

**SECOND AMENDMENT TO
FUNDING AND EXCLUSIVE RIGHTS AGREEMENT**

THIS AGREEMENT, made as of June __, 2024 (this “Agreement”), between **KARBANK HOLDINGS LLC**, a Delaware limited liability company (“Developer”); and **CITY OF WESTWOOD, KANSAS**, a political subdivision organized and existing under the laws of the State of Kansas (“Westwood”),

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

WHEREAS, pursuant to that certain Funding and Exclusive Rights Agreement, dated March 9, 2023 (as amended December 1, 2023, the “Funding Agreement”), between Developer and Westwood, Westwood and Developer undertook certain obligations in connection with the planning, zoning, subdivision and certain matters concerning certain parcels of real property (the “Property”) described in the Funding Agreement and located on or near Rainbow Boulevard between 50th and 51st Street in Westwood, Kansas (such activities are collectively the “Project”); and

WHEREAS, pursuant to Section 5 of the Funding Agreement, as amended, the Funding Agreement’s term (the “Term”) shall expire on September 9, 2024 (the “Expiration Date”); and

WHEREAS, one or more citizens of Westwood have sought, in Johnson County, Kansas District Court case #24CV272 and in Kansas Court of Appeals case 24-127371-A (collectively with any subsequent appeal or proceeding, the “Litigation”) to prohibit Westwood from conveying, to Developer, a portion of the Property known as the “Joe Dennis Parcel”, and the Litigation has in fact impaired Westwood’s ability to convey, to Developer, marketable fee simple title to the Joe Dennis Parcel; and

WHEREAS, because the Litigation has delayed the Project, Developer and Westwood wish to revise certain dates contained in Funding Agreement so that the Project can proceed once the Litigation has been terminated and Westwood is able to convey, to Developer, the Joe Dennis Parcel; and

WHEREAS, Sections 2 and 3 of the Funding Agreement provide for Developer’s payment or reimbursement of Westwood’s expenses incurred in connection with the Project, and Westwood and Developer wish to confirm that Westwood’s expenses incurred in connection with confirming Westwood’s ability to convey title to all or part of the Property, including without limitation any and all of Westwood’s attorneys’ fees and costs associated with the Litigation, shall be borne exclusively by Westwood and not by Developer.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Developer and Westwood hereby agree as follows (a capitalized term contained herein but not defined herein shall have the meaning ascribed to it in the Funding Agreement, and in the event of any conflict between the terms of the Funding Agreement and the terms of this Agreement, the terms of this Agreement shall control):

1. Ratification of the Funding Agreement Estoppel.

1.1 Developer and Westwood hereby confirm that the Funding Agreement remains in full force and effect subject, however, to the terms and conditions of this Agreement.

1.2 Developer confirms that to the best of its knowledge, Westwood has fulfilled all of its obligations under the Funding Agreement and that as of this date hereof there are no defenses, offsets or counterclaims which Developer has against the enforcement of the Funding Agreement by Westwood.

1.3 Westwood confirms that Developer has timely paid all sums billed to date to Developer pursuant to Sections 2 and 3 of the Funding Agreement, and Westwood confirms that to the best of its knowledge, Developer has fulfilled all of its obligations under the Funding Agreement and that as of this date hereof there are no defenses, offsets or counterclaims which Westwood has against the enforcement of the Funding Agreement by Developer.

2. Extension of the Expiration Date. Pursuant to Section 5(b) of the Funding Agreement, the Expiration Date is hereby extended to March 9, 2025.

3. Matters Concerning Title to the Property or Authority to Convey Title. Westwood hereby confirms that Westwood, and not Developer, shall continue to bear all of the costs and expenses of assuring that Westwood can convey marketable fee simple title, to Developer, in the Property, including (without limitation) by undertaking to completion any and all statutory procedures or litigation, including without limitation the Litigation, which would confirm Westwood's ability to convey marketable fee simple title to the Property.

4. **Counterparts; Facsimile Execution and Delivery.** This Agreement may be executed in several counterparts, each of which shall be deemed an original. Such counterparts shall constitute but one and the same instrument. This Agreement may be executed and delivered by the electronic transmission of signatures, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, Developer and Westwood have executed this Agreement as of the day and year first above written.

KARBANK HOLDINGS LLC

By: _____
Neil D. Karbank, a Manager

CITY OF WESTWOOD, KANSAS
as Westwood

By: _____
David E. Waters, Mayor

ATTEST:

By: _____
Abby Schneweis, City Clerk

APPROVED AS TO FORM:

By: _____
Ryan Denk, City Attorney

Date: _____, 2024

Time: