

**Draft: March 29, 2021**

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**IMPROVEMENT DISTRICT DEVELOPMENT AGREEMENT**

**by and between the**

**CITY OF OLATHE, KANSAS**

**and**

**HEDGE 175 ASSOCIATES, LLC**

**DATED AS OF APRIL \_\_, 2021**

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## IMPROVEMENT DISTRICT DEVELOPMENT AGREEMENT

This **Improvement District Development Agreement** (the “Agreement”) dated as of April \_\_\_, 2021, by and between the City of Olathe, Kansas (the “City”), and Hedge 175 Associates, LLC, a Kansas limited liability company (the “Developer”), its successors and assigns.

**WHEREAS**, on March 10, 2021, the Developer filed with the City Clerk a petition pursuant to K.S.A. 12-6a01 *et seq.* (the “Act”) to construct certain street improvements (the “Petition”) for the benefit of certain property legally described in **Exhibit A**; and

**WHEREAS**, the Petition requests that the City create the Improvement District, construct the Improvements, assess the costs thereof against the Improvement District (all as defined in the Petition), and issue the City’s general obligation bonds to finance the costs of the Improvements; and

**WHEREAS**, the Developer desires to construct the Improvements and provide financing for the costs of the Improvements until such time as the City issues general obligation bonds to permanently finance the costs of the Improvements, all subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing, and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer hereby agree as follows:

### **1. Constructing the Improvements.**

- A. Construction. Developer shall design, construct and install, at its own expense, the Improvements described in the Petition and as shown in the exhibits thereto, subject to reimbursement by the City as provided in Section 3 below. The design, construction and installation of the Improvements shall be in accordance with the City of Olathe’s Technical Specifications and Design Criteria for Public Improvements and all applicable laws including the Olathe Municipal Code, and Developer shall obtain or shall cause to be obtained all licenses, permits or other approvals required by any governmental authorities to complete the Improvements. All field changes must be approved in writing (which writing may include via electronic communications) by the City. The City shall have final judgment of all clarifications, interpretations, or decisions on issues related to design, performance or acceptability of the Improvements.
- B. Timing. The Developer is authorized to begin work on the Improvements after execution of this Agreement, but **(i) no construction contract shall be let until after Resolution No. \_\_\_\_\_ (creating the Improvement District and authorizing the Improvements, the “Advisability Resolution”) is published in the official City newspaper and (ii) construction shall not commence until after an Ordinance levying pre-construction assessments is published in the official City newspaper (the “Assessment Ordinance”) and the City has approved the construction plans.** All work on the Improvements must be performed with reasonable diligence and work may not cease for more than fifteen (15) consecutive days.

If construction of the Improvements has not begun for at least twelve (12) months after the date of the Assessment Ordinance, and acquisition of all right-of-way and/or easements necessary for construction of the Improvements has not been completed within twelve (12) months after the date of the Assessment Ordinance (with exceptions to the

foregoing twelve (12) month deadline for delays related to unforeseen events, including, but not limited to, litigation, inflation-related increases in construction costs, and changes in the financial environment such as a recession), then the Governing Body may elect to repeal the Advisability Resolution and the Assessment Ordinance and terminate the Improvement District created herein, and the Developer shall have no right to protest such termination.

- C. Acquisition of Right-of-Way. The Developer shall dedicate to the City the right of way and easements necessary to construct the Improvements, as to any property owned by Developer as of the date of this Agreement. The Developer and the City shall cooperate to obtain right of way and easements necessary to construct the Improvements, as to any property owned by third parties as of the date of this Agreement. The costs of all such right of way and easements necessary to construct the Improvements shall be charged to the Improvement District.
- D. Inspection. The City's project management and inspection fees shall be charged to the District and be paid to the City contemporaneously with reimbursement to the Developer of the costs of the Improvements pursuant to **Paragraph 3** below. All public improvements will be inspected by City inspectors.
- E. Performance and Maintenance Bonds. Prior to the commencement of work on the Improvements, Developer shall obtain from its contractor(s) performance and maintenance bond(s) ("Performance Bond") and statutory public works bond(s) required by K.S.A. 60-1111 ("Payment Bond"), as follows:
  - 1. A Performance Bond, running independently to the City, conditioned upon the prompt, full, and complete performance by the contractor as principal of the bond's covenants, obligations, and agreements as contained in the contract documents; and further conditioned that for a period of two years after the City's final acceptance the Improvements (as indicated on the Certificate of Completion provided pursuant to **Paragraph 2** of this Agreement), the contractor, at its expense and free of charge to the City, shall make good all defects in materials or workmanship or any improper, imperfect, or defective preparation of the ground upon which such Improvements are constructed.
  - 2. A Payment Bond running to the City, conditioned that the contractor as principal shall pay all indebtedness incurred for labor, supplies, equipment, and materials furnished in making the applicable phase of Improvements called for by the contract documents.

Each bond shall be in an amount at least equal to the contract price for the applicable phase of Improvements. The City will provide bond forms for execution. Each bond shall be executed by such sureties as are authorized to conduct business in the state of Kansas. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act. A Performance Bond shall be delivered to the City Clerk. Developer or its contractor shall file a Payment Bond with the Clerk of the Johnson County District Court in accordance with K.S.A. 60-1111(b) and deliver a file-stamped copy to the City Clerk. The premiums for such bonds shall constitute costs chargeable to the Improvement District. Developer shall indemnify the City and its officers and

employees for any damage resulting from failure of Developer to provide the bonds required by this subsection.

- F. Warranty. If within two years after final acceptance of the Improvements (as indicated on the Certificate of Completion provided pursuant to **Paragraph 2** of this Agreement), any Improvements are found to be defective, Developer's contractor for such Improvements shall promptly, without cost to the City and in accordance with the City's written instructions:

1. Correct such defective Improvements; or
2. If the defective Improvements have been rejected by the City, remove and replace them with Improvements that are not defective; and satisfactorily correct or repair, or remove and replace, any damage to other Improvements or other land or areas resulting therefrom.

If Developer's contractor does not promptly comply with the terms of the City's written instructions, or in an emergency where delay would cause serious risk of loss or damage, the City may have the defective Improvements corrected or repaired or may have the rejected Improvements removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Developer's contractor, and if such contractor does not pay, then Developer shall otherwise perform the obligations of its contractor as provided in this paragraph.

Where defective Improvements (and damage to other improvements resulting therefrom) has been corrected or removed and replaced under this paragraph, the warranty period hereunder with respect to such Improvements will be extended for an additional period of two years after such correction or removal and replacement has been satisfactorily completed.

Prior to the commencement of work on the Improvements, Developer's contractor(s) constructing the Improvements shall expressly acknowledge and agree in writing to undertake and perform the warranty obligations set forth in this paragraph as they apply to such contractor's portion(s) of the Improvements. Each contractor shall expressly acknowledge and agree, in its contract with Developer, that the City (i) is an express third-party beneficiary of the contractor's warranty, (ii) shall be entitled to the rights and benefits thereunder, and (iii) may enforce the provisions thereof as if it were a party thereto.

The obligations under this paragraph are in addition to any other obligation or warranty, and shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitations or repose.

## 2. **Certifying Completion of the Improvements**

- A. Upon the completion of the Improvements, Developer shall submit to the City a request for reimbursement, accompanied by copies of all paid invoices for the Improvements, in

accordance with **Exhibit B**. The Developer also shall furnish all records, contracts, bills and other documents relating to the Improvements and the Developer's financing of the costs thereof, that the City reasonably requests in order to verify the amount to be reimbursed pursuant to this Agreement. The Developer shall also provide as-built plans. Further, Developer shall provide to the City adequate documentation that all contractors, engineers or other parties that have provided goods or services for the Improvements have been paid in full by the Developer.

- B. After receiving the foregoing information, the City will arrange for final inspection of the Improvements. If the Improvements have been completed in substantial compliance with the Advisability Resolution, the City shall certify completion of the Improvements and issue a Certificate of Completion in accordance with **Exhibit C**. The City shall review all invoices and other requested documentation, inspect the Improvements and either (i) issue to the Developer a Certificate of Completion or (ii) provide to Developer a list of additional required documentation, within 30 days after the Developer submits a request for reimbursement.

