof.
22. **Mutual Assent.** This Agreement is the result of bona fide arms' length negotiations between the Parties and the Parties contributed substantially and materially to the preparation of the Agreement. Accordingly, this Agreement shall not be construed or interpreted more strictly against any one Party than against any other Party.
23. **Waivers.** No waiver by either Party of any term or condition of this Agreement shall be deemed to be or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach of the same provision of this Agreement.

24. **Amendments.** This Agreement may not be amended, changed or modified, and material provisions hereunder may not be waived, except by a written document approved and executed by all Parties.
25. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same document.
26. **De-Annexation.** The City agrees that if it fails to approve all of the Project Approvals under terms and conditions satisfactory to both Parties, then the Developer shall have the right to make demand upon the City in writing requesting de-annexation of either part or all of the Property, whereby the City shall take all steps necessary to de-annex such property. If the City shall have failed to de-annex such property within one hundred twenty (120) days of the City's receipt of Developer's written request for de-annexation pursuant hereto, Developer shall have the right to obtain from the District Court of Johnson County, Kansas, such orders and judgments as may be required to enforce City's agreement to de-annex such property in accordance herewith, including recovery of the costs and expenses of said litigation including reasonable attorney's fees. All provisions of this Paragraph 26 shall survive termination of this Agreement.

**[SIGNATURE PAGES BELOW]**


IN WITNESS WHEREOF, the above parties have signed as of the date written above.

CITY OF OLATHE, KANSAS



John W Bacon (Aug 3, 2022 11:10 CDT)

John W. Bacon, Mayor



Brenda D. Swearingian, City Clerk

(SEAL)

**ACKNOWLEDGMENT**

STATE OF KANSAS            )  
                                          ) ss:  
COUNTY OF JOHNSON        )

BE IT REMEMBERED, that on this 3<sup>rd</sup> day of August, 2022, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came **JOHN W. BACON**, Mayor of the City of Olathe, Kansas, and **BRENDA D. Swearingian**, City Clerk of said City, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.



  
Notary Public

My Appointment Expires:

4-21-24



**DEVELOPER**

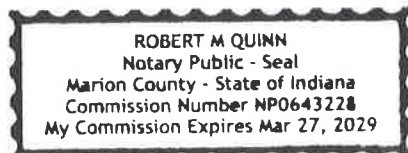
MAEGARDNER, LLC, an Indiana limited liability company

By: [Signature]  
Name: MARK SIFFIN  
Its: Managing Member

STATE OF INDIANA )  
 ) ss.  
COUNTY OF HAMILTON )

On this 9 day of August, 2022 before me appeared Mark SIFFIN, to me personally known, who being by me duly sworn, did say that he is the Managing Member of **MAEGARDNER, LLC**, an Indiana limited liability company, and that he, as such and being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of said entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.



[Signature]  
Notary Public

My Appointment Expires:

3/27/2029

## **EXHIBIT A**

### **Property Legal Description & Map**

Johnson County Parcel IDs:

- 6F231421-2001
- 6F231421-2005
- 6F231421-1012
- 6F231421-3006

Legal Description and General Depiction: See pages that follow

File No.006-2059  
Macgardner  
November 17, 2006

Surveyor's Recommended Property Description

All that part of Section 21, Township 14 South, Range 23 East, in Johnson County, Kansas, described as follows:

COMMENCING at the Southeast corner of the Southwest Quarter of Section 21, Township 14 South, Range 23 East; thence North 1 degree 50 minutes 33 seconds West along the East line of the Southwest Quarter of said Section 21 a distance of 60.00 feet to a point on the North right of way line of 175th Street, the POINT OF BEGINNING; thence South 88 degrees 06 minutes 22 seconds West along the North right of way line of 175th Street a distance of 1891.91 feet to a point; thence North 89 degrees 59 minutes 05 seconds West along the North right of way line of 175th Street a distance of 600.33 feet to a point; thence North 58 degrees 27 minutes 25 seconds West along the North right of way line of 175th Street a distance of 35.91 feet to a point on the East right of way line of Clare Road; thence North 4 degrees 33 minutes 14 seconds West along the East right of way line of Clare Road a distance of 200.25 feet to a point; thence North 16 degrees 26 minutes 06 seconds West along the East right of way line of Clare Road a distance of 98.23 feet to a point; thence North 1 degree 41 minutes 29 seconds West along the East right of way line of Clare Road a distance of 363.68 feet to a point; thence North 8 degrees 50 minutes 52 seconds East along the East right of way line of Clare Road a distance of 191.30 feet to a point; thence North 1 degree 09 minutes 30 seconds East along the East right of way line Clare Road a distance of 1105.95 feet to a point on the Southeasterly right of way line of Interstate Highway I-35; thence in a Northeasterly direction along the Southeasterly right of way line of Interstate Highway I-35 and along a curve to the left whose initial tangent bears North 56 degrees 11 minutes 53 seconds East, having a radius of 11,609.16 feet, through a central angle of 4 degrees 43 minutes 03 seconds, an arc distance of 955.86 feet to a point on the North line of the Southwest Quarter of said Section 21; thence North 87 degrees 17 minutes 46 seconds East along the North line of the Southwest Quarter of said Section 21 a distance of 351.60 feet to a point that lies 33.00 feet West of the Southwest corner of the East half of the Northwest Quarter of said Section 21; thence North 1 degree 51 minutes 33 seconds West following a line formed by striking a line between a point lying 33.00 feet West of the Southwest corner of the East half of the Northwest Quarter of said Section 21 and a point lying 37.00 feet West of the Northwest corner of the East half of the Northwest Quarter of said Section 21, a distance of 267.10 feet to a point on the Southeasterly right of way line of Interstate Highway I-35; thence in a Northeasterly direction along the Southeasterly right of way line of Interstate Highway I-35 and along a curve to the left whose initial tangent bears North 49 degrees 17 minutes 09 seconds East, having a radius of 11609.16 feet, through a central angle of 5 degrees 15 minutes 23 seconds, an arc distance of 1065.03 feet to a point; thence North 44 degrees 01 minutes 46 seconds East along the Southeasterly right of way line of Interstate Highway I-35 a distance of 1111.52 feet to a point; thence North 50 degrees 52 minutes 20 seconds East along the Southeasterly right of way line of Interstate Highway I-35 a distance of 503.59 feet to a point; thence North 44 degrees 01

minutes 46 seconds East along the Southeasterly right of way line of Interstate Highway I-35 a distance of 100.00 feet to a point; thence North 39 degrees 34 minutes 26 seconds East along the Southeasterly right of way line of Interstate Highway I-35 a distance of 386.17 feet to a point; thence South 45 degrees 58 minutes 14 seconds East along the Southeasterly right of way line of Interstate Highway I-35 a distance of 205.00 feet to a point; thence North 44 degrees 01 minutes 46 seconds East along the Southeasterly right of way line of Interstate Highway I-35 a distance of 171.20 feet to a point; thence South 53 degrees 17 minutes 01 seconds East along the Southeasterly right of way line of Interstate Highway I-35 a distance of 67.05 feet to a point that is 363.45 feet Northwesterly of Interstate I-35 Highway Right of Way, 812 feet right of Centerline Station 717 + 11, as established in Project 50-46-I-02-3(10) Part 2 (as measured along said right of way line); thence South 1 degree 54 minutes 42 seconds East a distance of 969.14 feet to a point on the South line of the North half of the Northeast Quarter of said Section 21; thence South 87 degrees 35 minutes 10 seconds West along the South line of the North half of the Northwest Quarter of said Section 21 a distance of 1321.33 feet to the Southwest corner thereof; thence South 1 degree 50 minutes 30 seconds East along the West line of the Northeast Quarter of said Section 21 a distance of 1338.85 feet to the Northeast corner of the Southwest Quarter of said Section 21; thence South 1 degree 50 minutes 33 seconds East along the East line of the Southwest Quarter of said Section 21 a distance of 2552.59 feet to the POINT OF BEGINNING, and containing 8,111,270 Square Feet or 186.209 Acres, more or less.





**EXHIBIT B**  
**PETITION FOR ANNEXATION**  
**(FORM)**

TO THE CITY COUNCIL OF THE CITY OF OLATHE, KANSAS:

\_\_\_\_\_, the undersigned, respectfully states:

1. That I am the record owner(s) of the following described land located in Johnson County, Kansas:  
See attached Exhibit 1
2. That such land adjoins the City of Olathe, Kansas, as is shown on the map attached hereto and incorporated by reference herein.
3. That I respectfully request that such land be annexed and incorporated to the City of Olathe, Kansas, and do hereby consent to such annexation.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State Zip Code

\_\_\_\_\_  
Phone Number

**CERTIFICATION**

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

SS.

\_\_\_\_\_ hereby certify that we signed the foregoing Petition for Annexation as our free act and deed and certify that we are the legal owners of the real estate described in the foregoing Petition for Annexation.

\_\_\_\_\_  
\_\_\_\_\_  
Subscribed to and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Appointment expires: