



CITY OF COUNCIL GROVE · 205 UNION STREET · PO BOX 313

COUNCIL GROVE, KS 66846 · 620-767-5417 · COUNCILGROVE.COM

**City Council Agenda  
May 17, 2022  
5:30 P.M. - City Hall**

WELCOME AND CALL TO ORDER

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT PERIOD

Items not already on the agenda may be brought before the Governing Body. Persons must sign in to be eligible. (Three-minute maximum time limit). After three minutes, items will then be voted on to see whether to place the item on the next agenda.

CONSENT AGENDA:

- Minutes from the Previous meeting: Pages 2 - 6
- Appropriations:
- Lake Cabin Transfer: G-5 & R-5 Pages 7 - 40

Motion:	Seconded:	Action:	Abstention:	Este. Cost:	Appd.	Cost:
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OLD BUSINESS:

- N/A

Motion:	Seconded:	Action:	Abstention:	Este. Cost:	Appd.	Cost:
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NEW BUSINESS:

- Superior Systems - John Scarce Page 41

Motion:	Seconded:	Action:	Abstention:	Este. Cost:	Appd.	Cost:
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- Recreation Department Seasonal Employee – Appointment Page 42

Motion:	Seconded:	Action:	Abstention:	Este. Cost:	Appd.	Cost:
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- Flood Plan Mapping Ordinance – Update Pages 43 - 67

Motion:	Seconded:	Action:	Abstention:	Este. Cost:	Appd.	Cost:
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- Executive Session: Attorney Client Privilege City Lake

Motion:	Seconded:	Action:	Abstention:	Este. Cost:	Appd.	Cost:
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Governing Body Comments:

Adjournment:

City Council Meeting Minutes  
May 03, 2022

**WELCOME AND CALL TO ORDER**

Mayor Debi Schwerdtfeger called the regular City Council Meeting to order. Council members present were Keith Wessel, Jason Booker, Mark Berner, Sean Honer, Larry Siegrist, Sharon Haun also present were City Administrator Nick Jones and City Attorney Bill Halvorsen. Others attending were Marcus Hernandez, Deidra Knight, Jesse Knight, Brian Brown

**PUBLIC COMMENT PERIOD**

Jesse Knight representing the Washunga Days committee requested several items for the event on June 17<sup>th</sup> & 18<sup>th</sup>. Mr. Knight requested use of the entire Neosho Riverwalk Park for the event, blocking off the new northeast riverwalk to pedestrian traffic for the fireworks show, closure of main street for the Washunga Days Parade with the Council Grove Police Department leading the parade, City Administrator Jones said the Washunga Days committee would need to submit a request to KDOT for permission to close Main Street for the parade as it is a state highway. Mr. Knight also requested barricade fence and help, use of city owned spider boxes for hookups, City sponsored free swim, spraying of mosquitoes, mowing and groundskeeping prior to festival, peddlers permit restriction. After discussion a motion was made by Councilperson Mark Berner to approve the requested items. The motion was seconded by Councilperson Jason Booker  
Motion Carried 6 – 0

Mr. Knight inquired about the possibility of the city purchasing approximately 250ft of 6 – 8-foot black fence to block access to the backstage area. City Administrator Jones said he would discuss and get bids with local contractors for the fence install. After discussion Councilperson Keith Wessel made a motion to approve the request with a not to exceed amount of \$10,000 from infrastructure. The motion was seconded by Councilperson Sean Honer, Motion Carried 6 – 0

**CONSENT AGENDA**

Councilperson Jason Booker made a motion to approve the Consent Agenda as presented in the packet. Councilperson Sharon Haun seconded the motion. Motion Carried 6 – 0. The consent agenda consisted of:

- April 19, 2022, Minutes
- April 19, 2022, to Current Appropriations.
- Cabin Transfer: N/A

**OLD BUSINESS**

- N/A

**NEW BUSINESS:**

**City Lake Committee Recommendation:**

City Administrator Nick Jones presented to the City Council that the City Lake Committee recommends the City Council approve a variance request of 6' to the 100' high water setback for the construction of a deck for Rusty and Anjenette Heins, B-40. The variance for the deck will not restrict or interfere with the neighboring cabins or access to the area. The neighboring leaseholds are aware of this request and have indicated such in writing. After discussion Councilperson Larry Siegrist made a motion

to approve the request. The motion was seconded by Councilperson Sean Honer. Motion Carried 6 – 0

**Police and Fire Committee Recommendation:**

Mayor Debi Schwerdtfeger read the recommendation of the Police and Fire Committee to appointment Juan Sanchez to Volunteer Firefighters for the Council Grove Fire Department. This appointment is contingent on passing a physical, drug/alcohol screening, background check. Mayor Schwerdtfeger asked for a motion to approve her appointment. Councilperson Jason Booker made a motion to approve the appointment of Juan Sanchez. The motion was seconded by Councilperson Mark Berner. Motion Carried 6 – 0

**Alcohol Consumption and Sale at Community Events Application – Council Grove Rotary Club:**

City Administrator Nick Jones presented the City Council the request from the Council Grove Rotary Club to sale alcohol at the upcoming Washunga Days Festival on June 16<sup>th</sup> from 5pm – 11pm, 17<sup>th</sup> from 3pm – 1am, and 18<sup>th</sup> 11am – 1am and asked for approval of their Alcohol Consumption and Sales at Community Events Application. City Administrator Jones noted that all attendees will be required to show ID and will receive a wrist band in order to consume alcohol. After discussion Councilperson Mark Berner made a motion to approve the request from the Council Grove Rotary Club. The motion was seconded by Councilperson Sharon Haun. Motion Carried 6 – 0

**Council Grove Public Library Trustee Board Recommendation:**

Mayor Debi Schwerdtfeger read the recommendation from the Council Grove Public Library Trustee Board to submit the name of Morgan Hemmy as a Trustee nominee. If appointed, she will fill Mary Ann Wendel's spot on the Board. Mayor Schwerdtfeger asked for a motion to approve her appointment of Morgan Hemmy as a Trustee. A motion was made by Councilperson Keith Wessel to approve the appointment. The motion was seconded by Councilperson Sharon Haun. Motion Carried 5 – 0 with 1 assentation from Councilperson Jason Booker.

**Recreation Department Seasonal Employee Appointments:**

Mayor Debi Schwerdtfeger asked for a motion to approve the appointment of the following seasonal employees.

- **Pool Manager at \$11.00**
  - Katy Herde
- **Asst. Pool Manager \$9.91**
  - Lauren Carlson

Councilperson Sharon Haun made a motion to approve the appointment. The motion was seconded by Councilperson Larry Siegrist

- **Lifeguard – 1<sup>st</sup> year at \$8.25**
  - Adeiah Heffner Lifeguard
  - Casaiia Mullen Lifeguard

- David Seymour Lifeguard
- Elizabeth Armstrong
- Koen Hula Lifeguard
- Lillian Zeigle

A motion was made by Councilperson Jason Booker to approve the appointments. The motion was seconded by Councilperson Keith Wessel. Motion Carried 6 - 0

**Lifeguard – 2<sup>nd</sup> year at \$8.50**

- Allison Hower
- Bree Hilton
- Gavin Mills
- Hailey Hewitt
- Karly Goodell
- Madilyn Hilton
- Myles Gant

A motion was made by Councilperson Sean Honer to approve the appointments. The motion was seconded by Councilperson Sean Honer. Motion Carried 6 - 0

**Lifeguard – 3<sup>rd</sup> year at \$9.00**

- Keeley Honas

A motion was made by Councilperson Jason Booker to approve the appointments. The motion was seconded by Councilperson Keith Wessel. Motion Carried 6 - 0

**Concessions at \$7.69**

- Addison Craige
- Brenah Cannon
- Brycen Palmquist
- Cienna Good
- Dax Myers
- Drew Buchman
- Easton Hanson
- Emily Bacon
- Finn Gant
- Haylie Grant
- Hollyn Zeigler
- Jacy Koch
- Jessica Filken
- Jimmy Wendel
- Kierni Mullen

- Kohin Swalley
- Lauren Brown
- Linkin Sherwood
- Madison Brown
- Makenzie Grant
- Marlee Gant
- Mason Wilkens
- Maxton Villalobos
- Paul Bessmer
- Rylee Spaulding

A motion was made by Councilperson Sean Honer to approve the appointments. The motion was seconded by Councilperson Jason Booker. Motion Carried 6 – 0

#### **General Maintenance at \$9.91**

- Mija Carlson
- Braden Reddick

A motion was made by Councilperson Jason Booker to approve the appointments. The motion was seconded by Councilperson Sharon Haun. Motion Carried 6 – 0

#### **General Maintenance at \$7.69**

- Jace Goodman

A motion was made by Councilperson Sean Honer to approve the appointments. The motion was seconded by Councilperson Mark Berner. Motion Carried 6 – 0

#### **Executive Session - City Lake**

Mayor Debi Schwerdtfeger asked for a motion to go into Executive Session. A motion was made by Councilperson Keith Wessel to go into executive session for attorney client privilege regarding the City Lake, which included the Mayor, City Council, City Attorney, and City Administrator for 30 minutes. The Motion was seconded by Councilperson Sharon Haun. Motion Carried 6 – 0, upon returning to regular session no action was taken.

#### **GOVERNING BODY COMMENTS**

- **Councilperson Jason Booker** – inquired about the mess located at Chris Blackledge house and if there were any plans on getting it cleaned up. City Administrator Jones informed the Council that City Inspector James Masters was in the process of writing up violations and send him a notice in the mail.
- **Councilperson Mark Berner** – N/A
- **Councilperson Keith Wessel** – N/A

- **Councilperson Sean Honer** – Thanked the city crews for fixing Washington Street
- **Councilperson Larry Siegrist** – N/A
- **Councilperson Sharon Haun** – Thanked the city crews for fixing Washington Street
- **City Attorney Bill Halvorsen** – N/A
- **City Administrator Nick Jones** – City Administrator presented to the Council a Joint Resolution between Osawatomie, Ottawa, Herington, and Council Grove to work together on the development of the Flint Hills Trail. Mayor Schwerdtfeger read the resolution to the Council and appointed Administrator Jones and Councilperson Wessel as the two city officials to serve on the working group for the Flint Hills Trail. After discussion a motion was made by Councilperson Jason Booker to approve the Resolution. The motion was seconded by Councilperson Keith Wessel. Motion Carried 6 – 0
- Administrator Jones presented a request from the Gun Fight on the Santa Fe Trail Committee to use the Soccer building power and water for one of the events special guests. After discussion a motion was made by Councilperson Sharon Haun. The motion was seconded by Councilperson Mark Berner. Motion Carried 6 - 0
- Administrator Jones presented a request from Cami Sanromani owner of the Wooden Spoon to have a snow cone trailer parked in front of her store on Saturday the May 28<sup>th</sup>. After discussion the Council agreed that they would limit the snow cone trailer to occupy 2 parking spots. A motion was made by Councilperson Jason Booker. The motion was seconded by Councilperson Sharon Haun. Motion Carried 6 – 0
- Administrator Jones presented to the Council a new design from Story Media for the water tower that does not include the city’s badge logo. After discussion a motion was made by Councilperson Keith Wessel to approve all black logo to go on the water tower. The motion was seconded by Councilperson Sharon Haun. Motion Carried 6 – 0
- **Mayor Debi Schwerdtfeger** – said she received complaints that someone maybe possibility living in the former Bowman Building on Main Street. Administrator Jones informed the Council that City Inspector James Masters had inspected the building and that the owners were not living in the building. Also, inquired if the City Inspector was inspecting and enforcing the city’s Vacant Building ordinance and if fines were being sent out to buildings that are not in compliance with the Vacant Building ordinance.