### 3. **Reimbursement.**

- A. The City shall reimburse the Developer for the Developer's actual cost of the Improvements, as submitted pursuant to Paragraph 2 of this Agreement. The Developer may be reimbursed for interest expense related to financing the costs of the Improvements, upon proof that such interest expense was paid to a third party unrelated to the Developer, and provided that such interest expense does not exceed \$561,625.26.
- B. **The maximum total amount of reimbursement to the Developer under this agreement shall be \$4,573,234.26, with no more than \$561,625.26 of such reimbursement amount attributable to interest expense on construction financing as provided in Paragraph 3.A of this Agreement.** Notwithstanding the foregoing, to the extent that the City makes payment to obtain right of way and easements necessary to construct the Improvements, the maximum total amount of reimbursement to the Developer shall be reduced by the amount paid by the City to acquire such right of way and easements.

The Parties agree that the costs shown in the Petition are an estimate only, and reimbursement shall be based on the actual expenses incurred by the Developer and verified by the City pursuant to Paragraph 2 of this Agreement; *except that, in no event shall the Developer be entitled to reimbursement in excess of the amount shown in this paragraph.* The Developer shall be solely responsible for all total costs of the Improvements in excess of the reimbursement amount provided in this paragraph.

- C. The City shall not issue any reimbursement payment until all of the following actions have occurred:
- (i) the Certificate of Completion has been issued in accordance with Paragraph 2 of this Agreement;
  - (ii) an ordinance levying assessments pursuant to the Petition, the Advisability Resolution and the Act has been approved by the Governing Body; and
  - (iii) the City has issued its general obligation bonds to permanently finance the costs of the Improvements.

D. The Developer hereby acknowledges that the following actions are required after the Certificate of Completion is issued and before proceeds of the City's general obligation bonds are available to reimburse the Developer:

- a. City prepares a statement of final costs of the Improvements and allocation of assessments to each property within the Improvement District;
- b. Amount of general obligation bond financing is determined by City (equal to total actual costs of Improvements to be reimbursed);
- c. City works with Financial Advisor and Bond Counsel to begin marketing general obligation bonds to investors;
- d. City holds bond sale; City Council approves sale of bonds to best bidder;
- e. City works with financing team on various closing matters;
- f. City closes bond issue; receives funds to reimburse Developer.

Developer further acknowledges that the City typically issues general obligation bonds in July of each year. In order for the City to complete all of the above-referenced steps to include financing for the Improvements in a particular year's bond issuance, the Developer must submit the documentation required by Paragraph 2 of this Agreement in sufficient time to permit the City to issue a Certificate of Completion by April 15. If a Certificate of Completion is not issued by April 15, then reimbursement will not occur until the following year's regularly-scheduled general obligation bond issue. The Developer is solely responsible for paying any additional financing costs incurred by the Developer as a result of any delay in the issuance of general obligation bonds for the Improvements, if such financing costs, together with the actual project costs, exceed the maximum reimbursement set forth in Paragraph 3 of this Agreement.

E. The City will use its best efforts to issue general obligation bonds in July of each year. If the City's issuance of general obligation bonds to permanently finance the Improvements is prevented, hindered or delayed for any reason, the Developer is solely responsible for carrying the costs of the Improvements. The City shall have no obligation to reimburse the Developer unless and until the City issues general obligation bonds for the purpose of financing the Improvements.

4. **Waiver.** THE DEVELOPER HEREBY AGREES TO WAIVE ANY RIGHTS THAT IT MAY HAVE PURSUANT TO KANSAS STATUTES, THE KANSAS CONSTITUTION, THE UNITED STATES CONSTITUTION, OR AS OTHERWISE PROVIDED BY LAW TO OBJECT TO ANY SPECIAL ASSESSMENTS REQUESTED IN THE PETITION AND IMPOSED PURSUANT TO THE ACT AND THIS AGREEMENT. Developer acknowledges and agrees that this waiver is freely given and with full knowledge of the extent of all statutory, constitutional or other legal rights being waived thereby, and is given in consideration of the City forming the Improvement District and assisting in providing for the financing and construction of the Improvements.

As a condition to the effectiveness of this Agreement, the Developer shall deliver to the City a waiver in substantially the form attached hereto as **Exhibit D**, signed by all owners of property within the Improvement District, as described on **Exhibit A**. As soon as practicable after delivery of the waiver, the Governing Body of the City will consider the Assessment Ordinance.

5. **Further Development of the Site.** Developer agrees to participate in a future improvement district formed pursuant to K.S.A. 12-6a01 *et seq.* to finance the construction of Hedge Lane from 171<sup>st</sup> Street to 167<sup>rd</sup> Street to the City's arterial street standards, and to pay Developer's proportionate share of the costs of such improvement. This Development Agreement shall not negate the obligation of the Developer to comply with all required stipulations in the rezoning approval and/or any plat of the property within the Improvement District.
6. **Deposit.** Before this Agreement becomes effective, Developer shall deposit with the City the sum of \$4,000.00 as a petition fee, required pursuant to City policy. The petition fee is intended to cover the City's costs of considering the petition and is not refundable for any reason or reimbursable under the terms of this Agreement.
7. **Indemnity.**
  - A. **General Indemnity.** The Developer shall indemnify, release, defend, be responsible for and forever hold harmless the City, its officers, agents, employees, elected officials, and attorneys, each in their official and individual capacities, from and against all lawsuits, suits, actions, costs, claims, demands, damages, disability, losses, expenses, including reasonable attorney's fees and other defense costs or liabilities of any character and from any cause whatsoever, brought because of bodily injury or death received or sustained, or loss or damage received or sustained, by any person, persons, or property arising out of or resulting from any act, error, omission, or intentional act of the Developer or its agents, employees, or subcontractors in connection with the design, construction, installation and maintenance of the Improvements.
  - B. **No Limitations or Waiver.** The indemnity required hereunder shall not be limited by reason of any insurance coverage provided by Developer as required by this Agreement. The City does not, and shall not, waive any rights against the Developer which it may have by reason of this indemnification. This indemnification by the Developer shall not be limited by reason of whether or not Developer's insurance policies shall have been determined to be applicable to any such damages or claims for damages.
  - C. **Use of Independent Contractors.** The fact that the Developer carries out any activities connected with the Improvements under this Agreement through independent contractors shall not constitute an avoidance of, or defense to, the Developer's duty of defense and indemnification under this section.
8. **Insurance.** During construction of the Improvements, Developer shall maintain, or shall cause its general contractor to maintain, insurance in favor of the City, consistent with the requirements set forth on **Exhibit E**.
9. **Default and Termination.** Developer shall be in default of this Agreement if Developer fails to comply with any obligations set forth in this Agreement. This Agreement may be terminated at the option of the City if written notice of event of default has been delivered to the Developer by the City and the Developer has not cured such default or is not actively pursuing such cure within thirty (30) days after such notice is delivered. If the Agreement is terminated, then the Governing Body may elect to repeal the Advisability Resolution and the Assessment Ordinance and terminate the Improvement District created herein, and the Developer shall have no right to protest such termination.

**10. General Provisions.**

- A. No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both City and Developer; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any right under this Agreement, will not constitute the approval of any wrongful act by the Developer or the acceptance of any Improvements.
- B. The parties to this Agreement may amend or modify this Agreement only by written instrument duly executed by the parties hereto.
- C. No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement.
- D. This Agreement constitutes the entire Agreement between the parties, and no statements, promises, or inducements that are not contained in this Agreement will be binding on the parties. This Agreement may not be assigned without the prior written consent of the City, except for any assignment to Block TPA Investors, LLC, or for any assignment to any entity owned, controlled or managed at least 51% by Kenneth G. Block or to any affiliate of and controlled by the Developer.
- E. If any part, term, or provision of this Agreement is held by a court to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision, and the rights of the parties will be construed as of the part, term, or provision was never part of this Agreement.
- F. Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under any applicable state law.
- G. This Agreement shall be construed in accordance with and governed by the laws of the State of Kansas.
- H. This Agreement may be executed simultaneously and, in several counterparts, each of which shall be deemed to be an original and all of which shall constitute the same instrument. This Agreement and the transactions related thereto and described herein may be conducted and documents may be stored by electronic means.

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\_\_\_\_\_, 20\_\_.

**CITY OF OLATHE, KANSAS**

(Seal)

Mayor

**ATTEST:**

City Clerk

STATE OF KANSAS

)

) SS.

COUNTY OF JOHNSON

)

On \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_ and \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument as Mayor and City Clerk, respectively, of the CITY OF OLATHE, KANSAS, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

My commission expires: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereunto have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**HEDGE 175 ASSOCIATES, LLC**, a Kansas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_, as amended, \_\_\_\_\_ of **HEDGE 175 ASSOCIATES, LLC**, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed on behalf of Hedge 175 Associates, LLC.

WITNESS my hand and official seal.

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

My commission expires: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY IN THE IMPROVEMENT DISTRICT**

The following property, excluding all dedicated public right of way within such area:

The Southeast Quarter of Section 21, Township 14, Range 23, in the City of Olathe, Johnson County, Kansas, except that part in streets and road.

AND ALSO:

All that part of the Northeast Quarter of Section 21, Township 14 South, Range 23 East, Sixth Principal Meridian, Johnson County, Kansas, described as follows:

Commencing at the Southeast corner of the Northeast Quarter of said Section 21; thence South 87 degrees 18 minutes 00 seconds West, along the South line of the Northeast Quarter of said Section 21, a distance of 20.00 feet to the point of beginning; thence continuing South 87 degrees 18 minutes 00 seconds West, along the South line of the Northeast Quarter of said Section 21, a distance of 2574.33 feet to the Southwest corner of the Northeast Quarter of said Section 21; thence North 01 degrees 50 minutes 38 seconds West, along the West line of the Northeast Quarter of said Section 21, a distance of 1338.94 feet to the Northwest corner of the South Half of the Northeast Quarter of said Section 21; thence North 87 degrees 34 minutes 50 seconds East, along the North line of the South Half of the Northeast Quarter of said Section 21, a distance of 2572.77 feet to a point being 20.00 feet West of the Northeast corner of the South Half of the Northeast Quarter of said Section 21; thence South 01 degrees 54 minutes 16 seconds East, parallel to the East line of the Northeast Quarter of said Section 21, a distance of 1326.41 feet to the point of beginning, Except that part in streets and roads.

SUBJECT PROPERTY CONTAINS 9,715,283 SQUARE FEET OR 223.032 ACRES MORE OR LESS.

**EXHIBIT B**

**FORM OF REIMBURSEMENT REQUEST**

TO: City of Olathe, Kansas  
Attention: City Manager

Re: \_\_\_\_\_ Improvement District

*Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Improvement District Development Agreement dated as of April \_\_\_\_, 2021 (the "Agreement") between the City and the Developer.*

In connection with the Agreement, the undersigned hereby states and certifies that:

1. Each item listed on *Schedule 1* hereto is cost that was incurred in connection with the construction of the Improvements after \_\_\_\_\_, 20\_\_ [*INSERT DATE DISTRICT CREATED BY RESOLUTION*], and is an eligible cost pursuant to the Petition, the Advisability Resolution and the Act. Attached hereto are invoices and other supporting documentation showing proof that each cost listed in *Schedule 1* was actually incurred by the Developer and is an eligible cost pursuant to the Petition, the Advisability Resolution and the Act.

2. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.

3. The Improvements have been completed in a workmanlike manner and in accordance with all construction plans approved by the City. All necessary permits and approvals required for the work for which this certificate relates were issued and were in full force and effect at the time such work was being performed.

