

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF SUNRISE 2ND ADDITION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SUNRISE 2ND ADDITION ("Declaration") is made this ___ day of _____, 2024, by THE CITY OF ANTHONY, KANSAS ("City").

WHEREAS, City is the owner of the following-described real property located in Harper County, Kansas (the "Property"):

Lots 1 through 16 Block 5 Sunrise 2nd Addition to City of Anthony, Harper County, Kansas, being part of the Northwest Quarter (NW/4) of Section 12, Township 32 South, Range 7 West of the 6th P.M., as set forth on Final Plat of Sunrise 2nd Addition Anthony recorded in the office of the Register of Deeds of Harper County, Kansas on _____, 202_ in Book ___ at Page ___, Plat Book "___" at page _____ (the "Plat");

WHEREAS, City deems it desirable to adopt and establish covenants, conditions, and restrictions for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property; and

NOW, THEREFORE, City hereby covenants, agrees, and declares that Lots 1 through 16 in Block 5 located on the Property, shall be held, sold, and conveyed subject to the following covenants, conditions, and restrictions, which are hereby declared to be for the benefit of all of the Property described herein and the Owners thereof, their successors, and assigns, and which are hereby deemed to be covenants, conditions, and restrictions running with the land.

ARTICLE I DEFINITIONS

The following terms used in this Declaration shall have the meanings set forth below:

1.01. City. “City” shall mean and refer to the City of Anthony, Kansas, and its successors and assigns.

1.02. Committee. “Committee” shall mean the Special Housing Committee (SHC) appointed by the Governing Body of the City of Anthony, Kansas. In the event the SHC ceases to exist, the “Committee” as used herein shall mean the Commission or such committee appointed by the Commission and vested with the rights and obligations currently vesting in the Committee. The Committee shall serve as the Architectural Control Committee provided for in Section 2.01 below.

1.03 Commission. “Commission” shall mean the Governing Body of the City of Anthony, Kansas

1.04. Declaration. “Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions of Sunrise 2nd Addition, as it may be amended from time to time.

1.05 HOA. “HOA” shall mean any homeowners’ association organized in accordance with Article VI below.

1.06. Improvement. “Improvement” shall mean and include, without limitation: (a) the construction, installation, alteration or expansion of any permanent or temporary building, structure, use or other improvement on a Lot, including without limitation houses, storage sheds, utility facilities, fences, recreational equipment, and any accessory use or structure; (b) the destruction by voluntary action or abandonment of any building, structure or other improvement on a Lot; (c) the excavation, filling or similar disturbance or change in elevation of the surface of the land on a Lot; and (d) any change or alteration in any previously approved Improvement, including without limitation any change of color, texture or exterior appearance.

1.07. Lot. “Lot” shall mean and refer to any parcel of the Property shown as Lots 1-16, Block 5 on the Plat and identified thereon as a lot or site

1.08. Owner. “Owner” shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot, or of an estate or interest most nearly equivalent to fee simple title; *provided, however*, that City shall not be deemed an “Owner” for purposes of this Declaration, except with respect to Section 7.07 hereof.

1.09. Planning Commission. “Planning Commission” shall mean the Planning Commission & Board of Zoning Appeals, City of Anthony, Harper County, Kansas.

1.10. Plat. “Plat” shall mean the Final Plat of Sunrise 2nd Addition, an Addition to the City of Anthony, Harper County, Kansas, recorded in the office of the Register of Deeds of Harper

County, Kansas on _____, 2024 in Book _____ at Page _____, Plat Book “__” at Page _____, as the same may be amended from time to time.

1.11. Property. “Property” shall mean the real property described in the recitals above.

1.12. Residential Dwelling. “Residential Dwelling” shall mean a primary single-family residence structure constructed or to be constructed on a Lot.

ARTICLE II ARCHITECTURAL CONTROL

2.01. Architectural Control. Architectural control will be governed by the Committee. The Committee shall serve unless and until it assigns such **responsibility to an HOA.**

2.02. Approval of Improvement. Prior written approval must be obtained from the Committee for any Improvement. The Committee shall have complete discretion to approve or disapprove any Improvement; provided, however, that the party seeking an Improvement must obtain appropriate permits from the City of Anthony, if the change is one that requires any permit, in addition to the approval of the Committee. The Committee shall exercise such discretion with the following objectives in mind, among others: (a) to carry out the general purposes expressed in this Declaration; (b) to prevent violation of any specific provision of this Declaration; (c) to prevent any change which would be unsafe or hazardous to any persons or properties; (d) to minimize obstruction or diminution of the view of others; (e) to preserve visual continuity and to prevent any marked or unnecessary transition between improved and unimproved areas; (f) to assure that any change will be of good and attractive design and in harmony with development on other portions of the property; and (g) to assure that materials and workmanship for all improvements are of high quality, comparable to other improvements in the area. After approval of the Committee of any proposed Improvement, the improvement shall be accomplished as promptly and diligently as possible, in complete conformity with the description of the proposed Improvement, and with any plans and specifications therefor approved by the Committee. Failure to complete the improvement within one year after the date of approval or to complete the proposed improvement strictly in compliance with the description thereof and the plans and specifications therefor shall operate automatically to revoke the approval of the proposed Improvement, and, upon demand by the Committee, the property shall be restored as nearly as possible to its state existing prior to any work in connection with the proposed change. The Committee shall have the right and authority to record a notice to show that any particular Improvement has not been approved or that any approval given has been revoked.

2.03. Access and Inspection. An agent, authorized by the City, may at reasonable times enter upon and inspect any Lot or any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of structures thereon are in compliance with the provisions hereof, and neither the City nor any agent thereof shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

2.04. 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 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 this Declaration 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 Committee 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 this Declaration by court order for the removal or termination of such violation(s), and costs, in proceedings in any court in Anthony County, Kansas, having jurisdiction of such suits and collection of all costs to extinguish such violation including but not limited to filing fees and other court costs, attorneys' fees, and interest on such costs.

In the event the Owner of the Lot fails to take reasonable steps toward removal or termination of the violation within ten (10) days, the Owner shall pay the City an amount equal to Fifty Dollars (\$50) multiplied by the number of days of non-compliance from the date of notice of non-compliance, not to exceed Five Hundred Dollars (\$500.00) per month of non-compliance, not as a penalty but as liquidated damages for the Owner's breach of this Declaration. 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 (30th) day after levy, shall bear interest at the maximum rate of interest then allowed in Kansas on judgments under Chapter 61. The liquidated damages provisions of this Section 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 this Declaration.

In addition to, or as an alternative to the above paragraphs, 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.

2.05. Nonliability. No member of the Committee, or any agent thereof, shall be liable to any Owner or to any person, firm, corporation or other entity for any damages arising from any performance or non-performance of any duties or functions under this Article II.

ARTICLE III GENERAL COVENANTS AND RESTRICTIONS

The following covenants and restrictions shall apply to all Lots:

3.01. Minimum Size of Dwelling. No Lot shall have more than one Residential Dwelling located thereon. The main floor living area of the Residential Dwelling shall contain finished square footage of no less than one thousand two hundred (1,200) square feet. Garages, process, breezeways and patios are not included in the calculation of finished square footage. The Residential Dwelling shall be site-built.

3.02. Garages, Driveways and Accessory Structures. All Residential Dwellings shall have a minimum of a two-car attached 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. Any variation of this requirement must be approved in writing by unanimous consent of the Committee.

Accessory buildings may be built in the rear yard of the residence, and its size, design, and location shall be subject to review and approval of the Committee. One accessory building may be allowed to be constructed with living quarters for human habitation subject to code provisions for this purpose.

If fencing is desired, the fence shall be of wood, polyvinyl, wrought iron, or chain-link construction, and shall not exceed six feet in height. No fence is allowed in front of the residential structure.

3.03. Site Plan. A site plan must be provided to the Committee for review and approval as a condition to the issuance of any initial city permits. The site plan shall be 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 construction drawings or other such drawings as determined by the Committee, and shall include a description of building products to be used and color scheme. **No lot shall be developed greater than 50% etc..??**

3.04. Residential Structure Set Back Line. All residential structures shall be constructed so the front of home is facing east and begins 50' west the east property line.

3.05. Landscaping. Upon completion of a Residential Dwelling on a Lot or as soon as practicable and appropriate thereafter, Owner shall plant or sod a lawn of fescue grass or such other grass species or blend approved by the Committee on the entire Lot excluding the areas on which approved improvements are constructed.

3.06. Drainage. Upon completion of any Residential Dwelling on a Lot, Owner shall cause such Lot to be graded in strict compliance with the approved drainage plan and standards concerning water drainage from such Lot to other Lots and/or the City right-of-way or reserved areas identified on the plat.

3.07. 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 Committee.

3.08. Prohibited Improvements and Uses. No box car, shipping container, trailer, trailer house, mobile home, modular home, used home, secondhand home or previously constructed building or outbuilding (does not include pre-manufactured accessory structures) may be moved, placed, parked or used, upon the Property or 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 Committee, may be used at any time for human habitation or 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), poles, towers or wires shall be erected or maintained on the Property.

3.09. 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 or on the Property except 1) in appropriate trash containers, or 2) during approved construction. 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 this Declaration.

3.10. 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 Committee may be used for a model home.

3.11. Licensed Contractor. All Residential Dwellings and improvements constructed upon a Lot shall be constructed by a contractor licensed by the City and expressly approved by the City prior to or at the time of approval of plans by the Committee.

3.12. Exterior Color Schemes. All initial exterior color schemes shall be approved in advance by the Committee. Approval shall not be unreasonably withheld.

3.13. Each Owner shall keep all Lots owned by him or her and all improvements therein or thereon, in good order and repair, including but not limited to the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. If in the opinion of the Committee, any Owner fails to perform the duties imposed by the preceding sentence, the Committee, after fifteen (15) days written notice to such Owner to remedy such default, shall have the right, through its agents and employees, to enter upon the Lot or Lots involved and to repair, maintain, repaint and restore such Lot or Lots or such improvements and the cost thereof shall be a binding personal obligation of such Owner and shall be a lien on the Lot or Lots affected thereby.

3.14. Lot Split. No Lot shall be split, divided or sub-divided.

3.15 Utilities. All utilities shall be underground.

3.16. Antennas. There shall be no external antennas allowed on any Lot.

3.17. Pipes. No water pipe, gas pipe, sewer pipe or drainage pipe shall be installed or maintained on any Lot above the surface of the ground.

3.18. Leasing Restrictions. No owner of a Lot shall rent or lease such Lot or any portion of a Lot for business activities, speculative investment or short-term rentals, including but not limited to “Airbnb”, “Vrbo” or similar short-term rental companies

3.19. Solar Panels. Solar panels shall only be installed on the rear portion of the roof of the Residential Dwelling, not visible from the front of the Residential Dwelling..

3.20. 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.

4.21. Mowing. Each Owner shall maintain, mow and keep in good repair and condition all drainage channels and basins located on any Lot owned by such Owner.

ARTICLE IV INTERPRETATION OF RESTRICTIONS

The provisions of this Declaration shall in no way be deemed to permit any action or thing prohibited by the applicable zoning laws, or the laws, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, deeds, leases or this Declaration shall be taken to govern and control.

Where this Declaration imposes a greater restriction upon the use or occupancy of any residence site or upon the construction of buildings or structures, or in connection with any other matters that are imposed or required by such provisions of law or ordinance or by such rules, regulations or permits, or by such covenants, easements and agreements, then, in that case, the provisions of this Declaration shall control.

ARTICLE V EASEMENT AND ACCESS CONTROL

5.01. Public Utility and Easement Dedication. Easements for the installation and maintenance of all public utilities on Lots subject to this Declaration are dedicated as shown on the Plat.