Mayor Debi Schwerdtfeger asked for a motion to adjourn. Councilperson Keith Wessel made a motion to adjourn. Councilperson Sharon Haun seconded the motion. Motion carried 6 – 0

\_\_\_\_\_ Mayor  
Debi Schwerdtfeger

ATTEST:

\_\_\_\_\_ City Administrator  
Nick Jones

**Application for Cabin Site Transfer**  
**COUNCIL GROVE CITY LAKE**

Site Number: G-5 Date: 4-28~~2~~, 2022

Name of Transferee: William A. & Lisa D. Kempf

Address: 420 E Grant

City: Walton State KS Zip Code 67151

Telephone Number: 316 / 288 - 5093

Name of Transferor: Betty M. & Dennis Butler

OFFICE USE ONLY BELOW THIS LINE

Septic tank checked: April 26, 2022

The above application is approved:

this 2<sup>nd</sup> day of May, 2022

Signed James Mast  
Building Inspector

Please immediately fill in date, site number, sign and return to City of Council Grove, P.O. Box 313, Council Grove, Kansas 66846, or deliver to City Hall at 205 N Union Street, Council Grove.

**GROUND LEASE AGREEMENT**

(Modified and Effective October 2, 2018)

This lease pertains to a building on leased ground, pursuant to K.S.A. 79-412.

THIS GROUND LEASE AGREEMENT (the "Lease") made and entered into this 22<sup>nd</sup> day of April 2022, by and between the City of Council Grove, Kansas, a municipal corporation, hereinafter referred to as the "City" or "Lessor" and William A. and Lisa D. Kempf, hereinafter referred to as "Lessee". If more than one Lessee is referenced, they shall be deemed to hold their interests hereunder

as joint tenants and not as tenants in common, or

as tenants in common. (check the desired box; only one can apply.)

WHEREAS, the City is the owner of the real estate described within the Final Plat, Council Grove Lake Park, an addition to Morris County, Kansas, also referred to herein as the Council Grove City Lake Park, and;

WHEREAS, the City is also the owner of real estate located in Final Plat, Council Grove Lake Park, Section G, Lot G - 5, to Morris County, Kansas, hereinafter referred to as the "Leased Premises", and,

WHEREAS, the City desires to lease the Leased Premises to Lessee, and Lessee desires to lease the Leased Premises from the City; and,

WHEREAS, the Council Grove City Lake Association (the "CGCLA") is a Kansas not for profit corporation formed for the purpose of representing the interests of the residents of the Council Grove City Lake Park; and,

WHEREAS, the parties hereto recognize the CGCLA as an official representative of the leaseholders at the Council Grove City Lake Park for the purposes set forth herein, provided that the membership includes the majority of all leaseholders.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties here to do agree as follows:

1. **USE OF PREMISES:** The Leased Premises are only to be used for the construction and use of a residential building designed as a single family living unit along with the normal appurtenances associated therewith.

2. **DEMISE:**

a. The City does hereby lease to the Lessee, and Lessee does hereby accept from the City, subject to the



terms and conditions set forth herein, the Leased Premises.

b. The actual boundaries of the Leased Premises have been previously established and are as set forth in Final Plat, Council Lake Park, to Morris County, Kansas, which is of record at the Morris County Register of Deeds office.

c. As a part of the grant of the Leased Premises, if Leased Premises abut the Council Grove City Lake, the Lessee is hereby granted access, to and from the Leased Premises to the Council Grove City Lake.

3. **MODIFICATION OF THIS LEASE:** Other than the term of this lease as set forth in paragraph 4 and modification of rent as set forth in paragraph 5, the City may, if reasonably necessary, with consultation with the CGCLA, modify terms and conditions of the Lease and the Lessee agrees to be bound by any such modification.

4. **TERM:** The term of this Lease shall expire on December 31, 2041, regardless of its commencement date. Provided, however, this Lease, upon its expiration, shall automatically renew for a period of thirty years, and shall continue to renew for successive terms of thirty years perpetually. Notwithstanding the perpetual nature of this Lease, nothing herein shall be construed as divesting Lessor of legal title to the Leased Premises.

5. **RENT:** The Lessee agrees to pay the City rental for this Lease as follows:

a. For the year 2012, the sum of \$1,000.00; for the year of 2013, the sum of \$1,100.00; and for the year of 2014 the sum of \$1,200.00 per year. Said rental amount has been determined based upon the historical expenses (the "Expenses") incurred by the City, related to the Council Grove City Lake Park, and for matters that directly and specifically benefit the Residential Lots, such as, security, road repair and maintenance, maintenance to common areas, equipment costs, caretaker salary and that portion of general services apportioned to such purposes. It is estimated the recent annual cost of such historical expenses has been approximately \$261,000.00, which has resulted in the established rent. The rent for all subsequent three year periods shall remain at an amount equal to the third year amount of the preceding three year period, unless adjusted as set forth hereinafter.

b. Subject to the provisions of subparagraph (c), in the event there is a significant increase in the Expenses, or if there are other factors that occur which reasonably and in good faith should require an increase in rent, the City may, within reason and good faith, require an adjustment of the rent for the second three year period of the Lease and may also require adjustments to the rent for any three year period thereafter under the same factors and requirements. Prior to implementing any adjustment, the City shall notify Lessee, and also the CGCLA, of its intention to modify the rent, and the proposed new annual rental amount. Such notice shall be delivered, in writing at least 180 days prior to the end of the current three year period of the Lease. Such notice shall include the basis of the proposed increase which shall include:

1. The actual annual itemized Expenses for the period commencing January 1 and ending December 31, every year the Lease is effective.
2. Calculated average of the annual Expenses applicable to such period and a comparison of that average to the average annual Expenses during the period when the current Rent was established.
3. An itemization of all other factors which the City relies upon to justify the modification.

The proposed modified rent shall go into effect on January 1 of the year following the notice. The CGCLA may request to negotiate the proposed amount, provided they do so within sixty (60) days of receipt of the notice, in writing, to the City Clerk. Upon such request the City and CGCLA shall enter into good faith negotiations to establish a fair and equitable annual rental amount by forming a committee of three lake leaseholders, appointed by the CGCLA, three City Council members, appointed by the City Council, one representative from Ward 1, Ward 2, and Ward 3 who are not lake leaseholders, appointed by the City Council and three Council Grove business people who are not lake leaseholders, appointed by the City Council. During such negotiations the factors set forth above shall provide the criteria upon which the Committee shall base its recommendation. The Committee shall recommend a fair and equitable rent to the City Council and the City Council shall thereafter reasonably and in good faith establish a rental amount, however the City Council shall not be bound to follow the committee's recommendation. Written notice of the new Rent shall be provided to Lessee and shall become effective on January 1 of the year following such notice.

c. The City shall only be entitled to modify the Rent, as set forth in subparagraph (b), if, from the commencement of the current three year period until the notification of the modified Rent, the City has:

1. Provided the CGCLA with accurate annual itemizations of both Expenses and Rental Revenue generated by the Residential Lots; and,
2. After the first year, set aside 10% of the Revenue in a special fund designated for use only as capital improvements at the Council Grove City Lake Park. Expenditures from this fund shall be reviewed and recommended by a committee established for such purpose and including representatives from the CGCLA. The City Council shall thereafter reasonably and in good faith determine the amount and purpose of expenditure from the fund, but shall not be bound to follow the Committee's recommendation.
3. Beginning in 2014, 10% of the 10% referred to in Paragraph 5c2 above, shall be set aside by the City for a capital improvement fund to be held as a contingency fund for future major projects mutually agreed upon by the CGCLA Board of Directors and the City Council.

d. Rental payments shall be made to the Office of the City Clerk of the City. The Lessee has an option to pay one-half of a given year's rent on or before January 15 of that year and the second half on or before July 15 of that year. If at least one-half of the rent is not paid by February 15 of each year then the entire year's rent will be immediately due and payable, plus a late payment penalty in the amount of \$75.00. If the lessee makes timely payment of the first half rent, but does not make the second half payment by July 15, a \$75.00 late payment fee shall be due to Lessor. If Lessee fails to make the rental payments required hereunder, the amount due shall accrue interest at the rate of 5% per annum from and after such date, and may be collected by the City under terms of the default provisions set forth hereinafter. The City shall have a first and prior lien on the Leased Premises for all Rent due hereunder.

**6. ENCUMBRANCE AND TRANSFER OF LEASEHOLD INTEREST:**

a. Lessee may encumber by mortgage or deed of trust, or other proper instrument, its leasehold interest and estate in the Leased Premises, together with all buildings and improvements on the premises, as security for any indebtedness of Lessee, however such encumbrance shall be subject to the obligations of the Lessee to the City as set forth herein. The execution of any mortgage, or deed of trust, or other instrument, or the foreclosure of any mortgage, or deed of trust, or other instrument, or any sale, either by judicial proceedings or by virtue of any power reserved in a mortgage or deed of trust, or conveyance by Lessee to the holder of the indebtedness, or the exercising of any right, power, or privilege reserved

in any mortgage or deed of trust, shall not be held as a violation of any of the terms or conditions of this Lease, or as an assumption by the holder of the indebtedness personally of the obligations of this Lease.

b. If Lessee shall encumber its leasehold interest in the Leased Premises, the Lessee or the holder of the indebtedness secured by the encumbrance, shall give written notice to the City of the existence of the encumbrance. The notice shall state the name, address and telephone number of the holder of the indebtedness. The holder of the indebtedness may, at its option, at any time before the rights of Lessee shall be terminated as provided in this Lease, pay any of the rents due under this Lease, or pay any taxes and assessments, or do any other act or thing required of Lessee by the terms of this Lease, or do any act or thing that may be necessary and proper to be done in the observance of the covenants and conditions of this Lease to prevent the termination of this Lease. All payments so made and all things so done and performed by the holder shall be as effective to prevent a foreclosure of the rights of Lessee hereunder as the same would have been if done and performed by Lessee.

c. Lessee may sell, transfer, assign, gift, devise by will or other instrument, its interest in this Lease, but only with prior approval of the Lessor. The transferee of any lease must sign a lease with the City and pay a transfer fee prior to approval of the transfer. The transferor must be in full compliance with City requirements before the transfer is approved. In addition, Lessee's interest in this Lease shall pass by the laws of intestate succession and descent and distribution, pursuant to the laws of the state of Kansas.

#### 7. LIENS:

a. Lessee shall keep all and every part of the Leased Premises and all buildings and other improvements at any time located on the premises free and clear of any and all mechanics, material suppliers, and other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with any operations of Lessee, any alteration, improvement, or repairs or additions that Lessee may make or permit or cause to be made, or any work or construction, by, for, or permitted by Lessee on or about the premises, or any obligations of any kind incurred by Lessee, and at all times promptly and fully to pay and discharge any and all claims on which any such lien may or could be based, and shall indemnify Lessor and all of the Leased Premises and all buildings and improvements on the Leased Premises from and against any and all such liens and claims of liens and suits, including reasonable attorney fees, or other proceedings pertaining to the premises.

b. Lessor does not consent to any such lien attaching to the Leased Premises. In the event of a breach of this section by Lessee, Lessor shall have the rights and remedies set forth in the section on Default hereinafter.

#### 8. TAXES AND ASSESSMENTS:

a. IMPROVEMENTS TAXES. As long as the county assesses taxes against the improvements separately from the real estate, Lessee shall be obligated to pay, when due, all taxes assessed against the improvements placed upon the Leased Premises. Lessee shall hold Lessor harmless from all such taxes. In the event Lessor, as owner of the land, shall receive notice of taxes due on the improvements, Lessor shall promptly notify Lessee of such notice within a time, and in a manner, allowing Lessee to make the payments, when due.

b. TAXES IMPOSED ONLY UPON THE LAND. Beginning with the year 2017, with the platting of the lots within the Council Grove City Lake Park, the County is assessing each lot therein separately. However, because the City is the owner of all of said lots, the Valuation Notice, as well as the statement

for taxes due, for all of said lots is provided only to the City. Therefore, the City shall, within ten (10) business days after receipt of the Valuation Notice, the statement for taxes due, or any other communication related to the taxes upon the land, mail a copy of such via first class mail to the Primary Lessee. It shall be the Lessee's responsibility to make sure they obtain the tax statement within a time frame necessary to pay the taxes in a timely manner. It shall be Lessee's obligation to pay all taxes due from the City, and related to the Leased Premises. Lessee shall pay such taxes in one of two methods, depending upon how the County will accept such payments. Under the first method, beginning in 2018 and continuing each year thereafter as long as the County will accept this method, Lessee shall make such payment directly to the County, on or before the due date set forth in the County's statement to the City. Lessee may pay such taxes in the same manner as the City could make such payment, i.e., Lessee may pay one-half of said taxes on, or before, the due date in December, and one-half of said taxes on, or before, the due date in May. If Lessee fails to make any such payment when due, the City may make such payment and recover such amounts, plus penalties, interest and attorney fees from Lessee, pursuant to Section 12 of this Lease. Under the second method, if, and when, the county has indicated that the tax payment must be made by the City the Lessee shall be obligated to pay, in full, to Lessor, within thirty days after the City gives notice of such amount being due, all taxes on the leasehold real estate which are assessed to the Lessor, as set forth on the tax statement, and the Lessor shall use such payment to pay the taxes due on the land within the time frames required. Provided, however, in the event the due date of such taxes is less than thirty days after the City gives notice of such amount, Lessor shall make such payment at least ten (10) days prior to their due date, as long as the City has provided such notice at least fifteen (15) days prior to the due date. If the City fails to provide such notice at least fifteen (15) days prior to the due date, Lessor shall make such payment within five (5) days after receipt of the notice. (The payments made by Lessee, as set forth in the preceding sentence, shall only be made to Lessor. The Lessee shall not make such payments directly to the County.) It shall be the City's obligation to determine how the county will accept the tax payment, and to notify Lessee of which method is applicable if that method has changed from the previous year, at the time the City provides notice of the amount due. Under the first method, Lessee shall have full authority to pay any, or all, of such taxes under protest, and Lessee may do so in the name of the City, to the extent any such taxes are technically the city's responsibility. Under the second method, in the event directed to do so by the Lessee, or their agent(s), the City shall pay such taxes under protest; however, the City shall only be obligated to do so if the Lessee has fulfilled their obligations to make the payment required hereunder. Lessee shall be responsible for any penalties and interest incurred by reason of their failure to pay any taxes when due. Since the Lessee is responsible hereunder for all taxes imposed upon the land, the City hereby authorizes the Lessee, or the Lessee's authorized agent(s), including but not limited to the CGCLA, to appeal the Valuation or classification of their lot, as well as any taxes imposed thereon, on behalf of and in the name of the City, without any further action of the City authorizing such appeal. The Lessee and/or their authorized agent shall have full authority, and responsibility, for filing the appeal and paying all fees and costs associated therewith and shall hold the City harmless from any obligations related thereto. The City shall have no responsibility to pursue any such appeal; however, the City agrees to cooperate, in good faith, with the Lessee, or their authorized agent(s), in their pursuit of any such appeal. The rights to appeal granted herein shall include the right to pursue such appeal throughout the statutory process, including any judicial review.

c. In the unlikely event the taxing authority does not itemize taxes by leasehold, and the Lessor only receives a tax bill for the total amount due at the Lake Park, such taxes shall be distributed 1/350 to each of the 350 leasehold lots.

d. Any assessments made by the county or other taxing authority, made by reason of the use of the premises by Lessee shall be reimbursed by Lessee within thirty (30) days after the City gives notice of such amount being due.

e. In the event the CGCLA pursues an appeal pursuant to the authority granted herein, CGCLA agrees to indemnify, and hold harmless, the Lessor from any claims of leaseholders arising from such appeal, except to the extent such claims arise from the actions or omissions of the Lessor.

9. **NO MANAGEMENT AUTHORITY:** No Lessee may individually, nor acting on behalf of any organization or entity, at any time represent that they have authority over the management or maintenance of the Council Grove City Lake Park.

10. **CONSTRUCTION REPAIR AND MAINTENANCE:**

a. All construction, repair and maintenance of any improvement upon the Leased Premises shall comply with the duly adopted Building Codes of the City, in effect at the time of such construction, repair and maintenance, the same as though the Leased Premises were located within the corporate limits of the City. Lessee shall be required to obtain any permit, and pay any fee, associated with such construction, repair and maintenance as though the Leased Premises were located within the corporate limits of the City.

b. Lessee shall, throughout the term of this Lease, at its own cost, and without any expense to Lessor, keep and maintain the premises, including all buildings and improvements of every kind that may be a part of the Leased Premises, and all appurtenances to the Leased Premises, in good, sanitary, and neat order, condition and repair, and except as specifically provided in this Lease, restore and rehabilitate any improvements of any kind that may be destroyed or damaged by fire, casualty, or any other cause whatsoever.

c. The damage, destruction, or partial destruction of any building or other improvement that is a part of the Leased Premises shall not release Lessee from any obligation under this Lease, except as expressly provided below. In case of damage to or destruction of any such building or improvement, Lessee shall at its own expense promptly repair and restore it to a condition as good or better than that which existed prior to the damage or destruction or remove such building or improvement & restore property to a clean condition.

d. In spite of anything to the contrary in the immediately preceding paragraphs of this section, in case of damage or destruction to improvements on the Leased Premises, to an extent that they are no longer useable by Lessee, Lessee may elect to terminate this Lease by written notice to Lessor; however, such termination shall not be effective until Lessee shall have either removed all of the improvements from the Leased Premises, and restored the property to a clean, sanitary and safe condition, or if Lessor at its sole discretion has waived in writing such action by Lessee.

e. The Lessor does not contemplate black-topping or hard-surfacing any of the roads at the Council Grove City Lake Park, however in the event that seventy-five percent (75%) or more of the leaseholders in any particular section should petition for hard-surfacing of roads serving that section, the Lessor shall have the right to make a special assessment against the leaseholders receiving the benefit of such improvements. Such assessment shall be on a "per lot" basis, or any other means the Lessor deems appropriate and payment of that special assessment is in addition to any other obligations herein.

f. The Lessor does not contemplate making any improvements for a sewage disposal system in the Council Grove Lake Park, however in the event that seventy-five percent (75%) or more of the leaseholders in any particular section should petition the Lessor for such a sewage disposal system, then the Lessor shall have the right to make a special assessment upon the leaseholders for payment for any and all costs and expenses for such system. Such special assessments shall be based upon a "per lot" basis or any other manner as the Lessor deems appropriate, and shall be in addition to any other obligations set forth herein.

11. **UTILITIES:** Lessee shall fully and promptly pay all monthly service charges for all water, gas, heat, light, power, telephone service, and other public utilities of every kind furnished to the leased premises throughout the term of this Lease, and all other costs and expenses of every kind whatsoever of or in connection with the use, operation, and maintenance of the leased premises and all activities conducted on the Leased Premises, and Lessor shall have no responsibility of any kind for any such costs and expenses.

12. **DEFAULT:**

a. Lessee shall be in default under the terms of this Lease if he/she/it shall fail to comply with any provision hereunder, and such failure continues for a period of sixty (60) days after Lessor has provided notice of such default, in writing. Such notice, on the part of Lessor, shall provide Lessee with a description of the default, the actions necessary to remedy the default, and shall allow the Lessee sixty (60) days within which to correct the default.

b. Except for a default by Lessee regarding the payment of rent under Section 5, or reimbursement of taxes and assessments under Section 8, Lessor shall have the right, upon the expiration of sixty (60) days following delivery of the notice set forth above, to either proceed to remedy the default itself and to assess the cost of such action against the Lessee, or bring an injunctive action, requesting a court of competent jurisdiction to order the Lessee to correct the default. In the event Lessor takes action, it shall be entitled to recover its actual costs, including reasonable attorney fees, plus an administrative fee of five percent of those costs. The administrative fee shall not exceed \$500.00. The costs and administrative fee imposed by the Lessor shall be billed to the Lessee and if not paid within thirty (30) days of such billing, Lessor shall be entitled to file notice of such costs with the Morris County Register of Deeds and such shall become a lien on the Leased Premises. If Lessor elects to bring an injunctive action to enforce the provisions hereunder, the prevailing party shall be entitled to recover their costs, including reasonable attorney fees.

c. If Lessee is in default for failure to pay rent, or other fees, pursuant to Section 5, or reimbursement of taxes and assessments under Section 8, upon expiration of sixty (60) days following delivery of the notice set forth above, Lessor shall be entitled to bring an action in a court of competent jurisdiction to recover such amounts and to also foreclose its first and prior lien on the Leased Premises, and shall be entitled to recover its costs, including reasonable attorney fees.

13. **QUIET ENJOYMENT/LESSORS RIGHT OF ENTRY:** Lessor covenants that Lessor is seized of the Leased Premises, in fee simple, and has full right to make and enter into this Lease and that Lessee shall have quiet and peaceable possession of the leased premises and improvements during the term of this Lease. Lessee shall permit Lessor and the agents and employees of Lessor to enter upon the unimproved portion of the leased premises at any time. Lessor and the agents and employees of the

Lessor may enter improvements at all reasonable times, with prior reasonable notice to the Lessee, for the purpose of inspecting the leased premises and improvements, inspecting for compliance with this Lease and any ordinances, or for the purpose of posting any notices.

**14. SPECIAL OBLIGATIONS OF THE CITY:**

- a. The city shall maintain all main roads within the Council Grove City Lake subdivision in order to provide the Leased Premises with access to public right-of-ways, consistent with the policy used within the City limits.
- b. The City agrees to work with CGCLA and any leaseholders to establish an Advisory Committee to the City Council on matters pertaining to the City Lake Park.
- c. The City shall maintain the Park, including the lake, and its supporting infrastructure, in compliance with all applicable statues, laws, rules and regulations. However nothing herein shall require the maintenance of the infrastructure which would be contrary to the best interest of the City.
- d. The Lake is the primary water source for the City and the City shall have the right to impose such ordinances, rules and regulations as it deems necessary to protect the water supply.
- e. The City agrees to compile and make public a semi-annual accounting of all revenues generated by, and expenses incurred for, the Council Grove City Lake Park. After the first year, the City further agrees to set aside and reserve 10% of the lease rent fee to be placed in a special Capital Improvement Fund to help finance improvements at the Council Grove City Lake Park that provide benefit to the Lessees and public access facilities. A committee, including representatives of CGCLA, shall be established for the purpose of reviewing and recommending expenditures from this fund. The City Council shall thereafter reasonably and in good faith determine the amount and purpose of expenditure from the fund, but shall not be bound to follow the committee's recommendations.
- f. Notice of any new ordinances enacted by the Lessor applicable to the Council Grove City Lake Park shall be sent, at the end of each calendar year to the Lessee.

**15. SPECIAL OBLIGATIONS OF THE LESSEE:**

- a. Lessee shall not do, or permit, anything upon the leased premises that will jeopardize the water supply of the City.
- b. This Lease does not, and is not intended to, contain all matters regarding the Lake Park and each leasehold. Lessee shall obtain, read and comply with all applicable laws, statues, ordinances, rules and regulations regarding the use of the Leased Premises.
- c. Lessee shall not use the premises so as to constitute a nuisance.
- d. Lessee shall be responsible for removal of garbage, rubbish, other waste and waste disposal from the Leased Premises, at Lessee's expense.
- e. Chemicals may only be used on leased premises with a Chemical Permit as set forth by city ordinance.

f. On all cabins, homes, residences or dwellings located upon the lease site, there shall be displayed, clearly visible to the public, both the section number and lot number. The letters shall be at least three (3) inches in size.

g. Nothing in this Lease shall be deemed to lease any tenant any surface water nor does it permit any Tenant to pump water out of the lake for any use without the approval of the City Council.

h. Lessee may not make any new roads or ways of access to any leasehold in, upon or across the Lake Park or any part thereof.

i. Before any building or improvement is placed upon the leasehold, the Lessee shall submit to the Lessor an application in writing setting forth a description of the outside dimensions of the building or improvement, the material to be used, the type of construction, and whether the same is new material or used material and such other information as may be requested by the Lessor.

16. **EMINENT DOMAIN:** In the event all, or any significant portion, of the Leased Premises is taken by an entity, using the entity's power of eminent domain, this Lease shall terminate. In such event, the parties hereto shall each be entitled to make claim against the condemning authority for the amount of any damages they have sustained as a result of such taking.

17. **VOLUNTARY SURRENDER:** Lessee, at any time during the term of this Lease, as long as Lessee is not in default of any provision hereunder, may voluntarily surrender its rights hereunder to Lessor, and upon doing so this Lease shall terminate, and both parties shall be released from the terms hereof. In order to voluntarily surrender its rights, Lessee shall notify Lessor of its intention to do so, in writing, and shall also file such notice with the Morris County Register of Deeds. Lessor shall have 60 days, from the date the notice is filed with the Register of Deeds, within which to either deny or accept such voluntary surrender, or to notify Lessee of any existing defaults that must be corrected by Lessee before such is acceptable. If Lessor fails to notify Lessee of any such defaults within such time, Lessor shall have been deemed to accept the voluntary surrender on the date the notice was filed with the Register of Deeds. If Lessor notifies Lessee of defaults to be corrected, such notice shall also be filed with the Register of Deeds. In the event Lessor notifies Lessee of defaults to be corrected, this Lease shall not terminate until such defaults are corrected and both parties have filed a consent to terminate the Lease with the Register of Deeds.

18. **RIGHT OF FIRST REFUSAL:** If at any time during the term of this Lease, Lessor shall receive from any third party a bona fide offer to purchase an individual leasehold the property to which this Lease is subject at a price and on terms acceptable to Lessor, Lessor shall give written notice of the price and terms to Lessee, and Lessee shall have thirty (30) days thereafter in which to execute a written agreement with Lessor for the purchase of such property at that price and on those terms. If Lessor shall so notify Lessee and Lessee shall fail to execute such agreement within the 30 day period, Lessor shall thereafter be free to sell the Property to the third party making the offer on the same terms and conditions set forth in the offer, subject to the terms of this Lease. Nothing herein shall be construed to require a right of first refusal if the Lake real estate is being sold in its entirety.



19. **REGISTER OF DEEDS:** As soon as practical after the execution of this Lease, the parties shall cooperate in its filing with the Morris County Register of Deeds. Lessee shall be responsible for all costs associated with such filing.

20. **NOTICES:** Any notices given by the Lessor to the Lessee will be given to the Primary Leaseholder designated herein at the address to which such Primary Leaseholder authorizes notice until such time, if any, the Primary Leaseholder authorizes a change in such by notice in writing. Any notices to the Lessor shall be given to the City Clerk at the Office of the City clerk of the City of Council Grove, Kansas. Notices or other communication pursuant to this lease shall be given by first class mail, postage prepaid, to:

the City: City of Council Grove  
Attn: City Clerk  
P.O. Box 313  
Council Grove, KS 66846

Primary Lessee: William A. Kempf  
420 E. Grant  
Walton, KS 67157

21. **GENERAL TERMS:**

a. **NO WAIVER:** The waiver of either party, or the failure to take action by that party, with the respect to any breach of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition or subsequent breach of the same, or any other term, covenant or condition contained in this Lease, nor will it bar enforcement of any term.

b. **BINDING:** The provisions of this Lease shall be binding upon and shall inure to the benefit of the parties, their heirs, executors, administrators, successors and assigns.

c. **TIME OF ESSENCE:** Time is of the essence of this Lease and of each and every covenant, term, condition and provision of this Lease.

d. **PARAGRAPH HEADINGS:** Paragraph headings are for convenience only and are not to be used in construing this agreement.

e. **GOVERNING LAW:** This Lease is entered into, and shall be governed by, the laws of the State of Kansas.

f. **ENTIRE AGREEMENT:** This Lease shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this Lease shall not be binding upon either party except to the extent incorporated in this Lease. Any prior written leases, whether oral or written, between the parties hereto, regarding the Leased Premises are hereby deemed to be null and void.

g. MODIFICATION: Any modification of this Lease or additional obligation assumed by either party in connection with this Lease shall be binding only if evidenced in writing signed by each party or an authorized representative of each party. This provision shall not apply to modifications of this Lease pursuant to paragraph 3 hereof.

IN WITNESS WHEREOF, the parties have set their hands the date set forth above.

CITY OF COUNCIL GROVE, KANSAS

\_\_\_\_\_  
By:  
Mayor \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
  
\_\_\_\_\_  
City Clerk

LESSEE:  
*William A. Kempf*  
\_\_\_\_\_  
Primary Leaseholder *William A Kempf*  
*Lisa D. Kempf*  
\_\_\_\_\_  
Lessee *Lisa D. Kempf*

\_\_\_\_\_  
Lessee

Address to which Primary Leaseholder authorizes Notices:

*420 E. Grant*  
\_\_\_\_\_  
*Walton, KS 67151*  
\_\_\_\_\_

The 911 Mailing address for this Leasehold address is as follows:

*124 Cottonwood Cove*  
\_\_\_\_\_  
*Council Grove, KS 66846*  
\_\_\_\_\_

**BILL OF SALE**

KNOW ALL PERSONS BY THESE PRESENTS, I/we the undersigned Grantor(s), in consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations do, at the time of closing of the contract between the two parties, I/we do GRANT, SELL, TRANSFER AND DELIVER unto William A Kempf and Lisa D Kempf

and/or his/her heirs, executors, administrators, and assigns, hereinafter referred to as Grantee(s), the following existing goods and chattels, to wit:

Lake home and related improvements located in Final Plat, Council Grove Lake Park, Section G , Lot G -5 , to Morris County, Kansas, 66846, including but not limited to: Water well & well equipment, septic system, all buildings, lake home, dock, and boathouse and contents thereof, as well as the assignment of all of the grantors' rights under a Lease Agreement with the City of Council Grove.

TO HAVE AND TO HOLD, all and singular, the said goods and chattels forever; And the said grantor hereby covenants with said grantee(s) that he/she/they are the lawful owner(s) of said goods and chattels; that they are free from all liens and encumbrances; that he/she/they have good right to sell the same as aforesaid, and that he/she/they will warrant and defend the same against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, the said grantor(s) have hereunto set their hands this 28<sup>th</sup> day of April , 2022 .

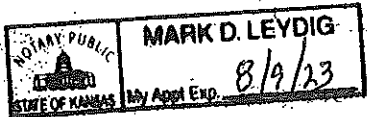
<u>Betty M Butler</u>	<u>Dennis Butler</u>
Betty M. Butler	Dennis Butler
STATE OF Kansas ,	Morris COUNTY, ss.

