

## **FIRST RIGHTS AGREEMENT**

THIS AGREEMENT dated as of January 4, 2024 (this "Agreement"), among **THE CITY OF WESTWOOD, KANSAS**, a political subdivision of the State of Kansas ("Grantor") and **KARBANK HOLDINGS LLC**, a Delaware limited liability company ("Grantee"),

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

WHEREAS, Grantor owns certain real property located between 50<sup>th</sup> Street and 51<sup>st</sup> Street, west of Rainbow Boulevard and east of Belinder Avenue, (the "Park Property"), which is legally described in **Exhibit "A"** annexed hereto; and

WHEREAS, Grantee owns certain real property located between 50<sup>th</sup> Street and 51<sup>st</sup> Street, west of Rainbow Boulevard and east of Belinder Avenue, (the "Development Property"), which is legally described in **Exhibit "B"** annexed hereto and which adjoins the Park Property; and

WHEREAS, Grantor has subjected the Park Property to a Declaration of Covenants and Restrictions (the "Declaration") which restricts, for a period of forty-three (43) years (the "Restricted Period"), the Park Property to municipal park uses, all as set forth in the Declaration; and

WHEREAS, Grantee has requested that in the event that Grantor offers to sell or transfer or agrees to sell or transfer the Park Property for a period commencing on the date hereof and ending on the date which is twenty-five (25) years after the Restricted Period, Grantee shall have the continuing rights to purchase the Park Property, all on and subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of Ten (\$10.00) Dollars and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

**1. Grant of The Negotiation Right and The Refusal Right.**

Grantor hereby grants to Grantee a continuing right of first negotiation (the "Negotiation Right") for the purchase of the Park Property as well as a continuing right of refusal (the "Refusal Right", and together with the Negotiation Right, the "First Rights") for the purchase of the Park Property all on and subject to the terms and conditions set forth herein. The "Park Property" shall be deemed to mean the Park Property or any part thereof.

**2. Operation of The Negotiation Right.**

**2.1** In the event that Grantor shall, at any time during the Restricted Period and for twenty-five (25) years thereafter (such period is, in the aggregate, the "First Rights Term"), elect to sell the Park Property, Grantor shall, by notice to Grantee (a "Sale Offer Notice"), communicate to Grantee the terms and conditions on which Grantor is willing to sell the Park Property. A Sale Offer Notice shall contain at least the proposed sale price for the Park Property; the form of payment therefor; the amount and form of any earnest money; the proposed closing date; true and complete copies of any encumbrances or interests to which the Park Property is subject; a current commitment for title insurance, concerning the Property, which has been issued by a reputable title company doing business in Johnson County, Kansas (together with copies of the recorded documents referenced therein), and an "as-built" survey of the Park Property that has been prepared, signed and sealed, within six (6) months of the Sale Offer Notice's date, by a surveyor licensed in the State of Kansas.

**2.2** Grantee shall thereafter have the exclusive right (the "Negotiation Right"), for a period of sixty (60) days from the date on which the Sale Offer Notice is delivered to Grantee (the "Sale Offer Period"), to negotiate the terms and conditions of the sale contained in the Sale Offer Notice. During the Sale Offer Period, Grantee and Grantor shall negotiate in good faith to agree on the terms and conditions of the sale of the Park Property to Grantee and shall undertake to enter into a definitive agreement for the sale of the Park Property to Grantee. Upon the expiration of the Sale Offer Period without the mutual execution and delivery by Grantor and Grantee of such a definitive contract for the sale of the Park Property to Grantee, the Negotiation Right shall be deemed to be waived as to the offer contained in the Sale Offer Notice.

**3. Operation of The Refusal Right.**

**3.1** In the event that Grantor shall, at any time during the First Rights Term enter into a contract or letter of intent or any other written understanding to sell the Park Property (except by operation of law in connection with the merger, reorganization or dissolution of the City of Westwood Kansas), Grantor shall, by notice to Grantee (the "Refusal Offer Notice"), deliver to Grantee a true and complete copy of such fully executed instrument including all exhibits thereto (the "Refusal Offer Notice Instrument"), together with a certificate, executed on behalf of Grantor, stating that *"The enclosed instrument is a true and complete copy of the agreement which we have entered into to sell the Park Property"*

**3.2** Grantee shall thereafter have the exclusive right (the "Refusal Right"), for a period of thirty (30) days from the date on which the Refusal Offer Notice is

delivered to Grantee at the address set forth below (the "Refusal Offer Period"), to execute and deliver to Grantor a notice (the "Acceptance Notice") accepting the terms set forth in the Refusal Offer Notice Instrument (and Grantee's delivery of the Acceptance Notice shall be deemed to bind Grantor to sell the Park Property to Grantee), except that:

- (a) the closing date for Grantee's purchase of the Property shall be a date (the "Acceptance Notice Closing Date"), which shall be the later of (1) the closing date set forth in the Refusal Offer Notice Instrument (the "Refusal Offer Notice Closing Date") or (2) a business day which is not later than ten (10) days after the Refusal Offer Notice Closing Date;
- (b) regardless of the terms of the Refusal Offer Notice Instrument, Grantee shall not be required to deliver, as earnest money, a sum greater than five (5%) percent of the purchase price for the Refusal Property; and
- (c) the Property shall be delivered to Grantee free and clear of any and all mortgages, deeds of trust, leases, tenancies, licenses or liens (other than the lien of real estate taxes for the current year) affecting the Refusal Property.

Upon the expiration of the Refusal Offer Period without Grantee's timely delivery of the Acceptance Notice, the Refusal Right shall be deemed to have been waived as to the Refusal Offer Notice Instrument.

- 3.3** Notwithstanding anything to the contrary contained in this Section 3, in the event that Grantee shall waive (or, by not timely responding to the Refusal Offer Notice, shall be deemed to have waived) the Refusal Right as to the Refusal Offer Notice Instrument but Grantor shall not, within a period of two hundred seventy (270) days after the date of the Refusal Offer Notice, have sold the Refusal Property to the buyer named in the Refusal Offer Notice Instrument for at least ninety-five (95%) percent of the price set forth in the Refusal Offer Notice (subject, however, to customary closing adjustments), then the Refusal Right shall be deemed to be reinstated as to the Refusal Offer Notice Instrument and shall be subject to the terms and conditions set forth herein.

**4. Transactions Excepted From The First Rights; Cumulative Rights .**

- 4.1** The First Rights shall apply to any and all conveyances of fee simple title to the Park Property except for a conveyance of fee simple title by purchase and sale of the Property at a judicial foreclosure sale.

**4.2** Any waiver of the First Rights for any particular transaction shall not extinguish such rights as to any further transaction during the First Rights Term and shall be continuing rights, in favor of Grantee, as to any and all further sale transactions as described in Sections 2 or 3 hereof.

**5. Confirmation of Waiver of The Refusal Right.**

At Grantor's request upon Grantee's waiver of the Refusal Right as to any Refusal Offer Notice Instrument, Grantee shall execute, acknowledge and deliver to Grantor, at Grantor's expense and in recordable form and within ten (10) days of Grantor's request therefor, an instrument reasonably acceptable to Grantee confirming such waiver of the Refusal Right as to the transaction specified in the Refusal Offer Notice Instrument. It is intended that any such waiver shall be limited to the particularly described sale transaction identified in such waiver.

**6. Time of Essence.**

Time is of the essence as to Grantor's and Grantee's rights and obligations hereunder.

**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 Grantor:

City of Westwood, Kansas  
Attn: City Administrator  
4700 Rainbow Blvd.  
Westwood, KS 66205

With a copy to:

Ryan B. Denk, Esquire  
McAnany, Van Cleave & Phillips, P.A.

10 E. Cambridge Cir. Dr., Ste. 300  
Kansas City, KS 66103

To Grantee:

Karbank Holdings LLC  
2000 Shawnee Mission Pkwy., Ste. 400  
Mission Woods, KS 66205  
Attention: Adam Feldman, Esquire

With a copy to:

Karbank Holdings LLC  
2000 Shawnee Mission Pkwy., Ste. 400  
Mission Woods, KS 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 party ten (10) days prior written notice thereof.

**8. Successors and Assigns; Covenant Running With The Land; After-Acquired Lands.**

**8.1** This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, and this Agreement is and shall be deemed to be a "covenant running with the land" to which the Park Property is subject and which benefits the Development Property and the fee owner or owners thereof.

**8.2** In the event that Grantor 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 Agreement shall be deemed to spread to such lands (which shall be deemed to be a part of the Park Property) and **(b)** such lands shall be bound by this Agreement and by all of its terms and conditions.

**9. Attorney's Fees; Specific Performance.**

In the event that either party shall engage an attorney to enforce its rights hereunder, the party substantially prevailing in litigation shall be entitled to receive from the substantially non-prevailing party the substantially prevailing party's reasonable attorneys' fees and costs for such enforcement. This Agreement may be enforced by a decree of specific performance and through an action for damages. 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.

**10. Governing Law; Choice of Forum.**

This Agreement shall be governed by and construed in accordance with the local law of the State of Kansas, and any suit to enforce any rights hereunder, or for the interpretation of any of the provisions of this Agreement, or for damages or any other relief arising from or in connection with this Agreement, shall be filed and heard in and only in the Johnson County, Kansas District Court. Grantor and Grantee each hereby irrevocably consent to the jurisdiction of such court over each of them and over the subject matter hereof.

**11. Entire Agreement; 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.

**12. Counterparts; Recording.**

This Agreement may be executed in several counterparts, each of which is deemed an original. Such counterparts shall, taken together, constitute but one and the same instrument. Grantor and Grantee have mutually executed and delivered that certain Memorandum of First Rights Agreement, dated the date hereof and between Grantor and Grantee, which may be recorded in the real estate records of Johnson County, Kansas and which imparts public notice of this Agreement.

**13. Captions.**

The captions in this Agreement are for convenience only and shall not be construed to be part of or affect the construction or interpretation of any provision of this Agreement.

*[Signatures commence on the following page]*

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

**CITY OF WESTWOOD, KANSAS**  
as Seller

By: \_\_\_\_\_  
David E. Waters, Mayor

ATTEST:

By: \_\_\_\_\_  
Abby Schneweis, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Ryan Denk, City Attorney

**KARBANK HOLDINGS LLC**  
as Grantee

By: \_\_\_\_\_  
a Manager



**Table of Exhibits**

Exhibit A:	Legal Description of the Park Property
Exhibit B:	Legal Description of the Development Property
Exhibit C:	Memorandum of First Rights Agreement
Exhibit D:	Legal Description of the Gaar Trust Property

STATE OF KANSAS        )  
                                  ) ss  
COUNTY OF JOHNSON    )

On this 4<sup>th</sup> day of January, 2024, 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 \_\_\_\_\_

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STATE OF KANSAS        )  
                                  ) ss.  
COUNTY OF JOHNSON    )

On this 4<sup>th</sup> day of January, 2024, before the undersigned, a Notary Public in and for said County and State, residing therein duly commissioned and sworn, personally appeared \_\_\_\_\_, 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 a Manager of Karbank Holdings LLC, a Delaware 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 \_\_\_\_\_