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**2020R18179**

SHAWNEE COUNTY, KANSAS  
REGISTER OF DEEDS  
REBECCA J. NIOCE  
DATE RECORDED:  
09/24/2020 11:48:00 AM

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND DEDICATION OF EASEMENTS**

**SHERWOOD VILLAGE DEVELOPMENT**

This Declaration of Covenants, Conditions, Restrictions and Dedication of Easements (“Declaration”) is made effective September 15, 2020, by Sherwood Park Development Co., L.L.C., a Kansas limited liability company (herein referred to as the “Declarant”).

**WHEREAS**, the Declaration imposes covenants, conditions, restrictions and easements upon certain real estate owned by the Declarant known as “Sherwood Village Subdivision” described by Exhibit “A” attached hereto and made a part hereof (hereinafter the “Sherwood Village Development”); and

**WHEREAS**, Declarant will cause to be incorporated under the laws of the state of Kansas, a not-for-profit corporation by the name of Sherwood Village Homeowners Association for the purpose of exercising the functions of a Homeowners Association as hereafter set forth for the benefit of said Sherwood Village Development.

**NOW THEREFORE**, Declarant hereby declares Sherwood Village Development is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens herein set forth or otherwise filed of record as may be amended from time to time pursuant to the terms hereof. These easements, covenants, restrictions and conditions shall run with the real estate of Sherwood Village Development and shall be binding upon all of the parties having or acquiring any right, title or interest in Sherwood Village Development, or a part thereof, and shall inure to the benefit and burden of each Owner thereof.

**ARTICLE I**  
**Definitions**

The following words, when used in the Declaration or any supplemental or amended Declaration, shall have the following meanings:

1. “Association” shall mean and refer to Sherwood Village Homeowners Association, to be established as a not-for-profit corporation for and pursuant to the laws of the state of Kansas by Articles of Incorporation filed with the Secretary of State of the State of Kansas.
2. “Sherwood Village Development” shall mean and refer to the real estate, and all improvements now located or hereinafter constructed thereon, described by Exhibit “A” attached hereto and made a part hereof, including any Common Area and Facilities.

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3. "Common Area and Facilities" shall mean and include that part of Sherwood Village Development and all improvements located thereon, other than the home Sites, and all personal property owned by the Association for the common use and enjoyment of the Owners as further set forth in Article III herein.
4. "Site" and "Sites" shall mean and refer to each building site on which one residence is or may be constructed, substantially as designated on the development filed with the Topeka Shawnee County Metropolitan Planning Agency and as more specifically described on the deeds transferring such building sites in Sherwood Village Development.
5. "Owner" and "Owners" shall mean and refer to the owner of record, whether one or more persons (including partnerships and other legal entities), of the fee simple title to a Site. The terms "Owner" and "Owners" shall not mean any mortgagee or trustee under any deed of trust, unless and until such mortgagee or trustee has acquired fee simple title to a Site pursuant to foreclosure or any proceeding in lieu of foreclosure.
6. "Member" shall mean and refer to each Owner as defined herein.
7. "Declarant" shall mean and refer to Sherwood Park Development Co., L.L.C., a Kansas limited liability company, its successors and assigns.
8. "Home Builder" shall refer to an Owner of a Site who constructs a residence on the Site for sale, other than Declarant or an entity owned in whole or in part by the Declarant, but only until the sale of the residence.
9. "Board" shall refer to the Board of Directors of the Association.

**ARTICLE II  
Association**

1. Membership in the Association. Every person (including partnerships and other legal entities) who is an Owner of fee Simple title to one or more Sites shall be a Member of the Association. Ownership of the Site shall be the sole qualification for a Class A membership.
2. Types of Association Membership and Voting Rights. The Association shall have two (2) classes of voting membership:
  - a. *Class A.* Class A Members who are current on the obligations to pay fees, charges and assessments under Article IV below shall be entitled to one vote for each Site in which they hold the interest required for membership by Article II, paragraph 1. When more than one person holds an interest in any one Site, all such persons shall be members and the single vote for such Site shall be exercised as they, among themselves, determine; but in no event shall more than one vote be cast with respect to any one Site. Declarant shall hold one Class A membership and voting right for every Site owned in whole or in part by Declarant or an entity owned in whole or in part by Declarant.
  - b. *Class B.* All Class B memberships shall be issued to the Declarant. There shall be four (4) Class B memberships for each Site for which Declarant or a Home Builder holds the Class A Membership, including Class A Memberships held by Declarant for Sites owned

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in part by Declarant or an entity owned in whole or in part by Declarant. Each Class B membership shall be entitled to one vote.

c. *Termination of Class B Memberships.* All Class B memberships shall be surrendered by the Declarant to the Association for cancellation, on the happening of any of the following events, whichever occurs first in time (the "Termination Date"):

- (i) When residences are constructed on all of the Sites in Sherwood Village Development; or
- (ii) Declarant's voluntary surrender of the Class B memberships.

3. Quorum, Proxies and Voting. Twenty-five percent (25%) of the outstanding Class A and all Class B memberships of the Association entitled to vote represented in person or by proxy shall constitute a quorum at any meeting of the Association. At all meetings of the Association, a Class A member entitled to vote may vote in person or by proxy executed in writing by such member. Such proxy shall be filed with the Secretary of the Association before the commencement of a meeting. No proxy shall be valid after two (2) months from the date of its execution.

4. Approval Rights. Notwithstanding anything in this Declaration to the contrary, the Declarant shall maintain absolute and exclusive control over the Board and the Association with respect to any matters requiring the approval or consent of the Board, the Association or its Members as stated herein, or any matter requiring an agreement between an Owner and the Association, until the Termination Date.

5. Articles of Incorporation and Bylaws. Except as specifically set forth in this Declaration, all provisions applicable to notice, voting and quorum requirements for all actions to be taken by the Association shall be set forth in its Articles of Incorporation and Bylaws.

6. Powers and Duties of the Association. In addition to the powers granted by other portions of this Declaration, or by law, but subject to all of the limitations set forth in this Declaration, the Association shall have the power and authority to do and perform all such acts as may be deemed necessary or appropriate by the Board to carry out and effectuate the purposes of this Declaration, including, without limitation:

a. To enforce, in the Association's name, any and all building, use or other restrictions, obligations, agreement, reservations or assessments which have been or hereafter may be imposed upon any of the Sites or other part of Sherwood Village Development; provided, however, that this right of enforcement shall not serve to prevent waivers, changes, releases or modifications of restrictions, obligations, agreements or reservations from being made by the parties having the right to make such waivers, changes, releases or modification under the terms of the deeds, declarations, or plats in which such restrictions, obligations, agreements and reservations are set forth. The expense and cost of any such enforcement proceedings by the Association shall be paid out of general funds of the Association, except as herein provided. Nothing herein contained shall be deemed or construed to prevent the Declarant or any Owner from enforcing any building, use or other restrictions in its or his own name.

b. To acquire and own title to or interests in, to exercise control over, and to improve and maintain the Common Area and Facilities, subject to the rights of any governmental authority, utility or any other similar person or entity therein or thereto.

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- c. To maintain public liability, worker's compensation, fidelity, fire and extended coverage, director and officer liability, indemnification, and other insurance with respect to the activities of the Association and the property within Sherwood Village Development.
  - d. To levy the assessments and related charges which are provided for in this Declaration and to take all steps necessary or appropriate to collect such assessments and related charges.
  - e. To enter into and perform agreements from time to time with the Declarant and other parties regarding the performance of services and matters benefiting both the Declarant and the Association and its Members and the sharing of expenses associated therewith.
  - f. To have employees and otherwise engage the services of a management company or other person or entity to carry out and perform all or any part of the functions and powers of the Association, including, without limitation, keeping of the books and records, operation and maintenance of Common Areas and Facilities, and planning and coordination of activities.
  - g. To perform such acts as deemed necessary or desirable in the judgment of the Board to keep any property in the Sherwood Village Development neat in appearance and in good order.
  - h. To exercise any architectural, aesthetic or other control and authority given and assigned to the Association in this Declaration or in any other deed, declaration or plat relating to all or any part of the Sherwood Village Development.
  - i. To make, amend and revoke reasonable rules, regulations, restrictions, and guidelines (including, without limitation, regarding the use of Common Areas and Facilities) and to provide means to enforce such rules, regulations and guidelines.
  - j. To exercise such other powers as may be set forth the Articles of Incorporation or Bylaws.
7. The Association shall at all times, from and after its date of formation and at its expense, be responsible for properly repairing, replacing, controlling, maintaining, operating and insuring, as applicable, all Common Areas and Facilities (except any part thereof that is within any Site that has not been landscaped or otherwise improved by or for the Declarant or the Association), subject to any control thereover maintained by any governmental authority, utility or other similar person or entity.

**ARTICLE III**

**Description of Common Area and Facilities - Right of Owners**

1. Description. The Common Area and Facilities shall include, but not be limited to, the following:
  - a. All real estate owned in fee simple by the Association.
  - b. All recreation facilities, trees, landscaping and other improvements located upon real estate owned by the Association.
  - c. All installations of central services for the benefit of more than one Site.
  - d. All paved drives, streets and parking areas located upon real estate owned by the Association.
  - e. All personal property owned by the Association.
2. Enjoyment. Subject to Article III, paragraph 3 and other provisions hereof, each Owner shall have a right and easement of enjoyment in and to the Common Area and Facilities and such right and easement shall be appurtenant to and shall pass with the title to each Site.

3. Regulation and Suspension of Rights. The rights and easements of enjoyment created hereby shall be subject to the following:

- a. The right of the Board to prescribe reasonable rules and regulations governing the use, operation and maintenance of all Common Area and Facilities (including all recreational facilities).
- b. The right of the Board to suspend the right of any Owner to use any or all of the Common Area and Facilities (including recreational facilities) for any period during which such Owner owes any fees, charges or assessments to the Association.
- c. The right of the Association to charge reasonable admission and use fees, as determined by its Board, for the use of any Common Area and Facilities (including recreational facilities) to defray costs of the operation thereof.
- d. The right of the Association to dedicate or transfer part of the Common Area and Facilities to any public agency, authority or any utility to provide necessary utility services to the Owners and the Association.
- e. The right of the Board to fix and collect penalties for the violation of rules and regulations of the Association.

4. No Restrictions on Access to Sites. As a benefit running with the real estate in Sherwood Village Development, ownership of each Site shall include the right to use and enjoy all walks, streets, entrances and exits. There shall always be direct access by both pedestrians and vehicles to and from each Site through a public street.

#### **ARTICLE IV**

##### **Covenants for Fees or Charges, Additional Assessments, Special Assessments, Insurance Premiums and Accounting**

1. Creation of the Lien and Personal Obligation for Fees and Charges, Additional Assessments, Special Assessments, Insurance Premiums, and Accounting. Each Owner, except Declarant or an entity owned in whole or in part by Declarant or a Home Builder, by acceptance of the deed therefor, whether or not it shall be expressed in any such deed of conveyance for each Site owned, hereby covenants and agrees, and shall be deemed to covenant and agree to pay the Association or its nominees beginning on the Commencement Date specified below.

- a. *Quarterly Fees and Charges.* Initial quarterly fees and charges in the sum of Two Hundred Seventy Dollars (\$270) per quarter for each Site until December 31, 2021. Thereafter, the quarterly fees and charges shall be determined by the Board. The rate of assessment upon each Site may be increased annually (a) by the Board, without a vote of the Members, by up to Three Hundred Sixty dollars ( \$ 360) per year over the rate of annual assessment in effect for the preceding year for each of the second through sixth years of the existence of the Association; (b) after the sixth year of existence of the Association, by the Board from time to time, without a vote of the Members, by up to ten percent (10%) over the rate of annual assessment in effect for the preceding year; or (c) at any time by any amount by a majority vote of the Members at a meeting of the Members duly called and held for that purpose in accordance with the Association bylaws. Notwithstanding the foregoing limits on annual assessments, the Board, without a vote of Members, shall always have the power to set and shall set the rate of assessment at an amount that will permit the Association to perform it duties as specified in this Declaration.