BE IT REMEMBERED, That on this 28<sup>th</sup> day of April , 2022, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Betty M Butler and Dennis W Butler who are/is personally known to me to be the same person(s) who executed the foregoing bill of sale, and such person(s) duly acknowledged the execution of the same.

IN TESTIMONY THEROF, I have hereunto set my hand and affixed my notary seal on the day and year last above written.



www.CGLakeside.net



Mark D. Leydig  
Notary Public



## SEPTIC SYSTEM INSPECTION RESULTS

Section:   G   Site:   G-5   Date:   5-2-2022  

Address:   124 Cottonwood Cove  

Septic System Type: Anaerobic: ( )

Aerobic (ATU/AWTDS): (X)

Septic Tank Capacity:   1500 Gallon  

Septic Tank Material: Concrete: (X) Steel: ( )

Lift Pump: Yes: (X) No: ( )

Pumped By:   Rodney Whitaker   Date:   4-25-2022  

Inspected By:   James Masters   Date:   4-25-2022  

Inspected By: \_\_\_\_\_ Date: \_\_\_\_\_

Septic System Approved: Yes: (X) No: ( )

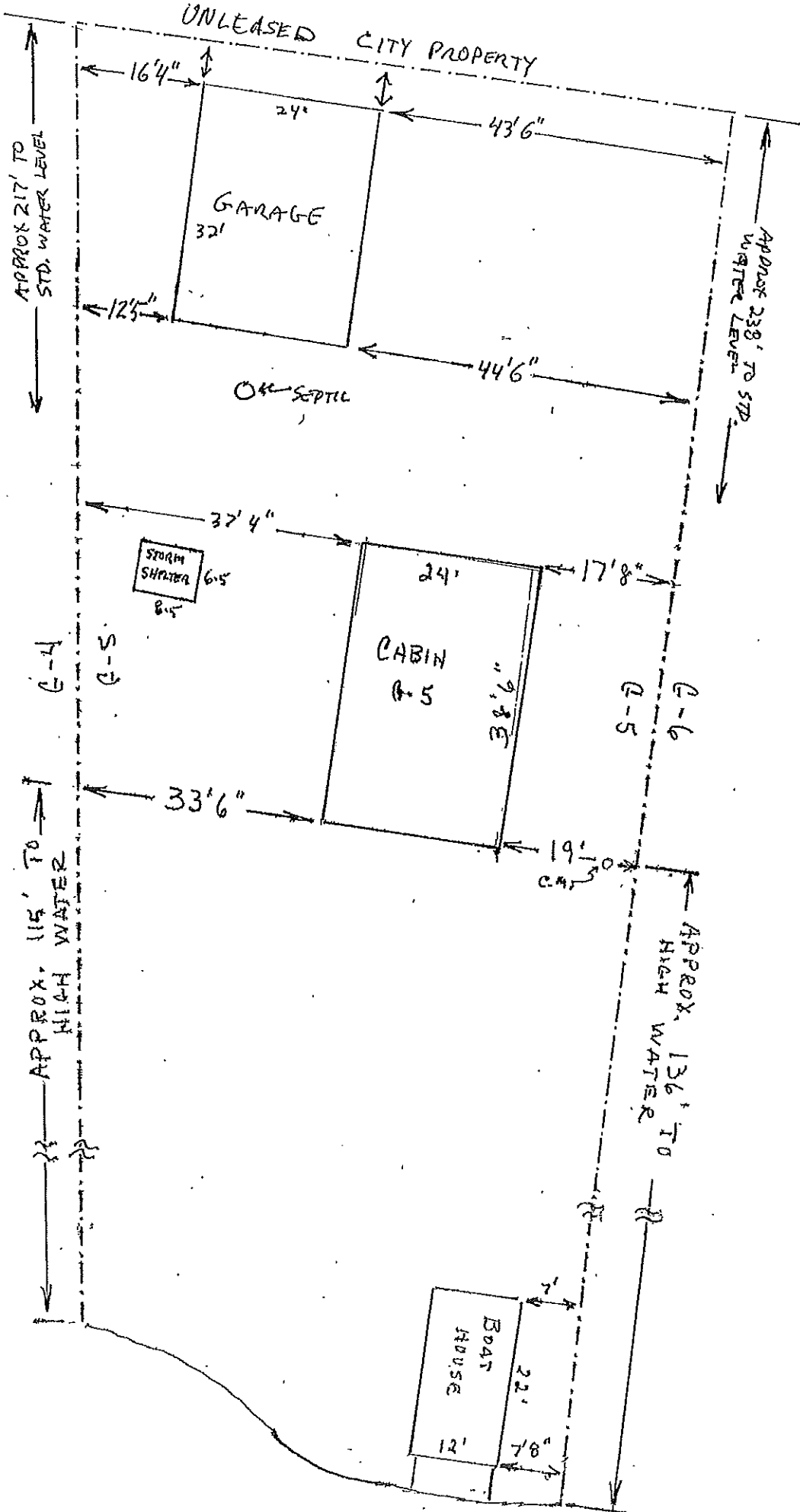
Comments:

Sincerely,

James Masters  
City Inspector

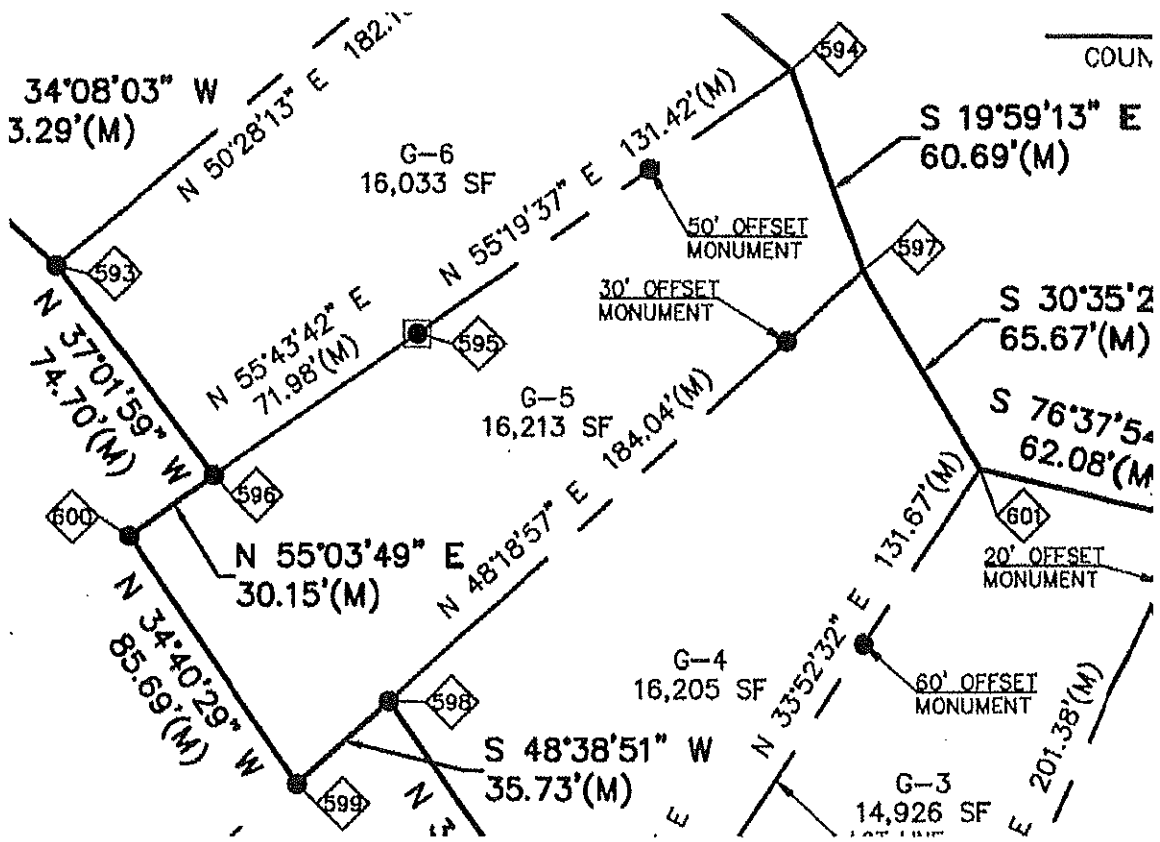
OK WELL

G-5<sup>P21</sup>



1/4" = 20 FT  
DO NOT SCALE  
DRAWING

LAKE ACCESS SIDE



ROAD ACCESS SIDE

BOUNDARY CORNER COORDINATES				
◇	NORTHING	EASTING	LATITUDE	LONGITUDE
587	126065.2797	1717915.4126	N38.67073411	W96.57944607
588	126021.1630	1718010.6430	N38.67060890	W96.57911501
589	125881.9123	1717915.0950	N38.67023072	W96.57945726
590	125854.3536	1717896.4123	N38.67015586	W96.57952420
591	125894.4618	1717822.6054	N38.67026915	W96.57978046
592	125955.5375	1718102.6389	N38.67042477	W96.57879645
593	125839.6138	1717962.1605	N38.67011257	W96.57929477
† 594	125895.2804	1718174.7142	N38.67025623	W96.57854736
† 595	125820.5161	1718066.6324	N38.67005563	W96.57892996
† 596	125779.9827	1718007.1496	N38.66994692	W96.57914049
† 597	125838.2450	1718195.4586	N38.67009876	W96.57847785
† 598	125715.8526	1718058.0117	N38.66976867	W96.57896591
† 599	125692.2453	1718031.1896	N38.66970501	W96.57906113
† 600	125762.7196	1717982.4371	N38.66990059	W96.57922798
601	125781.7186	1718228.8769	N38.66994213	W96.57836393
602	125672.4022	1718155.4869	N38.66964518	W96.57862695
603	125616.2721	1718127.0552	N38.66949231	W96.57872960
604	125767.3653	1718289.2744	N38.66990012	W96.57815322
605	125584.3391	1718205.2782	N38.66940127	W96.57845743
606	125612.3597	1718124.4830	N38.66948168	W96.57873882
607	125714.0127	1718348.9678	N38.66975108	W96.57794711
608	125574.0008	1718281.8239	N38.66936959	W96.57818994
609	125498.2234	1718245.8247	N38.66916310	W96.57832017
610	125524.0095	1718177.5325	N38.66923684	W96.57855790
611	125640.3570	1718398.5340	N38.66954673	W96.57777759
612	125473.8153	1718367.0688	N38.66909087	W96.57789694
613	125593.9929	1718511.4439	N38.66941457	W96.57738474
614	125369.8602	1718490.1985	N38.66880016	W96.57747147
615	125410.8259	1718364.2047	N38.66891806	W96.57791043
616	125562.3854	1718581.8099	N38.66932476	W96.57714007
617	125518.2969	1718574.5950	N38.66920403	W96.57716776
618	125346.0856	1718546.3769	N38.66873247	W96.57727605
619	125535.9169	1718648.9610	N38.66924920	W96.57690637
620	125346.3976	1718619.7363	N38.66873016	W96.57701914
STATE PLANE COORDINATES (UNADJUSTED) KANSAS NORTH ZONE 1501, NAD 1983, US SURVEY FEET			LATITUDE & LONGITUDE DECIMAL DEGREES	

# Application for Cabin Site Transfer

## COUNCIL GROVE CITY LAKE

Site Number: R-5 Date: May 11, 2022

Name of Transferee: Schlessinger Cattle Company, Inc.

