

**AGREEMENT
CONCERNING THE DEVELOPMENT
OF THE ELK CREEK 3RD
TO THE CITY OF BEL AIRE, KANSAS**

This agreement is made and entered into by and between Barakeh Property, LLC, a Kansas Company, hereinafter referred to as "DEVELOPER", and the CITY OF BEL AIRE, KANSAS, hereinafter referred to as the "CITY."

WHEREAS, the DEVELOPER desires platting by the CITY of a tract of land more fully described below and herein referred to as the ELK CREEK 3rd Bel Aire, Sedgwick County, Kansas (hereinafter ELK CREEK 3RD); and

WHEREAS, the CITY is willing to consider platting of said ELK CREEK 3RD;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the DEVELOPER and the CITY agree as follows:

PURPOSE. This agreement is necessary to address certain financial, infrastructure and drainage conditions arising from the platting process which must be dealt with prior to final plat approval, and as such, approval of this agreement is a condition precedent to final consideration by the CITY of the DEVELOPER's request for approval of the final plat on a tract of land more fully described below and herein referred to as ELK CREEK 3RD.

Specifically, this agreement is to assure that necessary improvements are in place to support development of ELK CREEK 3RD. Therefore, the DEVELOPER's compliance with the terms and conditions of this Agreement shall be a condition precedent to the granting of building and/or occupancy permits for development on said property. The DEVELOPER shall strictly observe and comply with the terms of this Agreement, all regulations, resolutions, policies, and ordinances of the CITY and Sedgwick County, and all statutes and laws of the State of Kansas and of the United States.

The development of ELK CREEK 3RD shall proceed in accordance with this Agreement and subsequent platting. Any deviation, as determined by the CITY, shall constitute a violation of the building permit authorizing construction of the proposed development, and may result in suspension or termination of such building permit. It is understood by the parties that the final site dimensions, grading plan, drainage, landscape plan, street plan, parking plan and utility plans will be submitted by the DEVELOPER and approved by the CITY in phases based on the conceptual plans. Any deviations from the conceptual drawing shall be submitted for review and approval by the CITY. Any and all costs, permit fees, review fees, and building and zoning permit and review fees incurred or required by City staff and review and/or through building and zoning review shall be paid by the DEVELOPER.

LEGAL DESCRIPTION. The tract of land herein referred to as the ELK CREEK 3RD, Bel Aire, Sedgwick County, Kansas has the following pre-platting legal description, to-wit:

Lot 1, Block 11, Elk Creek Addition, Bel Aire, Sedgwick County, Kansas.

PERMITTED USE: All lots are zoned R-5b – Single Family/Zero Lot Line Residential District.

BUILDING SETBACKS: The minimum building setbacks for residential lots shall be:

- Front building setback on interior lots – twenty (20) feet
- Front building setback on corner lots – twenty-five (25) feet (15 feet is permitted where such frontage is adjacent to an interior zero lot line lot)
- Rear building setback – fifteen (15) feet

ATYPICAL LOT SIZE, LOT LINE, AND LOT LINE ENCROACHMENT: No lot shall be less than 50' wide by 90' deep, or less than 5,000 square feet, whichever is smaller. The master plan for side yard building set back as approved by the Governing Body will allow the main house structure foundation (concrete footing and slab on grade, no basement or window wells), to be constructed on one side yard property line, free of any platted easement and easements of public record. Typical building practices and approved architectural designs that meet the minimum building and fire codes shall be used to complete the house structure above grade, but at no point may the distance between houses be less than four (4) feet, such distance to be maintained from the ground to the sky. The opposite side yard shall be six (6) feet or more between the structure and the property line. The maximum encroachment of the abutting house wall and roof elements including guttering is two (2) feet provided that provisions for their extension and maintenance over adjacent property is contained in the restrictive covenants. No exhaust openings in the wall shall be within ten (10) feet of the property line. Any changes to the building master plan will require review of the new plan by the Governing Body for approval.

All accessory structures such as sheds, garages, play equipment shall be 10' from property lines if approved using the minimum requirements of the current zoning code.

CONSTRUCTION PERIOD REQUIREMENTS. In addition to other requirements set forth within this agreement regarding property maintenance, the following requirements shall be met specifically during the period of time during which construction of ELK CREEK 3RD is being developed:

All lots covered by this Agreement shall be subject to the CITY'S storm water regulations.

The Contractor shall install, and the DEVELOPER maintains the storm water protection devices established by the CITY and the master drainage / grading plan until such time the devices are no longer needed due to the adequate establishment of ground cover. All lots covered by this agreement shall be kept clean, shall not pond water, shall be mowed to a height not exceeding eight (8) inches, and shall comply with all applicable laws and regulations pertaining to erosion control.

All temporary construction units must be removed when building in the immediate vicinity is completed.

All temporary utility connections made to expedite the development must be removed immediately as utility services are provided; i.e., temporary above ground power supply.

Vehicle access to the tract of land herein referred to as the ELK CREEK 3RD shall be limited to the existing street connection at Elk Creek Drive as recommended by the Sedgwick County Fire Department for fire protection purposes and emergency vehicles. Traffic in ELK CREEK 3RD shall be limited to vehicles under 20 tons. Construction traffic shall enter from either Elk Creek Drive or 45th Street. If a construction entrance is placed off of 45th Street, it shall be removed immediately following the installation of the roads and the area returned to pre-construction condition. DEVELOPER shall be responsible for installation and removal of any temporary roads and drainage culverts during construction. Such temporary roads shall be approved by the CITY. All roadways must be kept free of construction debris and mud. Dust created during construction must be controlled avoiding a nuisance for motorist and neighbors.

DETENTION PONDS. Any on-site detention ponds will be designed to control two, twenty-five-year storm events and one, hundred-year storm event. Additionally, the ponds will act as temporary sedimentation basins during construction but are limited to the amount of sediment allowed and DEVELOPER responsible for any dredging required.

Any on-site detention ponds and associated inflow and outflow systems to the property as well as the reserves, and ditches are to be maintained by the DEVELOPER indefinitely unless transferred to a homeowner's association or equal resolution approved by the CITY, excluding paving and utilities within dedicated rights of ways as indicated on plat documents. Failure of the DEVELOPER to maintain such areas and property as described shall be grounds for the CITY to enforce this provision as a nuisance abatement action and charge all costs back to the DEVELOPER as set forth in K.S.A. 12-1617e.

DRAINAGE. Protecting surrounding platted property from the impacts of changes in drainage across such property resulting from the development of ELK CREEK 3RD must be addressed as part of the platting process. The DEVELOPER shall prepare a storm drainage plan which shall address the various impacts of increased/modified drainage, meet CITY drainage specifications, and be approved by the City Engineer. Prior to approval of said proposed storm drainage plan, the City Engineer may impose

modifications upon such proposed plan as Engineer deems necessary to insure the effectiveness of such plan. After approval by the City Engineer of said storm drainage plan, including any necessary modifications, the DEVELOPER shall install, or cause to be installed, the improvements pursuant to the drainage plan.

The DEVELOPER shall maintain a master drainage plan throughout the development stage for each parcel, by providing grass and installing landscape to ensure the reduced yard requirements have no consequence to the drainage of the property.

DRAINAGE PLAN. The DEVELOPER must provide a maintenance plan within the HOA Covenant document that will provide adequate provisions to protect the master drainage plan engineered design as such was approved by the CITY. The Maintenance Plan will include but not limited to: how to initiate the maintenance process for the drainage plan, how to inspect, what to inspect, when to inspect, how to correct drainage problems that are discovered, the appropriate records to be maintained and designating the party responsible for maintaining such records. The CITY may request a copy of the inspection report to monitor compliance on a biannual basis. Failure of the HOA to maintain such records or provide such records to the CITY in a timely manner, shall be grounds for the CITY, or the CITY'S designee, to conduct an inspection and charge the costs associated with such inspection back to the HOA

ELECTRIC: All electric lines shall be installed underground and paid for by the DEVELOPER.

EROSION AND SEDIMENT CONTROL. The DEVELOPER must follow all National Pollution Discharge Elimination System (NPDES) Kansas Department of Health and Environment (KDHE) and City of Bel Aire Standards for erosion and sediment control on site.

FENCING & SCREENING: Fencing and screening methods and materials shall blend in with the architectural design of the buildings and to reasonably hide the materials, trash and recycling containers from ground view, and all fencing and screening methods and materials must be pre-approved in writing by the CITY. Vinyl coated chain link fencing materials and other similar fencing materials may be allowed if such materials blend in with the architectural design elements of the building and adjacent sites. Any plans for outside storage facilities shall comply with the applicable ordinances and zoning regulations of the CITY and be submitted in writing to the CITY for prior approval. No barbed wire is allowed.

FIRE HYDRANTS: All fire hydrants shall be of a type and quality specified by CITY standards, but not less than the minimum standards of the National Board of Fire Underwriters and shall be provided and connected to the CITY'S municipal water supply system. Such hydrants shall be subject to the inspection and approval of the applicable Fire Chief.

FOUNDATION CERTIFICATIONS. Foundation Certifications will be required on each foundation after construction. Minimum low opening certifications will be required on all lots with minimum pads indicated on the face of the plat.

HOMEOWNERS' ASSOCIATION. DEVELOPER and/or Homeowners Association will be required to provide continuous maintenance for all identified reserves, common areas, ponds, drainage systems, detention ponds and construction areas associated with ELK CREEK 3RD. DEVELOPER shall complete a plan for cooperating and sharing costs in the maintenance of shared entryways and shared reserves with neighboring HOAs, such plan shall be completed and provided to the City prior to DEVELOPER being granted a Certificate of Occupancy. Any land dedicated to or owned by a municipal authority shall be exempt from any and all assessments including those assessed by Homeowners Association Covenants. Land within this plat owned by such a municipal organization exempt from taxation by the laws of the State of Kansas, shall not be subject to any non-taxing authority assessments throughout the duration of such ownership.

INFRASTRUCTURE PETITION AND INSTALLATION: The development of ELK CREEK 3RD may be accomplished by virtue of a multi-phase process. Representatives of the parties shall formally meet and review the existing and proposed phases of development as well as the requirements of this agreement, prior to the submission of petitions for infrastructure improvements for each phase of development.

Installation of all improvements shall be in compliance with requirements of all applicable federal, state and local legislation, including the Americans with Disabilities Act. All electric power, streetlights and telephone service shall be installed underground. The CITY shall perform the engineering design, construction and inspection of water mains, sanitary sewer mains, storm water systems and paving necessary for the platting and development of the tract of land herein referred to as the ELK CREEK 3RD, Bel Aire, Sedgwick County, Kansas which said improvements shall be dedicated to and owned and maintained by the CITY. Said improvements shall be installed on CITY owned property or within public right of ways or easements. The DEVELOPER shall reimburse the CITY for the actual costs of the engineering design, construction and inspection of all improvements necessary for the platting and development of the tract of land herein referred to as the ELK CREEK 3RD unless otherwise petitioned and approved by the Governing Body of the City of Bel Aire, Kansas.

The DEVELOPER shall dedicate necessary public right-of-ways and easements and install, or cause to be installed, all improvements necessary for the platting and development of the tract of land herein referred to as the ELK CREEK 3RD. Said improvements include, but are not limited to streets, curb, gutter, street signs, storm water system, sidewalks, water distribution system, sanitary sewer lines, corner pins, driveways and utilities. The DEVELOPER shall indemnify and hold harmless the CITY from any liability from damages that may occur during construction. The DEVELOPER shall pay

one hundred percent (100%) of the cost of the improvements unless otherwise petitioned and approved by the Governing Body of the City of Bel Aire, Kansas and/or another unit of government.

Whenever existing sanitary sewer, storm water, water lines, drainage channels, culverts, underground and overhead electric, communications, gas lines, pipe lines or transmission lines are required to be installed, lowered, encased, modified or relocated due to the subdivision or construction improvements required, and in the event it was not known at time of platting approval, the DEVELOPER shall pay one hundred percent (100%) of the cost of the improvements unless otherwise petitioned and approved by the Governing Body of the City of Bel Aire, Kansas and/or another unit of government. The DEVELOPER shall indemnify and hold harmless the CITY from any liability from damages that may occur during construction.

LANDSCAPING & SCREENING: The DEVELOPER shall submit and have approved by the CITY, a "Landscape Plan" that is representative of the landscaping to be provided as each phase of ELK CREEK 3RD is developed. The "Landscaping Plan" shall show contours, utilities, size and spread at planting, any type of ground cover, shrubs, and coordinate with the Drainage Plan and Site Plan for the project.

Planting of interior trees shall meet the CITY'S street tree requirements. Any areas outside of the general boundaries of each development phase shall be planted to appropriate turf or ground cover adequate to prevent undue soil erosion and shall be maintained in accordance with applicable CITY ordinances. Within all detailed landscape plans, ground mounted mechanical equipment and trash receptacles shall be screened from ground level view. Plantings shall take place within 6 months of the certificate of occupancy being granted.

LIGHTING: A Street and parking lighting plan shall be submitted to the CITY for approval and comply with the City zoning ordinance. Outdoor lighting sources shall employ cutoff luminaries to minimize light trespass and glare. Wood poles will not be allowed.

MAINTENANCE: DEVELOPER and/or Homeowners Association will be required to provide continuous maintenance for all identified reserves, common areas, ponds, Elk Creek Drive and 45th Street right-of-way and construction outside boundaries of ELK CREEK 3RD. The DEVELOPER shall work in conjunction with the Courtyards at Elk Creek HOA and the Elk Creek HOA regarding the continued maintenance of the Elk Creek Drive entrance off of 45th Street.

PERMITS. No construction shall commence on any portion of the tract of land herein referred to as ELK CREEK 3RD without the DEVELOPER having first obtained the proper building and zoning permits from the CITY.

The development of ELK CREEK 3RD shall proceed in accordance with this Agreement and subsequent platting. Any deviation, as determined by the CITY, shall constitute a violation of the building permit authorizing construction of the proposed development. The final site dimensions, grading plan, drainage, landscape plan, street plan, parking plan and utility plans will be submitted and approved in phases based on the conceptual plans. Any deviations from the conceptual drawing shall be submitted for review and approval by the CITY. Any and all costs permit fees, review fees, and building and zoning permit and review fees incurred or required by city staff and review and/or through building and zoning review shall be paid by the DEVELOPER.

ROADWAYS, DRIVES, and ACCESS: The DEVELOPER shall cause to be installed, according to the design standards of the CITY, minimum twenty-nine (29) foot back-to-back paved street with curb and gutter on all streets in ELK CREEK 3RD.

All driveways shall be per CITY ordinance.

Vehicle access to the tract of land herein referred to as the ELK CREEK 3RD shall be limited to the existing street connection at Elk Creek Drive as recommended by the Sedgwick County Fire Department for fire protection purposes and emergency vehicles. Traffic in ELK CREEK 3RD shall be limited to vehicles under 20 tons.

PARKING, RESERVE OPEN SPACE: Reserves A and B shall always remain at least 50% covered by grass and landscaping. Guest parking shall be installed to meet City standards.

SANITARY SEWER: The DEVELOPER shall petition the CITY to perform the engineering design review, construction and inspection of collection lines, not less than (8) inches in diameter, to transport sewage and discharge in the existing main. Said sewer main shall be installed within dedicated easements. If not shown on the final plat, necessary easements shall be granted by the DEVELOPER prior to the construction project and dedicated by separate instrument. All Sanitary Sewer User Fees and Hookup Fees are subject to City Ordinances.

SIDEWALKS: Sidewalks shall be installed on one side of all non-cul-de-sac streets. Sidewalks shall comply with the ADA Accessibility Guidelines (ADAAG). Sidewalks shall be handicap accessible and be required to extend or complete connecting links in the sidewalk system.

In general, sidewalks shall be constructed with the outside edge of the sidewalk as close as practical to the property line, subject to the discretion of the engineer designated by the CITY. The Sidewalk along shall be 5 feet wide (6" thick). Sidewalks shall be installed per the sidewalk plan approved by the CITY with curb ramps for road crossings. Sidewalks shall be installed when the streets are installed.

SIGNAGE. Signs of such location, type and size as shall be approved as part of the building permit process or by the Governing Body, giving due regard to the prevailing type, size and pattern of location utilized throughout the area. All signage shall comply with the applicable ordinances and zoning regulations of the City and be submitted in writing to the CITY for written approval.

Signs are to be maintained by the DEVELOPER indefinitely unless transferred to a Homeowner's Association or equal resolution approved by the CITY. Failure of the DEVELOPER to maintain such areas and property shall be grounds for the CITY to enforce this provision as a nuisance abatement action and charge all costs back to the DEVELOPER as set forth in K.S.A. 12-1617e.

WATER: The DEVELOPER shall petition the CITY to perform the engineering design, construction and inspection of transmission water lines minimum (8) inches in diameter, to the municipal water supply system of the City of Bel Aire, Kansas. Said water transmission lines shall be dedicated to and owned and maintained by the CITY. Lines shall be designed to loop. Said water transmission lines shall be installed within dedicated easements. If not shown on the final plat, necessary easements shall be granted to the CITY by the DEVELOPER or acquired prior to the construction project and dedicated by separate instrument. All Water User Fees and Hook Up Fees are subject to City Ordinances.

BONDING CAPACITY. Assurances are to be provided whenever the CITY has been furnished a financial guarantee (irrevocable letter of credit, corporate completion bond, cashier's check, escrow account or cash) on 35% of the estimated principal cost of the project (engineering design, construction, inspections, temp note interest and administration). The Letter of Credit (LOC) or bond will be in the form approved by the CITY and name the City of Bel Aire as beneficiary. The assurances will serve to protect the general taxpayers of Bel Aire from subsidizing the special assessment debt. The assurance shall be filed prior to any debt being issued by the CITY for any of the expenses mentioned above and be in the equal to 35% of these same costs. It is understood that this letter of credit shall be automatically renewed for additional 2-year periods unless the DEVELOPER notifies the CITY in writing at least sixty (60) days prior to the then relevant expiration date that it will not be renewed at which time the DEVELOPER may draw up to the full amount of the credit available at that time. Provided there are no delinquent taxes or special assessments owed by the DEVELOPER, the financial guarantee will be released upon request of the DEVELOPER when development (issuance of satisfactory framing by the City of Bel Aire) of 35 percent of the properties covered by the LOC, the CITY will, by written instruction, authorize the release of this letter of credit, provided, however, that before this letter of credit is released the CITY shall be entitled to a partial drawing against the credit in the amount of any delinquent special assessments.

MISCELLANEOUS:

The DEVELOPER must make mail delivery provisions for each household with the U.S. Postal Services.

MODIFICATION OF PLAT THROUGH REPLATTING PROCESS. While it is intended by the parties that the development will proceed in compliance with this Agreement and the existing plat of ELK CREEK 3RD nothing herein shall be construed to prohibit modifications to the ELK CREEK 3RD development as a result of the formal replating process.

RESPECTIVE RESPONSIBILITIES OF CITY AND DEVELOPER: Notwithstanding anything to the contrary contained herein, the CITY shall be responsible for the construction of streets, sewer, and water facilities for ELK CREEK 3RD or other projects or additions, including excavation, storm sewers and detention ponds, the costs for which shall be spread as special assessments against the addition on a square footage basis, but not for three (3) years, or until the year 2025.

The DEVELOPER agrees to assume responsibility to see that all original purchasers of lots in the Addition receive a copy of the Developer's Agreement and the Restrictive Covenant at the time of purchase.

Each DEVELOPER, individual, or entity who is presently an owner of a lot or lots in ELK CREEK 3RD or any individual or entity who later becomes a DEVELOPER by acquiring ownership of a lot or lots in said projects, shall do so subject to the terms of this Development Agreement, and shall be liable for the payment of other costs and expenses payable by DEVELOPER hereunder which are incurred for improvements or facilities located on the lots or which are used or are available for the benefit of the lot or lots owned by the DEVELOPER.

Likewise, each DEVELOPER shall be responsible for the performance or compliance with other obligations or requirements contained herein which may be performed on the lot or lots owned by the DEVELOPER or which the DEVELOPER otherwise has the legal power and authority to perform. In the event any improvements or facilities are constructed on the lot or lot of a DEVELOPER not to serve the needs of that lot or lots, but rather to serve the needs of a lot or lots not owned by the DEVELOPER, the DEVELOPER shall have no liability or responsibility for the costs and expenses incurred in the construction or maintenance of those improvements or facilities.

Finally, in the event improvements or facilities are constructed and maintained to serve lots owned by more than one DEVELOPER or for the use of all DEVELOPERS, the costs and expenses for such construction and maintenance shall be paid by all DEVELOPERS whose lots are served by such improvements and facilities which costs and expenses shall be allocated to those DEVELOPERS whose lots are being served in the proportion that the number of square feet in the lots being served and respectively owned by them bears to the total square feet of all lots being served.

RECORDING: The DEVEOLPER shall file an executed copy of this Agreement with the Sedgwick County Register of Deeds. A copy of this Agreement showing said recording

along with a copy of the recorded plat shall be furnished by the DEVELOPER to the general contractor before building permits are issued.

BINDING: The terms and conditions of this Agreement, as set forth herein, shall be binding upon the City and the DEVELOPER, their successors, representatives, trustees, and assigns.

THIS AGREEMENT is hereby executed on this _____ day of _____, 2022.

EMAD BARAKEH, Agent
Barakeh Property, LLC

THIS AGREEMENT was approved by vote the City Council of the City of Bel Aire, Kansas on the _____ day of _____, 2022 and is hereby executed on this _____ day of _____, 2022.

MAYOR, JIM BENAGE

SEAL

ATTEST:

CITY CLERK, MELISSA KREHBIEL

ACKNOWLEDGEMENTS

STATE OF KANSAS)
SEDGWICK COUNTY) SS:

BE IT KNOWN BY ALL PERSONS that on this _____ day of _____, 2022, before me, a Notary Public, came Emad Barakeh, agent, Barakeh Property, LLC, Wichita, Kansas, who is known to me and who personally acknowledged execution of the forging Agreement as the Developer of ELK CREEK 3RD, Bel Aire, Sedgwick County, Kansas.

— _____
NOTARY PUBLIC

My Appointment Expires: _____

STATE OF KANSAS)
SEDGWICK COUNTY) SS:

BE IT KNOWN BY ALL PERSONS that on this _____ day of _____, 2022, before me, a Notary Public, came Mr. Jim Benage, who is known to me to be the Mayor of Bel Aire, Kansas and who personally acknowledged execution of the forgoing Agreement Concerning the Development of the ELK CREEK 3RD, Bel Aire, Sedgwick County, Kansas, and Melissa Krehbiel, who is known to me to be the City Clerk of Bel Aire, Kansas and who personally acknowledged attesting the signature of said Mr. Jim Benage.

— _____
NOTARY PUBLIC

My Appointment Expires: _____