

WESTWOOD CITY PARK
DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (this “Declaration”) is granted as of January 4, 2024 by **THE CITY OF WESTWOOD, KANSAS**, a political subdivision of the State of Kansas (“Declarant”), for the benefit of **K-FRANS LLC**, a Missouri limited liability company (“Beneficiary”),

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

WHEREAS, Declarant will, exclusively using cash donations (the “Land Acquisition Donations”), made by Beneficiary to Declarant, acquire title to that certain real property located in the City of Westwood, Johnson County, Kansas which is legally described as, or is intended to be platted as legally described on **Exhibit “A”** annexed hereto and made a part hereof

(the “Park Property”); and

WHEREAS, once Declarant has acquired the Park Property, Declarant will, again exclusively using cash donations (the “School Demolition Donations,” and, together with the Land Acquisition Donations, the “Park Creation Donations”), made by Beneficiary to Declarant, demolish existing improvements located on the Park Property; and

WHEREAS, as a condition of and in accordance with the intent of the Park Creation Donations, Declarant has agreed to create a municipal park on the Park Property (the “City Park”) and to restrict the use of the Park Property, as provided herein; and

WHEREAS, reference is hereby made to that certain real property located in the City of Westwood, Johnson County, Kansas, located adjacent and to the east of the Park Property, which is legally described as, or is intended to be platted as legally described on **Exhibit “B”** annexed hereto and made a part hereof (the “Development Property”).

NOW THEREFORE, in consideration of Declarant’s receipt of the benefits of the Park Creation Donations, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby agrees that the Park Property shall be subject to the following rights and restrictions:

1. **Recitals Incorporated by Reference.** The foregoing recitals are incorporated by reference herein and made a part hereof, and all of the restrictions and covenants contained herein are collectively the “Restrictions”.

2. **Restricted Uses.**
 - 2.1 During the term of this Declaration (the “Term”, as described in Section 4.2 hereof), the Park Property shall be used only as a municipal park and related purposes thereto or therefor, including but not limited to parking and restroom facilities serving the City Park.

 - 2.2 The City Park’s uses shall be limited to those park purposes, including hours of operation, as defined by the policies, rules and regulations, ordinances and code of Declarant or of any municipal corporation or governmental agency (including, by way of example only, Johnson County, Kansas, or the Johnson County, Kansas, Park and Recreation District) that is a successor-in-interest to Declarant.

 - 2.3 Notwithstanding the provisions of Section 2.2 hereof, Declarant agrees that the uses and hours of operation of the City Park shall be reasonably restricted in order not to be unreasonably burdensome on or noxious to the Development Property and its customers and tenants. For the purpose of this Section 2.3, a “noxious” use shall include (without limitation) **(a)** amplified music during the hours of 6 AM through 5:00 PM, Monday through Friday (with exception of any state of federally-recognized holiday or the day before or after a holiday if such date is used to celebrate such holiday), to the extent that such amplified music would violate the terms of any applicable noise ordinance or regulation of Declarant, and **(b)** overnight camping (except by youth groups or City sanctioned events having permits, issued by Declarant, specifically for such purpose and not to exceed one (1) day in duration); no other overnight camping shall be permitted. Declarant shall reasonably monitor and control the Park Property according to the foregoing.

 - 2.4 Attached hereto as **Exhibit “C”** is a drawing showing where parking, restroom and other facilities may be located. Declarant acknowledges and intends that such restrooms and parking areas are so located, in part, so that users of the City Park shall not utilize

the restrooms and other parking areas located on the Development Property as a substitute therefor, and Declarant acknowledges that the restroom facilities and other parking areas that are or will be located on the Development Property are solely for the use and enjoyment by the owner or owners of the Development Property and for their tenants and customers.