Address: 343 SE 100 Ave

City: Ellinwood State KS Zip Code 67526

Telephone Number: 620/562-7744

Name of Transferor: Chris + Tammy Hamman

OFFICE USE ONLY BELOW THIS LINE

Septic tank checked: MAY 10, 2022

The above application is approved:

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Signed \_\_\_\_\_

Building Inspector



BILL OF SALE

KNOW ALL PERSONS BY THESE PRESENTS: Chris Hamman and Tammy Hamman, husband and wife, the undersigned grantors, in consideration of Ten Dollars and other valuable consideration do GRANT, TRANSFER AND DELIVER unto, Schlessinger Cattle Company Inc., the following described property to wit:

The lease to Lot R-5 Final Plat, Council Grove Lake Park Section R, Morris County, Kansas as well as lake home and related improvements and other miscellaneous items remaining on the premises as of the date of closing, plus the water well and equipment, septic system, and all buildings.

TO HAVE AND TO HOLD, all and singular, the said goods and chattels to Schlessinger Cattle Company Inc., and the said grantors hereby covenants with the said grantee that it is the lawful owner of said goods and chattels; that they are free from all encumbrances; it has right to convey the same as aforesaid, and that it will warrant and defend the same against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, the said grantor has hereunto set his hand this 4<sup>th</sup> day of May, 2022.

  
Chris Hamman

  
Tammy Hamman

STATE OF KANSAS COUNTY OF JOHNSON MORRIS

Be it remembered on this 4<sup>th</sup> day of May 2022, before me, the undersigned at Notary Public in and for the County of Morris and State of Kansas came Chris Hamman and Tammy Hamman who are known to me the same persons who executed the foregoing instrument of writing, and duly acknowledged the execution of the same.

IN TESTIMONY THEREOF I have hereunto set my hand and affixed my notary seal on the day and year last above written.

  
Notary Public Appointment expires 5/26/24

HOWARD M WRIGHT  
NOTARY PUBLIC  
STATE OF KANSAS  
My Appointment Expires:  
05/26/2024



Please immediately fill in date, site number, sign and return to City of Council Grove, P.O. Box 313, Council Grove, Kansas 66846, or deliver to City Hall at 205 N Union Street, Council Grove.

**GROUND LEASE AGREEMENT**

(Modified and Effective October 2, 2018)

This lease pertains to a building on leased ground, pursuant to K.S.A. 79-412.

THIS GROUND LEASE AGREEMENT (the "Lease") made and entered into this 29<sup>th</sup> day of April 2022, by and between the City of Council Grove, Kansas, a municipal corporation, hereinafter referred to as the "City" or "Lessor" and Schlessiger Cattle Inc., hereinafter referred to as "Lessee". If more than one Lessee is referenced, they shall be deemed to hold their interests hereunder

- as joint tenants and not as tenants in common, or
- as tenants in common. (check the desired box; only one can apply.)

WHEREAS, the City is the owner of the real estate described within the Final Plat, Council Grove Lake Park, an addition to Morris County, Kansas, also referred to herein as the Council Grove City Lake Park, and;

WHEREAS, the City is also the owner of real estate located in Final Plat, Council Grove Lake Park, Section R, Lot R - 5, to Morris County, Kansas, hereinafter referred to as the "Leased Premises", and,

WHEREAS, the City desires to lease the Leased Premises to Lessee, and Lessee desires to lease the Leased Premises from the City; and,

WHEREAS, the Council Grove City Lake Association (the "CGCLA") is a Kansas not for profit corporation formed for the purpose of representing the interests of the residents of the Council Grove City Lake Park; and,

WHEREAS, the parties hereto recognize the CGCLA as an official representative of the leaseholders at the Council Grove City Lake Park for the purposes set forth herein, provided that the membership includes the majority of all leaseholders.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties here to do agree as follows:

1. **USE OF PREMISES:** The Leased Premises are only to be used for the construction and use of a residential building designed as a single family living unit along with the normal appurtenances associated therewith.
2. **DEMISE:**
  - a. The City does hereby lease to the Lessee, and Lessee does hereby accept from the City, subject to the

terms and conditions set forth herein, the Leased Premises.

b. The actual boundaries of the Leased Premises have been previously established and are as set forth in Final Plat, Council Lake Park, to Morris County, Kansas, which is of record at the Morris County Register of Deeds office.

c. As a part of the grant of the Leased Premises, if Leased Premises abut the Council Grove City Lake, the Lessee is hereby granted access, to and from the Leased Premises to the Council Grove City Lake.

3. **MODIFICATION OF THIS LEASE:** Other than the term of this lease as set forth in paragraph 4 and modification of rent as set forth in paragraph 5, the City may, if reasonably necessary, with consultation with the CGCLA, modify terms and conditions of the Lease and the Lessee agrees to be bound by any such modification.

4. **TERM:** The term of this Lease shall expire on December 31, 2041, regardless of its commencement date. Provided, however, this Lease, upon its expiration, shall automatically renew for a period of thirty years, and shall continue to renew for successive terms of thirty years perpetually. Notwithstanding the perpetual nature of this Lease, nothing herein shall be construed as divesting Lessor of legal title to the Leased Premises.

5. **RENT:** The Lessee agrees to pay the City rental for this Lease as follows:

a. For the year 2012, the sum of \$1,000.00; for the year of 2013, the sum of \$1,100.00; and for the year of 2014 the sum of \$1,200.00 per year. Said rental amount has been determined based upon the historical expenses (the "Expenses") incurred by the City, related to the Council Grove City Lake Park, and for matters that directly and specifically benefit the Residential Lots, such as, security, road repair and maintenance, maintenance to common areas, equipment costs, caretaker salary and that portion of general services apportioned to such purposes. It is estimated the recent annual cost of such historical expenses has been approximately \$261,000.00, which has resulted in the established rent. The rent for all subsequent three year periods shall remain at an amount equal to the third year amount of the preceding three year period, unless adjusted as set forth hereinafter.

b. Subject to the provisions of subparagraph (c), in the event there is a significant increase in the Expenses, or if there are other factors that occur which reasonably and in good faith should require an increase in rent, the City may, within reason and good faith, require an adjustment of the rent for the second three year period of the Lease and may also require adjustments to the rent for any three year period thereafter under the same factors and requirements. Prior to implementing any adjustment, the City shall notify Lessee, and also the CGCLA, of its intention to modify the rent, and the proposed new annual rental amount. Such notice shall be delivered, in writing at least 180 days prior to the end of the current three year period of the Lease. Such notice shall include the basis of the proposed increase which shall include:

1. The actual annual itemized Expenses for the period commencing January 1 and ending December 31, every year the Lease is effective.
2. Calculated average of the annual Expenses applicable to such period and a comparison of that average to the average annual Expenses during the period when the current Rent was established.
3. An itemization of all other factors which the City relies upon to justify the modification.

The proposed modified rent shall go into effect on January 1 of the year following the notice. The CGCLA may request to negotiate the proposed amount, provided they do so within sixty (60) days of receipt of the notice, in writing, to the City Clerk. Upon such request the City and CGCLA shall enter into good faith negotiations to establish a fair and equitable annual rental amount by forming a committee of three lake leaseholders, appointed by the CGCLA, three City Council members, appointed by the City Council, one representative from Ward 1, Ward 2, and Ward 3 who are not lake leaseholders, appointed by the City Council and three Council Grove business people who are not lake leaseholders, appointed by the City Council. During such negotiations the factors set forth above shall provide the criteria upon which the Committee shall base its recommendation. The Committee shall recommend a fair and equitable rent to the City Council and the City Council shall thereafter reasonably and in good faith establish a rental amount, however the City Council shall not be bound to follow the committee's recommendation. Written notice of the new Rent shall be provided to Lessee and shall become effective on January 1 of the year following such notice.

c. The City shall only be entitled to modify the Rent, as set forth in subparagraph (b), if, from the commencement of the current three year period until the notification of the modified Rent, the City has:

1. Provided the CGCLA with accurate annual itemizations of both Expenses and Rental Revenue generated by the Residential Lots; and,
2. After the first year, set aside 10% of the Revenue in a special fund designated for use only as capital improvements at the Council Grove City Lake Park. Expenditures from this fund shall be reviewed and recommended by a committee established for such purpose and including representatives from the CGCLA. The City Council shall thereafter reasonably and in good faith determine the amount and purpose of expenditure from the fund, but shall not be bound to follow the Committee's recommendation.
3. Beginning in 2014, 10% of the 10% referred to in Paragraph 5c2 above, shall be set aside by the City for a capital improvement fund to be held as a contingency fund for future major projects mutually agreed upon by the CGCLA Board of Directors and the City Council.

d. Rental payments shall be made to the Office of the City Clerk of the City. The Lessee has an option to pay one-half of a given year's rent on or before January 15 of that year and the second half on or before July 15 of that year. If at least one-half of the rent is not paid by February 15 of each year then the entire year's rent will be immediately due and payable, plus a late payment penalty in the amount of \$75.00. If the lessee makes timely payment of the first half rent, but does not make the second half payment by July 15, a \$75.00 late payment fee shall be due to Lessor. If Lessee fails to make the rental payments required hereunder, the amount due shall accrue interest at the rate of 5% per annum from and after such date, and may be collected by the City under terms of the default provisions set forth hereinafter. The City shall have a first and prior lien on the Leased Premises for all Rent due hereunder.

**6. ENCUMBRANCE AND TRANSFER OF LEASEHOLD INTEREST:**

a. Lessee may encumber by mortgage or deed of trust, or other proper instrument, its leasehold interest and estate in the Leased Premises, together with all buildings and improvements on the premises, as security for any indebtedness of Lessee, however such encumbrance shall be subject to the obligations of the Lessee to the City as set forth herein. The execution of any mortgage, or deed of trust, or other instrument, or the foreclosure of any mortgage, or deed of trust, or other instrument, or any sale, either by judicial proceedings or by virtue of any power reserved in a mortgage or deed of trust, or conveyance by Lessee to the holder of the indebtedness, or the exercising of any right, power, or privilege reserved

in any mortgage or deed of trust, shall not be held as a violation of any of the terms or conditions of this Lease, or as an assumption by the holder of the indebtedness personally of the obligations of this Lease.

b. If Lessee shall encumber its leasehold interest in the Leased Premises, the Lessee or the holder of the indebtedness secured by the encumbrance, shall give written notice to the City of the existence of the encumbrance. The notice shall state the name, address and telephone number of the holder of the indebtedness. The holder of the indebtedness may, at its option, at any time before the rights of Lessee shall be terminated as provided in this Lease, pay any of the rents due under this Lease, or pay any taxes and assessments, or do any other act or thing required of Lessee by the terms of this Lease, or do any act or thing that may be necessary and proper to be done in the observance of the covenants and conditions of this Lease to prevent the termination of this Lease. All payments so made and all things so done and performed by the holder shall be as effective to prevent a foreclosure of the rights of Lessee hereunder as the same would have been if done and performed by Lessee.

c. Lessee may sell, transfer, assign, gift, devise by will or other instrument, its interest in this Lease, but only with prior approval of the Lessor. The transferee of any lease must sign a lease with the City and pay a transfer fee prior to approval of the transfer. The transferor must be in full compliance with City requirements before the transfer is approved. In addition, Lessee's interest in this Lease shall pass by the laws of intestate succession and descent and distribution, pursuant to the laws of the state of Kansas.

**7. LIENS:**

a. Lessee shall keep all and every part of the Leased Premises and all buildings and other improvements at any time located on the premises free and clear of any and all mechanics, material suppliers, and other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with any operations of Lessee, any alteration, improvement, or repairs or additions that Lessee may make or permit or cause to be made, or any work or construction, by, for, or permitted by Lessee on or about the premises, or any obligations of any kind incurred by Lessee, and at all times promptly and fully to pay and discharge any and all claims on which any such lien may or could be based, and shall indemnify Lessor and all of the Leased Premises and all buildings and improvements on the Leased Premises from and against any and all such liens and claims of liens and suits, including reasonable attorney fees, or other proceedings pertaining to the premises.

b. Lessor does not consent to any such lien attaching to the Leased Premises. In the event of a breach of this section by Lessee, Lessor shall have the rights and remedies set forth in the section on Default hereinafter.

**8. TAXES AND ASSESSMENTS:**

a. **IMPROVEMENTS TAXES.** As long as the county assesses taxes against the improvements separately from the real estate, Lessee shall be obligated to pay, when due, all taxes assessed against the improvements placed upon the Leased Premises. Lessee shall hold Lessor harmless from all such taxes. In the event Lessor, as owner of the land, shall receive notice of taxes due on the improvements, Lessor shall promptly notify Lessee of such notice within a time, and in a manner, allowing Lessee to make the payments, when due.

b. **TAXES IMPOSED ONLY UPON THE LAND.** Beginning with the year 2017, with the platting of the lots within the Council Grove City Lake Park, the County is assessing each lot therein separately. However, because the City is the owner of all of said lots, the Valuation Notice, as well as the statement

for taxes due, for all of said lots is provided only to the City. Therefore, the City shall, within ten (10) business days after receipt of the Valuation Notice, the statement for taxes due, or any other communication related to the taxes upon the land, mail a copy of such via first class mail to the Primary Lessee. It shall be the Lessee's responsibility to make sure they obtain the tax statement within a time frame necessary to pay the taxes in a timely manner. It shall be Lessee's obligation to pay all taxes due from the City, and related to the Leased Premises. Lessee shall pay such taxes in one of two methods, depending upon how the County will accept such payments. Under the first method, beginning in 2018 and continuing each year thereafter as long as the County will accept this method, Lessee shall make such payment directly to the County, on or before the due date set forth in the County's statement to the City. Lessee may pay such taxes in the same manner as the City could make such payment, i.e., Lessee may pay one-half of said taxes on, or before, the due date in December, and one-half of said taxes on, or before, the due date in May. If Lessee fails to make any such payment when due, the City may make such payment and recover such amounts, plus penalties, interest and attorney fees from Lessee, pursuant to Section 12 of this Lease. Under the second method, if, and when, the county has indicated that the tax payment must be made by the City the Lessee shall be obligated to pay, in full, to Lessor, within thirty days after the City gives notice of such amount being due, all taxes on the leasehold real estate which are assessed to the Lessor, as set forth on the tax statement, and the Lessor shall use such payment to pay the taxes due on the land within the time frames required. Provided, however, in the event the due date of such taxes is less than thirty days after the City gives notice of such amount, Lessor shall make such payment at least ten (10) days prior to their due date, as long as the City has provided such notice at least fifteen (15) days prior to the due date. If the City fails to provide such notice at least fifteen (15) days prior to the due date, Lessor shall make such payment within five (5) days after receipt of the notice. (The payments made by Lessee, as set forth in the preceding sentence, shall only be made to Lessor. The Lessee shall not make such payments directly to the County.) It shall be the City's obligation to determine how the county will accept the tax payment, and to notify Lessee of which method is applicable if that method has changed from the previous year, at the time the City provides notice of the amount due. Under the first method, Lessee shall have full authority to pay any, or all, of such taxes under protest, and Lessee may do so in the name of the City, to the extent any such taxes are technically the city's responsibility. Under the second method, in the event directed to do so by the Lessee, or their agent(s), the City shall pay such taxes under protest; however, the City shall only be obligated to do so if the Lessee has fulfilled their obligations to make the payment required hereunder. Lessee shall be responsible for any penalties and interest incurred by reason of their failure to pay any taxes when due. Since the Lessee is responsible hereunder for all taxes imposed upon the land, the City hereby authorizes the Lessee, or the Lessee's authorized agent(s), including but not limited to the CGCLA, to appeal the Valuation or classification of their lot, as well as any taxes imposed thereon, on behalf of and in the name of the City, without any further action of the City authorizing such appeal. The Lessee and/or their authorized agent shall have full authority, and responsibility, for filing the appeal and paying all fees and costs associated therewith and shall hold the City harmless from any obligations related thereto. The City shall have no responsibility to pursue any such appeal; however, the City agrees to cooperate, in good faith, with the Lessee, or their authorized agent(s), in their pursuit of any such appeal. The rights to appeal granted herein shall include the right to pursue such appeal throughout the statutory process, including any judicial review.

c. In the unlikely event the taxing authority does not itemize taxes by leasehold, and the Lessor only receives a tax bill for the total amount due at the Lake Park, such taxes shall be distributed 1/350 to each of the 350 leasehold lots.

d. Any assessments made by the county or other taxing authority, made by reason of the use of the premises by Lessee shall be reimbursed by Lessee within thirty (30) days after the City gives notice of such amount being due.

e. In the event the CGCLA pursues an appeal pursuant to the authority granted herein, CGCLA agrees to indemnify, and hold harmless, the Lessor from any claims of leaseholders arising from such appeal, except to the extent such claims arise from the actions or omissions of the Lessor.

9. **NO MANAGEMENT AUTHORITY:** No Lessee may individually, nor acting on behalf of any organization or entity, at any time represent that they have authority over the management or maintenance of the Council Grove City Lake Park.

10. **CONSTRUCTION REPAIR AND MAINTENANCE:**

a. All construction, repair and maintenance of any improvement upon the Leased Premises shall comply with the duly adopted Building Codes of the City, in effect at the time of such construction, repair and maintenance, the same as though the Leased Premises were located within the corporate limits of the City. Lessee shall be required to obtain any permit, and pay any fee, associated with such construction, repair and maintenance as though the Leased Premises were located within the corporate limits of the City.

b. Lessee shall, throughout the term of this Lease, at its own cost, and without any expense to Lessor, keep and maintain the premises, including all buildings and improvements of every kind that may be a part of the Leased Premises, and all appurtenances to the Leased Premises, in good, sanitary, and neat order, condition and repair, and except as specifically provided in this Lease, restore and rehabilitate any improvements of any kind that may be destroyed or damaged by fire, casualty, or any other cause whatsoever.

c. The damage, destruction, or partial destruction of any building or other improvement that is a part of the Leased Premises shall not release Lessee from any obligation under this Lease, except as expressly provided below. In case of damage to or destruction of any such building or improvement, Lessee shall at its own expense promptly repair and restore it to a condition as good or better than that which existed prior to the damage or destruction or remove such building or improvement & restore property to a clean condition.

d. In spite of anything to the contrary in the immediately preceding paragraphs of this section, in case of damage or destruction to improvements on the Leased Premises, to an extent that they are no longer useable by Lessee, Lessee may elect to terminate this Lease by written notice to Lessor; however, such termination shall not be effective until Lessee shall have either removed all of the improvements from the Leased Premises, and restored the property to a clean, sanitary and safe condition, or if Lessor at its sole discretion has waived in writing such action by Lessee.

e. The Lessor does not contemplate black-topping or hard-surfacing any of the roads at the Council Grove City Lake Park, however in the event that seventy-five percent (75%) or more of the leaseholders in any particular section should petition for hard-surfacing of roads serving that section, the Lessor shall have the right to make a special assessment against the leaseholders receiving the benefit of such improvements. Such assessment shall be on a "per lot" basis, or any other means the Lessor deems appropriate and payment of that special assessment is in addition to any other obligations herein.

f. The Lessor does not contemplate making any improvements for a sewage disposal system in the Council Grove Lake Park, however in the event that seventy-five percent (75%) or more of the leaseholders in any particular section should petition the Lessor for such a sewage disposal system, then the Lessor shall have the right to make a special assessment upon the leaseholders for payment for any and all costs and expenses for such system. Such special assessments shall be based upon a "per lot" basis or any other manner as the Lessor deems appropriate, and shall be in addition to any other obligations set forth herein.

**11. UTILITIES:** Lessee shall fully and promptly pay all monthly service charges for all water, gas, heat, light, power, telephone service, and other public utilities of every kind furnished to the leased premises throughout the term of this Lease, and all other costs and expenses of every kind whatsoever of or in connection with the use, operation, and maintenance of the leased premises and all activities conducted on the Leased Premises, and Lessor shall have no responsibility of any kind for any such costs and expenses.

