

REAL PROPERTY DONATION AGREEMENT

THIS AGREEMENT (this "Agreement") is entered into this ___ day of June, 2024, between **K-FRANS LLC**, a Missouri limited liability company ("Donor"); and **THE CITY OF WESTWOOD, KANSAS**, a political subdivision of the State of Kansas ("Westwood"),

W-I-T-N-E-S-S-E-T-H:

WHEREAS, Donor owns real property located at 2322 West 51st Street, Westwood Kansas (identified as Kansas Uniform Parcel No. RP300000010011, Quick Ref R168896 and legally described as:

- All of Lot 11, Block 1, KLASSEN PLACE, a subdivision in the City of Westwood, Johnson County, Kansas, according to the recorded plat thereof -

(the "Property"); and

WHEREAS, the Property comprises a single-family home together with a paved driveway and other improvements (collectively, the "Improvements") located on .48 acres of land; and

WHEREAS, the Property is subject to that certain Residential Lease Agreement, dated as of October 31, 2023 (the "Gaar Lease", a true and complete copy of which is annexed hereto as **Exhibit "A"**), among Donor, as lessor, Joanne M. Gaar ("Joanne Gaar") , as lessee, and the Joanne Maureen Gaar Trust 11-1-94 (the "Gaar Trust"), as guarantor; and

WHEREAS, Westwood owns neighboring lands which Westwood will be developing into a municipal park (the "City Park"); and

WHEREAS, Donor wishes to donate the Property, subject to the Gaar Lease, to Westwood, all on the terms and conditions set forth herein.

NOW, THEREFORE, Donor and Westwood hereby agree as follows.

1. **Donation.** Not later than June 30, 2025 (the "Donation Deadline"), Donor shall to make a donation (the "Donation"), to Westwood, of the Property, subject, however, to the Gaar Lease if the Gaar Lease shall then be in effect and shall not have been sooner terminated pursuant to its terms.
2. **Restricted Use of the Property.** Donor intends the Property shall be used strictly and exclusively, by Westwood, as part of the City Park; provided, however, that during the term of the Gaar Lease (the "Gaar Lease term", which corresponds, more or less, to the life of Joanne Gaar and which may be sooner terminated according to its terms and conditions), Joanne Gaar shall be entitled to the exclusive use and possession of the Property.
3. **Closing; Inspection Period.**
 - 3.1 The consummation of the transaction contemplated hereby (the "Closing") shall take place at 10:00 a.m. at the offices of First American Title Insurance Company, 1100 Main Street, Suite 1900, Kansas City, Missouri 64105 (the "Title Company") on a business day (the "Closing Date") selected by Donor and which is not later than the Donation Deadline. Donor shall notify Westwood of the Closing Date not later than five (5) business days prior to the Closing Date.
 - 3.2 Westwood and its agents, contractors and invitees may enter onto the Property from time to time through Closing for the purpose of inspecting the Property and for making such investigations and tests as Westwood may require, subject, however, to Sections 3.2.1 and 3.2.2 hereof.
 - 3.2.1 Westwood acknowledges the terms and conditions of the Gaar Lease and further acknowledges that during the Gaar Lease Term, Joanne Gaar may refuse to allow Westwood to inspect or even to enter upon the Property.
 - 3.2.2 In the event that, during the Gaar Lease Term, Joanne Gaar shall grant Westwood permission to enter onto the Property from time to time through Closing for the purpose of inspecting the Property, Westwood shall take such steps as are necessary to respect Joanne's right of quiet enjoyment of the Property.

- 3.3** Westwood shall in any event indemnify and hold Donor harmless from and against any injury to persons or damage to property arising from any investigations of the Property conducted by Westwood or by its agent or contractors.
- 3.4** In the event that Westwood shall determine that Westwood does not wish to accept the donation of the Property, then Westwood shall provide written notice to Donor of its termination of this Agreement (“Westwood’s Termination Notice”) not later than 5:00 p.m. local time on June 27, 2025. Notwithstanding anything to the contrary contained in Section 16 hereof, Westwood's Termination Notice may be given by fax to 816-221-4494, attention: Neil D. Karbank, Esquire, and by email to nk@karbank.com, to Mr. Steven Karbank at sk@karbank.com and to Adam Feldman, Esquire, at af@karbank.com, stating that this Agreement is terminated. In the absence of the timely delivery of Westwood's Termination Notice, the inspection condition set forth in Section 3.2 hereof shall be deemed satisfied.
- 3.5** In the event that Westwood shall not timely give Westwood’s Termination Notice and Donor does make the Donation, then Westwood shall be deemed to have elected to accept the Property in absolutely “AS IS” condition, with all its faults, and subject to the Gaar Lease and to all other Permitted Exceptions (as defined in Section 5.1.1 hereof).