- 2.5** Notwithstanding anything to the contrary contained herein, nothing herein shall be deemed to preclude Declarant from granting (and Declarant shall grant) **(a)** for the benefit of the Development Property, permanent maintenance and construction easements along the eastern twenty (20) feet of the Park Property, as the Development Property owner or owners may request from time to time for access, to the Development Property, in order to access, repair, maintain and replace such improvements and landscaping as may be constructed on the Development Property from time to time, or **(b)** such other easements or rights-of-way as may be reasonably necessary for the provision of utilities or other infrastructure.
- 3. Maintenance, Repairs, Replacements, Cleaning and Policing; Further Assurances.**
- 3.1** By accepting the benefit of the Park Creation Donations, Declarant accepts the responsibility of grading and landscaping the Park Property and for creating and equipping the City Park and also, at Declarant's expense, of all of the responsibilities set forth in Sections 3.1.1 through 3.1.4 hereof, including without limitation:
- 3.1.1** Maintaining, repairing, and making replacements (as reasonably required) of all the City Park equipment and facilities (including without limitation all lawns and trees and gardens, playgrounds, pavilions, all equipment, parking areas, restroom facilities, and sport facilities).
- 3.1.2** Cleaning the City Park and all of its facilities and features (including without limitation by timely removing all trash from the City Park and its trash receptacles) and timely removing ice and snow from paths and walkways in the City Park.

3.1.3 Providing such police and other security and public safety personnel and apparatus as may be reasonably required for the City Park.

3.1.4 Instituting, maintaining and governing the City Park's uses, including by restricting scheduling, by imposing reasonable special usage fees and by limiting the City Park's hours and uses, so that the City Park's grounds, equipment and sanitation and parking facilities are not overly used, subject to waste or become a nuisance to the Development Property, its tenants or customers or to any residential neighbor of the City Park; provided, however, that in accordance with Kansas law, nothing in this Declaration shall be deemed to contractually require that Declarant take any legislative action.

3.2 In addition to the acts and deeds recited herein and contemplated to be performed by Declarant pursuant to this Declaration, Declarant agrees to take all such actions as may be required in order to create the City Park on or before July 1, 2027. Notwithstanding the foregoing, nothing herein shall obligate Declarant to construct any particular City Park amenities or grant to Beneficiary any prior rights of approval or rejection of any particular City Park layout or features.

4. Declaration Runs With the Land; Term; Third-Party Beneficiary; No Transfer by Declarant.

4.1 This Declaration and all of the Restrictions, covenants and easements contained herein shall be deemed a "covenant running with the land" as to the Park Property, shall be binding upon Declarant's successors and assigns and shall be for the benefit of Beneficiary and its designees, successors and assigns.

4.2 The Term shall be forty-three (43) years from the date of the recording of this Declaration with the Register of Deeds for Johnson County, Kansas. Upon the expiration of the Term, the terms of this Declaration and the Restrictions contained herein shall no longer bind the Park Property.

4.3 During the Term, Declarant shall not transfer fee title to, or enter into any lease of any of the City Park or any of the lands comprising the City Park, except to the extent such transfer is required by operation

of law arising out of the merger, reorganization, or dissolution of the City of Westwood, Kansas. This provision shall not preclude Declarant from reserving certain City Park facilities for the exclusive use by members of the public in accordance with the policies, rules and regulations, ordinances and code of the City of Westwood, Kansas.

5. Enforcement; Applicable Venue and Law; Attorneys' Fees and Costs.

5.1 This Declaration and all of the Restrictions, covenants and easements contained herein may be enforced by Beneficiary or by its designees, successors and assigns by an action for injunctive relief or for damages (or both), and the sole and exclusive venue for any such action shall be the District Court for Johnson County, Kansas.

5.2 The bond required for any preliminary or temporary injunctive relief shall be One Thousand (\$1,000.00) Dollars in cash, and no showing of irreparable harm shall be required for any such relief.

5.3 This Declaration is being executed and delivered in the State of Kansas and shall be construed in accordance with the local laws of the State of Kansas. In the event of litigation seeking the enforcement or interpretation of this Declaration or any of the Restrictions, covenants or easements contained herein, and to the extent permitted under applicable law, the party prevailing in litigation shall be entitled to receive from the non-prevailing party the prevailing party's reasonable attorneys' fees and costs for such enforcement or interpretation.

6. Notices. Any notice, approval, request or consent required by or asked to be given under this Declaration 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 Declarant:

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.
707 Minnesota Avenue, 4th Floor
P.O. Box 171300
Kansas City, Kansas 66117-1300

To Beneficiary:

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

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

7. Successors and Assigns; Delegation of Enforcement Rights; Beneficiary's Preemptive Rights.

7.1 This Declaration shall bind Declarant and shall inure to the benefit of Beneficiary and its designees, successors and assigns. Beneficiary may from time to time delegate its enforcement rights hereunder to such person, persons, entity or entities which shall have the power to enforce such rights in the name of, and for the benefit of, Beneficiary and its successors or assigns.