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*b. Additional Assessments.* In addition to the assessments provided for above, the Board (a) shall have the authority to levy from time to time an additional assessment against any Site and its Owner, other than Declarant or an entity owned in whole or in part by Declarant or by a Home Builder, to the extent the Association expends any money (for servicers or materials, or legal fees and expenses) to correct or eliminate any breach by such Owner of any agreement, obligation, reservation or restriction contained in any deed, declaration or plat covering such Site (including, without limitation, to maintain or repair any Site or improvement thereof provided the obligation to maintain or repair was that of the Owner) and (b) shall levy from time to time additional assessments against each and every Site (other than any Site owned by Declarant or an entity owned in whole or in part by Declarant or by a Home Builder) in any amount that is sufficient, when aggregated, to enable the Association to perform its duties as specified in this Declaration that require any expenditure during any period in any amount in excess of the general funds of the Association available therefor. Each such additional assessment shall be due and payable upon giving written notice of the assessment to the Owner.

*c. Special Assessments.* Special Assessments for capital improvements, to be fixed established and collected from time to time as hereinafter provided.

*d. Insurance Premiums.* Premiums for insurance purchased by the Association, as determined by the Board pursuant to Article V of this Declaration.

*e. Accounting.* The Association shall at no time spend more money within any one (1) year than the total amount of the assessments for that particular year, plus any surplus and available reserves which it may have on hand from prior years, plus any loans from Declarant described in Article VI section 4b. The Association shall not have the power to enter into any contract which binds the Association to pay for any future year, except for (i) contracts for utilities, maintenance or similar services or matters to be performed for or received by the Association or the Owners in subsequent years, (ii) matters in Article II section 6 above, and (iii) borrowing from the Declarant described in Article VI section 4b below.

2. Purposes of Fees or Charges. The fees or charges levied by the Association may be used for the following purposes:

- a. Care and maintenance of the lawn (except as to any additional permitted plantings by an Owner within the six-foot perimeter around the Owner's residence).
- b. Care and maintenance of lawn, trees, and shrubs and other plantings on property owned by the Association.
- c. Snow removal for drives and sidewalks up to the entry porch will be performed when the Board of Directors determines these services are needed (ice removal will not be standard practice but determined by the Board with each occurrence).
- d. Management (including legal and accounting expenses of the Association).
- e. Ad valorem and special real estate taxes on land and improvements owned, used or maintained by the Association; provided, however, first mortgagees of Sites may jointly or severally pay overdue taxes or on charges which are in default and which may have become a charge against the Common Area and Facilities and shall be entitled to immediate reimbursement therefor from the Association.
- f. Contingency reserves for maintenance, repair and replacement of those elements of the Common Area and Facilities that must be replaced upon a periodic basis.

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- g. Such other purposes that the Board may from time to time determine necessary or desirable to meet the purpose of the Association as stated in the Articles of Incorporation, Bylaws, and this Declaration.
- h. Maintain, repair or replace sidewalks on Common Area and Facilities.
- i. Such general liability insurance as the Association may purchase as hereinafter provided.
- j. Trash removal, if the Association elects to assume responsibility for this service.

3. Owners' Responsibilities. The Owners shall be responsible for the following with respect to their individual property:

- a. Repair and/or replacement of each Owner's private driveways and private walks located on their Site (not including easements for other Owners).
- b. Ad valorem and special assessments taxes on their Site and all improvements thereto.
- c. Repair, maintenance, care and replacement of all improvements on their Site including all patios, decks, porches, trellis, windows and other glass surfaces, doors and entry ways and all interior improvements and fixtures which are appurtenant to each home, including without limitation, responsibility for all breakage, damage, malfunction ordinary wear and tear, and care, maintenance and replacement of roofs of their home.
- d. Replacement and repair of all or of any of the windows, doors, garage doors, shutters or any other part of the designated exterior surface of any residence on their Site.
- e. Trash removal, if the Association does not elect to provide this service; provided, however, the Association may require that all trash removal be carried out by one common provider.
- f. Snow and ice removal on porches, steps, decks, patios and private walks.
- g. Obtaining and maintaining fire and extended coverage insurance against loss or damage by fire or other casualty for the full replacement value of all improvements, excluding land, foundation and excavations, with payment for losses thereunder by the insurer to the Association, or its nominee, as insurance trustee for the benefit of each Owner, the holder of each first mortgage of record thereon, and the Association as the interest appear and as set forth in this Declaration. The Association may further require the Owners to name the Association as an additional insured on such policies of insurance. The insurance proceeds received by such insurance trustee shall be used to repair, reconstruct or rebuild the improvements damaged or destroyed by said fire or other casualty, unless all Owners and their first mortgagees agree in writing to not repair, reconstruct or rebuild. In the event improvements will not be repaired, reconstructed or rebuilt, the damaged structure (or portion thereof) shall be razed, the debris removed from the Site, and the Site attractively landscaped within forty-five (45) days from the date of the casualty. Extensions may be approved on a case by case basis upon application and review by the Board.

4. Special Assessments for Capital Improvements. In addition to the quarterly fees and charges authorized by paragraph 1 of this Article, the Board may levy in any year a special assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any construction or reconstruction and estimated repairs or replacement of any capital improvements located upon the Common Area and Facilities or easements of the Association ("Special Assessments"). Such Special Assessments shall, however, require an affirmative vote of fifty-one percent (51%) of the Class A membership who are present and entitled to vote in person or by proxy and all of the Class B membership at the special meeting called for the purpose of considering the Special Assessments after not less than thirty (30) days' notice in writing to each Member of the Association, stating the time, purpose and place of said meeting. Such Special

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Assessments shall be due and payable at the time and in the manner as approved by fifty-one percent (51%) of the Class A membership votes and all the Class B membership votes at said meeting.

5. Uniform Rate of Fees or Charges. All fees, charges and Special Assessments must be fixed by the Board at a uniform rate for all Sites, except that no fees pursuant to this Article IV shall be payable for Sites owned by Declarant or an entity owned in whole or in part by Declarant or a Home Builder.
  
6. Commencement Date and Due Date for Fees and Charges. All Owners, excluding Declarant, entities owned in whole or in part by Declarant or a Home Builder, shall be obligated to pay quarterly fees or charges commencing on the first day of the first whole month after delivery of a deed conveying fee simple title to an Owner, excluding Declarant, entities owned in whole or in part by Declarant or a Home Builder. Thereafter, quarterly fees and charges shall be due and payable to the Association on the 1<sup>st</sup> day of each calendar quarter (i.e., January 1, April 1, July 1 and October 1). In the event the first payment falls on the day of a month other than one of the foregoing months, the initial payment shall be prorated for the number of months between that date and the next succeeding quarterly payment date. Fees or charges may also be paid by mortgagees or trustees, for and on behalf of the Owners.
  
7. Duties of the Board with Respect to Quarterly Fees or Charges.
  - a. On or before the 15<sup>th</sup> day of November of each year, the Board shall, by resolution, determine the amount of the quarterly fees and charges for the following calendar year. Written notice of such quarterly fee or charge shall be given to each Owner. Failure of the Association to give written notice of any quarterly fee or charge prior to December 31<sup>st</sup> of any year shall not invalidate any such fee or charge prior to December 31<sup>st</sup> of any year and shall not invalidate any such fee or charge levied thereafter, nor shall failure to levy any quarterly charge for any one year affect the right of the Board to do so for any subsequent year.
  - b. The Board shall, upon demand, at any time, furnish to any Owner liable for fees or charges hereunder a certificate in writing signed by the Secretary or Treasurer of the Association setting forth whether all fees or charges have been paid to date. A reasonable amount may be charged by the Board for the issuance of such certificate. Such certificate may be recorded in the office of the Register of Deeds for Shawnee County, Kansas, and upon recording shall constitute conclusive evidence of payment of any fee or charge for the period stated in the certificate.
  - c. The Association, acting by its Board, shall enforce payment of the fees or charges in accordance with the provisions in paragraph 8 of this Article.
  
8. Effect of Non-Payment of Fees or Charges.
  - a. If any quarterly fees and charges, Special Assessments, additional assessments, or insurance premiums payable to the Association, or any part thereof ("Delinquent Payments") are not paid on the date when due, then the unpaid amount of such Delinquent Payments shall become delinquent and shall thereupon be a continuing lien on the Site (including any improvements) of the non-paying Owner, and shall bind such Site and improvements in the hands of the Owner, and heirs, executors, administrators, successors and assigns of the Owner. No Owner may waive, have waived or otherwise escape liability



for the Delinquent Payments provided herein by non-use of the Common Area and Facilities owned by the Association or by abandonment or sale of the Site.

b. If any Delinquent Payments are not paid within thirty (30) days after the due date, the same shall bear interest at twelve percent (12%) per annum and, in addition, there shall be a \$ 25.00 late payment fee for each month any Delinquent Payments are in arrears. Such late payment fees and interest shall also be a continuing lien on the Site (including improvements) of the non-paying Owner, and shall bind such Site and improvements in the hands of the Owner, and heirs, executors, administrators, successors and assigns of the Owner.

c. The Association, acting by its Board, in addition to any other available remedies (including under the terms of Article IX below), may elect to commence an action in a court of competent jurisdiction against the Owner personally obligated to pay the same to enforce payment of said Delinquent Payments and/or to foreclose the lien against said Site and improvements thereon. Such liens shall continue for a period of five (5) years from the date of delinquency and no longer, unless within such period suit shall have been instituted for collection of the assessment, in which case the lien shall continue until payment in full or termination of the suit and sale of the property under the execution of judgement establishing the same.

9. Subordination of Association Lien to Tax Liens. The lien of the Delinquent Payments provided for herein shall be subordinate and inferior to tax liens on the Sites and improvements thereon in favor of any assessing unit and special district, but shall be prior and superior to any other liens against such Sites and improvements.

10. Exempt Property. The following property subject to this Declaration shall be exempt from the fees, charges and liens created herein:

d. All property dedicated to and accepted by any municipality or public utility for public use purposes.

e. All Common Area and Facilities.

f. All Sites owned by the Declarant and by any entities owned in whole or in part by Declarant or a Home Builder.

11. Sherwood Village Park. Pursuant to Article VI section 4, Declarant has the right (but not the obligation) to establish a recreational park and/or picnic area (this foregoing may be collectively referred to herein as the "Sherwood Village Park") and to make such facilities available for use by the Owners.

## **ARTICLE V Insurance and Risks**

In addition to the insurance each Owner is required to obtain and maintain under Article IV above, the Board may obtain and maintain the following policies of insurance, as it determines is appropriate and feasible:

1. Liability Insurance. Comprehensive public liability and property damage insurance for real and personal property owned, used or maintained by the Association and easements granted herein for the benefit of the Association and Owners in such amounts deemed necessary or desirable by the Board. Such policy may contain a "severability of interest" clause or endorsement to preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association

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or Owners. Coverage may include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of Common Area and Facilities owned by the Association and legal liability arising out of lawsuits related to employment contracts of the Association.

2. Workman's Compensation Insurance. Workman's compensation insurance to the extent deemed necessary by the Board.

3. Casualty Insurance. Blanket hazard insurance including fire and extended coverage and all perils normally covered by a standard intended coverage endorsement for insurance for insurable improvements and fixtures owned, used or maintained by the Association.

4. Non-liability and Indemnification of Declarant, Association, Officers, Directors and Agents. Notwithstanding any other provisions herein, Declarant, the Association and their officers, directors and agents shall not be liable to any Owner or any other person, if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner to ascertain the coverage and insurance coverage and protection as the Owner may desire. Further, to the fullest extent permitted by law, the Association shall indemnify its officers, directors and agents and Declarant and its officers, directors and agents to the fullest extent permitted by law for any and all insurable expenses and liabilities, including attorney fees, for any action, inaction, omission, error or negligence authorized hereunder.

5. Inherent Dangers. Each Owner of a Site and purchaser under any contract, by acceptance of a deed or contract therefor, and each occupant of a Site, for themselves, their heirs, grantees, representatives, guests, invitees, tenants, family members, successors and assigns hereby agree to and do hereby release Declarant, the Association and their officers, members, directors and agents from any and all liability whatsoever relation to injury of damage sustained as a result of the use of the Common Area and Facilities including the Sherwood Village Park.

