

ANNEXATION AGREEMENT

THIS AGREEMENT is made and entered into this ___ day of April, 2021, by and between **SLAM D HOLDINGS, INC.**, as to a one-half (½) undivided interest as tenant in common, and **Thomas S. VanKeirsbilck**, Trustee (or any successor trustee) under Thomas S. VanKeirsbilck Trust Agreement dated February 14, 2001, as may be amended, as to a one-half (½) undivided interest as tenant in common (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 situated 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 the city limits of the City and within the City’s future annexation plan, but is not otherwise situated within the limits of any other municipality; and

WHEREAS, Landowner (or its designee or a future grantee) may 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 may desire to submit to the City applications for the issuance of industrial revenue bonds and real property tax abatement, rezoning, site plans and other documents for these purposes; and

WHEREAS, City desires to annex the Property and to ensure that the development of the Property and adjacent City land uses are 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; 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 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, including contributions by Landowner toward the City’s road and water infrastructure network, increasing the vitality of the City’s economy, and expanding the local tax base; and

WHEREAS, the City and Landowner pursuant to K.S.A. 12-534, desire to enter into an agreement to set the conditions of annexation of the Property 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 Landowner 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 Landowner (or its designee or future grantee) may desire to submit application(s) for issuance of industrial revenue bonds and property tax abatement, rezoning, preliminary and final site development plans, re-platting, and related permits/applications for the Property, or a portion thereof, and any changes to the Comprehensive Plan, to be developed for commercial, office, manufacturing, warehouse/distribution, business park, and 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.** Landowner acknowledges that the annexation and zoning of the Property are subject to the plenary legislative and quasi-judicial discretion of the Governing Body of the City. No assurances of annexation or future rezoning 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, or any rezoning application described in Paragraph 7, 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.
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.** The Parties acknowledge that the Property is currently zoned Johnson County RUR (Rural) and that Landowner does not intend to seek a rezoning immediately upon annexation. The City agrees not to rezone any of the Property without the written permission of Landowner during the term of this Agreement. Any rezoning application submitted for all or a portion of the Property 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.

Landowner acknowledges and agrees that the City shall not be responsible for any fees, costs, or expenses of any kind whatsoever resulting to Landowner if any 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 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 any proposed development for the Property should be consistent with the Future Land Use Map. A determination on compliance with the Comprehensive Plan and the Future Land Use Map will be a part of any rezoning application. Landowner 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, Landowner 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. 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 of \$0.0098 per square foot of platted land – 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.** Landowner's responsibility for construction of or contribution to the construction of off-site improvements required for development of the Property will be determined during the Project Approvals process. Notwithstanding any other provision of this Agreement to the contrary, specific Off-Site Improvements are addressed as follows:

A. Road Improvements. So long as:

- i. SLAM D Holdings, Inc. and/or Thomas S. VanKeirsbilck Trust, or an entity controlled by Mike Dusselier or Thomas S. VanKeirsbilck owns the Property, and
- ii. the Property meets the qualifications of K.S.A. 12-6,110 *et seq.*, and particularly K.S.A. 12-6,113, for a delay in the payment of special assessments,

the City shall not create any special benefit district that proposes to levy special assessments against the Property to finance the costs of road improvements, unless City also agrees to also grant a delay in the payment of such special assessments for a period of 10 years or until the Property is platted or developed. If only a portion of the Property is sold or platted by Landowner, the remainder of the Property shall remain eligible for the delay in payment of the special assessments allocated to such remainder of the Property not sold or platted but only to the extent such remainder of the Property continues to meet the qualifications of K.S.A. 12-6,113.

Landowner agrees to dedicate, without cost to the City, all right of way necessary to construct road improvements directly adjacent to the Property.

If the City determines that the construction of Hedge Lane south from 167th Street is best served using an "S" curve configuration through the northern portion of the Property and such configuration results in the creation of an unbuildable remnant of the Property located west of Hedge Lane, Landowner shall dedicate, without cost to the City, and the City shall accept a dedication of all such property.

If Landowner should be required by the City to construct or contribute to the construction of off-site (off-Property) improvements (including, but not limited to, the improvement of Hedge Lane from 171st Street north), either on its own or by participating in a special benefit district created to finance the costs of such

improvements, Landowner shall be eligible for a transportation excise tax credit in accordance with Section 3.35.060 (c) of the Olathe Municipal Code. The Parties acknowledge that Hedge Lane from 171st Street north is designated as a Main Trafficway in Section 10.01.010 of the Olathe Municipal Code.

B. Sanitary Sewer Improvements. The Parties acknowledge that the Property is within the boundaries of the 1-B-077-10 South Cedar Creek Sewer Phase I (aka 159th and Hedge Lane Crossing) sanitary sewer benefit district and is subject to its proportionate share of special assessments for such improvements. Any improvements required to extend sanitary sewers to the Property, including acquisition of any necessary easements related to such improvements, will be extended by Landowner (and dedicated to the City), the scope and route of which to be determined during the Project Approvals process.

C. Water Improvements. The Parties acknowledge that the Property is within the water service territory of Johnson County Water District No. 1 (“WaterOne”), and that Landowner will coordinate extension of water service to the Property with WaterOne.

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 Landowner’s expense, but not until after the passage of the annexation ordinance.

13. **Cooperation**. The Parties agree that the future development of the Property is in the best interests of all Parties and requires their ongoing cooperation. Landowner hereby states and agrees to fully comply with all lawful City requirements in connection with any such future development. The City hereby states its intent to cooperate with the Landowner in the resolution of mutual problems and its willingness to facilitate the development of the Property as contemplated by the provisions of this Agreement, unless prohibited by law. Such intention does not preclude City staff from making professional recommendations regarding the Project Approvals which are in conflict with Landowner’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 or a permitted assignee. 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 permitted 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. Landowner may assign this Agreement and any rights herein to an entity not a party hereto who purchases all or any part of the Property from Landowner without the consent of the City, or to any assignee who is an affiliate of Landowner in which Landowner or its principals own or control at least 50% of such assignee. In all other circumstances, Landowner may only assign this Agreement and any rights herein to an entity not a party hereto without the prior written consent of the City, which consent shall not be unreasonably withheld, delayed or conditioned.
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 Landowner, 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.

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

CITY OF OLATHE, KANSAS

John W. Bacon, Mayor

Brenda D. Long, City Clerk

(SEAL)

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

BE IT REMEMBERED, that on this _____ day of _____, 2021, 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. LONG**, 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.

My Commission Expires:

Signature of Notary Public in and for said
County and State

Print Name: _____

[SEAL]

LANDOWNER

SLAM D HOLDINGS, INC.

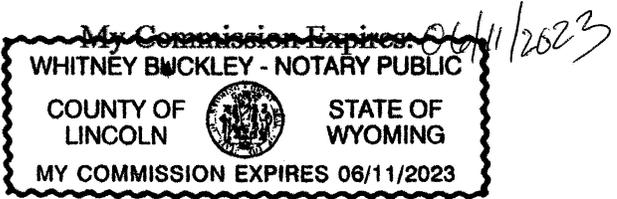
By: 
Mike Dusselier, President

ACKNOWLEDGMENT

STATE OF ^{WYOMING} KANSAS)
COUNTY OF Lincoln) SS.

This instrument was acknowledged before me on April 1st, 2021 by **Mike Dusselier**, as President of Slam D. Holdings, Inc., who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said Landowner, and such person duly acknowledged the execution of the same to be the act and deed of said Landowner.

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

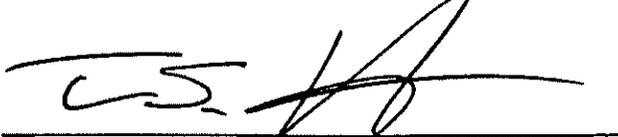



Signature of Notary Public in and for said County and State

Print Name: Whitney Buckley

[SEAL]

Thomas S. VanKeirsbilck, Trustee
under Thomas S. VanKeirsbilck Trust Agreement
dated February 14, 2001, as may be amended



Thomas S. VanKeirsbilck, Trustee

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF JOHNSON)

This instrument was acknowledged before me on April ____, 2021 by **Thomas S. VanKeirsbilck**, as Trustee under the Thomas S. VanKeirsbilck Trust Agreement dated February 14, 2001, as may be amended, who is personally known to me to be the same person who executed, as such trustee, the within instrument on behalf of said Landowner, and such person duly acknowledged the execution of the same to be the act and deed of said Landowner.

