

**SANITARY SEWER EASEMENT ACQUISITION AND REIMBURSEMENT
AGREEMENT**

COMES NOW the **City of Olathe, Kansas**, a municipal corporation duly organized under the laws of the State of Kansas (hereinafter referred to as "City"), and **CEDAR CREEK DEVELOPMENT COMPANY, LLC**, a Kansas limited liability company, and **VALLEY RIDGE, LLC**, a Kansas limited liability company (hereinafter collectively referred to as "Developer") (collectively, the "Parties", and each, individually, a "Party"), and enter into this Sanitary Sewer Easement Acquisition and Reimbursement Agreement (the "Agreement") this _____ day of _____, 2021 concerning the construction of a sanitary sewer main extension (the "Sewer Extension") to serve the Development of property located at Valley Ridge 6th and 7th plats (the "Development") more particularly as identified in **Exhibit A**, attached hereto and incorporated herein by reference.

WHEREAS, Developer desires to develop certain land on portions of Johnson County Parcel ID DF231317-3011 to create the Development; and

WHEREAS, the Parties desire for the Sewer Extension to be constructed to extend from 119th Street to serve the Development to provide sanitary sewer service to the Development; and

WHEREAS, Developer has been unable to obtain easements over land Developer does not own to construct the Sewer Extension; and

WHEREAS, City is a City of the first class, authorized under Kansas Law to obtain land for a public purposes by eminent domain; and

WHEREAS, construction of the Sewer Extension, including obtaining any necessary easements, is a Developer responsibility under City ordinances; and

WHEREAS, Developer desires to reimburse City for the full costs of acquisition of necessary easements for the Sewer Extension; and

WHEREAS, the Parties desire to memorialize their mutual understandings regarding the land acquisition for the Sewer Extension, by entering into this Agreement.

IT IS HEREBY AGREED:

1. Developer will hire consultants to design a Sewer Extension from the southern tie-in point of Development to the City's sanitary sewer system, including a connection to said system, through said property to be condemned, to serve the Development in accordance with the City's Technical Specification and Design Criteria (the "Sewer Extension Design Documents"). Developer will also produce all necessary engineering documents for condemnation, including, but not limited to, sealed engineering drawings, legal descriptions, easement forms, and owners and encumbrance reports (the "Condemnation Documents"). Developer is also responsible for providing design of the sanitary sewer system within the Development for connection to Sewer Extension.

2. Once Developer provides the Sewer Extension Design Documents and Condemnation Documents, the City will then engage in good faith efforts to acquire the easements from the landowners on a voluntary basis. If, in the sole judgment of the City Council acting in its legislative capacity, the easements are not acquirable by voluntary negotiation, the City will proceed to acquire the easements by eminent domain, as authorized by and pursuant to the terms of Kansas law.

3. The City shall perform its easement acquisition obligations under Paragraph 2 above diligently and without unreasonable delay.

4. Developer agrees to reimburse the City for all actual, final costs of acquiring the easements. These costs include, but are not limited to, the reasonable negotiated purchase price of the easements in lieu of condemnation, reasonable legal fees, appraiser's fees, court appointed appraiser's awards, contract consultants, contract land acquisition agents, costs associated with any appeals to the condemnation and reasonable negotiated settlement or jury award arising therefrom, and reasonable city staff time (the "City Expenses").

5. In order to ensure the prompt and timely payment of the City Expenses, within fourteen (14) days of the execution of this Agreement by both Parties, Developer agrees to pay the City TWENTY THOUSAND DOLLARS AND NO CENTS (\$20,000.00) ("Deposit") for the purpose of establishing a fund from which the City may pay or reimburse the City Expenses. The City will pay all City Expenses in accordance with this Agreement from the Deposit and will periodically, or upon request of the Developer, submit statements to Developer itemizing the City Expenses paid from the Deposit. Upon receiving a statement indicating that the balance of the Deposit has fallen below \$10,000, the Developer will remit to the City within ten (10) days the amount necessary to replenish the Deposit fund balance to a minimum \$15,000 against which additional City Expenses and payments may be applied. If such funds are not so received and the City has incurred City Expenses in excess of the balance of the Deposit fund, the amounts necessary to reimburse the expenditure of City funds will be subject to a penalty of 1.0% per month until paid, and the City reserves the right in its sole and absolute discretion to cease all land acquisition work being undertaken under this Agreement. Following payment of all City Expenses, any amounts remaining in the Deposit fund will be returned to the Developer.

6. When the City obtains either a voluntary agreement to purchase or a court judgment for any of the easements required for the Sewer Extension, the City will notify

Developer within one (1) business day of the agreement or judgment amount. To the extent that the then current balance of the Deposit is insufficient to pay all amounts due under the agreement or judgment, then within seven (7) days of the City sending to Developer such amount, Developer must pay City such amount. If Developer does not pay such amount within such period, the City reserves the right in its sole and absolute discretion to cease all land acquisition work being undertaken under the Agreement, including but not limited to terminating any voluntary agreement for such easements and/or abandoning any eminent domain case.

7. The City will provide Developer with a final statement of costs after the City obtains title to the easements. To the extent that the then current balance of the Deposit is insufficient to pay all amounts due Developer shall have ten (10) days from the final statement date to make payment of the total amount due.

8. The Parties agree that the City may send invoices and notices under this agreement to the email provided in the signature block below for the Developer.

9. This Agreement cannot be altered or modified except by written agreement signed by all Parties.

10. Interpretation of this Agreement and disputes arising out of or related to this Agreement will be subject to and governed by the laws of the State of Kansas, excluding Kansas' choice-of-law principles. Jurisdiction and venue for any suit arising out of or related to this Agreement will be in the District Court of Johnson County, Kansas.

11. This Agreement, including all documents and exhibits included by reference herein, constitutes the entire Agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. Each Party hereby confirms that it has the power to enter into and execute this Agreement. This Agreement shall be binding upon the

Parties and their respective successors and assigns. Developer may not assign this Agreement 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 Developer or in which Developer or its principals own or control at least 51% of such assignee.

12. This Agreement shall terminate upon payment of all amounts due under this Agreement by Developer or its successors or assigns, to the City.

13. Time is of the essence.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate the day and year first above written.

CITY OF OLATHE, KANSAS

BY: _____

Mayor

ATTEST:

City Clerk

(SEAL)

APPROVED AS TO FORM:

City Attorney

**CEDAR CREEK DEVELOPMENT
COMPANY, LLC**


By:  _____

Name: John Duggan

Title: Authorized representative

Email: jduggan@kc-dsdlaw.com

VALLEY RIDGE, LLC

By:  _____

Name: John Duggan

Title: Authorized representative

Email: jduggan@kc-dsdlaw.com

EXHIBIT A

DESCRIPTION:

Parts of the Northeast One-Quarter, and the North One-Half of the Southeast One-Quarter of Section 17, Township 13 South, Range 23 East in the City of Olathe, Johnson County, Kansas, both together being more particularly described as follows:

Commencing at the Southwest corner of the said North One-Half; thence along the South line of the said North One-Half, North 87 degrees 51 minutes 00 seconds East, a distance of 246.29 feet to the Point of Beginning, said point being the Southeast corner of VALLEY RIDGE, FOURTH PLAT, a subdivision in the said City of Olathe; thence along the West line of said VALLEY RIDGE, FOURTH PLAT for the following ten courses, North 30 degrees 05 minutes 48 seconds East, a distance of 339.81 feet to a point of curvature; thence along a curve to the right, having, an initial tangent bearing of South 64 degrees 50 minutes 11 seconds East, a radius of 300.00 feet, a central angle of 04 degrees 46 minutes 51 seconds and an arc length of 25.03 feet; thence North 30 degrees 05 minutes 48 seconds East, a distance of 793.18 feet; thence North 01 degrees 48 minutes 06 seconds West, a distance of 158.25 feet; thence North 17 degrees 31 minutes 12 seconds East, a distance of 72.52 feet; thence North 41 degrees 07 minutes 40 seconds East, a distance of 83.95 feet; thence North 64 degrees 51 minutes 06 seconds East, a distance of 90.88 feet; thence South 87 degrees 27 minutes 27 seconds East, a distance of 53.31 feet; thence North 44 degrees 07 minutes 33 seconds East, a distance of 88.54 feet to a point on the North line of the said North One-Half; thence continuing North 44 degrees 07 minutes 33 seconds East, a distance of 391.80 feet to the Northeast corner of said VALLEY RIDGE, FOURTH PLAT; thence South 71 degrees 16 minutes 59 seconds East, a distance of 287.84 feet; thence South 10 degrees 58 minutes 53 seconds East, a distance of 168.91 feet to a point on the South line of the said Northeast One-Quarter; thence continuing South 10 degrees 58 minutes 53 seconds East, a distance of 19.28 feet; thence South 62 degrees 53 minutes 35 seconds East, a distance of 139.27 feet; thence South 13 degrees 36 minutes 19 seconds West, a distance of 488.68 feet; thence South 86 degrees 48 minutes 05 seconds West, a distance of 47.99 feet; thence South 01 degrees 15 minutes 35 seconds East, a distance of 134.22 feet; thence South 88 degrees 44 minutes 25 seconds West, a distance of 124.54 feet; thence South 01 degrees 15 minutes 35 seconds East, a distance of 246.28 feet; thence South 14 degrees 58 minutes 00 seconds West, a distance of 223.62 feet; thence South 51 degrees 25 minutes 41 seconds West, a distance of 297.52 feet to a point on the South line of the said North One-Half; thence along said South line, South 87 degrees 51 minutes 00 seconds West, a distance of 996.12 feet, to the Point of Beginning, and containing 31.5747 acres, more or less.

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DESCRIPTION:

Parts of the Northeast One-Quarter, and the North One-Half of the Southeast One-Quarter of Section 17, Township 13 South, Range 23 East in the City of Olathe, Johnson County, Kansas, both together being more particularly described as follows:

Commencing at the Northeast corner of the said Southeast One-Quarter; thence South 87 degrees 42 minutes 53 seconds West, along the North line of the said Southeast One-Quarter, a distance of 234.59 feet to the Point of Beginning, said point being a corner point on the West line of Lot 3, CLAREVIEW, a subdivision in the said City of Olathe; thence along the West line of said CLAREVIEW for the following ten courses, South 02 degrees 51 minutes 00 seconds West, a distance of 114.32 feet; thence South 47 degrees 51 minutes 00 seconds West, a distance of 140.00 feet; thence South 12 degrees 51 minutes 00 seconds West, a distance of 280.00 feet; thence South 02 degrees 51 minutes 00 seconds West, a distance of 170.00 feet; thence South 17 degrees 51 minutes 00 seconds West, a distance of 230.00 feet; thence South 27 degrees 51 minutes 00 seconds West, a distance of 120.00 feet; thence South 62 degrees 51 minutes 00 seconds West, a distance of 190.00 feet; thence South 32 degrees 51 minutes 00 seconds West, a distance of 250.00 feet; thence South 87 degrees 51 minutes 00 seconds West, a distance of 260.00 feet; thence South 32 degrees 51 minutes 00 seconds West, a distance of 97.66 feet to a point on the South line of the said North One-Half; thence along said South line, South 87 degrees 51 minutes 00 seconds West, a distance of 207.41 feet; thence North 51 degrees 25 minutes 41 seconds East, a distance of 297.52 feet; thence North 14 degrees 58 minutes 00 seconds East, a distance of 223.62 feet; thence North 01 degrees 15 minutes 35 seconds West, a distance of 246.28 feet; thence North 88 degrees 44 minutes 25 seconds East, a distance of 124.54 feet; thence North 01 degrees 15 minutes 35 seconds West, a distance of 134.22 feet; thence North 86 degrees 48 minutes 05 seconds East, a distance of 47.99 feet; thence North 13 degrees 36 minutes 19 seconds East, a distance of 488.68 feet; thence North 62 degrees 53 minutes 35 seconds West, a distance of 139.27 feet; thence North 10 degrees 58 minutes 53 seconds West, a distance of 19.28 feet to a point on the North line of the said Southeast One-Quarter; thence continuing North

EXHIBIT A

10 degrees 58 minutes 53 seconds West, a distance of 168.91 feet; thence North 71 degrees 16 minutes 59 seconds West, a distance of 287.84 feet to the Southeast corner of VALLEY RIDGE, SECOND PLAT, a subdivision in the said City of Olathe; thence along the East lines of said VALLEY RIDGE, SECOND PLAT and VALLEY RIDGE, FIRST PLAT, a subdivision in the said City of Olathe, North 44 degrees 07 minutes 33 seconds East, a distance of 1136.29 feet to a point on the South right-of-way of 113th Terrace as platted in said VALLEY RIDGE, FIRST PLAT; thence along said South right-of-way for the following two courses, South 43 degrees 52 minutes 17 seconds East, a distance of 42.03 feet to a point of curvature; thence along a curve to the left, tangent to the previous course and having a radius of 330.00 feet, a central angle of 40 degrees 43 minutes 55 seconds and an arc length of 234.60 feet to the Northwest corner of Tract "A" VALLEY RIDGE MONUMENT, a subdivision in the said City of Olathe; thence along the West line of said Tract "A" for the following two courses, South 44 degrees 07 minutes 33 seconds West, a distance of 69.00 feet; thence South 58 degrees 50 minutes 58 seconds East, a distance of 157.33 feet to the Norwest corner of said Lot 3, CLAREVIEW; thence along the West line of said Lot 3 for the remaining five courses, South 20 degrees 51 minutes 00 seconds West, a distance of 190.00 feet; thence South 02 degrees 51 minutes 00 seconds West, a distance of 210.00 feet; thence South 02 degrees 09 minutes 00 seconds East, a distance of 161.01 feet; thence South 32 degrees 51 minutes 00 seconds West, a distance of 135.72 feet; thence South 12 degrees 09 minutes 00 seconds East, a distance of 125. 86 feet to the Point of Beginning, and containing 30.9779 acres, more or less.