4. Warranties, Representations and Covenants.

- 4.1** Donor represents and warrants to and covenants and agrees with Westwood the following as of the date of this Agreement, except where specific reference is made to another date or dates, in which case such date or dates will be applicable hereunder:
- 4.1.1** Donor is a limited liability company, organized and in good standing under the laws of the State of Missouri and qualified to do business in the State of Kansas.
- 4.1.2** All necessary action has been taken by Donor with respect to the execution and delivery of this Agreement and the performance by Donor of its obligations hereunder.
- 4.1.3** This Agreement has been executed and delivered by Donor and constitutes Donor’s valid and binding agreement, enforceable in

accordance with its terms, and there are no consents of any third party required for the consummation of the transaction contemplated herein.

- 4.1.4** Except with respect to a management agreement (together, the "KREC Agreement") with Karbank Real Estate Company LLC, which is terminable at Closing and which Donor shall terminate at Closing, Donor is not a party to any management or service agreement concerning the Property or to any agreement under which any brokerage commission or finder's fee is payable in connection with the conveyance of all or any part of the Property.
- 4.1.5** Donor has good, marketable and insurable fee simple absolute title to, and is the owner of, the Property, and Donor's ownership of the Property is free and clear of all liens, claims, encumbrances, covenants, conditions, rights-of-way, easements and any other matters affecting title except for the Gaar Lease, matters of record and real estate taxes not yet due and payable.
- 4.1.6** There are no rights or options to purchase all or any part of the Property, and there are no options to lease, license or use all or any part of the Property.
- 4.1.7** To Donor's actual knowledge, there are no actions, suits, proceedings, orders, writs, judgments, rulings, decrees or injunctions, governmental or otherwise, pending or threatened against or affecting the Property, and there are no actions, suits or proceedings pending, contemplated or threatened by Donor in connection with the Property including, without limitation, tax reduction proceedings.
- 4.1.8** Except with respect to any service or utility agreements undertaken by Joanne Gaar or by the Gaar Trust, Donor is not aware of any service agreements which affect the Property. From and after the date hereof, Donor will not enter into any service agreement pertaining to all or any part of the Property which cannot be cancelled effective as of the Closing Date.
- 4.1.9** Donor has no knowledge of any pending or contemplated condemnation of the Property or any part thereof.

4.1.10 Pursuant to the Gaar Lease, Joanne Gaar is now maintaining and shall maintain until Closing "replacement cost" fire and extended coverage insurance on the Property as well as liability coverage for acts or omissions in connection with the use, ownership or operation of the Property.

4.2 Westwood represents and warrants to and covenants and agrees with Donor the following as of the date of this Agreement:

4.2.1 Westwood is a municipal corporation and is a political subdivision of the State of Kansas, duly organized, validly existing and in good standing as a City of the Third Class under the laws of the State of Kansas.

4.2.2 All necessary action has been taken by Westwood with respect to the execution and delivery of this Agreement and the performance by Westwood of its obligations hereunder.

4.2.3 This Agreement has been executed and delivered on behalf of Westwood and constitutes the valid and binding agreement of Westwood, enforceable in accordance with its terms, and there are no consents of any third party required for the consummation of the transaction contemplated herein.

4.2.4 The person executing this Agreement on behalf of Westwood is duly authorized to execute and deliver this Agreement, and Westwood intends to be bound by this Agreement's terms and conditions.

4.2.5 Westwood's use of the Donation is and shall be solely and exclusively for public purposes and uses and not for any private purpose or use.

4.2.6 Westwood acknowledges that except as provided in Section 4.1 hereof, **(a)** Donor has made no representations or warranties of whatever kind or nature about the Property, **(b)** Donor has made no representation or warranty whatever about the Property's condition, fitness for any particular use, value or otherwise and **(c)** in connection with its purchase of the Property, Westwood is relying solely upon its own judgment and the judgment of its own experts and whatever investigations of the Property that Westwood has

elected to perform in determining whether or not to accept the Donation.

5. Title; Survey.

5.1 Title Commitment. Attached as **Exhibit "B"** hereto is a commitment for an owner's policy of title insurance issued by the Title Company (the "Title Commitment"), together with complete and legible copies of all instruments listed as exceptions therein.

5.1.1 Donor shall donate the Property to Westwood subject to the Gaar Lease, to real estate taxes and assessments outstanding against the Property, to Title Commitment exceptions _____, to any matters caused or suffered by Westwood or by its agents or invitees and to any matters, to any matters cause by Joanne Gaar or by the Gaar Trust and to any matters which an accurate survey of the Property would show (collectively, the Permitted Exceptions"). Any matter which Donor shall cause the Title Company to omit from the Title Commitment or the owner's title policy shall be deemed to be released.

5.1.2 Westwood shall have forty-five (45) days after it has received both the Title Commitment and the Survey (as defined in Section 5.2 hereof) to object to any matters excepted or referenced in the Title Commitment. Matters accepted by Westwood shall be deemed to be part of the Permitted Exceptions. Donor shall have twenty (20) days from the date of its receipt of Westwood's title objections (the "Title Curing Period") within which it shall take any reasonable actions as may be necessary to cure or remove any such defects or objections, at no cost or at nominal cost, and have an amended Title Commitment issued. Any such objection which may be cured at Closing by disbursement of funds may be so cured by Donor at Closing; provided, however, that Donor shall notify Westwood during the Title Curing Period of its intention to cure any defect or objection by disbursement of funds at Closing.

5.1.3 If defects or objections are not cured or removed to Westwood's satisfaction within the Title Curing Period, then Westwood shall have an additional ten (10) days in which to elect to terminate this Agreement by reason of such defects or objections. Alternatively, Westwood may, within such ten (10) day period, elect to accept such

title as Donor can convey. Notwithstanding the foregoing, if at or prior to Closing there is any defect or objection to title not set forth in the Title Commitment and of which Westwood is first made aware after Westwood's receipt of the Title Commitment, and if Westwood shall be unwilling to waive the same, Westwood shall notify Donor at or prior to Closing and Donor may (but need not) take such reasonable actions (at no cost or at nominal cost) as shall be necessary to remove such defects or objections. If such defects or objections are not cured or removed to Westwood's satisfaction within ten (10) days after Westwood's request that the same shall be removed (and if Donor shall not agree to cure such defect or objection by the disbursement of funds at Closing), then Westwood shall, for a period of ten (10) days thereafter, have the same rights with respect to such defect or objection and terminating this Agreement or closing title as are set forth above with respect to any such defect or objection appearing in the initial Title Commitment.

- 5.2** Survey. Annexed hereto as **Exhibit "C"** is that certain ALTA/NSPS Land Title Survey, dated September 7, 2023 (the "Survey"), prepared by George Butler Associates, Inc. Westwood may at its own expense purchase any update of the Survey or any new survey of the Property. Donor shall convey the Property to Westwood subject to the matters shown on the Survey and to any other matters that an accurate and current survey of the Property would show.

6. Condemnation and Casualty.

- 6.1 Condemnation.** If, at or before Closing, any condemnation proceeding affecting any part of the Property shall be commenced, then Donor shall give written notice of such condemnation proceeding within five (5) days of receiving notice thereof. In the event that such condemnation shall be completed prior to Closing, then Donor shall retain any proceeds paid to Donor as a result of such condemnation (and Donor shall, at Closing, convey to Westwood such interest in the Property that Donor owns at Closing). In the event that such condemnation shall not have been completed prior to Closing, then at Closing, Donor shall assign to Westwood all of Donor's rights to receive any condemnation proceeds in connection with such condemnation, and it is understood that no condemnation shall be grounds for cancellation of this Agreement by Westwood).

6.2 Casualty. If the Property shall be damaged by casualty, Donor (and not Westwood) shall be entitled to receive any insurance proceeds in connection with the casualty, and it is understood that no casualty shall be grounds for cancellation of this Agreement by Westwood.

7. Donor's Obligations at Closing. At Closing, Donor shall perform the following:

7.1 Execute, acknowledge and deliver to the Title Company a gift deed which conveys, to Westwood, fee simple title to the Property subject to the Permitted Exceptions.

7.2 If the Gaar Lease shall then be in effect, execute and deliver to Westwood and an assignment and assumption of the Gaar Lease in the form annexed hereto as **Exhibit "D"** (the "Lease Assignment")

7.3 Execute and deliver a quitclaim bill of sale in the form annexed hereto as **Exhibit "E"** conveying to Westwood all of the tangible personal property owned by Donor and which is a part of the Property.

7.4 Execute and deliver a "FIRPTA" certificate confirming that Donor is not a "foreign person" within the meaning of Sections 897 and 1445 of the Internal Revenue Code of 1986, as amended, and any rules, regulations and orders promulgated thereunder.

7.5 Execute and deliver Internal Revenue Service Form 8283 ("Form 8283") concerning "Noncash Charitable Contributions") concerning the Property.

7.6 Terminate the KREC Agreement.

7.7 Execute and deliver such customary miscellaneous closing documents as the Title Company may request.

8. Westwood's Obligations at Closing. At Closing, Westwood shall perform the following:

8.1 If the Gaar Lease shall then be in effect, execute and deliver to Donor the Lease Assignment.

8.2 Execute and deliver Form 8283 and the Donation Acknowledgement (as defined in Section 11.2 hereof) concerning the Property.

- 8.3 Execute and deliver such customary miscellaneous closing documents as the Title Company may request.
- 8.4 Execute, acknowledge, deliver and cause to be recorded in the Johnson County Kansas Register's Office (the "Register's Office") an instrument spreading, to the Property, the City Park Covenants (as defined in Section 11.1 hereof).

9. **Costs and Fees; Prorations.**

- 9.1 Westwood shall pay the cost of recording the deed as well as the cost of any update of the Survey, and Westwood shall pay the cost of its owner's (and if applicable, any lender's) title insurance policy and any endorsements. The parties shall split the Title Company's escrow fees for a standard, all-cash closing, and Westwood shall pay any additional escrow fees. Each party hereto will pay the fees and costs of its own counsel.
- 9.2 No rents are payable pursuant to the Gaar Lease, so there shall be no rents for the Property to be prorated between Donor and Westwood. All real estate taxes and assessments and all utilities as to the Property are payable by Joanne Gaar, so there shall be no proration of real estate taxes or utilities between Donor and Westwood, and if any delinquent taxes or assessments are due and payable with respect to the Property, then Donor's conveyance of the Property to Westwood shall be subject to such delinquent taxes or assessments.

10. **Notices.** Any notice, approval, request or consent required by or asked to be given under this Agreement shall be deemed to be given if in writing and mailed by restricted or certified or express United States mail, postage prepaid, or delivered by hand (including by any national recognized overnight delivery service or otherwise), and addressed as follows:

To Westwood:

City of Westwood, Kansas
Attn: Mayor
4700 Rainbow Boulevard
Westwood, Kansas 66205

With a copy to:

Ryan B. Denk, Esquire
McAnany, Van Cleave & Phillips, P.A.
10 E. Cambridge Circle Drive, Suite 300
Kansas City, Kansas 66103

To Donor:

c/o Karbank Real Estate Company LLC
2000 Shawnee Mission Parkway, Suite 400
Mission Woods, Kansas 66205
Attention: Adam Feldman, Esquire

With a copy to:

c/o Karbank Real Estate Company LLC
2000 Shawnee Mission Parkway, Suite 400
Mission Woods, Kansas 66205
Attention: Neil D. Karbank, Esquire

Each party may specify that notice be addressed to any other person or address by giving to the other parties ten (10) days prior written notice thereof.

11. Further Assurances; Donation Acknowledgement; Time of Essence.

- 11.1** In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by Donor and Westwood, each agrees to perform, execute and/or deliver any and all such further acts, deeds and assurances as may be reasonably required to assist or consummate the transactions contemplated hereby. Westwood shall fulfill its obligation to use the Property only as part of the City Park (pursuant to Section 2 hereof) by, among other things, subjecting the Property to any declaration of covenants or restrictions (the "Park Covenants") to which Westwood agrees and to which Westwood has subjected or has agreed to subject other lands comprising or to comprise all or part of the City Park.
- 11.2** Westwood shall, concurrently with Donor's making of all or part of the Donation, cause the acknowledgment form annexed hereto as **Exhibit "F"** (the "Donation Acknowledgement") to be executed and delivered, by Westwood to and for the benefit of each Donor which has made such portion of the Donations. The Donation Acknowledgement shall contain:

- Donor's name
- Westwood's name
- Westwood's tax identification number
- Confirmation that Westwood is a municipal corporation organized under Kansas law
- The dollar value of the Donation (as set forth on Form 8283) made by Donor and received by Westwood
- A statement that no goods or services were provided by the organization in exchange for or in connection with such Donation and that such Donation is strictly for a public purpose.

11.3 Time shall be of the essence as to Donor's and Westwood's obligations hereunder.

12. Successors and Assigns; Irrevocable Promises; Westwood's Reliance.

12.1 This Agreement shall bind and inure to the benefit of Donor and to Westwood.

12.2 Donors acknowledges that **(a)** its promise to make the Donation provided herein is irrevocable except as to the conditions set forth herein and that **(b)** Westwood is relying upon Donor's promise to make the Donation to Westwood, subject, however, to the terms and conditions set forth herein.

13. Miscellaneous.

13.1 Incorporation of Recitals. The recitals contained in the introduction to this Agreement are intended to provide the factual context for this Agreement and for the parties' respective performances hereunder.

13.2 Entire Agreement; Amendment; Severability. This Agreement embodies the entire agreement between the parties relative to the subject matter hereof and there are no oral or other agreements existing between the parties relative to the subject matter hereof which are not expressly set forth herein and covered hereby. This Agreement may be amended only by an instrument in writing signed by the parties hereto. The invalidity or unenforceability of any term or provision of this Agreement or the non-application of such term or provision to any person or circumstance shall not impair or affect the remainder of this Agreement, and its application to other persons and circumstances and the remaining terms and provisions hereof shall not be invalidated but shall remain in full force and effect.

13.3 Cumulative Rights; No Waiver. The rights and remedies of each party hereto, as well as those provided or accorded by law, shall be cumulative, and none shall be exclusive of any other rights or remedies hereunder or allowed by law. A waiver by either party hereto of any breach or breaches, default or defaults by the other party hereto shall not be deemed or construed to be a continuing waiver of such breach or default nor as a waiver of or permission, expressed or implied, for any subsequent breach or default.

13.4 Applicable Law and Venue; Attorneys' Fees and Costs. This Agreement shall be deemed to be entered into in the State of Kansas, and shall be construed in accordance with the local laws of the State of Kansas. The sole and exclusive venue for any legal action based upon or in any way relying upon this Agreement shall be in the District Court of Johnson County, Kansas. This Agreement shall be enforceable by one or more actions for damages or for specific performance, in which event the bond required for any action for injunctive relief shall be One Thousand (\$1,000.00) Dollars in cash. In the event of litigation seeking the enforcement or interpretation of this Agreement, the party prevailing in litigation shall be entitled to receive from the non-prevailing party or parties the prevailing party's or parties' reasonable attorneys' fees and costs for such enforcement or interpretation.

13.5 Counterparts; Facsimile Execution and Delivery. This Agreement may be executed in several counterparts (including by facsimile or electronic signatures), each of which is deemed an original. Such counterparts shall, taken together, constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

K-FRANS LLC

By: _____
Adam Feldman, an Authorized Representative

CITY OF WESTWOOD, KANSAS

By: _____
David E. Waters, Mayor

ATTEST:

By: _____
Abby Schneweis, City Clerk

APPROVED AS TO FORM:

By: _____
Ryan Denk, City Attorney

Table of Exhibits

- Exhibit A: Gaar Lease
- Exhibit B: Title Commitment
- Exhibit C: Survey of the Property
- Exhibit D: Lease Assignment
- Exhibit E: Bill of Sale
- Exhibit F: Donation Acknowledgment Form