



DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION is made effective the 21st day of February, 2019 (the "Effective Date"), by 40 North, LLC., a Kansas limited liability company (the "Declarant").

RECITALS

- Declarant desires to place certain covenants, conditions, restrictions, easements, charges and liens upon certain real property located in Douglas County, Kansas, and described as Exhibit A attached to and, by reference, made a part of this Declaration (the "**Real Estate**"), for the benefit of Declarant and Declarant's successors, grantees and assigns, and to protect the value and desirability of the Real Estate and contiguous real property owned by Declarant or in which Declarant has an interest.
- Declarant by this Declaration, subjects that the Real Estate shall be subject to protective covenants, conditions, restrictions, reservations, liens and charges set forth in this Declaration.

DECLARATION

NOW, THEREFORE, Declarant declares that the Real Estate is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens described in this Declaration, for the purposes of (i) enhancing and protecting the value, desirability and attractiveness of the Real Estate and contiguous real property owned by Declarant or in which Declarant has an interest, (ii) increasing the Owners' benefit to be derived from the Real Estate, and (iii) protecting the owners, lessees and sublessees of any part of the Real Estate against incompatible uses of other parts of the Real Estate. The easements, covenants, restrictions and conditions shall run with the Real Estate and shall be binding upon all parties having or acquiring any right, title or interest in the Real Estate, or any part thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

- "**Build Out Plans**" shall mean and refer to the Build Out Plan for 25.76 Acres more or less in Northeast QUARTER OF 31-13-20 as recorded in the Office of the Register of Deeds of

Douglas County, Kansas and as attached to and, by reference incorporated in this Declaration as Exhibit B, and amended from time to time.

- **“Building Envelopes”** shall mean and refer to the buildable area of a Residential Development Parcel defined by the minimum required setbacks contained within Douglas County Zoning Regulations.
- **“Certificate of Survey”** shall mean and refer to the Certificate(s) of Survey for the Real Estate or any portion thereof, as amended from time to time, approved in accordance with the Subdivision Regulations and recorded with the Register of Deeds of Douglas County, Kansas.
- **“Declarant”** shall mean and refer to 40 North, LLC, a Kansas limited liability company and to any persons to whom 40 North, LLC shall assign its rights as Declarant.
- **“Driveways”** shall mean and refer to the driveway easements for vehicular and pedestrian ingress and egress, dedicated by separate easement(s) shown on Exhibit A and legally described on Exhibits A and C, both of which are attached to and, by reference, incorporated in this Declaration, and as to Exhibit C, previously recorded September 5, 2018 in Book 1161, Page 3370-3373 in the Office of the Register of Deeds of Douglas County, Kansas.
- **“Future Development Area”** shall mean and refer to the portion of the Real Estate that is to be set aside for future development after annexation into a city, as identified in a Certificate of Survey.
- **“Immediate Development Area”** shall mean and refer to the portion of the Real Estate that may be divided into Residential Development Parcels and developed immediately, prior to annexation into the city, as identified in a Certificate of Survey.
- **“Owner”** shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to a Parcel, including a contract purchaser of a Parcel. The term “Owner” shall not mean any mortgagee, unless and until such mortgagee has acquired fee simple title to a Parcel pursuant to foreclosure or any proceeding in lieu of foreclosure.
- **“Person” or “Persons”** shall mean a natural individual, corporation, partnership, limited liability company, trustee or other legal entity capable of holding title to real property, or any combination thereof.

- **“Parcel” or “Parcels”** shall mean and refer to the individual parcels or lots as described in the Build Out Plans and that make up the Real Estate, together with all future permitted subdivisions of any parcel.
- **“Residential Development Parcel”** shall mean and refer to the Parcel or Parcels upon which a residence may be constructed prior to annexation into a city, as identified in a Certificate of Survey.
- Other terms may be defined in specific provisions contained in this Declaration and shall have the meaning assigned in such definition.

ARTICLE II

SCOPE OF DECLARATION

- **Property Subject to Declaration.** Declarant, as the Owner of all of the Real Estate, expressly intends to, and by the execution and recording of this Declaration does hereby, subject the Real Estate to the provisions of this Declaration.
- **Conveyances Subject to Declaration.** All restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant, running with the land, and shall at all times inure to the benefit of and be binding on all persons having at any time any interest or estate in any Parcel, or part thereof, and their respective heirs, legal representatives, successors and assigns.

ARTICLE III

ARCHITECTURAL CONTROL COMMITTEE

- **Architectural Control Committee.** The Architectural Control Committee shall have the powers and duties set forth in this Declaration and shall consist of (3) persons. Initially, the Committee shall consist of Glenn Westervelt, Jason W. Flory and Michael A. Flory. A majority of the Committee may designate a representative to act for it. Until such time as all of the Parcels have been sold by Declarant to third parties, Declarant shall have the right to remove members of the Committee and substitute other persons for any member who may be removed, resign or for any other reason ceases to act as a member of the Committee. Declarant shall take such action by written statement duly filed with the Committee. At such time as Declarant conveys all the Parcels, or earlier if Declarant so elects in writing, a majority of the Owners shall have all powers previously held by Declarant to remove and appoint members of the Committee. The affirmative vote of a majority of the members of the Committee shall be required in order to adopt or

promulgate any rule or regulation or to make any finding, determination, ruling, or order, or to issue any permit, consent, authorization, or approval pursuant to the authority contained in this Declaration. In lieu of a meeting, the Committee may take action by unanimous written consent or may meet by telephone conference in which all members participate. The decisions of the Committee shall be final.