**ARTICLE VI**

**Construction, Management, Maintenance, Repairs, Alterations and Improvements**

1. Association Board of Directors. The Board shall have authority to manage, maintain, alter and improve all property owned or used by the Association, including to construct improvements on real estate owned by the Association and upon easements granted to Owners and the Association under the terms of this Declaration and otherwise. The Board may delegate any portion of its authority to a managing agent.

2. Owners. Except to the extent the Association assumes responsibility for landscaping and certain property owned or used by the Association, each individual Owner shall maintain, repair and replace all improvements on Sites owned by such Owner at their own expense and in accordance with the requirements set forth in this Article VI. No Owner may paint or otherwise decorate or change the appearance of any exterior portion of any improvements on a Site without written consent of the Board.

3. General Construction and Maintenance Requirements. Pursuant to each Owner's obligations set forth in section 2 above, the materials to be used in repairing and replacing the improvements shall be identical to those used by Declarant in the original construction in both quality, color and application/workmanship (except for any deviations with the prior written approval of the Board).

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No alterations from the original building plan shall be permitted without the prior written consent of the Board.

- a. Prior to commencing any repairs or reconstruction of a residence or other improvement, the Owner may ask the Board to approve the plans or to clarify any requirement set out herein. When such approval or clarification is requested, the Board shall respond in writing in a timely manner. If such prior approval or clarification is not obtained, the risk of liability for non-compliance shall be that of the Owner.
- b. With respect to any substantial repairs or replacements to any residence, defined as costs in excess of \$ 25,000.00, each Owner must receive the prior written approval of the Board of all contractors to be hired to perform the repairs or replacements to the improvements.
- c. Upon completion of any substantial repairs or replacements to any improvements, defined as costs in excess of \$ 25,000.00, the Owner must obtain a written statement from the Secretary of the Board stating that the improvements were repaired and/or reconstructed in accordance with the building restrictions as set out herein. The Association shall have a \$25,000.00 lien against the Site until the written statement is obtained.

4. Sherwood Village Park. If the Sherwood Village Park is constructed and made available for use by residents of Sherwood Village Development, the following shall apply:

- a. The Association shall pay all (i) operating expenses and (ii) all post-construction capital expenditures relating to the Sherwood Village Park.
- b. The Association shall pay the amount due under section (a) above out of the assessments collected from the Owners of the Sites subject to this Declaration, except that Declarant shall have the right (but not the obligation) to make non-interest bearing loans to the Association for post-construction capital expenditures incurred through the Termination Date, which loans shall be repaid to the Declarant in (2) equal annual installments commencing six (6) months after the Termination Date or in earlier payments to the extent the Association has funds available therefor.

5. Common Areas and Facilities. Subject to section 4 above, the Declarant covenants and agrees to convey by special warranty deed all of its rights, title and interest in the Common Area and Facilities (except any part thereof that is outside Sherwood Village Development) to the Association, at such time(s) as the Declarant, in its absolute discretion, may determine, but in all events, not later than one month after all of the Sites have been sold and residences constructed thereon ("Substantial Completion"). Notwithstanding the actual date of transfer, except as otherwise provided in an agreement with the Declarant, the Association shall be responsible for properly repairing, replacing controlling, maintaining, operating, and insuring, as applicable, all Common Areas and Facilities (except any part thereof that is within any Site and has not been landscaped or otherwise improved by the Declarant or the Association), subject to any control thereover maintained by any governmental authority, utility or similar person or entity. Any transfer of title by the Declarant shall not constitute an assignment by the Declarant of any of its rights as the developer of Sherwood Village Development pursuant to the Declaration or any other instrument, contract or declaration. In insuring the Common Areas and Facilities, the Association shall cause the Declarant to be named as an additional insured on the insurance coverage until Substantial Completion.

6. Landscaping. The Owner shall install the initial landscaping package for each Site subsequent to the construction of the residence. The package shall consist of trees, shrubs and plants designed to complement the architectural character of the residence in form, location and scale. Additional plantings shall not be permitted by an Owner except by written agreement between an Owner and the Board. Notwithstanding the foregoing, each residence shall have a six (6) foot perimeter extending around its foundation in which the Owner may plant flowers or shrubs as the Owner may desire; provided, however, if an Owner chooses to install plantings in the six (6) foot perimeter, such area shall not be maintained by the Association and provided further the Owner must maintain the area in a clean and attractive condition.

a. The Association shall maintain all landscaping installed by the Declarant or the Association on the Sites in a clean and attractive condition. Without limiting the generality of the foregoing, the Association shall maintain, cultivate and keep in good condition and repair, all shrubs, trees, grass, lawns, plantings and other Landscaping originally located or from time to time placed on each Site by Declarant or the Association. Except for the removal and replacement of dead or diseased plants, no additional plantings shall be installed on any Site without a written agreement between the Owner and the Board.

b. An authorized representative of the Association and all contractors, repairmen or other agents employed or engaged by the Association shall be entitled to reasonable access to each Site as may be required to perform any of the Association's responsibilities hereunder.

## ARTICLE VII Easement

1. Declarant will install or cause to be installed, lines, pipes, conduits, and other utility facilities for common use (herein referred to as "utility lines") for the purpose of providing sewer, electricity, gas, water and telephone services up to the individual Sites. To insure that such utility lines shall be kept, maintained, restored, repaired and replaced, Declarant hereby grants to the Association, its successors and assigns, and to the City of Topeka, and all and any public utilities, for the benefit of the Owners, the following permanent rights, licenses and easements: an easement to keep, maintain, restore, repair and replace any such utility lines over, under and across any Association property or Site for the purpose of maintaining, restoring, repairing or replacing any utility lines, and the purpose of reading any meter installed with respect to any utility lines.

2. Easement for Minor Encroachments. Each Site and all improvements constructed upon property owned by the Association shall be subject to an easement created by the construction of any overhang of the structures built by Declarant and a valid easement for said encroachment and for the maintenance of the same as long as they stand shall and does exist. In the event any such improvements are partially or totally destroyed and then rebuilt, the Association and the Owners agree that valid easements shall exist for any encroachments resulting therefrom.

3. Blanket Easement. There is hereby created a blanket easement upon, across, over and under all of the real estate of Sherwood Village Development for ingress and egress, installment, operation, replacing, repairing and maintaining utilities and utility lines, including but not limited to, water, sewer, telephone, television, electricity, gas and drainage facilities, together with the right to remove any obstruction that may be placed in any such easement or with the use, maintenance, operation or installation of such utilities or drainage facilities. By virtue of this easement, it shall be expressly permissible for the City of Topeka or any public utility and/or Declarant to fix and maintain pipe, wires, conduits or other service lines, on, above, across and

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under the roofs and exterior walls of the Site improvements. Notwithstanding anything to the contrary in this paragraph, or in this Declaration, no sewer, electrical line, water line or other utility may be installed or relocated on property owned by the Association or by Owners until approved by Declarant so long as Declarant owns any of Sherwood Village Development and thereafter, by the Board.

4. Easement for Ingress and Egress. The Declarant hereby dedicates and creates to itself, its successors and assigns, and hereby grants to the Association, its successors and assigns, and unto each Owner, an easement for ingress and egress to each Site on over and across all private streets, parking areas and sidewalks in Sherwood Village Development.

5. Association Easements. The Declarant hereby establishes and reserves to itself, its successors and assigns, and hereby grants to the Association, its successors and assigns, an easement over, under and across all of Sherwood Village Development, for the benefit of each Owner, for the purpose of executing any of the powers, rights or duties granted to or imposed upon the Association by the terms of this Declaration, the Articles of Incorporation and Bylaws of the Association, and any past and future amendments thereto.

6. Landscaping Easements. The Declarant hereby establishes and reserves to itself, its successors and assigns, and hereby grants to the Association, its successors and assigns, an easement over, under and across each of the Sites in Sherwood Village Development for the benefit of the Association for the purpose of performing the landscaping duties on each of the Sites, as such duty is imposed upon the Association by the terms of this Declaration and any past and future amendments thereto.

**ARTICLE VIII  
Use and Restrictions**

1. Legal Title. Each Site shall be evidenced by a deed recorded or to be recorded in the office of the Register of Deeds of Shawnee County, Kansas, and designated by a separate legal description. Except for improvements owned by the Declarant and the Association, each Site shall be used solely for one private, single-family residence, and no professional business or commercial use shall be made of the same or any portion thereof; nor shall an Owner's or tenant's use of the site endanger the health or disturb the reasonable enjoyment of any other Owner or resident.

2. Without the prior written permission of the Board, no leases for less than one (1) year shall be permitted. All leases shall be in writing and shall be subject to this Declaration. Upon request of the Association, a copy of each lease shall be delivered to the Association.

3. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, storage building or other outbuildings on any site shall be used at any time as a residence, either temporarily or permanently.

4. No signs, billboards, unsightly objects, playground equipment, bicycles, recreational equipment, or nuisances shall be placed or permitted on any Site. No awnings, canopies, shutters, radio, and television antennas shall be affixed to or placed upon an exterior wall or roof of a residence or other improvement on a Site without prior written consent of the Board.

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5. Size of the Principal Dwelling: The gross floor area of the main structure of any residence, exclusive of porches, garages, and basements areas, finished or unfinished shall not be less than 1,450 square feet.
6. Twenty-five percent to thirty percent (25% to 30%) of the front of the residence is required to have Decorative Stone, Rock or Brick.
7. No external or outdoor hot tubs or spas (unless located on a patio or deck) shall be permitted without the prior written approval of the Board. Swimming pools may be allowed with approval of the Board concerning size, location, setbacks and neighbor approval.
8. No outside storage of any items shall be allowed on any Site, except within the private garage of the Owner. No boat, camper, trailer, mobile home or self-propelled recreational vehicle of any type whatsoever may be parked, stored, or otherwise located at any portion of Sherwood Village Development, except for a period of time necessary for loading or unloading of personal property into or from the same. No recreational vehicles shall be parked anywhere in Sherwood Village Development for longer than twenty-four (24) hours without Board approval.
9. Each Site shall only be allowed the number of vehicles per spaces provided in the garage on that respective Site. No vehicle may remain parked in a driveway for more than eight (8) consecutive hours in any twenty-four period. Garage doors shall be kept closed at all times (except when necessary to permit the passage of persons and vehicles.)
10. No maintenance of any vehicle (other than washing) shall be permitted on any Site, except within the private garage of the Owner. This includes but is not limited to automobiles, trucks, campers, trailers and boats. No non-operable vehicle of any kind, nor any vehicle without current license tags may be kept on any Site, yard, driveway or street in front of any Site at any time.
11. No dog or other animal pen or run may be constructed or maintained without the prior written consent of the Board. No animals, livestock or poultry of any kind shall be raised, bred or kept at any time or place, with the sole exception being common household pets as authorized by the Board, provided that they are not kept, bred or maintained for any commercial purpose. Allowed pets must be confined at all times within the interior of a residence or patio or on a leash under the direct supervision and control of the Owner. Owners must remove any waste produced by their pet promptly and in a hygienic and responsible manner.
12. All rubbish, trash and/or garbage shall be kept so as not to be seen from the neighboring residence and streets except on collection day.
13. All fixtures and equipment installed within a residence and all utility lines, pipes, wires, conduit or other systems over, under or on a Site (not maintained by the utility provider) shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will impair the structural soundness or integrity of any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the property or improvements of other Owners or the Association.
14. No vehicles shall be parked on streets or driveways except for the reasonable needs of emergency, construction, or service vehicles for a time limited to as briefly as possible.

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15. No noxious or offensive activity shall be conducted in, on or above any Site, Common Area and Facilities, or improvements thereon, and nothing shall be done thereon which may be or may become an annoyance or nuisance to an Owner.

16. No unlawful use shall be made of any Site, Common Area and Facilities, and improvements thereon, and all valid laws, zoning ordinances and regulations shall be observed.

17. At the time of submitting plans for the residential structure, the Builder/owner shall include a Landscape Plan submitted to the Declarant or assigns for approval. Landscaping shall include a minimum of one (1) tree to be placed between the residence and street right-of-way with a minimum of a two (2) inch caliper and sufficient landscaping to cover the front of the residence. Fescue Sod and appropriately sized Sprinkler System is required on each Home Site. No additional plantings, except within the six (6) foot perimeter around each residence, will be allowed on Sites without approval of the Board. Maintenance of any additional plantings, flowers or other approved plantings, unless otherwise agreed by the Board, shall be the responsibility of the Owner.