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

My Commission Expires:

Signature of Notary Public in and for said
County and State

Print Name: _____

[SEAL]

EXHIBIT A

Property Legal Description & Map

Johnson County Parcel ID: 6F231422-1001

Legal Description:

All that part of the Northwest Quarter of Section 22, Township 14 South, Range 23 East, Sixth Principal Meridian, Johnson County, Kansas, described as follows:

Beginning at the Northwest corner of the Northwest Quarter of said Section 22; thence South 89 degrees 54 minutes 56 seconds East, along the North line of the Northwest Quarter of said Section 22, a distance of 2,713.72 feet to the Northeast corner of the Northwest Quarter of said Section 22; thence South 00 degrees 14 minutes 25 seconds West along the East line of the Northwest Quarter of said Section 22, a distance of 2,657.00 feet to the Southeast corner of the Northwest Quarter of said Section 22; thence North 89 degrees 49 minutes 07 seconds West, along the South line of the Northwest Quarter of said Section 22, a distance of 2,699.52 feet to the Southwest corner of the Northwest Quarter of said Section 22; thence North 00 degrees 03 minutes 59 seconds West, along the West line of the Northwest Quarter of said Section 22, a distance of 2,652.43 feet to the point of beginning, except that part in road right of way and except part platted as VanDuss Industrial Park First Plat, a subdivision in City of Olathe, Johnson County, Kansas.

Note: This legal description may need to be updated to exempt parcels already annexed into City.

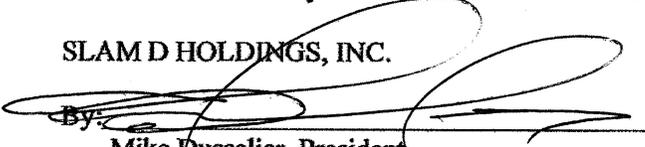
EXHIBIT B
PETITION FOR ANNEXATION
(FORM)

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

Slam D Holdings, Inc. and Thomas S. VanKeirsbilck, as Trustee of Thomas S. VanKeirsbilck Trust Agreement dated February 14, 2001, as may be amended, the undersigned, respectfully states:

1. That we are the record owners 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 we respectfully request that such land be annexed and incorporated to the City of Olathe, Kansas, and do hereby consent to such annexation.

SLAM D HOLDINGS, INC.

By: 
Mike Dusselier, President

PO Box 482045

Address
KC, MO 64148

City, State Zip Code

816 331-1334

Phone Number


Thomas S. VanKeirsbilck, Trustee

Address

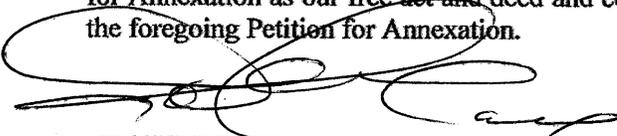
City, State Zip Code

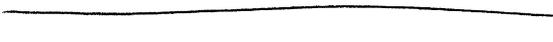
Phone Number

CERTIFICATION

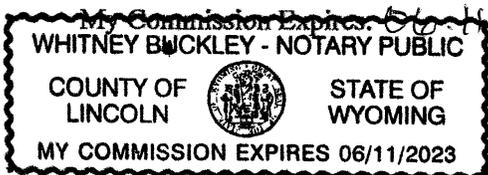
STATE OF WYOMING)
COUNTY OF LINCOLN) SS.

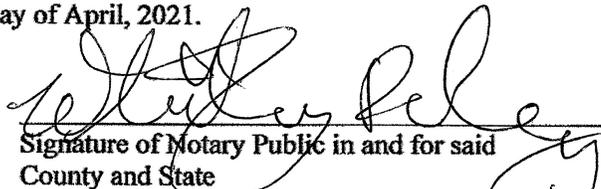
(Mike Dusselier)
Slam D Holdings, Inc. and ~~Thomas S. VanKeirsbilck, Trustee of Thomas S. VanKeirsbilck Trust Agreement dated February 14, 2001, as may be amended,~~ hereby certify that we signed the foregoing Petition for Annexation as our free act and deed and certify that we are the legal owners of the real estate described in the foregoing Petition for Annexation.


Mike Dusselier, President of Slam D Holdings, Inc.


Thomas S. VanKeirsbilck, Trustee

Subscribed to and sworn to before me this 1st day of April, 2021.




Signature of Notary Public in and for said County and State

Print Name: Whitney Buckley

[SEAL]