- **Restrictions.** No structures, fencing, or other improvements, including, without limitation, residential dwellings, barns, outbuildings, or sheds, shall be constructed, erected, placed, altered, maintained or permitted on any Parcel until plans and specifications with respect thereto in manner and form satisfactory to the Committee showing the proposed improvements, site plan, all exterior elevations, roof pitch and materials, color and composition of exterior materials, including trim colors, signs, easements and utilities, and such other information as may be requested by the Committee have been submitted to and approved in writing by the Committee. No Owner may paint or otherwise decorate or change the appearance of any exterior portion of his dwelling or other buildings on his Parcel or the grade or topography of such Owner's Parcel without the prior written consent of the Committee. No permission or approval shall be required to (i) repaint in accordance with the originally approved color scheme, (ii) rebuild in accordance with originally approved plans and specifications, or (iii) to decorate any Parcel or improvements located on a Parcel with temporary seasonal decorations that do not constitute a nuisance or annoyance to the neighborhood or which detracts from the attractiveness of the Real Estate. Nothing herein shall be construed to limit the right of an Owner to remodel the interior of such Owner's residence or other buildings, or to paint such interior any color the Owner desires.
- **Standard for Review.** Approval by the Committee must be in writing, and shall be based, among other things, on adequacy of the Parcel dimensions, conformity and harmony of external design, colors, roof, materials, effect of location and use of improvements on neighboring Parcels, operations and uses; relationship of topography, grade and finished ground elevation of the Parcel being improved to that of neighboring Parcels; proper facing of main elevation with respect to nearby roads; compatibility and location of parking areas; and conformity of the plans and specifications to the propose and intent of this Declaration. The Committee shall not arbitrarily or unreasonably withhold its approval of any such plans and specifications.
- **Limitation of Liability.** Neither the Committee nor Declarant, nor their respective agents, employees, successors or assigns, shall be liable in damages to (i) anyone submitting plans to them for approval, or (ii) the Owner of any land affected by this Declaration, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval, or failure to approve or disapprove any such plans and specifications which are submitted to it. Every person who submits plans to the Committee for approval agrees by submission of such plans and specifications, and any Owner or tenant of any of the Parcels agrees by acquiring title thereto or an interest therein, to not bring any action or suit, against the Committee or Declarant, asserting any right to recover any such damages.

- Construction Requirements.** Exterior walls of all residential dwellings, structures, and appurtenances thereto shall be of brick, stone, wood shingles, wood siding, glass, glass blocks, any combination thereof, or any other materials approved by the Architectural Control Committee. Roofs may be covered with wood shingles, or high-grade, alternative roofing materials, such as three-dimensional composition (with minimum warranty period of 30 years), metal, concrete or fiberglass shingles that have the look and appearance of wood shingles, wood shakes, slate or tile provided, however, that no such alternative roofing materials shall be permitted absent the prior written approval of the Architectural Control Committee in each instance. Windows, doors, and louvers shall be of wood, vinyl, or metal and glass. Roofs with a pitch of less than six (6) inches per foot shall be prohibited. Maximum roof pitch shall be eighteen (18) inches per foot. All exterior walls and roofs shall be as specified in this paragraph unless approval is otherwise granted by the Architectural Control Committee.
- Approval or Disapproval of Plans.** The Committee shall have thirty (30) days following submission, in writing, by the Owner, of required plans, specifications, and other information, in which to approve or disapprove such plans and specifications, or to request additional information reasonably required by the Committee. If the Committee shall fail to approve or disapprove such plans, or to request additional information within such thirty (30) day period, the plans and specifications shall be deemed to be approved and the requirements of this Article shall be deemed to have been fully complied with. Upon approval by the Committee of any plans and specifications submitted pursuant to the provisions of this Declaration and upon approval by the applicable governmental agency authorized to issue building permits, such plans and specifications and a copy of all building permits as approved, if requested by the Committee, shall be deposited among the permanent records of the Committee. Approval for use on any Parcel of any particular plans and specifications or design shall not be construed as a waiver of the right of the Committee to disapprove such plans and specifications or any elements or features thereof in the event such plans and specifications are subsequently submitted for use upon any other Parcel or Parcels. The Committee may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to the provisions of this Article.

ARTICLE IV

GENERAL RESTRICTIONS AND EASEMENTS

The following general restrictions and covenants shall apply to all the Real Estate, except as expressly provided:

- Permitted Use.** Except as limited by laws of any governing body having jurisdiction over the Real Estate, the Parcels shall be utilized only for single-family residential purposes, compatible with this Declaration.

- **Dwelling Size.** The total combined area of the first floor for any residence, dwelling or home to be constructed on a Parcel (exclusive of open porches, "screened-in" porches, decks, patios, and garages) shall not be less than 1,300 square feet, which are finished above-grade and intended for the regular use and occupancy of the persons living in the residence. The total combined area, exclusive of open porches (including "screened-in" porches), decks, patios, and garages, for any residence, dwelling or home containing more than one story to be constructed on a Parcel shall not be less than 1,800 square feet, which are finished above-grade and intended for the regular use and occupancy of the persons living in the residence.
- **Signs.** No sign of any kind shall be displayed to the public view on any Parcel, except (i) one sign of not more than five (5) square feet advertising the property for sale or rent, or (ii) signs used by a builder and/or owner to advertise the property during the construction and sales period. No professional or commercial signs of any type or form shall be allowed on any Parcel.
- **Livestock and Poultry.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Parcel, except dogs, cats, and other household pets for the Owner's personal family use may be kept so long as they are not kept, bred, or maintained for any commercial purposes. No pigs, hogs or other swine, nor goats, peacocks or exotic animals will be allowed. Except as specifically set forth in this Declaration or approved by the Committee, in no event shall any animal of any nature exceed a density of 2 animals of one species on any Parcel, nor shall there be more than 1 animal of any nature exceeding a weight of 500 pounds. Pets shall be kept under control so as not to create damage or become a nuisance. Notwithstanding the foregoing provisions of this Paragraph 4, the Architectural Control Committee may authorize, in writing, exceptions to the restrictions contained in this Paragraph 4, particularly exceptions pertaining to raising animals for 4-H, educational, or similar purposes.
- **Oil, Mining and Quarry Operations.** No quarrying, top-soil removal for commercial purposes, borrow pit or mining operations of any kind shall be permitted upon or in any Parcel, nor shall tunnels, mineral excavations, or shafts be permitted upon or in any Parcel for such purposes. No oil drilling, oil wells, tanks, oil development operations or oil refining of any kind shall be permitted upon or in any Parcel, nor shall oil derricks or other structures designed for use in boring for oil or natural gas be erected, maintained or permitted upon any Parcel.
- **Nuisances.** No noxious or offensive activity shall be carried on within any Parcel, nor shall any trash, ashes, or other refuse be thrown, placed, or dumped upon any exposed area nor shall anything ever be done which may be or become an annoyance, nuisance, security risk or safety hazard to the Owners. Each Owner shall refrain from making or permitting any disturbing noise by himself, his family, agents, visitors, licensees, lessees, and pets, and to refrain from permitting anything by such persons or pets that will interfere with the rights, comforts, or conveniences of the other Owners. All trash and refuse shall be placed in closed containers or plastic bags,

securely covered or tied, and delivered at such times, and to such locations, as may be determined for trash pickup by the County of Douglas County, Kansas.