18. Roofs: All residential dwellings or residences, garages, attachments and outbuildings shall be constructed with Architectural grade of better roofing material. All Roofs shall have a minimum 6/12 pitch on all four sides of any structure.

19. All driveways shall be constructed of concrete, brick or pavers.

20. Real Estate "for sale" signs and Home Builder signs may be allowed in the front of the main body of the home but restricted within the six (6) foot perimeter of the home. Such Signage must be professionally lettered and may not exceed the standard 3' x 2' size with two identifying Realtor or Home Builder names and numbers.

21. All exterior basement foundations and walls which are exposed in excess of six (6) inch above final grade level shall be painted the same color as the residence or covered with siding compatible with the structure.

22. All building utility service, for all utilities, shall be underground from the point of the service available to any structure.

23. American Flags may be flown from a holder on the home on any day. A flag pole would require prior permission from the Board. Sports teams flags may be flown on game days only.

24. No garage or yard sales are permitted in Sherwood Village Development except for one spring and one fall community wide sale conducted at such time and manner as determined by the Board.

25. No Site may be further subdivided, except by the Declarant.

26. Yard Lights will be required to be installed approximately 25 to 30 feet from the curb of the street and approximately 10 to 25 feet from the left or right boundary line of the property at the location marked by the Declarant. The Declarant will select the yard light and secure a source for the owner to purchase same. The Home Builder or Owner will be required to install the yard light on a concrete pad and connect, operate, and maintain the yard light. Carriage lamps/lights are required on the main structure on each side of all garage doors (i.e., two (2) lights for a single door, three(3) lights for two doors), except a can/disc recessed light over the address plaque for

identification and emergency services location may be used in lieu of the third light. Both yard and garage lights will be required to operate on a dusk to dawn photo-electric cell.

27. Except as specifically authorized herein, no fences shall be allowed anywhere in Sherwood Village Development without the prior written consent of the Board. Any fences in Sherwood Village Development not specifically authorized herein or approved in writing by the Board shall be removed by the Owner of the Site upon which such fence is located. If permission to maintain such existing fence is not obtained, the Board may remove such fence and charge the cost of such removal to the Owner. If permission is granted for any fence, the Owner shall be responsible for all maintenance and painting of the interior and exterior of the fence and for mowing grass on the interior of the fence. Notwithstanding the foregoing, the installation of the underground pet containment system ("invisible fence") shall be permitted, provided the boundaries of such system are within the respective Owner's Site and provided further that any breach of the boundary by the Owner's pet does not trigger an audible alarm generated by the system.

28. The foregoing covenants of this Declaration shall not apply to the activities of the Association, a Home Builder, the Declarant and any entity owned in whole or in part by Declarant. Declarant, an entity owned in whole or in part by Declarant and a Home Builder may maintain, while selling Sites in or upon such portions of Sherwood Village Development as Declarant may determine, such facilities as in its sole discretion may be necessary or convenient, including, but without limitation, offices, storage areas, model units and signs.

## **ARTICLE IX**

### **Enforcement; Remedies; Waiver of Rights**

1. Enforcement and Remedies. In the event of any violations or default by any Owner or other person of these or any amended provisions of this Declaration, which violations or default is not cured within thirty (30) days after written notice of such violation or default is delivered to the Owner or posted on the Site (or if such cure requires more than thirty (30) days to complete, the cure is commenced within thirty (30) days), the Association and Declarant and their successors, assigns, and agent or their authorized agents may enter any Site on which a violation of these restrictions exists and may correct such violation at the expense of the Owner. The Association shall further have each and all of the other rights and remedies which may be provided for in this Declaration, or which may be available at law or equity, and may prosecute any action or other proceedings against such defaulting Owner or other persons for injunctive relief, enforcement or foreclosure of any lien herein provided, damages, specific performance, judgment for payment of money and collection thereof, or for any combination of remedies.

2. Expenses of Enforcement. All expenses of the Association, Declarant or any other persons granted rights of enforcement hereunder, including court cost and reasonable attorneys' and other fees and expenses, and all damages, liquidated or otherwise, together, with interest, shall be charged to and assessed against such defaulting Owner or other person and to the extent legally permissible shall be a Special Assessment against such defaulting Owner or other person, and enforceable by the Association, Declarant or any other persons granted rights of enforcement hereunder as a lien against the portion of Sherwood Village Development owned by such defaulting Owner or other person. Such expenses and such fines and penalties as may be imposed pursuant to this Declaration or any additional rules promulgated by the Association shall be a Special Assessment secured by a lien upon such Site enforceable in accordance with this



Declaration. The Declarant or the Association may record such lien for title purposes in the office of the Register of Deeds for Shawnee County, Kansas.

3. Waiver of Rights. Each Owner hereby waives, to the extent permitted by law and as to any liens created herein, any and all redemption, homestead and exemption laws of the State of Kansas now or hereafter in effect.

**ARTICLE X  
Amendment**

1. This Declaration may be amended by the Declarant until all the Sites owned by the Declarant or an entity owned in whole or in part by Declarant are sold, or until January 1, 2029, whichever occurs first. Thereafter, this Declaration may be amended in the following manner.

*a. Notice.* Notice of the subject matter of a proposed amendment shall be included in the notice of any Association meeting in which a proposed amendment is considered.

*b. Resolution of Adoption.* A resolution adopting a proposed amendment may be proposed by either the Board or by the Members of the Association. Directors and Members not present in person or by proxy at the meeting considering the amendment may express their approval or disapproval in writing, providing such approval or disapproval is delivered to the secretary at or prior to the meeting. Except as elsewhere provided, any amendment of this Declaration shall require the approval of majority of the Owners.

2. Execution and Recording. A copy of each amendment shall be executed by the officers of the Association or the Declarant with all the formalities of a deed of conveyance. The amendment shall be effective when such certificate and copy of the amendment are recorded in the office of the Register of Deeds of Shawnee County, Kansas.

3. Amendment Requiring Two-Thirds Approval. Unless approved by a two-thirds vote of a Class A members entitled to vote, or with the prior written consent of such Class A members, this Declaration may not be amended and the Association may not take any action which would:

a. By act or omission seek to abandon, partition, subdivide, sell or transfer Common Area and Facilities owned by the Association, provided however that the granting of easements for public utilities or public purposes shall not be deemed a transfer within the meaning of this clause.

b. Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Site or Owner.

c. Fail to maintain fire and extended coverage insurance for insurable property owned by the Association in an amount not less than the full replacement cost.

**ARTICLE XI  
Condemnation**

1. Partial Taking Without Direct Effect on Sites. If part of the Common Area and Facilities or any easement created hereunder shall be taken or condemned by any authority having the power of eminent domain, such that no Site nor any part thereof is taken, then all compensation and damages for and on account of the taking of the Common Area and Facilities or any easement created hereunder (exclusive of compensation for consequential damages to any affected Sites), shall be paid to the Association as trustee for all Owners and mortgagees.

2. Partial or Total Taking Directly Affecting Sites. If part or all of a Site shall be taken or condemned by any authority having the power of eminent domain, the Association shall act on behalf of the Owners with respect to Common Area and Facilities and any easement created hereunder as set forth in paragraph 1 of the Article. The Owners of Sites, or any portions thereof, taken or condemned and their respective mortgagee shall represent and negotiate for themselves with respect to the damages affecting their respective Site and improvements.

## **ARTICLE XII**

### **Duration**

1. The restriction on the use and benefit of the property subject to this Declaration is hereby established and continued for a period of time ten (10) years from the date hereof and shall thereupon renew for an additional ten (10) year unless the Owners of at least two-thirds of the Sites file their signed and acknowledged written objection of record with the Register of Deeds of Shawnee County, Kansas, not less than sixty (60) days prior to the expiration of the original term of these restrictions. Thereafter, the restrictions shall automatically renew for successive ten (10) year periods until and unless the Owners of at least two-thirds of the Sites file a signed and acknowledged written objection of record with the Register of Deeds of Shawnee County, Kansas not less than sixty (60) days prior to the expiration of such renewal term.

2. If the rule against perpetuities is applicable to any right, restrictions or other provisions of the Declaration, such right, restrictions or other provision shall terminate (if not earlier terminated) upon the lapse of twenty years after the death of the last survivor of the now-living children and grandchildren of the individual signing this Declaration on behalf of the Declarant as of the date of such execution.

## **ARTICLE XIII**

### **Assignment**

The Declarant shall have the right and authority, by appropriate agreement made expressly for that purpose, to assign, convey, transfer and set over to any person(s) or entity, all or any part of the rights, benefits, powers, reservations, privileges, duties and responsibilities herein reserved by or granted to the Declarant and, upon such assignment, the assignee shall then for any or all such purposes be the Declarant hereunder with respect to the rights, benefits, powers, reservations, privileges, duties, and responsibilities so assigned. Such Assignee, and its successors and assigns, shall have the right and authority to further assign, convey, transfer and set over the rights, benefits, powers, reservations privileges, duties and responsibilities hereunder. Upon such full assignment, the Declarant shall be forever released from all further obligations thereafter accruing under this Declaration, provided that the Declarant shall not then be in default in the performance of any provision of this Declaration. The Association shall have no right, without the written consent of the Declarant, to assign, convey or transfer all of any part of its rights, benefits, powers, reservations, privileges, duties and responsibilities hereunder.

## **ARTICLE XIV**

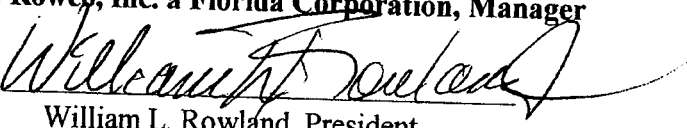
**Limitation of Liability**

Notwithstanding anything to the contrary herein, it is expressly agreed that neither the Declarant nor any member in the Declarant shall have any personal liability to the Association or any Owner arising under, in connection with, or resulting from (including, without limitation, resulting from action or failure to act with respect to) this Declaration or for any action taken or not taken pursuant to authority granted to Declarant herein or with respect thereto, except, in the case of the Declarant, to the extent of its interest in the Association, and in the case of a member of the Declarant, to the extent of the member's interest in Declarant, and in the event of a judgment against the Declarant or any member of Declarant, no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets of the judgment debtor.

**THIS DECLARATION** is to be binding on the Declarant and all other parties having or acquiring any right, title or interest in Sherwood Village Development, or a part thereof, and their heirs, executors, administrators, successors and assigns.

**SHERWOOD PARK DEVELOPMENT CO., L.L.C.**

By: Rowco, Inc. a Florida Corporation, Manager

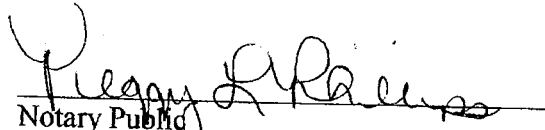
By:   
William L. Rowland, President

**ACKNOWLEDGEMENT**

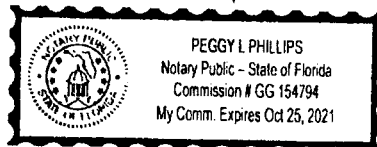
STATE OF Florida, COUNTY OF Sarasota:

BE IT REMEMBERED, That on September 17<sup>th</sup>, 2020, before me, the undersigned, a Notary Public in and for the County and State, aforesaid, came William L. Rowland, as President of Rowco, Inc. a Florida corporation, Manager of Sherwood Park Development Co., L.L.C., a Kansas limited liability company, who is personally known to me to be the same person who executed the foregoing instrument of writing in such capacity and duly acknowledged the execution of the same to be his free and voluntary act and deed for and on behalf of the said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by notarial seal the day and year last above written.

  
Notary Public

My Appointment Expires: Oct 25<sup>th</sup> 2021



**EXHIBIT A  
Legal Description**

“Lots 1-9, Block A; Lots 1-5, Block B; Lots 1-19, Block C; All in Sherwood Village  
Subdivision, City of Topeka, Shawnee County Kansas.”