7.2 Notwithstanding anything to the contrary contained herein, this Declaration shall be deemed to be void ab initio, and shall be deemed released from the Park Property, in the event that a building permit for at least one (1) building to be located on the Development Property shall not have been requested on or before December 31, 2025, such request to have been made in accordance with and in substantial compliance with all approved plans and other requirements applicable to the Development Property.

8. Miscellaneous.

8.1 **Entire Agreement; Severability.** This Declaration embodies the entire agreement between the parties hereto 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 Declaration may be amended only by an instrument in writing signed on behalf of Declarant and Beneficiary. The invalidity or unenforceability of any term or provision of this Declaration or the non-application of such term or provision to any person or circumstance shall not impair or affect the remainder of this Declaration, 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.

8.2 **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 Beneficiary or by any owner(s) of record of the Development Property of any breach or breaches, default or defaults by Declarant 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.

8.3 **Counterparts.** This Declaration 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; provided, however, only the version of this Declaration that is actually recorded with the Register of Deeds for Johnson County, Kansas, shall bind

or inure to the benefit of Declarant, Beneficiary (and its designees) and their respective successors or assigns.

- 8.4 Estoppel.** Declarant shall, within ten (10) days of Beneficiary's request from time to time, execute, acknowledge and deliver an estoppel certificate (using a form furnished by Beneficiary) stating, if the same be true, that this Declaration is a true and exact copy of the agreement between the parties hereto and that there are no amendments hereof (or stating what the amendments are) that the same is then in full force and effect and that, to the best of Declarant's knowledge, there are no offsets, defense or counterclaims with respect to the performance of any terms, covenants and conditions hereof on the part of Beneficiary to be performed, and that as of such date, no default has been declared hereunder by Beneficiary or Declarant, and that Declarant has no knowledge of any facts or circumstances which it might reasonably believe would give rise to a default hereunder by Declarant or Beneficiary. Notwithstanding anything to the contrary contained herein, and without relieving Declarant of its obligations under this Section 8.4, Declarant's failure to timely execute, acknowledge and deliver to any Beneficiary such estoppel certificate within ten (10) days after written demand shall constitute the acknowledgment of Declarant that all matters set forth in such instrument are true and correct.
- 8.5 After-Acquired Lands.** In the event that Declarant shall acquire lands adjoining the Park Property (including without limitation lands now owned by the Joanne M. Gaar Trust and legally described on **Exhibit "D"** annexed hereto), then **(a)** this Declaration shall be deemed to spread to such lands and **(b)** such lands shall be bound by this Declaration and by all of its terms and conditions.

[signatures commence on the following page]

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

CITY OF WESTWOOD, KANSAS

By: _____
David E. Waters, Mayor

ATTEST:

By: _____
Abby Schneweis, City Clerk

APPROVED AS TO FORM:

By: _____
Ryan Denk, City Attorney

K-FRANS LLC

By: _____
Adam Feldman, Authorized Representative

Table of Exhibits

- Exhibit A: Legal Description of the Park Property [TO COME]
- Exhibit B: Legal Description of the Development Property [TO COME]
- Exhibit C: Drawing of location of parking, restroom and other facilities [TO COME]
- Exhibit D: Legal Description of the Gaar Trust Property

STATE OF KANSAS)
) ss
COUNTY OF JOHNSON)

On this ____ day of _____, 2023, before the undersigned, a Notary Public in and for said County and State, residing therein duly commissioned and sworn, personally appeared **David E. Waters**, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same as his act and deed in his capacity as the Mayor of City of Westwood, Kansas, a political subdivision of the State of Kansas, as the act and deed of such city.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public within and for said County and State
My commission expires _____

STATE OF KANSAS)
) ss
COUNTY OF JOHNSON)

On this ____ day of _____, 2023, before the undersigned, a Notary Public in and for said County and State, residing therein duly commissioned and sworn, personally appeared Adam Feldman, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same as his act and deed in his capacity as an Authorized Representative of K-Frans LLC, a Missouri limited liability company, as the act and deed of such company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public within and for said County and State
My commission expires _____