- **Utilities and Drainage.** Rights for the installation and maintenance of utilities and drainage shall be provided over, across and under the Parcels, as reasonably requested by Declarant or required from any provider of such utilities or governmental authority, from time to time. No utility lines, including without limitation, gas, electrical power, telephone, cable television service, and internet lines, may be installed or maintained above the surface of the ground on any of the Real Estate without the consent in writing of the Architectural Control Committee. Each Owner shall refrain from interference with the established drainage pattern over such Owner's Parcel or from adjoining or other Parcels, and shall make adequate provision for proper drainage from any such other Parcel in the event the established drainage over such owner's Parcel is changed or altered.
- **Commercial and Junk Vehicles.** No commercial vehicles, construction equipment, semi-tractors or trailers, unusable vehicles, salvage machinery, or other items of junk or salvage shall be stored, kept or parked overnight upon any Parcel except within enclosed garages, sheds, outbuildings or screened from view.
- **Vehicles.** No bus, truck, trailer, mobile home, boat, boat trailer or rack, equipment, machinery, cars, or vehicles of any kind not in daily use shall be parked, located, or otherwise maintained on any Parcel except within the private enclosed garage, shed or outbuilding located on a Parcel, or behind any screening fences so that such vehicles are screened from view by the other Owners. Furthermore, the streets on the Real Estate shall not be used for overnight parking of vehicles of any kind.
- **Buildings.** All buildings, structures and outbuildings to be constructed upon a Parcel must be completed, including paint or its equivalent, within 9 months from the starting date of construction. Each Owner shall maintain in good condition and repair the exterior and interior of any building erected on such Owner's Parcel, and shall maintain in good condition the real property appurtenant to any such building, including the regular mowing of lawns and removal of debris. Each residential dwelling shall have an attached two-car garage. All barns, outbuildings, sheds or other non-residential structures ("**Outbuildings**") located on a Parcel shall have the same exterior design, the same roof materials, same roof pitch, and the same colors as the residence, as approved by the Architectural Control Committee. Metal buildings will be considered but will be required to have a frontal appearance that matches the residence, these metal buildings may also be required to have cupolas, wainscot, and overhangs as well as other upgrades. No Outbuilding shall be built closer to the road or street providing access to such Parcel than the rear of the residential dwelling.
- **Fencing.** Prior to adding fencing on any Parcel, information on the type, height, color, and location of any fencing shall be provided to the Architectural Control Committee, and no

construction of such fencing shall commence until approval of the fencing has been given in writing by the Committee. Notwithstanding the preceding sentence, no fence shall be constructed on any Parcel closer to the road or street providing access to such Parcel than the front of the residential dwelling on such Parcel unless such fence matches the appearance, style and color of fencing of adjacent parcels, as determined and approved by the Architectural Control Committee in its sole discretion.

- **Mobile Homes and Basements.** No mobile home, double-wide home, component home, modular home, manufactured home, prefabricated home, prebuilt home, factory build home, house trailer, travel trailer, or any temporary or mobile structure, or any portion thereof, may be used as a residence, occupied in any manner, permanent or temporary, or maintained on any Parcel, except within enclosed garages, sheds or outbuildings or except behind screening fences so that they are screened from view by the other Owners. No basement, or any portion thereof, may be used as a residence or occupied in any manner, permanent or temporary, on any Parcel until the residence, dwelling or home has been completed in accordance with paragraph 2 above.
- **Windmill Generators and Satellite Dishes.** No exterior power windmill generator shall be erected or installed upon any Parcel, nor shall any satellite dish with a diameter greater than three feet be installed upon any Parcel or be attached to any dwelling located on any Parcel.
- **Division of Parcels.** No Parcel shall be subdivided, except as permitted by this Declaration or as approved by a vote of at least seventy-five percent (75%) of the then Owners of all Parcels in accordance with the voting procedure established in paragraph 1 of Article V of this Declaration. Notwithstanding the previous sentence, each Owner, by accepting a deed to any Parcel, acknowledges and agrees that the Real Estate has been surveyed and planned for the purpose of residential development, and that Owners may use the Parcels for residential purposes in accordance with this Declaration, the Build Out Plans, and the laws and regulations of Douglas County, Kansas or any other governing body that has jurisdiction over such Parcels. Notwithstanding anything in this Declaration to the contrary, Declarant hereby reserves the right to subdivide, from time to time, any Parcel or Parcels owned by Declarant.
- **Lawful Use.** No immoral, improper, offensive or unlawful use shall be made of any Parcel, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Real Estate shall be observed. The obligation of complying with requirements of governmental bodies as to the maintenance, modification or repair of any part of the Real Estate, shall be imposed on the same person who has the obligation to maintain and repair such Real Estate.
- **Firearms Prohibited.** The discharge of firearms on or about the Real Estate is prohibited, including, without limitation, "B-B" guns, pellet guns, air rifles, carbines, rifles, shotguns, pistols, black powder guns, and other firearms of all types, regardless of size, gauge or caliber.

- **Lawn and Grass Maintenance.** The Owners of the Parcels shall have the obligation to mow the road ditches as the Owners deems necessary, but at least eight (8) times per year. Furthermore, the grass on each Parcel, including the grass surrounding any fence, must be maintained in a condition acceptable to the Architectural Control Committee, and in any event must be mowed, including trimming with a weed-eater or similar machine, at least four (4) times per calendar year. Turf shall be maintained at a height of between 6 and 12" in height at all times. If any Owner fails or refuses to conduct the maintenance described in this paragraph, the Architectural Control Committee shall have the right, but not the obligation, to cause such maintenance to occur, in which event the Owner shall be assessed a fee. Fee will be based on the amount charged by a local contractor plus an administrative fee of \$50.00.

- **Cluster Development Restrictions.** Any future division of a Residential Development Parcel must conform to the Build Out Plan. In any Immediate Development Area, each Residential Development Parcel shall be limited to one principal dwelling and accessory buildings, until annexation into the City of Lawrence, Kansas and municipal water and sanitary sewer service are extended to the property. In any Future Development Area, any further division for development purposes is prohibited until annexation or until an amended Certificate of Survey is approved and filed with the Register of Deeds of Douglas County, Kansas. The location of structures within any Immediate Development Area are restricted to the Building Envelopes that have been created to allow for the future subdivision of the Immediate Development Area into blocks of an urban density that avoids interference with planned future streets, roads, easements and setbacks.

- **Maintenance of Driveways.** Until such time as the Driveways are accepted as a public road or street for public maintenance by either Douglas County or the City of Lawrence, Kansas, the Driveways shall be maintained by the Owners of the Residential Development Parcels as follows:
 - The Owners of the Residential Development Parcels on which a Driveway easement is located, at their expense, shall cause the Driveway to be maintained at all times in good and clean condition and repair and shall equally share the expense of such maintenance and repair as follows: (i) To maintain the surface in a smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use, and durability; (ii) remove all papers, debris, filth, and refuse to the extent reasonably necessary to keep the Driveways in a clean and orderly condition; and (iii) maintain any drainage structures and drainage ways for storm water runoff. Any upgrading of the Driveways beyond that which exists at the time of the construction thereof shall be made only upon the agreement of all the Owners of the Residential Development Parcels on which such Driveway shall be located, and the cost of said improvements and the distribution of the costs must also be agreed to by the Owners of the Residential Development Parcels on which the Driveway exists; provided, however, that the Owner of a Residential Development Parcel on which

the Driveway exists may upgrade the Driveway without the agreement of the other Owners at any time and from time to time, at such Owner's sole expense.

- If a single-family residence is constructed on any Residential Development Parcel, then the Owner of such Residential Development Parcel shall be required to provide for snow removal on the Driveway upon which such Residential Development Parcel is located. Notwithstanding the previous sentence, if single-family residences are constructed on more than one Residential Development Parcel, then the cost of such snow removal shall be shared equally between the Owners thereof on the Driveway upon which such Residential Development Parcels are located. In no event shall a Residential Development Parcel with no single-family residence located thereon be required to contribute toward the cost of snow removal.

- If the Owner of any Residential Development Parcel shall fail or refuse to maintain or repair the Driveway in accordance with this Declaration, the Owners of the other Residential Development Parcels on which such Driveway is located shall have the right, but not the obligation, to perform or cause to be performed such maintenance and repairs as set forth in this Declaration, in which event the Owners performing said maintenance and repairs shall be entitled, upon written demand to the Owner of the other Parcel, to reimbursement of actual and reasonable expenses incurred, and the repayment of such expenses shall be enforceable and secured by a lien as in the case of all other fees or charges in accordance with paragraph 3 of Article V.

ARTICLE V

MODIFICATION AND ENFORCEMENT

- **Modification.** Except as provided in this Declaration, this Declaration, or any provision hereof, or any covenant, condition, restriction or reservation contained herein, may be terminated, changed, modified or amended, including, without limitation, adding new or additional provisions, covenants, terms or restrictions (hereinafter, "**Amend**" or "**Amendment**"), at any time, with the written affirmative vote, in person or proxy, of the then Owners of at least three-fourths of all the Parcels. The Owner or Owners of each Parcel shall be entitled to a single vote for each Parcel owned. Each Parcel shall be entitled to a single vote so that if an Owner owns more than one Parcel, such Owner shall be entitled to a single vote for each Parcel owned. If a subdivision shall occur under Paragraph 14 of Article IV of this Declaration, the Owner of each such subdivided Parcel shall also be entitled to a single vote. Notwithstanding the foregoing, no such Amendment shall be effective without the written approval of Declarant, so long as Declarant owns any Parcel. An Amendment made as provided herein shall immediately be effective upon recording a proper instrument in writing executed and acknowledged by the required Owners (and by Declarant, if required herein) in the office of the Register of Deeds of Douglas County, Kansas.

- **Declarant's Right to Amend.** Notwithstanding any other provision of this Article V, until at least 90% of the Parcels have been sold by Declarant to third parties, Declarant reserves the right to Amend this Declaration without the approval of any Owner or other person.

- **Enforcement.** In addition to any Owner, the Committee members shall have the authority and standing, but not the obligation, on behalf of the Owners, to enforce in courts of competent jurisdiction, the restrictions and covenants contained in this Declaration and decision of the Committee established in this Declaration. No restriction set forth in this Declaration shall be personally binding upon any Owner, except in respect to breaches committed during his, their, or its ownership of a Parcel as record title holder, and the Committee and/or the Owner or Owners of any other Parcel, or part thereof, may have the right, but not the obligation, to sue for and obtain a prohibitive or mandatory injunction to prevent the breach, or to enforce the observance of the restrictions herein set forth, in addition to ordinary legal action for damages. Enforcement either to recover damages or restrain violations shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant. The costs (including attorneys' fees and court costs) incurred by the Committee or the other Owners to enforce the provisions hereof may be assessed against the Parcel upon which such violation occurred. When the costs are so assessed, a statement of such costs shall be delivered to the Owner of said Parcel at which time the assessment shall become due and payable and a continuing lien upon such Parcel, and a binding personal obligation of the Owner of such Parcel and the Owner or the Committee in whose favor such lien accrues may, but shall not be required to, file a statement (a "**Lien Statement**") in the office of the Register of Deeds of Douglas County, Kansas, setting forth the amount due and the lien, which Lien Statement may state that it covers unpaid statements occurring after the date of the Lien Statement. The lien against any Parcel shall continue for a period of five (5) years from the date a Lien Statement is recorded in the Office of the Register of Deeds of Douglas County, Kansas, or if a Lien Statement is not so recorded, then the date of delinquency and no longer unless a foreclosure action shall have been filed. In the event such action is filed within five (5) years from the date the Lien Statement is recorded, or if not recorded within five (5) years from the date of delinquency, the lien shall continue until termination of the action and until sale of the Parcel under the execution of judgement establishing the same. No restriction set forth in this Declaration shall be personally binding upon any Owner, except in respect to breaches committed during his ownership of a Parcel or Parcels as record title holder. The Committee shall have the further right, through its agents, employees or committees, to enter upon and inspect any Parcel at any reasonable time for the purpose of ascertaining whether any violation of the provisions of this Declaration exist on such Parcel, and neither the Committee nor any such agent or employee shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

- **County Enforcement.** Notwithstanding anything in this Article V to the contrary, the Board of County Commissioners of Douglas County, Kansas shall have the right to enforce paragraph 18 of Article IV in any manner permitted by law, and no amendment to such paragraph 18 shall be effective unless and until such amendment has been approved in writing by the Lawrence/Douglas County Metropolitan Planning Director.

ARTICLE VI

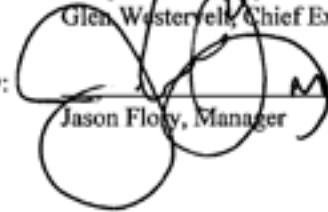
MISCELLANEOUS

- **Severability.** All of the conditions, covenants, restrictions and reservations contained in this Declaration shall be construed together, but if it shall at any time be held by a competent authority with jurisdiction that any one such conditions, covenants, restrictions and reservations, or any part thereof, is invalid or for any reason becomes unenforceable, no other condition, covenant, restriction or reservation or any part thereof shall be thereby affected or impaired.
- **Notice.** Any notices required or permitted under this Declaration shall be in writing and mailed, postage prepaid, by registered or certified mail, return receipt requested, and shall be addressed to the last known address of the respective Owner or Owners, as the case may be.
- **Interpretation.** Words used herein regardless of the number and gender specifically used shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.
- **State Law.** This Declaration shall be construed in accordance with the laws of the State of Kansas.
- **Headings.** Article and paragraph headings contained in the Declaration are for the convenience only and shall not be construed to limit or expand the provisions contained in this Declaration.
- **Covenants Running with the Land.** All easements and rights established in this Declaration are, and shall be, covenants running with the land and shall inure to the benefit and be binding upon the Owners of all Parcels and their heirs, successors and assigns, whether or not such easements or rights are mentioned or described in any deed or conveyance.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the Effective Date.

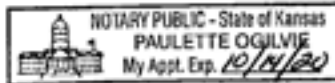
DECLARANT: 40 NORTH LLC, a Kansas limited liability company

by:  CEM
Glen Westervelt, Chief Executive Manager

by: 
Jason Floty, Manager

STATE OF KANSAS, COUNTY OF DOUGLAS) ss:

The forgoing instrument was acknowledged before me this 21st day of February, 2019, by Glen Westervelt, Chief Executive Manager of 40 North, LLC, a Kansas limited liability company on behalf of said limited liability company.



Paulette Ogilvie
Notary Public

My Appointment Expires: 10/14/20

STATE OF KANSAS, COUNTY OF DOUGLAS) ss:

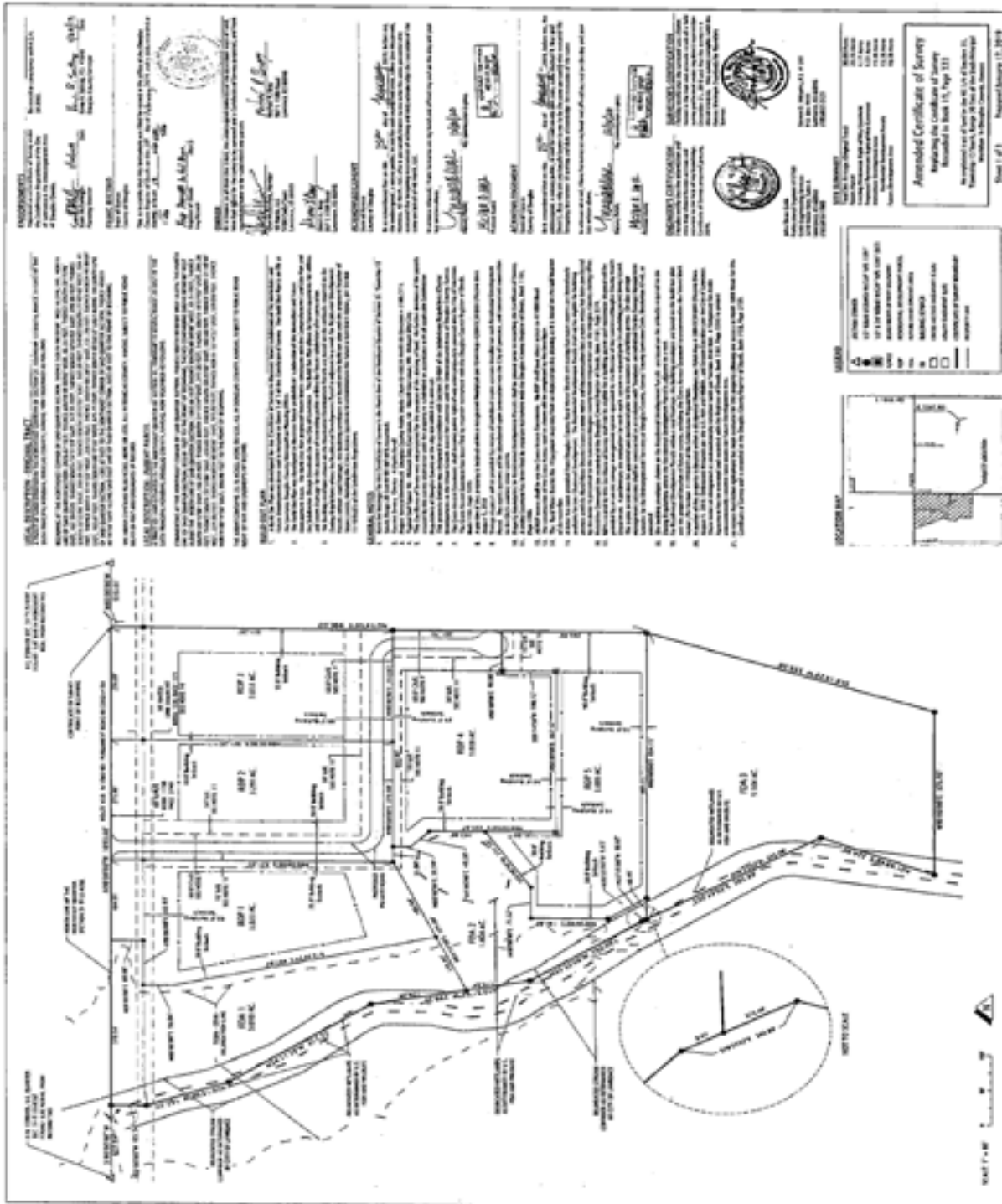
The forgoing instrument was acknowledged before me this 21st day of February, 2019, by Jason Flory, Manager of 40 North, LLC, a Kansas limited liability company on behalf of said limited liability company.



Paulette Ogilvie
Notary Public

My Appointment Expires: 10/14/20

EXHIBIT A



GENERAL NOTES:

1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
2. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
3. THE CONTRACTOR SHALL PROTECT ALL EXISTING UTILITIES AND STRUCTURES.
4. THE CONTRACTOR SHALL MAINTAIN ADEQUATE SAFETY MEASURES THROUGHOUT THE PROJECT.
5. THE CONTRACTOR SHALL SUBMIT ALL DRAWINGS AND SPECIFICATIONS FOR REVIEW AND APPROVAL.
6. THE CONTRACTOR SHALL MAINTAIN ACCURATE RECORD DRAWINGS.
7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
8. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
9. THE CONTRACTOR SHALL PROTECT ALL EXISTING UTILITIES AND STRUCTURES.
10. THE CONTRACTOR SHALL MAINTAIN ADEQUATE SAFETY MEASURES THROUGHOUT THE PROJECT.
11. THE CONTRACTOR SHALL SUBMIT ALL DRAWINGS AND SPECIFICATIONS FOR REVIEW AND APPROVAL.
12. THE CONTRACTOR SHALL MAINTAIN ACCURATE RECORD DRAWINGS.

LEGEND:

- WEST WALL
- WEST FLOOR
- WEST CEILING
- WEST ROOF
- WEST FOUNDATION
- WEST STRUCTURE
- WEST FRAME
- WEST CURB
- WEST GROUND
- WEST SURFACE
- WEST MATERIAL
- WEST COLOR
- WEST FINISH
- WEST EQUIPMENT
- WEST FURNITURE
- WEST FIXTURES
- WEST ACCESSORIES
- WEST DECORATIONS
- WEST LIGHTING
- WEST MECHANICALS
- WEST ELECTRICALS
- WEST PLUMBINGS
- WEST HEATING
- WEST COOLING
- WEST VENTILATION
- WEST EXHAUST
- WEST DRAINAGE
- WEST SANITATION
- WEST WASTE
- WEST RECYCLING
- WEST ENERGY
- WEST SUSTAINABILITY
- WEST SECURITY
- WEST DEFENSE
- WEST OFFENSE
- WEST SUPPORT
- WEST LOGISTICS
- WEST COMMUNICATIONS
- WEST INFORMATION
- WEST INTELLIGENCE
- WEST RESEARCH
- WEST DEVELOPMENT
- WEST INNOVATION
- WEST LEARNING
- WEST GROWTH
- WEST CHANGE
- WEST IMPROVEMENT
- WEST OPTIMIZATION
- WEST EFFICIENCY
- WEST EFFECTIVENESS
- WEST PRODUCTIVITY
- WEST QUALITY
- WEST RELIABILITY
- WEST DURABILITY
- WEST RESILIENCE
- WEST ADAPTABILITY
- WEST FLEXIBILITY
- WEST SCALABILITY
- WEST SUSTAINABILITY
- WEST RESPONSIVENESS
- WEST AGILITY

Approved Certificate of Survey
 Showing the location of survey
 recorded in Book 1165, Page 3011
 Surveyed by [Name] on [Date]
 Witnessed by [Name] on [Date]

Sheet 1 of 11 - Supplemental 11.2018

EXHIBIT B

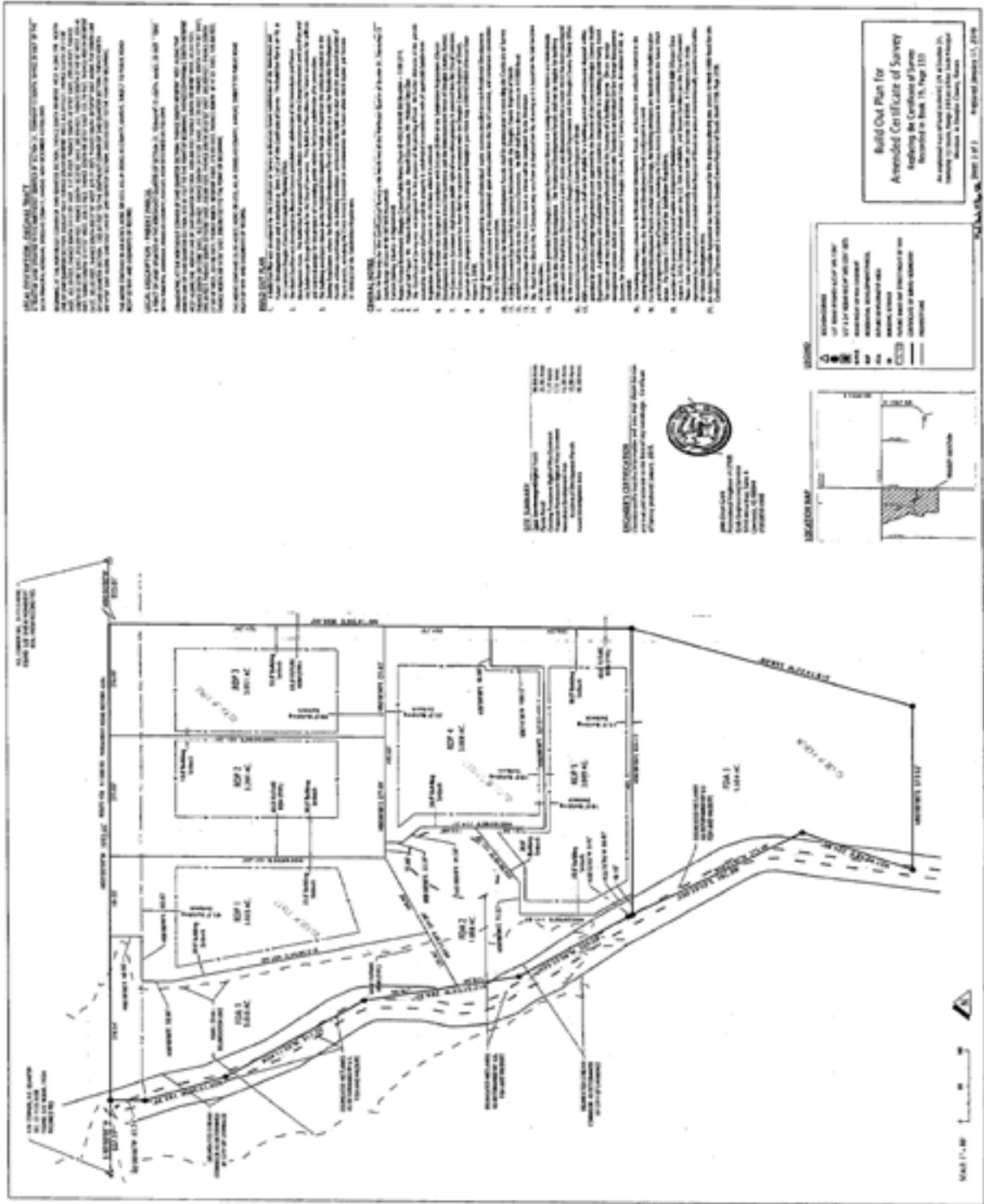


EXHIBIT C



Douglas County Register of Deeds
 BK: 1161 PG: 3370 - 3373 Receipt #:512345
 Rec Fees: \$72.00
 Pages Recorded: 4 Record Date: 9/5/2018 10:35 AM
 Cashier Initials : do Authorized By Kay Pessell

CROSS-ACCESS EASEMENT AND MAINTENANCE AGREEMENT

This Cross-Access Easement and Maintenance Agreement (this "Easement") is entered into this 9th day of July, 2018 by 40 North, LLC, a limited liability company ("Grantor"), 40 North, LLC, a limited liability company, and Michael R. Bray and Sheri L. Bray, 967 E 1500 Road, Lawrence, Kansas 66046 ("Developer(s)"), and County of Douglas County, Kansas 1100 Massachusetts, Lawrence, Kansas 66044 ("County"), and in favor of the County and property owners of the Cluster Development (defined below).

RECITALS

A. Developer desires to receive approval of a Certificate of Survey to permit Developer to legally subdivide the following described property located southwest of the intersection of E. 1500 Road and N. 1000 Road in Wakarusa Township, County of Douglas, State of Kansas, and legally described as follows:

A TRACT OF LAND SITUATED IN THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 13 SOUTH, RANGE 20 EAST OF THE SIXTH PRINCIPAL MERIDIAN, DOUGLAS COUNTY, KANSAS, NOW DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID QUARTER SECTION; THENCE SOUTH 90°00'00" WEST ALONG THE NORTH LINE OF SAID QUARTER SECTION, 933.01 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 90°00'00" WEST ALONG THE NORTH LINE OF SAID QUARTER SECTION, 1093.66 FEET THENCE SOUTH 00°00'00" WEST, 85.54 FEET; THENCE SOUTH 20°15'06" EAST, 162.39 FEET; THENCE SOUTH 34°11'29" EAST, 317.35 FEET; THENCE SOUTH 10°51'03" EAST, 299.30 FEET; THENCE SOUTH 33°55'06" EAST, 250.09 FEET; THENCE SOUTH 30°23'02" EAST, 382.89 FEET; THENCE SOUTH 21°49'48" WEST, 224.96 FEET; THENCE NORTH 90°00'00" EAST, 373.92 FEET; THENCE NORTH 18°14'23" EAST, 559.08 FEET; THENCE NORTH 00°14'56" EAST, 990.00 FEET TO THE POINT OF BEGINNING.

THE ABOVE CONTAINS 25.76 ACRES, MORE OR LESS, ALL IN DOUGLAS COUNTY, KANSAS, SUBJECT TO PUBLIC ROAD RIGHT-OF-WAY AND EASEMENTS OF RECORD.

(the "Cluster Development").

B. As a condition of Certificate of Survey approval, Developer is required to enter into an agreement to create a Cross-Access Easement on its property to allow for ingress and egress between the Residential Development Parcels to be located on the Cluster Development and to and from the adjacent public right-of-way, N. 1000 Road.

C. As a condition of Certificate of Survey approval, said Cross-Access Easement shall be deemed dedicated to the City of Lawrence, Kansas, as a permanent public road right-of-way and street, upon annexation by the City of Lawrence, Kansas and the City's acceptance of dedication.

D. As a condition of Certificate of Survey approval, Developer is required to create a Maintenance Agreement for said Cross-Access Easement.

GRANT OF EASEMENT

NOW, THEREFORE, in consideration of the mutual promises and obligations contained herein and other valuable considerations, the sufficiency of which are hereby acknowledged, the Developer agrees as follows:

1. Definitions. Capitalized words shall have the meaning defined in this Agreement. The following capitalized words not otherwise defined in this Agreement shall have the following definitions:

Certificate of Survey means the Certificate of Survey of the Cluster Development, approved in accordance with the Subdivision Regulations for Lawrence and the Unincorporated Areas of Douglas County, Kansas, and recorded with the Office of the Douglas County, Kansas Register of Deeds.

Residential Development Parcel means that tract or tracts of real estate located within the Cluster Development for which a residence may be constructed prior to annexation to the City of Lawrence, Kansas, as identified in the Certificate of Survey.

Subdivision Regulations means the jointly adopted Subdivision Regulations for the City of Lawrence, Kansas and the Unincorporated Areas of Douglas County, Kansas, as amended, or such successor subdivision regulations as are then applicable to the Cluster Development.

2. **Grant of Cross-Access Easements.** Developer grants and dedicates to County, and establishes for the benefit of the current and future owners of the Cluster Development, a permanent and perpetual easement and right of way over, through, and across the following described tract of real estate, for vehicular and pedestrian ingress and egress, together with construction, installation, and maintenance of public utilities, to and from the various tracts or parcels of the Cluster Development and County Road N. 1000 Road:

A TRACT OF LAND SITUATED IN THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 13 SOUTH, RANGE 20 EAST OF THE SIXTH PRINCIPAL MERIDIAN, DOUGLAS COUNTY, KANSAS, NOW DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTH LINE OF SAID QUARTER SECTION, SAID POINT BEING SOUTH 90° 00' 00" WEST, 1464.10 FEET FROM THE NORTHEAST CORNER OF SAID QUARTER SECTION; THENCE SOUTH 00° 00' 00" WEST, 60.00 FEET TO THE POINT OF BEGINNING, SAID POINT BEING ON THE SOUTH RIGHT-OF-WAY LINE OF NORTH 1000 ROAD; THENCE CONTINUING SOUTH 00° 00' 00" WEST, 461.25 FEET; THENCE NORTH 90° 00' 00" EAST, 468.83 FEET; THENCE SOUTH 00° 14' 56" WEST, 221.75 FEET; THENCE SOUTH 90° 00' 00" EAST, 60.00 FEET; THENCE NORTH 00° 14' 56" EAST, 281.75 FEET; THENCE SOUTH 90° 00' 00" WEST, 469.09 FEET; THENCE NORTH 00° 00' 00" WEST, 401.25 FEET TO A POINT ON SAID SOUTH RIGHT-OF-WAY LINE; THENCE NORTH 90° 00' 00" WEST ALONG SAID SOUTH RIGHT OF WAY LINE, 60.00 FEET TO THE POINT OF BEGINNING.

THE ABOVE CONTAINS 1.587 ACRES, MORE OR LESS, ALL IN DOUGLAS COUNTY, KANSAS, SUBJECT TO ANY EASEMENTS, RIGHT OF WAY OR RESTRICTIONS OF RECORD.

(the "Cross-Access Easement Tract").

3. **No Unreasonable Interference.** No building, structure, obstruction, or other improvement shall be constructed, installed, or maintained in or upon the Easement Tracts and nothing else shall be done within the Easement Tracts that unreasonably interferes with the rights granted and established in this Agreement.

4. **Construction, Repair and Maintenance.**

A. **Construction.** Developer agrees to construct, at their sole expense, approximately 1,137 lineal feet of road with a minimum 18 feet traveled way width, and otherwise meeting Douglas County Local Road Design and Construction Standards within the Cross-Access Easement Tract (the "Road"). The Road shall be constructed within a reasonable time after the creation of the Cross-Access Easement.

B. **Repair and Maintenance.** Repair and maintenance costs for the roadway and associated improvements shall be provided by the owners of the Residential Development Parcels. Said maintenance shall also require snow removal, which shall not block the easement. The owner or owners of the Residential Development Parcel shall be responsible for this repair and maintenance until such time as the Cross-Access Easement Tract is accepted as a public road or street for public maintenance by either the County or the City of Lawrence, Kansas. If there are more than one Residential Development Parcels, the owners of each Residential Development Parcel shall each share equally in all repair and maintenance of the Road.

5. **Public Dedication.** This Agreement shall be deemed a public dedication of the Cross-Access Easement Tract; provided, however, that County's signing of this Agreement shall not be deemed an acceptance of the dedication or and acceptance of any maintenance obligations over the Cross-Access Easement Tract or the Road.

6. **Manner of Acceptance of Public Dedication.** Prior to annexation of all or part of the Cluster Development into the City of Lawrence, Kansas, the County may accept the dedication of the Cross-Access Easement Tract as a public road, upon such terms and conditions as it determines appropriate. If dedication of the Cross-Access Easement Tract has not been previously accepted as a public road, then upon annexation of all or part of the Cluster Development into the City of Lawrence, Kansas, the City of Lawrence may accept the dedication of the Cross-Access Easement Tract upon such terms and conditions as it determines at the time of annexation. Any acceptance of the dedication of the Cross-Access Easement Tract as a public road shall be by a signed agreement specifically referencing this Agreement, authorized by formal action of the governing body the County

or City of Lawrence, as the case may be, and recorded with the Office of the Douglas County Register of Deeds.

7. No Termination. No breach of this Agreement shall entitle any party to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which such party may have hereunder by reason of any breach of this Agreement. The ownership of the Cluster Development, now or in the future, by a single owner or owners shall not effectuate a merger or otherwise terminate this Agreement.

8. No Limitation of Remedies. Any violation or breach of this Agreement shall be considered a breach of the Certificate of Survey and a violation of the Subdivision Regulations, and the County shall have the authority to enforce this Agreement in any manner permitted by law. The various rights and remedies contained in this Agreement and reserved to the parties, except as otherwise provided in this Agreement, shall not be considered as exclusive of any other right or remedy, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy shall impair any such right, power or remedy or be construed as a waiver of any default or non-performance or as acquiescence therein.

9. Construction of Terms. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas. All headings herein are for convenience and shall not be resorted to for interpretation or construction. Any feminine or neuter pronoun shall be substituted for masculine form, or vice versa, and plural shall be substituted for singular where the context may require. No waiver of any provision of this Agreement shall be construed to be a waiver of any preceding or succeeding breach of such provision, or any other provision. This Agreement may be amended or modified only in writing, authorized and executed by the County (or the City of Lawrence, Kansas if the Cluster Development is then within the corporate boundaries of the City of Lawrence) and all owners of all or any part of the Cluster Development, and may not be amended or modified by oral agreements or understandings.

10. Severability. In case any one or more of the provisions of this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

11. Covenants Running with the Land. This Agreement and the easements granted, dedicated, and established hereby shall at all times be perpetual and construed appurtenant to the land and a covenant running with the land and shall be binding upon the owner or owners of all or part of the Easement Tract and all parties claiming by, through, or under them, and shall be for the benefit of and limitations upon all future owners of the Cluster Development, provided, however, that upon acceptance of the dedication of the Cross-Access Easement Tract by a governmental entity, whether the County or the City of Lawrence, Kansas, the Easement Tract shall become a public right of way, for the benefit of all members of the public; provided further, however, that the rights, duties, and obligations of each owner as set forth herein shall cease with the termination of his or its ownership, except for the duties and obligations arising during the period of his or its ownership.


IN WITNESS WHEREOF, Developer and County have executed this Agreement as of the year and date first above stated.


GRANTOR:

 Glen Westervelt, Member
 40 North, LLC

DEVELOPERS:

 Glen Westervelt, Member
 40 North, LLC


 Michael R. Bray,


 Sherri L. Bray,

STATE OF KANSAS)
COUNTY OF DOUGLAS) ss.

BE IT REMEMBERED, that on this 9th day of July, 2018, before me the undersigned, a notary public in and for the County and State aforesaid, came Glen Westervelt, Member, on behalf of 40 North, LLC, Michael R. Bray and Sherril L. Bray, who are personally known to me to be same persons who executed the foregoing Agreement and such persons duly acknowledged the execution of the same.

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



Merka O. Hall
Notary Public

My Appointment Expires: 12/31/20

Merka O. Hall
Printed Name

COUNTY: Nancy Thell
Nancy Thell
Chair - County Commission

ATTEST: Jamie Show
Jamie Show, Douglas County Clerk