**ARTICLE VI
HOMEOWNERS' ASSOCIATION**

The Owners may, upon the affirmative vote of Owners owning at least twelve (12) Lots, organize a homeowners' association (an "HOA") pursuant to and in accordance with the provisions of The Kansas Uniform Common Interest Owners' Bill of Rights, K.S.A. § 58-4601 *et seq.*, and other applicable law. Upon the organization of an HOA, the HOA or committee thereof shall become the Committee for purposes of this Declaration, and the City may assign and transfer any or all other rights and powers of the Committee provided for in this Declaration and any modification or amendment hereof to the HOA. Upon the effective date of such assignment, City shall be released of any and all liabilities of whatever nature arising out of acts or omissions prior to the effective date of the assignment.

**ARTICLE VII
MISCELLANEOUS**

7.01. Provisions Binding on Grantees. City and each grantee hereafter of any part or portion of the Property covered by this Declaration, and any purchaser under any grant, contract of sale or lease covering any part or portion of such Property, accepts the same subject to all of the restrictions, liens and charges and the jurisdiction rights and powers provided for in this Declaration.

7.02. Construction and Validity of Restrictions. All of the restrictions, conditions, covenants, reservations, liens and charges contained in this Declaration shall be construed together, but if it shall at any time be held that any one or more of such restrictions, conditions, covenants, reservations, liens or charges, or any part thereof, are invalid or for any reason become unenforceable, no other restriction, condition, covenant, reservation, lien or charge, or any part thereof, shall be affected or impaired.

7.03. Waiver and Exceptions. The failure by City, any Owner and any other person to enforce any of the restrictions, conditions, covenants, reservations, liens or charges 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, reservation, lien or charge.

7.04. Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the City, Committee and the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty-five (35) years from the date hereof, and thereafter until abolished by the recording of an instrument signed by the City or the Owners of not less than seventy-five percent (75%) of the Lots in the office of the Register of Deeds of Harper County, Kansas, abolishing this Declaration, conditions and restrictions, provided the City no longer has ownership of any lots.

7.05. Amendments. Any provision contained in this Declaration may be amended or repealed, or additional provisions added to this Declaration, by the recording of a written instrument or instruments specifying the amendment or repeal, executed by the City or by the Owners of not less than seventy-five percent (75%) of the Lots; provided, that so long as City owns one (1) Lot, any such instrument or instruments drafted by Owners shall require the written consent of City, and further provided that no amendment materially impairing the rights of any mortgagee shall be binding on such mortgagee unless consented to in writing by such mortgagee.

7.06. Mortgage Protection Clause. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any mortgage made in good faith and for value, but all of this Declaration, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure sale or deed in lieu thereof.

7.07. Enforcement. The covenants set forth herein shall run with the land and bind the present Owner, its successors and assigns, and all parties claiming by, through or under it, and shall be taken to hold, agree and covenants with the Owner of each lot, its successors and assigns, and with each of them, to conform and observe this Declaration and each and every term and condition hereof (but no restrictions herein set forth shall be personally binding upon any corporation, person or persons, except in respect to breaches committed during its, his or their title to said land), and the HOA, the Committee or the Owner or Owners of any of the Lots shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the terms and conditions set forth herein, in addition to ordinary legal action for damages. The party bringing such enforcement action shall have the right to recovery of its attorneys' fees, court costs, and all other expenses reasonably incurred in enforcing the rights, terms, provisions, covenants and restrictions hereunder.

7.09. Governing Law; Jurisdiction and Venue. This Declaration is governed by the laws of the State of Kansas, and the District Court of Harper County, Kansas shall have exclusive jurisdiction of any action to enforce the provisions of this Declaration, to interpret the provisions of this Declaration, or otherwise arising under or related to this Declaration. Each Owner agrees that venue is proper in the District Court of Harper County, Kansas for any such action.

IN WITNESS WHEREOF, City has executed this Declaration as of the date first written above.

CITY OF ANTHONY, KANSAS

By _____
Gregory Cleveland, Mayor

Attest: _____
Cyndra Kastens, City Clerk

STATE OF KANSAS)

) SS.

COUNTY OF HARPER)

This instrument was acknowledged before me on this _____ day of _____, 2024, by Gregory Cleveland, Mayor and Cyndra Kastens, Clerk of the City of Anthony, Kansas, on behalf of said City.

Name:

Notary Public

My appointment expires: