

ANNEXATION AGREEMENT

THIS AGREEMENT is made and entered into this ___ day of _____, 2021, by and among **ROBERT S. MURPHY REVOCABLE TRUST** (“Landowner”), **BK PROPERTIES, LLC**, a Missouri limited liability company (“Developer”) and the **City of Olathe**, Johnson County, Kansas, a municipal corporation duly organized under the laws of the State of Kansas (“City”) (collectively, the “Parties”, and each, individually, a “Party”).

WHEREAS, 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 and/or Developer desires to develop the Property, which may include commercial, office, manufacturing, warehouse/distribution, business park, and other appropriate purposes approved by the City, and further desires 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 (subject to the De-Annexation agreement in paragraph 26 of this Agreement) 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 or Developer 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 and Developer intend 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 Authority.** Landowner and Developer acknowledge that the Project Approvals are subject to the plenary legislative and quasi-judicial discretion of the Governing Body of the City. No assurances of Project Approvals have been made or relied upon by the Landowner and Developer, and this Agreement shall in no way inhibit or affect the ability of the City or its officials from properly performing their legislative and quasi-judicial functions, including but not limited to, the outright denial of the annexation petition described in Paragraph 4, below, or the rezoning application described in Paragraph 6 below. The City acknowledges that should the Project Approvals not be obtained by Landowner and Developer in accordance with the provisions of this Agreement, or in the event that Developer does not close on the purchase of the Property from the Landowner, Landowner may cause the Property to be de-annexed in accordance with the provisions of Paragraph 26, below.
4. **Petition.** In accordance with K.S.A. 12-520 (a)(7), because the Property adjoins the City and 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.** Within three hundred and sixty (360) days after the effective date of annexation of the Property, Landowner and Developer shall submit an application for rezoning to M-2 (General Industrial District). The City agrees not to rezone any of the Property to a zoning district not described in this paragraph without the written permission of Landowner during the term of this Agreement. Such rezoning application will include all necessary and proper documentation and support data and analysis and comply with all rezoning and platting procedures set forth in the City's land development regulations, including, but not limited to, the City's Unified Development Ordinance and applications for any and all other land use development approvals, orders and permits.

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

7. **Comprehensive Plan & Development Standards.** The Landowner and Developer acknowledge 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 and Developer acknowledge that the proposed development should generally 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 the rezoning application. Landowner and Developer further acknowledge 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 and Developer acknowledge 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 or Developer will be responsible for construction of or contribution to the construction of off-site improvements required for the Property. Construction of improvements or contribution responsibility (including dedication of right-of-way for street purposes) is to be determined during the Project Approvals process. Specific Off-Site Improvements are addressed as follows:
 - A. Hedge Lane Improvements. If Landowner or Developer 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 175th Street north), either on its own or by participating in a special benefit district created to finance the costs of such improvements, the costs of such construction or contribution shall be credited against the excise tax, fee or assessment applicable to the Property or to a project developed on the Property so long as such improvements are eligible for a credit in accordance with Section 3.35.060 (c) of the Olathe Municipal Code. The Parties acknowledge that Hedge Lane from 175th Street north is designated as a Main Trafficway in Section 10.01.010 of the Olathe Municipal Code.

Any improvements required on Hedge Lane from 175th Street north which are necessitated by development of the Property (e.g., turn lanes or other infrastructure not included as part of the Hedge Lane improvement project financed by the special benefit district) will comply with the requirements of the Olathe Unified Development Ordinance as determined during the Project Approvals process.

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 development of the Property is in the best interests of all Parties and requires their ongoing cooperation. Landowner and Developer hereby states and agrees to fully comply with all City requirements and to assist the City to the fullest extent possible. The City hereby states its intent to cooperate with the Landowner and Developer in the resolution of mutual problems and its willingness to facilitate the development of the Property, or the De-Annexation if Developer does not close on the purchase of the Property from the Landowner, 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 or Developer's requests and/or desires pertaining to any of the Project Approvals.

14. **Entire Agreement.** This Agreement reflects an understanding between the Parties concerning the major points of development of the Property after annexation. Any prior negotiations, comments, plans or understandings not expressly set forth herein are of no further force and effect to the extent they may be inconsistent with the terms hereof. However, it is intended and expected that additional details will be addressed from time to time as part of the ordinary development review and permitting processes. This Agreement is not intended to modify, limit or restrict the ordinary review authority of the City and its staff, commissions, committees, and/or governing body to impose conditions on, or deny, certain aspects of the proposed development of the Property as deemed appropriate in the City's sole discretion.
15. **Limited Beneficiaries.** This Agreement is solely for the benefit of the Parties hereto, and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party which is not a Party hereto. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person or entity any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof, other than the Parties hereto and their respective designates, representatives, successors and/or assigns.
16. **Authority; Successors & Assigns.** Each Party hereby stipulates that it is duly authorized to enter into this Agreement and be bound by the terms and conditions set forth herein. The terms of this Agreement shall be binding upon the successors and assigns and legal representatives of the Parties hereto. Landowner and Developer may assign their interests in this Agreement and any rights herein to an entity not a party hereto who purchases all of the Property from Landowner or the Developer's interests herein without the consent of the City, or to any assignee who is an affiliate of Landowner or Developer in which Landowner and Developer or their principals own or control at least 50% of such assignee. In all other circumstances, Landowner and Developer 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.
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.
26. **De-Annexation.** The City agrees that if it fails to approve all of the Project Approvals under terms and conditions satisfactory to all Parties, herein, or in the event that Developer does not close on the purchase of the Property from the Landowner, then the Landowner shall have the right to make demand upon the City in writing requesting de-annexation of either part or all of the Property, whereby the City shall take all steps necessary to de-annex such property. If the City shall have failed to de-annex such property within one hundred twenty (120) days of the City's receipt of Landowner's written request for de-annexation pursuant hereto, Landowner shall have the right to

obtain from the District Court of Johnson County, Kansas, such orders and judgments as may be required to enforce City's agreement to de-annex such property in accordance herewith, including recovery of the costs and expenses of said litigation including reasonable attorney's fees. All provisions of this Paragraph 26 shall survive termination of this Agreement.

[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

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.

Notary Public

My Appointment Expires:

EXHIBIT A

Property Legal Description & Map

Johnson County Parcel ID: 6F231422-2001 and 6F231422-2003

Legal Description:

The Southwest Quarter of Section 22, Township 14, Range 23, Johnson County, Kansas,
except that part in streets and roads.



PETITION FOR ANNEXATION

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

Robert S. Murphy, the undersigned, respectfully states:

- 1. That I am the trustee of the Robert S. Murphy Revocable Trust, the record owner of the following described land located in Johnson County, Kansas:

Johnson County Parcel ID: 6F231422-2001 and 6F231422-2003

Legal Description:

The Southwest Quarter of Section 22, Township 14, Range 23, Johnson County, Kansas, except that part in streets and roads.

- 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.

Robert S. Murphy, Trustee
 Name
7450 W. 169th Street
 Address
Overland Park, Kansas 66085
 City, State Zip Code
(913) 484-9462
 Phone Number

CERTIFICATION

STATE OF Kansas)
)
 COUNTY OF Johnson)

SS.

Robert S. Murphy, as Trustee of the Robert S. Murphy Revocable Trust ("Trust"), hereby certifies that he signed the foregoing Petition for Annexation on behalf of the Trust and as his free act and deed and certifies that the Trust is the legal owner of the real estate described in the foregoing Petition for Annexation.

By: [Signature]
 Robert S. Murphy, Trustee

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

[Signature]
 Notary Public

My Appointment expires:
8-25-23

NOTARY PUBLIC - State of Kansas
Kyle C. Parker
 My Appointment Exp. 8-25-23