

## SUNRISE 2<sup>ND</sup> ADDITION RESIDENTIAL COVENANTS AND RESTRICTIONS

These Covenants and Restrictions ("Covenants") are made this \_\_\_ day of \_\_\_\_\_, 2024, by the **City of Anthony** (the "City").

WHEREAS, the City, as owner of the lots legally described in the attached and incorporated Exhibit A ("Development"), desires to place covenants and restrictions on said property for the purposes of (i) enhancing and protecting the value, desirability, and attractiveness of the Development, (ii) to prevent the erection of poorly designed or proportioned improvements in the property; (iii) to insure that all improvements are built with proper and suitable materials; (iv) to encourage and insure the erection of attractive residential single-family dwellings; (v) increasing the public benefit to be derived from the Development; (vi) promoting the efficient development of the Development, and (vii) promoting the public health, safety, and welfare.

WHEREAS, these Covenants shall run with the Development and shall be binding upon all parties having or acquiring any right, title, or interest in the Development, or any part thereof, and shall insure to the benefit of each owner thereof.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the City and future owners, the City places the following restrictions, conditions and covenants upon said Development:

### ARTICLE I. DEFINITION OF TERMS

- 1.01. **“Architectural Control Committee”** shall mean the Special Housing Committee appointed by the **City of Anthony** Governing Body **and the City Appointed First-Right Builder**. The Governing Body or other board designated by the City may serve as the Architectural Control Committee in the absence of a Special Housing Committee. **The Governing Body shall have ultimate decision-making authority in the event Architectural Control Committee decisions are challenged.**
- 1.02. **“City”** shall mean the **City Commission of the City of Anthony**, Harper County, Kansas.
- 1.03. **“Improvement”** shall mean and refer to any alteration, thing or device the placement of which upon any Lot may affect the appearance of such Lot including, by way of illustration and not limitation, any building, garage, porch, shed, greenhouse, bathhouse, covered or uncovered patio, outdoor kitchen, awning, swimming pool, clothes line, radio or television antenna, satellite dish, pergola, trellis, fence, paving, wall, hedge, shrubbery, trees, signboard or any temporary or permanent alteration of any Lot. The term “Improvement” shall also mean any mound, bank, excavation, fill,

ditch or other thing or device which affects or alters the natural flow of surface water from, upon or across any Lot, or which affects or alters the natural flow of surface water from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot, and any change in grade or any Lot from that existing at time of purchase of the Lot by each Owner.

- 1.04. “Lot” shall mean and refer individually by lot to **Lots 1 through 16, Block 5; in the Sunrise 2nd Addition to the City of Anthony, Harper County, Kansas.**
- 1.05. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot or Lot(s), including contract sellers, but excluding persons or entities having interest merely as security for the performance of an obligation.
- 1.06. “Property” shall mean and refer to all real property **on the west side of West Avenue** within the **Sunrise 2nd Addition to the City of Anthony, Harper County, Kansas.**
- 1.07. “Residential Dwelling” shall mean an improvement erected and maintained in conformance with these Covenants for private residential purposes and designed for occupancy by a single family. It shall not mean or refer to any apartment, flat, duplex or other multi-family dwelling even though intended for residential purposes.

## ARTICLE II. USE, OCCUPANCY AND CONDUCT RESTRICTIONS

- 2.01. **Use of the Property; Compliance with Plat.** No Improvement shall be erected, altered, placed or permitted to remain on **any** Lot other than a Residential Dwelling designed for private use and occupancy, along with a private garage and other improvements incidental to single-family residential use. No portion of the Property shall be used for other than residential use except for sales and development activities of the Property by the City and its successors, assigns, agents, employees, representatives and contractors. Each Improvement shall comply with the minimum front, back and side setback requirements for residential zoning districts and all other requirements shown on the recorded plat of the Property, or as otherwise specified by the City and shall comply with the requirements of any applicable law, code, ordinance, rule or regulation. **In addition, the front of the primary residential structures shall face east and shall be located 50’ west of the east property line of each lot, designating a uniform neighborhood building front line of 50’ setback from the property line.**
- 2.02. **Minimum Size of Dwelling.** Each lot shall be restricted to a maximum of one primary single-family residence structure. The **ground floor** of the residence structure shall contain finished square footage of no less than **one thousand two hundred (1,200) square feet.** Garages, porches, breezeways and patios are not included in the calculation of finished square footage.
- 2.03. **Garages, Driveways and Accessory Structures.** All residences shall have a **minimum two-car** attached or built-on garage. Connection with the residence may be by breezeway. A concrete driveway shall be built from the street to the garage at a width equal to the width of the entire garage. The garage shall be built with the same exterior finish as the residence.

**Accessory structures** may be built in the rear yard of the residence and shall be subject to review and approval of the Architectural Control Committee.

If fencing is desired, the fence shall be of wood, polyvinyl, wrought iron, or chain link construction. No fence is allowed in a front yard. Fences shall not exceed six feet in height. Fences shall be subject to review and approval of the Architectural Control Committee. *Since we have zoning, does Arch Committee have to approve?*

- 2.04. Site Plan.** A site plan must be provided to the Architectural Control Committee for review and approval as a condition to the issuance of any city permits. The plan is a comprehensive sketch or drawing showing the location of the dwelling, fences, outbuilding and trees and shrubs on the lot, together with a copy of the stamped construction drawings and shall include a description of building products to be used and color scheme. *(Stamped yes or no).*
- 2.05. Construction Period.** Construction of a new Residential Dwelling shall begin within six (6) months of entering into a Lot Purchase Agreement of an undeveloped Lot from the City. Every dwelling shall be constructed, completed, and receive an occupancy permit within no more than 365 days after the start of construction; provided, however, that upon written request by an Owner that has commenced and is diligently pursuing completion of construction, the Architectural Control Committee may grant up to two (2) forty-five (45) day extensions of the deadline to receive an occupancy permit.
- 2.06. Utility Service.** All new utilities shall be placed underground, except for temporary services during construction.
- 2.07. ~~Parking and Storage.~~** ~~No boats, campers, recreational vehicles, trailers, mobile homes, pickup campers, unlicensed or inoperable vehicles, unused building material, or any other material shall be kept, stored or otherwise maintained on any of the lots unless enclosed in a garage or an accessory structure. A guest of an owner may park a mobile home vehicle, camper or trailer upon the property while visiting such owner for a period not to exceed seven (7) days. Owners shall not allow guests to park such campers more than three (3) times in any calendar year. Default to city code~~
- 2.08. Landscaping.** Upon completion of a Residential Dwelling on a Lot or as soon as practicable and appropriate thereafter, Owner shall:
- a) plant or sod a fescue grass lawn on the entire front of the Lot from the front property line to the Residential Dwelling, excluding the areas on which approved Improvements are constructed;
  - b) No Bermuda grass; artificial turf or rock yards are permitted.
- 2.09. Drainage.** Upon completion of any Residential Dwelling Improvement on a Lot, Owner shall cause such Lot to be graded so as to strictly comply with drainage guidelines, standards and plans concerning water drainage from such Lot to other Lots and/or the City right-of-way or reserved areas identified on the plat as such guidelines, standards and plans are established by the City of Anthony and/or Harper County.
- 2.10. Excavations.** No excavations, except such as are necessary for the construction of a Residential Dwelling or Improvements, shall be permitted on any Lot without prior written consent of the Architectural Control Committee.
- 2.11. Prohibited Improvements and Uses.** No trailer, trailer house, mobile home, modular home, used home, secondhand home or previously constructed building or outbuilding may be moved, placed,

parked or used, upon the Property nor permitted to remain upon the Property. No garage, tent, shack, temporary structure, outbuilding or other Improvement, except a Residential Dwelling and an accessory dwelling unit as approved by the Architectural Control Committee, may be used at any time for human habitation nor converted into apartments, rental or living quarters. No external antennas, satellite dishes (except digital satellite system discs not to exceed 30 inches in diameter which are permitted), permanent clothes lines, poles, towers or wires shall be erected or maintained on the Property. All utility and phone lines shall be underground.

- 2.12. **Trash; Storage.** No trash, ashes, dirt, sand, rock, brick, lumber or other construction material or refuse shall be thrown, dumped or maintained on any Lot in the Property. All trash containers shall be stored out of sight except on days when trash pick up is scheduled. No machinery shall be placed or operated upon any Lot, except such machinery as is usual in the maintenance of a private residence or as is appropriate to and during construction of Improvements on the Property in accordance with these Covenants.
- 2.13. **Model Homes.** Notwithstanding any other provision herein to the contrary, any Lot or Residential Dwelling owned by the City or others so authorized by the City may be used for a model home.
- 2.14. **Approved Builder.** All Residential Dwellings and Improvements constructed upon a Lot shall be constructed by a contractor licensed by the City of Anthony and expressly approved by the City prior to or at the time of approval of plans by the Architectural Control Committee.
- 2.15. **Pipes, Water Wells.** No pipe, gas pipe, sewer pipe or drainage pipe be installed or maintained on any Lot above the surface of the ground, except hoses used for irrigation purposes. No portion of the Property shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth, nor shall any other improvement or activity relating thereto be permitted or allowed to remain in or on any portion of the Property.
- 2.16. **Exterior Colors Schemes.** All initial exterior color schemes shall be approved in advance by the Architectural Control Committee. Approval shall not be unreasonably withheld.
- 2.17. **Leasing Restriction.** Except as otherwise authorized by a waiver granted by the City as specifically enumerated herein, no owner of a Lot shall rent or lease such Lot or any portion of a Lot for business, speculative investment or any other purpose, including but not limited to short-term rentals, including but not limited to “Airbnb” or “Vrbo” (the “Lease Restriction”). The City, in its sole discretion may grant a waiver to the Lease Restriction for any hardship situation that may require temporary leasing such as a call to military service, a temporary job transfer or a family illness that forces an owner to move for a limited period of time. Any waiver granted under this provision must be in writing, signed by the City, and shall expire within one (1) year of being granted unless otherwise extended in writing by the City. Nothing in this paragraph shall prevent the owner of a lot from renting the home as a long-term traditional residential rental.
- 2.18. **Solar Panels.** Solar panels shall only be installed on the rear portion of the roof of the residence, not visible from the front of the residence, and no solar panel shall be installed without prior written approval from the Architectural Control Committee.
- 2.19. **Pools, Recreation Equipment.** Swimming or other pools and other recreational equipment shall not be located in the front or side yards of the Residential Dwelling, with the exception of basketball goals.

- 2.20. Restrictions Not Exclusive.** The covenants and restrictions contained herein shall not be taken as permitting any action or thing prohibited by applicable zoning laws, or the laws, rules or restrictions imposed by any deed or the recorded plat of the Property. In the event of any conflict, the most restrictive provision of any such law, rule, regulation, deed, plat or these Covenants shall be taken to govern and control.

### ARTICLE III. ARCHITECTURAL CONTROL

- 3.01. Architectural Control Function.** In order to assure the development and continued maintenance and operation of the Property as a first-class residential neighborhood, no Improvement shall be commenced, erected, placed, maintained, moved onto or permitted to remain on any Lot, nor shall any existing Improvement upon any Lot be changed or altered in any manner, nor shall any new use be commenced on any Lot, unless plans and specifications including a site plan, grade plan and drainage plan therefore shall have been submitted to and approved in writing by the **Architectural Control Committee** who shall have complete control of all such matters and may approve or withhold approval on any basis deemed proper in the City's sole and absolute discretion.
- 3.02. Required Information.** Such plans, specifications, site plan, grade plan and drainage plan shall be in such form and shall contain such information as may be required by the City or Architectural Control Committee in its sole discretion. The City shall have the absolute right at any time and from time to time to delegate such architectural control function to any other person(s) or entity(ies).
- 3.03. No Liability, Reliance on Decisions.** Neither the City, nor any successor, assign, agent, employee, representative or other person or entity to whom such architectural control function has been delegated nor the Architectural Control Committee shall be liable to any Owner or other person or other entity for any claims, damages or causes of action arising from or in any way out of performance or nonperformance of the architectural control function including, by way of illustration and not limitation, the failure, refusal or neglect to approve any plans and specifications submitted. Any architectural control decision shall be final and conclusive but only to the unique facts and circumstances presented to the Architectural Control Committee upon submission of plans and specifications for approval. No decision of the Architectural Control Committee may be relied upon as precedent or approval, explicit or implied, of any other improvement, whether or not such Improvement approved by the City or the Architectural Control Committee and any commencement, erection, placement or maintenance of an Improvement in reliance upon a previously approved or existing Improvement within the Property without written approval of the City or the Architectural Control Committee shall be at the Owner's own risk.
- 3.04. Noncompliance.** If any Improvement shall be altered, erected, placed or maintained upon any Lot, or any use or new use commenced or maintained on any Lot, without approval of the Architectural Control Committee or otherwise in accordance with the plans and specification approved pursuant to the provisions of this Article, such alteration, erection, maintenance, use or new use shall be deemed to have been undertaken in violation of these Covenants and without the approval required herein, and upon written notice, any such Improvements so altered, erected, placed or maintained upon any Lot in violation hereof shall be removed or re-altered, and any such use or new use shall be terminated so as to extinguish such violation. In the event the Owner of the Lot upon which such violation(s) exist(s) shall not have taken reasonable steps toward the removal or termination of the same within ten (10) days after the notice of such violation(s), the City shall have the right to take such steps as may be necessary to abate such violation(s) including but not limited to the enforcement of these Covenants by court order for the removal or termination of such violation(s), and costs, in

proceedings in any court in Harper County, Kansas, having jurisdiction of such suits and collection of all costs to extinguish such violation including but not limited to filing, attorneys fees and interest.

In addition to, or as an alternative to the above paragraph, the City may exercise its enforcement powers as a municipal government when a violation is determined to also be in violation of any section of the City Code of the City of Anthony, Kansas.

#### ARTICLE IV. ENFORCEMENT

- 4.01. Right to Enforce.** The City or any Owner shall have the right to enforce, by any proceeding at law or in equity, all covenants, conditions and restrictions now or hereafter imposed by the provisions of these Covenants including the authority to commence and maintain an action to enjoin any breach or threatened breach of any of the provisions hereof, and to pay all costs, subject to reimbursement, of any such action or other enforcement procedure. ~~The City, its successors or assigns in their sole discretion, shall determine compliance with these Covenants, for so long as the City, its successors or assigns own at least one (1) Lot in the Development, and~~ *I struck through this section about the city owning a lot as that sounds more HOA Is it necessary, why wouldn't our enforcement continue even after we do not own a lot?* in the event a Lot is not in compliance within fifteen (15) days of notice of non-compliance to the Owner of such Lot, said Owner shall pay damages in accordance with Section 4.05 below.
- 4.02. Waiver.** Failure by the City or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- 4.03. Attorneys' Fees and Costs.** The City or any Owner shall have the right to include in such claim for relief a reasonable sum for attorneys' fees and all other expenses reasonably incurred in enforcing the rights, terms, provisions, covenants and restrictions hereunder.
- 4.04. Notice of Non-Compliance and Hearing.** Upon receipt of an allegation of a Lots' non-compliance under Article II. Use, Occupancy and Conduct Restrictions, the City shall review the allegation and determine if action is necessary. If the City determines that action is necessary, the Owner of the lot shall be notified in writing of the allegation and the Owner shall have fifteen (15) days to request a hearing with the City to dispute the allegations. If the owner fails to respond to the notification, or after a hearing, the City determines **the allegation has merit**, the City shall notify the Owner in writing of the City's determination of non-compliance.
- 4.05. Damages for Breach of Covenants.** In the event the Lot is not in compliance within fifteen (15) days of the notice of non-compliance, the Owner shall pay the City an amount equal to \$50 multiplied by the number of days of non-compliance from the date of notice of non-compliance, not to exceed \$500.00 per month of non-compliance, not as a penalty but as liquidated damages for the Owner's breach of these Covenants. Such amount due shall become a lien on the Lot as soon as it is due and payable; provided, however, such lien shall be inferior or subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on the Lot. In the event of the Owner's failure to pay the amount due within thirty (30) days from the date levied, then such amount due, from the thirtieth (30<sup>th</sup>) day after levy shall bear interest at the maximum rate of interest then allowed in Kansas on judgments. The liquidated damages provisions of this Section 4.05 shall be in addition to, not in lieu of, the right of the City to enforce, by any proceeding at law or in equity, all covenants, conditions and restrictions per section 4.01 of these Covenants.

#### ARTICLE V. RIGHTS AND POWERS OF THE CITY

- 5.01. **Assignment and Delegation.** The City shall have all rights and powers to assign and/or delegate, at any time and from time to time, all or any party of any of the rights, powers and authority contained in these Covenants for so long as the City owns at least one (1) Lot in the Development.
- 5.02. **Removal of Land.** The City shall have the absolute right at any time and from time to time to waive or modify any or all of the covenants, conditions and restrictions of these Covenants as to any undeveloped Lot or Lots owned by the City by executing and filing a document of record with the office of the Register of Deeds of Harper County, Kansas, describing such waiver or modification and describing the Lot or Lots to which such waiver or modification applies.

**ARTICLE VI. COVENANTS RUNNING WITH THE LAND**

The covenants, conditions and restrictions of these Covenants shall be deemed to be covenants running with the land and shall be binding upon and run with the Property and shall be binding upon all Owners of any part or portion thereof, along with all successors, assigns, grantees or purchasers of any part or portion of Lot, including under any deed, grant, escrow, contract of sale, device or lease.

**ARTICLE VII. AMENDMENT**

- 7.01. **Amendment by City.** Until such time as the City owns no Lot in the Property, the City shall have the absolute right to amend these Covenants by recording a written Amendment in the office of the Register of Deeds of Harper County, Kansas; provided, however, that no such Amendment shall materially affect any rights of the then existing mortgage holders.
- 7.02. **Other Amendment.** After the City owns no Lot in the Property, these Covenants may be amended only by recording a written Amendment in the office of the Register of Deeds of Harper County, Kansas, signed by sixty-seven percent (67%) of Owners of Lot(s) in the Property who have title deed to the lot and a completely constructed Residential Dwelling.  
*These two sections are very HOA language. Who does the city want to have authority to amend the restrictive covenants? The city only or the city and owners later by majority vote?*

**ARTICLE VIII. MISCELLANEOUS**

- 8.01. **Term.** The covenants, conditions and restrictions of these Covenants shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the City or the Owner of any Lot and their respective legal representatives, heirs, successors, assigns and grantees, for a term of thirty-five (35) years from the date of recording hereof, after which time the covenants, conditions and restrictions hereof shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the Owners of a majority of the Lots by number according to the recorded plat and any amendments thereto, has been recorded, agreeing to abolish or change these covenants, conditions and restrictions in whole or in part.
- 8.02. **Severability.** All of the restrictions, conditions and covenants contained in these Covenants shall be construed together, but if it shall at any time be held that any one or more of such restrictions, conditions or covenants, or any part thereof, is invalid or for any reason becomes unenforceable, no other restriction, condition, covenants, reservation or any part thereof, shall be affected or impaired.
- 8.03. **Construction and Interpretation.** In constructing, interpreting and applying the provisions of these

Covenants, they shall be held to be minimum requirements adopted for the promotion of the health, safety, comfort, convenience and general welfare of the Owners of the Property. It is not the intent of these Covenants to interfere with any provisions of any law or ordinance or any rules, regulations or permits previously adopted or issued pursuant to law relating to the use of buildings or premises; nor is it the intention of these Covenants to interfere with or abrogate or annul easements, covenants or other agreements between parties; provided, however, that where these Covenants impose a greater restriction upon the use or occupancy of any Lot or upon the construction of buildings or Improvements, or in connection with any other matters that are imposed or required by such provisions of law or ordinances or by such rules, regulations or permits, or by such covenants, easements and agreements, then **in that** case the provisions of these Covenants shall control.

- 8.04. Waiver and Exception.** The failure by the City or of any Owner to enforce any of the restrictions, conditions, covenants or reservations to which the Property or any part thereof is subject, shall in no event be deemed a waiver of the right to do so thereafter or to enforce any other restriction, condition, covenant or reservation.
- 8.05. Mortgage Protection Clause.** No breach of the covenants, conditions or restrictions herein contained nor the enforcement of any provisions herein, shall defeat or render invalid the lien of any Mortgage made in good faith and for value, but all of these covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure sale or deed in lieu thereof.

IN WITNESS WHEREOF, the City has set its hand.

"DEVELOPER"

**CITY OF ANTHONY**

By: \_\_\_\_\_  
**Greg Cleveland, Mayor**

Attest: \_\_\_\_\_  
Cyndra Kastens, City Clerk

STATE OF KANSAS, COUNTY OF ANTHONY, ss:

This instrument was acknowledged before me on \_\_\_\_\_, 2024, by **the**  
**Governing Body of the City of Anthony**, Kansas.

My appointment expires:

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

**EXHIBIT A**  
**LEGAL DESCRIPTION OF DEVELOPMENT**

The following described real estate in the City of Anthony, Anthony County, Kansas, together with public rights-of-way adjacent thereto: