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CITY OF OLATHE  
CITY CLERK OFFICE

Attachment A

ANNEXATION AGREEMENT

**THIS AGREEMENT** is made and entered into this 15<sup>th</sup> day of November, 2019 (the "Effective Date"), by and among **WxW, L.L.C.**, a Missouri limited liability company authorized to conduct business in the state of Kansas, or assigns (hereinafter, "Landowner"), and the **City of Olathe**, Johnson County, Kansas, a municipal corporation duly organized under the laws of the State of Kansas (hereinafter, "City") (collectively, the "Parties", and each, individually, a "Party").

**WHEREAS**, Landowner is the owner of record of certain land comprising approximately 59.9 +/- acres, situated north of 127<sup>th</sup> Street, approximately 257.25 feet west of Clare Road/Lakeshore Drive in Johnson County, Kansas, being more particularly described on **Exhibit A**, which is attached hereto and made a part of this Agreement (the "Property"); and

**WHEREAS**, the Property is located adjacent to and contiguous with the city limits of the City and within the City's future annexation growth area, but is not otherwise situated within the limits of any other municipality; and

**WHEREAS**, Landowner is currently developing the Property as a seventeen (17) single-family residential lot subdivision plus common area tracts all as reflected on the final plat (the Project") , and further desires to develop the Property in accordance with approvals it has obtained from Johnson County; and

**WHEREAS**, subject to and in accordance with the provisions of this Agreement, including all of the conditions herein contained, Landowner consents to having the Property be annexed into the City; and

**WHEREAS**, this annexation is anticipated to increase the vitality of the City's economy and expand the local tax base; and

**WHEREAS**, the City, and Landowner pursuant to Kansas law, desire to enter into an agreement to set the conditions of annexation of the Property prior to the act of annexation; 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 Landowner owns and intends to develop 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 the Landowner has submitted to and received approval of application(s) for rezoning, preliminary and final site development plan, platting, and related permits/applications for the Property from Johnson County, and



that development of the property for single-family residential purposes will be made in accordance with Johnson County's specifications and standards (except as otherwise provided herein).

3. **City Authority.** Landowner acknowledges that the annexation of the Property is subject to the plenary legislative and quasi-judicial discretion of the governing body of the City. No assurances of annexation have been made or relied upon by the Landowner, 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.
4. **Petition.** In accordance with K.S.A. 12-520 (a)(7), because the Property adjoins the City and Landowner desires to voluntarily annex the Property into the City, Landowner 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). Landowner agrees to prepare, at Landowner's sole expense, all materials necessary for the annexation, including, without limitation, the annexation petition, associated legal description, and associated map for annexation. The Parties acknowledge that the City will not charge any annexation petition fees.
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, if any.
6. **Zoning, Platting, and Use of the Property.** The parties mutually acknowledge that the Property is currently zoned RLD (Residential Low Density, Single family dwellings, 3-acre minimum lot size) by Johnson County, and that the Landowner has submitted an application for a final plat for Cedar Ridge Ranch which is pending approval and recording by Johnson County as of the Effective Date. The City agrees that it will not require Landowner to re-zone the Property to a City zoning designation nor re-plat the property or pay any zoning, plan, platting, or other infrastructure development fees (specifically including without limitation all Transportation Improvements Excise Taxes shall not be levied pursuant to Chapter 3.35 of the Olathe Municipal Code) to the City after annexation. If Landowner chooses to change its land use or subdivision lot lines in the future, then Landowner will be responsible for complying with the applicable zoning and subdivision regulations in the Olathe Unified Development Ordinance. Permitted by-right uses in RLD will be honored after annexation. However, any supplemental uses, accessory uses or home occupation uses on the Property will be subject to the requirements of the Olathe Municipal Code, including the Olathe Unified Development Ordinance. All property maintenance standards will be enforced in accordance with the Olathe Municipal Code upon annexation. Landowner and/or its successors will be required to pay City building permit fees for each home constructed on the Property after annexation.

7. **Comprehensive Plan & Development Standards.** The Landowner 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. Landowner acknowledges that development of the Property will be consistent with the Future Land Use Map.
8. **City Services.** Upon annexation, the Property shall utilize all applicable City services except as otherwise provided herein. The Landowner shall use City solid waste and recycling services to serve the Property in accordance with Section 6.04.040 of the Olathe Municipal Code.
9. **Stormwater Management.** The Parties agree and acknowledge that the City will not annex the Property unless the Project meets the requirements 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.
10. **Off-Site Improvements.** Landowner 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 through Johnson County prior to annexation. Specific off-site improvements are addressed as follows:
  - A. Road Improvements. Landowner agrees to comply with all road improvement requirements required by Johnson County for development of the Property, including any requirements to improve and/or dedicate the future right-of-way for 127<sup>th</sup> Street and Shady Bend Road. Shady Bend Road will be a public street, and, upon completion of construction, will be maintained by the City. Any subsequent improvements to 127<sup>th</sup> Street and/or Shady Bend Road necessitated by development on the Property will be subject to City road improvement standards.
  - B. Sanitary Sewer Improvements. The City acknowledges that the lots developed on the Property will be served by septic systems and will be developed in accordance with Johnson County Health Department requirements.
  - C. Water Improvements. The Parties acknowledge Landowner has submitted a petition to Johnson County for the Property to be attached to Johnson County Water District No. 7 which has been approved by Johnson County. The City did not object to such attachment in consideration for annexation of the Property.



Landowner will coordinate extension of water service to the Property with Johnson County Water District No. 7.

D. Off – Site Improvements. Landowner agrees that it will not oppose the formation of future benefit districts in the event the City intends to make future improvements to 127th Street (or any other off-site infrastructure improvements) which benefit the Property, and will disclose such non-opposition in each contract to sell individual lots within the subdivision being constructed on the Property.

11. **Annexation Ordinance.** This Agreement is expressly contingent on the passage of an annexation ordinance covering all 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 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 Landowner's expense, but not until after the passage and publication of the annexation ordinance as required by law.
12. **Cooperation.** The Parties agree that the development of the Property is in the best interests of all Parties and requires their ongoing cooperation. The City and Landowner hereby state they intend to cooperate in the resolution of mutual problems. Such intention does not preclude City staff from making professional recommendations regarding the development of the Property which are in conflict with Landowner's requests and/or desires pertaining to any City-required approvals which may arise.
13. **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.
14. **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.

15. **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. However, Landowner may not assign this Agreement to an entity not a party hereto without the prior written consent of the City, which consent shall not be unreasonably withheld; provided no consent shall be necessary if such assignee is an affiliate of Landowner in which Landowner or its principals own or control at least 51% of such assignee.
16. **Exhibits.** The exhibits to this Agreement are hereby incorporated into this Agreement and are an integral part of this Agreement.
17. **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.
18. **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.
19. **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.
20. **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.
21. **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.
22. **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.

23. **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.
24. **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.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

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

**CITY OF OLATHE, KANSAS**

\_\_\_\_\_  
Michael E. Copeland, Mayor

\_\_\_\_\_  
Emily K. Vincent, City Clerk

(SEAL)

**ACKNOWLEDGMENT**

STATE OF KANSAS            )  
  ) ss:  
COUNTY OF JOHNSON    )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came **MICHAEL E. COPELAND**, Mayor of the City of Olathe, Kansas, and **EMILY K. VINCENT**, 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:

\_\_\_\_\_

**LANDOWNER**

WxW, LLC, a Missouri Limited Liability Company

By: [Signature]Name: David WhitcraftTitle: Manager**ACKNOWLEDGMENT**

STATE OF KANSAS            )  
   ) ss:  
 COUNTY OF JOHNSON        )

BE IT REMEMBERED, that on this 15<sup>th</sup> day of November, 2019 before me, the undersigned, a Notary Public in and for the County and State aforesaid, came David Whitcraft, Manager of WxW, L.L.C., who is personally known to me to be the same person who executed the foregoing instrument of writing on behalf of the landowner of the aforementioned Property and said person duly acknowledged the execution of the same to be the act and deed of said entity.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

[Signature]  
 Notary Public

My Appointment Expires:

Nov. 15, 2020



## **EXHIBIT A**

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

#### **LEGAL DESCRIPTION:**

**The West  $\frac{1}{2}$  of the East  $\frac{1}{2}$  of the East  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  of Section 20, Township 13, Range 23, Johnson County, Kansas, except that part in roads.**

**And**

**The West  $\frac{1}{2}$  of the East  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  of Section 20, Township 13, Range 23, Johnson County, Kansas, except that part in roads.**

**MAP (City will generate)**

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

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

David Whitcraft

, 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.

David Whitcraft

Name

5884 5 Nations Drive

Address

Portville, MO 64152

City, State Zip Code

816-885-4460

Phone Number

**CERTIFICATION**

STATE OF Kansas )

)

SS.

COUNTY OF Johnson )

I, David Whitcraft 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.

[Signature]

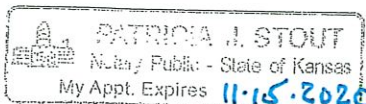
Subscribed to and sworn to before me this 15<sup>th</sup> day of November, 2019.

Patricia J. Stout

Notary Public

My Appointment expires:

Nov. 15, 2020





**PETITION FOR ANNEXATION**

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

We, the undersigned, respectfully state:

1. That David Whitcraft is the Manager of WxW, LLC.
2. That WxW, LLC is the record owner of the following described real property located in Johnson County, Kansas:

**The West ½ of the East ½ of the East ½ of the Southeast ¼ of Section 20, Township 13, Range 23, Johnson County, Kansas, except that part in roads.**

**And**

**The West ½ of the East ½ of the Southeast ¼ of Section 20, Township 13, Range 23, Johnson County, Kansas, except that part in roads.**

3. That such land adjoins the City of Olathe, Kansas, as is shown on the map attached hereby, and incorporated by reference herein.
4. That we have been duly authorized to request to have such land be annexed and incorporated to the City of Olathe, Kansas, and do hereby consent on behalf of said limited liability company, to such annexation.

(signature page to follow)

WxW, LLC



David Whitcraft

Manager

**CERTIFICATION**

STATE OF KANSAS

)

) ss,

COUNTY OF

)

Now on this 15<sup>th</sup> day of November, 2019, before me personally appeared David Whitcraft of WxW, LLC, who is personally known to me to be the same person who executed as Manager the foregoing instrument on behalf of said limited liability company, and such person duly acknowledged the execution of the same to be the act and deed of said limited liability company.

My Appointment Expires:



Notary Public

Nov. 15, 2020Printed Name: Patricia J. Stout