

DONATION AGREEMENT

THIS DONATION AGREEMENT (this “Agreement”) is entered into this _____ day of _____, 2023, 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 and its related entities own and have developed or redeveloped office, retail, mixed-use and industrial developments in various locations in Johnson County, Kansas including in the municipalities of Mission Woods, Prairie Village, Overland Park, Merriam, Lenexa and Olathe; and

WHEREAS, Shawnee Mission Unified School District No. 512 (the “School District”) owns a parcel of land located at 2511 West 50th Street, Westwood, Kansas (the “School District North Parcel”) comprising 4.49 acres of land; and

WHEREAS, the School District owns a parcel of land located immediately south of the School District North Parcel (the “School District South Parcel”, and together with the School District North Parcel, the “School District Land”) comprising .4823 acres of land; and

WHEREAS, the School District owns and operates Rushton Elementary School (including all buildings and other improvements, the “Rushton School”) located on the School District Land; and

WHEREAS, Westwood wishes to create a public park (the “City Park”) on a portion of the School District Land, and the creation of the City Park would require, among other things, the acquisition of the School District Land (the “Land Acquisition”) and the demolition of the Rushton School, which demolition shall include demolition of the school building, playground and parking lot serving the school, finishing the demolished portions of the site to a rough grade and seeded, (the “School Demolition”); and

WHEREAS, it is understood that Westwood’s cost of the Land Acquisition will be Two Million Six Hundred Fifty Thousand (\$2,650,000.00) Dollars (the “Land Acquisition Cost”) and that the cost of the School Demolition will be approximately Three Hundred Fifty Thousand (\$350,000.00) Dollars (the “School Demolition Cost”, and together with the Land Acquisition Cost, the “Park Creation Costs” with the exact amount of the School Demolition Cost and the attendant donation to be determined by the contract letting for the School Demolition work); and

WHEREAS, Westwood does not possess the funds to pay either the Land Acquisition Cost or the Demolition Cost; and

WHEREAS, Donor, as a corporate citizen of the Greater Kansas City area, wishes to assist Westwood in creating the City Park; and

WHEREAS, Donor wishes to donate, to Westwood, an amount equal to the Park Creation Costs in order to enable Westwood to create the City Park, all on the terms and conditions set forth herein.

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

1. **Donations.** Donor agrees to make two donations (each is a “Donation”, and together, the “Donations”) to Westwood in an aggregate amount equal to the Park Creation Costs. The Donations shall be made in two installments, which are **(a)** the “Land Acquisition Donation”, in the amount of the Land Acquisition Cost; and **(b)** the “School Demolition Donation”, in the amount of the School Demolition Cost.
2. **Donations Timing.** Donor agrees to make the Donations as follows:
 - 2.1 On or before November 21, 2023 (which is the fourteenth (14th) day prior to the expiration of the Due Diligence Period as defined in the Real Estate Purchase Agreement between Westwood and the School District dated June 8, 2023 (“SMSD Agreement”), Donor will make the Land Acquisition Donation.
 - 2.2 Provided that Westwood has acquired the School District Land, then on or before the date on which Westwood commences the School Demolition (which date is anticipated to be on or about August 1, 2024), Donor will make the School Demolition Donation.
3. **Execution of the Donations.** Donor may accomplish the purposes of this Agreement by funding the Donations to Westwood directly or indirectly as provided herein. Accordingly (as the circumstances require), Donor shall make **(a)** the Land Acquisition Donation by wire transfer either directly to Westwood or to the escrow agent handling Westwood’s purchase of the School District Land; and **(b)** the School Demolition Donation by wire transfer either directly to Westwood or to the escrow agent, selected by Donors and Westwood, which will make periodic disbursements to Westwood’s demolition contractor, immediately upon

Westwood's commencement, by a demolition contractor which is reasonably acceptable to Donors (the "Demolition Contractor"), of the School Demolition.

4. Restricted Uses; Means; Return of Donations.

- 4.1** Donor intends that the Donations shall be used strictly and exclusively for the purposes set forth in this Agreement, and Westwood agrees to such restrictions. It is of the essence of Donor's promise to make the Donations that the Donations shall be used only to fund the Park Creation Costs.
- 4.2** In the event that Westwood has not, on or before February 22, 2024 (the "School Land Acquisition Deadline"), acquired the School District Land, then Donors' agreement, contained in this Agreement, to make the Donations shall be, at Donor's election (by notice to Westwood) deemed void and of no effect.
- 4.3** In the event that Westwood has not, on or before the School Land Acquisition Deadline, acquired the School District Land but Donor has already made the Land Acquisition Donation, then Westwood shall, immediately upon Donor's request, refund the Land Acquisition Donation to Donor.
- 4.4** In the event that Westwood does acquire the School District Land but has not, on or before September 1, 2024, commenced the School Demolition but Donor has already made the School Demolition Donation, then Westwood shall immediately upon Donor's request refund the School Demolition Donation to Donor. For purposes of this paragraph, commencement of the School Demolition shall be deemed to have occurred by the accomplishment of all of the following: **(a)** Westwood's award of a contract, for the School Demolition, to the Demolition Contractor; **(b)** Westwood's issuance, to the Demolition Contractor, of all permits necessary for the School Demolition and **(c)** Westwood's issuance, to the Demolition Contractor (with a contemporaneous copy to Donor), of a notice to proceed with the School Demolition.

5. Declaration of Covenants and Restrictions.

- 5.1** Westwood shall, as a condition to Donor's funding the Land Acquisition Costs, and immediately following the recordation of the deed, from the School District to Westwood, for the School District Land, execute, acknowledge and record in the Office of the Johnson County, Kansas

Register of Deeds the Declaration of Covenants and Restrictions annexed hereto as **Exhibit "A"** and made a part hereof (the "Declaration"). The Declaration, by its terms, restricts the use of the Park Property (as defined in the Declaration) for the use, by Westwood, and for the term of years as set forth in the Declaration, as the City Park.

- 5.2 Donor expressly agrees that Westwood may sell or lease the remaining portion of the School District Land (the "Development Property") in connection with the development of the Development Property and of adjacent lands now owned by Westwood.
- 5.3 The Declaration, by its terms, shall be a "covenant running with the land" as to the Park Property and shall be specifically enforceable by Donor or by Donor's designee or assignee, all as provided in the Declaration.

6. **Westwood's Representations, Warranties and Certain Covenants.** Westwood represents and warrants to Donor, and covenants with Donor, as follows:

- 6.1 Westwood is a political subdivision, duly organized, validly existing and in good standing as a City of the Third Class under the laws of the State of Kansas.
- 6.2 All necessary action has been taken by Westwood with respect to the execution and delivery of this Agreement.
- 6.3 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.
- 6.4 This Agreement has been executed and delivered on behalf of Westwood and constitutes Westwood's valid and binding agreement, enforceable in accordance with its terms, and there are no consents of (or notices to) any third party required for the undertaking and consummation, by Westwood, of its receipt, acceptance or use of the Donations, all on the terms and conditions set forth herein.
- 6.5 Westwood's use of the Donations is and shall be solely and exclusively for public purposes and uses and not for any private purpose or use.

7. **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.
707 Minnesota Avenue, 4th Floor
P.O. Box 171300
Kansas City, Kansas 66117-1300

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.

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

8.1 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.

8.2 Westwood shall, concurrently with Donor's making of all or part of the Donations, cause the acknowledgment form annexed hereto as **Exhibit "B"** (each a "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. Each 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 amount of that portion of the Donations made by a Donor and received Westwood (or by Westwood's designee as provided herein)
- 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.

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

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

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

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

10. Miscellaneous.

- 10.1 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.
- 10.2 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.
- 10.3 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.
- 10.4 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.

10.5 Counterparts. 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.

[signatures commence on following page]

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: Declaration of Perpetual Covenants and Restrictions
- Exhibit B: Donation Acknowledgment Form