4. The Developer is not in default or breach of any term or condition of the Agreement, and no event has occurred and no condition exists which constitutes an event of default under the Agreement.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**HEDGE 175 ASSOCIATES, LLC**, a Kansas  
limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved for Payment this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_:

**CITY OF OLATHE, KANSAS**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT C**

**FORM OF CERTIFICATE OF COMPLETION**

The **CITY OF OLATHE, KANSAS** (the “**City**”), pursuant to that certain Improvement District Development Agreement dated as of April \_\_, 2021 (the “**Agreement**”), between the City and and undersigned, **HEDGE 175 ASSOCIATES, LLC**, a Kansas limited liability company (the “**Developer**”), hereby certifies as follows:

1. That as of \_\_\_\_\_, 20\_\_\_\_, the construction of all Improvements (as such term is defined in the Agreement) have been completed in accordance with the Petition, the Advisability Resolution and the Agreement.
2. As-built plans have been approved by the City of Olathe.
3. This Certificate of Completion is being issued by the City to the Developer in accordance with the Agreement to evidence the Developer’s satisfaction of all obligations and covenants with respect to the construction of the Improvements.

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CITY OF OLATHE, KANSAS**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **EXHIBIT D**

### **WAIVER OF ASSESSMENT PROCEEDINGS**

TO THE GOVERNING BODY OF THE CITY OF OLATHE, KANSAS:

The undersigned (the "Owner"), is the record titled owner of 100% of the real estate hereinafter described (the "Property"), and such Property is situated in the City of Olathe, Johnson County, Kansas (the "City"). The Property is all of the property liable for special assessment for the costs of constructing the following described improvements (the "Improvements"):

Construction of a 40 feet wide asphalt roadway known as Hedge Lane from 175<sup>th</sup> Street to the north approximately 2,615 feet, plus 400' taper. The improvements shall include clearing and grading, asphaltic pavement, curb and gutter, concrete sidewalk, curb inlets, storm sewer, street lights, and related work necessary to complete the project.

After being advised of the Owner's right to a public hearing and other matters related to the Improvements, the Owner hereby agrees to the following:

1. Waiver of formal notice of and the holding of a public hearing by the governing body of the City for the purpose of considering special assessments against the Property;
2. Consent to the levy of special assessments against the Property in the amounts described next to the Owner's signature below (the "Special Assessment") by appropriate proceedings of the governing body of the City, including the levy of assessments prior to commencement of construction pursuant to K.S.A. 12-6a09;
3. Waiver of the thirty (30) day period after publication of the assessment ordinance of the City to contest the levy of the Special Assessment;
4. Waiver of any period established by the City Council for the prepayment of the Special Assessment;
5. Consent that the City may immediately proceed to issue its general obligation bonds to finance the costs of the Improvements in accordance with K.S.A. 12-6a01 *et seq.*

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**Dated:** \_\_\_\_\_

**Signature of Owner:**

**HEDGE 175 ASSOCIATES, LLC**

By: BK Properties, LLC, Manager

By: Kenneth G. Block, Trustee of the  
Kenneth G. Block Trust dated  
January 11, 1991 as amended,  
Managing Member

By: \_\_\_\_\_  
Kenneth G. Block, Trustee

**Maximum Amount of Assessment:** As shown in the table below, plus interest at a rate equal to the interest rate on general obligation bonds issued to finance the Improvements, to be collected in 10 equal annual installments.

| Property owned within the Improvement District (Johnson County Parcel ID) | Estimated Assessment Amount |
|---|-----------------------------|
| DF231421-4001   | \$ 2,819,303.97             |
| DF231421-4004   | \$ 528,935.33               |
| DF231421-3005   | \$ 1,757,446.38             |

**Legal Description of Property Owned and Liable for Assessment:**

The following property, excluding all dedicated public right of way within such area:

The Southeast Quarter of Section 21, Township 14, Range 23, in the City of Olathe, Johnson County, Kansas, except that part in streets and road.

AND ALSO:

All that part of the Northeast Quarter of Section 21, Township 14 South, Range 23 East, Sixth Principal Meridian, Johnson County, Kansas, described as follows:

Commencing at the Southeast corner of the Northeast Quarter of said Section 21; thence South 87 degrees 18 minutes 00 seconds West, along the South line of the Northeast Quarter of said Section 21, a distance of 20.00 feet to the point of beginning; thence continuing South 87 degrees 18 minutes 00 seconds West, along the South line of the Northeast Quarter of said Section 21, a distance of 2574.33 feet to the Southwest corner of the Northeast Quarter of said Section 21; thence North 01 degrees 50 minutes 38 seconds West, along the West line of the Northeast Quarter of said Section 21, a distance of 1338.94 feet to the Northwest corner of the South Half of the Northeast Quarter of said Section 21; thence North 87 degrees 34 minutes 50 seconds East, along the North line of the South Half of the Northeast Quarter of said Section 21, a distance of 2572.77 feet to a point being 20.00 feet West of the Northeast corner of the South Half of the Northeast Quarter of said Section 21; thence South 01 degrees 54 minutes 16 seconds East, parallel to the East line of the Northeast Quarter of said Section 21, a distance of 1326.41 feet to the point of beginning, Except that part in streets and roads.

SUBJECT PROPERTY CONTAINS 9,715,283 SQUARE FEET OR 223.032 ACRES MORE OR LESS



## **EXHIBIT E**

### **CITY OF OLATHE INSURANCE REQUIREMENTS**

**A.** Developer will, or shall cause its general contractor to, procure, and maintain, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the project.

**B.** Such insurance shall be maintained with the following coverages and minimum limits.

1. Commercial General Liability (CGL): [ISO "occurrence" form or its equivalent] \$1,000,000 per occurrence limit including personal and advertising injury and products - completed operations. Any general aggregate limit must be at least \$2,000,000.
2. Business Auto Coverage: (*Owned and non-owned autos*) At least \$500,000 per occurrence, combined single limit.
3. Workers Compensation and Employers Liability: Workers compensation limits as required by applicable state workers' compensation laws and employers liability limits or equivalent of at least \$500,000/\$500,000/\$500,000.
4. Professional Liability: Minimum limits of at least \$1,000,000 each claim / annual aggregate.
5. Coverage Limits. Coverage limits for General and Auto Liability exposures may be met by a combination of primary and umbrella policy limits.
6. Exposure Limits: The above coverage limits and do not infer or place a limit on the liability of the Developer or its general contractor nor do they mean that the City has assessed the risk that may be applicable to Developer or its general contractor. Developer or its general contractor must assess its own risks and if it deems appropriate and/or prudent may maintain higher limits and/or broader coverages. The insurance will be primary and any insurance or self-insurance maintained by the City will not contribute to, or substitute for, the coverage maintained by Developer or its general contractor.

**C.** Additional Insured. CGL and auto policies must be endorsed to include the City as additional insured for the project. Any and all coverage available to the named insured is applicable to the additional insured. The insurance will apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

**D.** Verification of Coverage.

1. Developer or its general contractor will provide a certificate of insurance, listing the City as a certificate holder, accompanied by an additional insured endorsement or equivalent.
2. The insurance coverages are to be provided by Kansas authorized insurance companies with a Best's rating of at least A-VII. Those not meeting this standard must be approved by City.
3. Any self-insurance or self-insured retentions must be approved in advance by the City and specified on the certificate of insurance. Additionally, when self-insured, the name, address, and telephone number of the claims office must be indicated on the certificate or separate attached document. Any and all deductibles or self-insurance in the above described coverages will be the responsibility and at the sole risk of the Developer or its general contractor.
4. When any of the foregoing insurance coverages are required to remain in force after final payment, additional certificates with appropriate endorsements evidencing continuation of such coverage must be submitted along with the application for final payment.
5. Any coverage provided by a Claims-Made form policy must contain a three-year tail option, extended reporting period, or must be maintained for at least three years post contract.

**E.** Cancellation. Each insurance policy required may not be suspended, voided, or canceled, except after Consultant has provided thirty (30) days' advance written notice to the City.

**F.** Sub-Contractors. All coverages for sub-contractors must meet all of the requirements stated herein.