**12. DEFAULT:**

a. Lessee shall be in default under the terms of this Lease if he/she/it shall fail to comply with any provision hereunder, and such failure continues for a period of sixty (60) days after Lessor has provided notice of such default, in writing. Such notice, on the part of Lessor, shall provide Lessee with a description of the default, the actions necessary to remedy the default, and shall allow the Lessee sixty (60) days within which to correct the default.

b. Except for a default by Lessee regarding the payment of rent under Section 5, or reimbursement of taxes and assessments under Section 8, Lessor shall have the right, upon the expiration of sixty (60) days following delivery of the notice set forth above, to either proceed to remedy the default itself and to assess the cost of such action against the Lessee, or bring an injunctive action, requesting a court of competent jurisdiction to order the Lessee to correct the default. In the event Lessor takes action, it shall be entitled to recover its actual costs, including reasonable attorney fees, plus an administrative fee of five percent of those costs. The administrative fee shall not exceed \$500.00. The costs and administrative fee imposed by the Lessor shall be billed to the Lessee and if not paid within thirty (30) days of such billing, Lessor shall be entitled to file notice of such costs with the Morris County Register of Deeds and such shall become a lien on the Leased Premises. If Lessor elects to bring an injunctive action to enforce the provisions hereunder, the prevailing party shall be entitled to recover their costs, including reasonable attorney fees.

c. If Lessee is in default for failure to pay rent, or other fees, pursuant to Section 5, or reimbursement of taxes and assessments under Section 8, upon expiration of sixty (60) days following delivery of the notice set forth above, Lessor shall be entitled to bring an action in a court of competent jurisdiction to recover such amounts and to also foreclose its first and prior lien on the Leased Premises, and shall be entitled to recover its costs, including reasonable attorney fees.

**13. QUIET ENJOYMENT/LESSORS RIGHT OF ENTRY:** Lessor covenants that Lessor is seized of the Leased Premises, in fee simple, and has full right to make and enter into this Lease and that Lessee shall have quiet and peaceable possession of the leased premises and improvements during the term of this Lease. Lessee shall permit Lessor and the agents and employees of Lessor to enter upon the unimproved portion of the leased premises at any time. Lessor and the agents and employees of the



Lessor may enter improvements at all reasonable times, with prior reasonable notice to the Lessee, for the purpose of inspecting the leased premises and improvements, inspecting for compliance with this Lease and any ordinances, or for the purpose of posting any notices.

**14. SPECIAL OBLIGATIONS OF THE CITY:**

- a. The city shall maintain all main roads within the Council Grove City Lake subdivision in order to provide the Leased Premises with access to public right-of-ways, consistent with the policy used within the City limits.
- b. The City agrees to work with CGCLA and any leaseholders to establish an Advisory Committee to the City Council on matters pertaining to the City Lake Park.
- c. The City shall maintain the Park, including the lake, and its supporting infrastructure, in compliance with all applicable statutes, laws, rules and regulations. However nothing herein shall require the maintenance of the infrastructure which would be contrary to the best interest of the City.
- d. The Lake is the primary water source for the City and the City shall have the right to impose such ordinances, rules and regulations as it deems necessary to protect the water supply.
- e. The City agrees to compile and make public a semi-annual accounting of all revenues generated by, and expenses incurred for, the Council Grove City Lake Park. After the first year, the City further agrees to set aside and reserve 10% of the lease rent fee to be placed in a special Capital Improvement Fund to help finance improvements at the Council Grove City Lake Park that provide benefit to the Lessees and public access facilities. A committee, including representatives of CGCLA, shall be established for the purpose of reviewing and recommending expenditures from this fund. The City Council shall thereafter reasonably and in good faith determine the amount and purpose of expenditure from the fund, but shall not be bound to follow the committee's recommendations.
- f. Notice of any new ordinances enacted by the Lessor applicable to the Council Grove City Lake Park shall be sent, at the end of each calendar year to the Lessee.

**15. SPECIAL OBLIGATIONS OF THE LESSEE:**

- a. Lessee shall not do, or permit, anything upon the leased premises that will jeopardize the water supply of the City.
- b. This Lease does not, and is not intended to, contain all matters regarding the Lake Park and each leasehold. Lessee shall obtain, read and comply with all applicable laws, statutes, ordinances, rules and regulations regarding the use of the Leased Premises.
- c. Lessee shall not use the premises so as to constitute a nuisance.
- d. Lessee shall be responsible for removal of garbage, rubbish, other waste and waste disposal from the Leased Premises, at Lessee's expense.
- e. Chemicals may only be used on leased premises with a Chemical Permit as set forth by city ordinance.

f. On all cabins, homes, residences or dwellings located upon the lease site, there shall be displayed, clearly visible to the public, both the section number and lot number. The letters shall be at least three (3) inches in size.

g. Nothing in this Lease shall be deemed to lease any tenant any surface water nor does it permit any Tenant to pump water out of the lake for any use without the approval of the City Council.

h. Lessee may not make any new roads or ways of access to any leasehold in, upon or across the Lake Park or any part thereof.

i. Before any building or improvement is placed upon the leasehold, the Lessee shall submit to the Lessor an application in writing setting forth a description of the outside dimensions of the building or improvement, the material to be used, the type of construction, and whether the same is new material or used material and such other information as may be requested by the Lessor.

16. **EMINENT DOMAIN:** In the event all, or any significant portion, of the Leased Premises is taken by an entity, using the entity's power of eminent domain, this Lease shall terminate. In such event, the parties hereto shall each be entitled to make claim against the condemning authority for the amount of any damages they have sustained as a result of such taking.

17. **VOLUNTARY SURRENDER:** Lessee, at any time during the term of this Lease, as long as Lessee is not in default of any provision hereunder, may voluntarily surrender its rights hereunder to Lessor, and upon doing so this Lease shall terminate, and both parties shall be released from the terms hereof. In order to voluntarily surrender its rights, Lessee shall notify Lessor of its intention to do so, in writing, and shall also file such notice with the Morris County Register of Deeds. Lessor shall have 60 days, from the date the notice is filed with the Register of Deeds, within which to either deny or accept such voluntary surrender, or to notify Lessee of any existing defaults that must be corrected by Lessee before such is acceptable. If Lessor fails to notify Lessee of any such defaults within such time, Lessor shall have been deemed to accept the voluntary surrender on the date the notice was filed with the Register of Deeds. If Lessor notifies Lessee of defaults to be corrected, such notice shall also be filed with the Register of Deeds. In the event Lessor notifies Lessee of defaults to be corrected, this Lease shall not terminate until such defaults are corrected and both parties have filed a consent to terminate the Lease with the Register of Deeds.

18. **RIGHT OF FIRST REFUSAL:** If at any time during the term of this Lease, Lessor shall receive from any third party a bona fide offer to purchase an individual leasehold the property to which this Lease is subject at a price and on terms acceptable to Lessor, Lessor shall give written notice of the price and terms to Lessee, and Lessee shall have thirty (30) days thereafter in which to execute a written agreement with Lessor for the purchase of such property at that price and on those terms. If Lessor shall so notify Lessee and Lessee shall fail to execute such agreement within the 30 day period, Lessor shall thereafter be free to sell the Property to the third party making the offer on the same terms and conditions set forth in the offer, subject to the terms of this Lease. Nothing herein shall be construed to require a right of first refusal if the Lake real estate is being sold in its entirety.

19. **REGISTER OF DEEDS:** As soon as practical after the execution of this Lease, the parties shall cooperate in its filing with the Morris County Register of Deeds. Lessee shall be responsible for all costs associated with such filing.

20. **NOTICES:** Any notices given by the Lessor to the Lessee will be given to the Primary Leaseholder designated herein at the address to which such Primary Leaseholder authorizes notice until such time, if any, the Primary Leaseholder authorizes a change in such by notice in writing. Any notices to the Lessor shall be given to the City Clerk at the Office of the City clerk of the City of Council Grove, Kansas. Notices or other communication pursuant to this lease shall be given by first class mail, postage prepaid, to:

the City: City of Council Grove  
Attn: City Clerk  
P.O. Box 313  
Council Grove, KS 66846

Primary Lessee: Tricia Schlessiger  
343 SE 100 Ave  
Ellinwood, KS 67526

21. **GENERAL TERMS:**

- a. **NO WAIVER:** The waiver of either party, or the failure to take action by that party, with the respect to any breach of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition or subsequent breach of the same, or any other term, covenant or condition contained in this Lease, nor will it bar enforcement of any term.
- b. **BINDING:** The provisions of this Lease shall be binding upon and shall inure to the benefit of the parties, their heirs, executors, administrators, successors and assigns.
- c. **TIME OF ESSENCE:** Time is of the essence of this Lease and of each and every covenant, term, condition and provision of this Lease.
- d. **PARAGRAPH HEADINGS:** Paragraph headings are for convenience only and are not to be used in construing this agreement.
- e. **GOVERNING LAW:** This Lease is entered into, and shall be governed by, the laws of the State of Kansas.
- f. **ENTIRE AGREEMENT:** This Lease shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this Lease shall not be binding upon either party except to the extent incorporated in this Lease. Any prior written leases, whether oral or written, between the parties hereto, regarding the Leased Premises are hereby deemed to be null and void.

g. MODIFICATION: Any modification of this Lease or additional obligation assumed by either party in connection with this Lease shall be binding only if evidenced in writing signed by each party or an authorized representative of each party. This provision shall not apply to modifications of this Lease pursuant to paragraph 3 hereof.

IN WITNESS WHEREOF, the parties have set their hands the date set forth above.

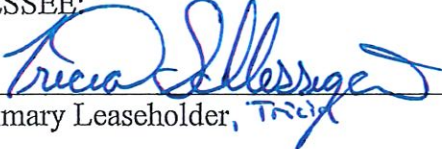
CITY OF COUNCIL GROVE, KANSAS

By: \_\_\_\_\_  
Mayor \_\_\_\_\_

ATTEST:

\_\_\_\_\_

City Clerk

LESSEE:  
  
Primary Leaseholder, Tricia

  
Lessee, Joe

\_\_\_\_\_  
Lessee

Address to which Primary Leaseholder authorizes Notices:

343 SE 100 Ave

Ellinwood, KS 67526

The 911 Mailing address for this Leasehold address is as follows:

156 East Shore Drive

Council Grove, KS 66846



## SEPTIC SYSTEM INSPECTION RESULTS

Section: R Site: R-5 Date: 05-10-2022

Address: 156 East Shore Drive

Septic System Type: Anaerobic: ( )

Aerobic (ATU/AWTDS): ( )

Septic Tank Capacity: 1,000

Septic Tank Material: Concrete: ( ) Steel: ( )

Lift Pump: Yes: ( ) No: ( )

Pumped By: Glen Session Date: 05-10-2022

Inspected By: James Masters Date: 05-10-2022

Inspected By: \_\_\_\_\_ Date: \_\_\_\_\_

Septic System Approved: Yes: (X) No: ( )

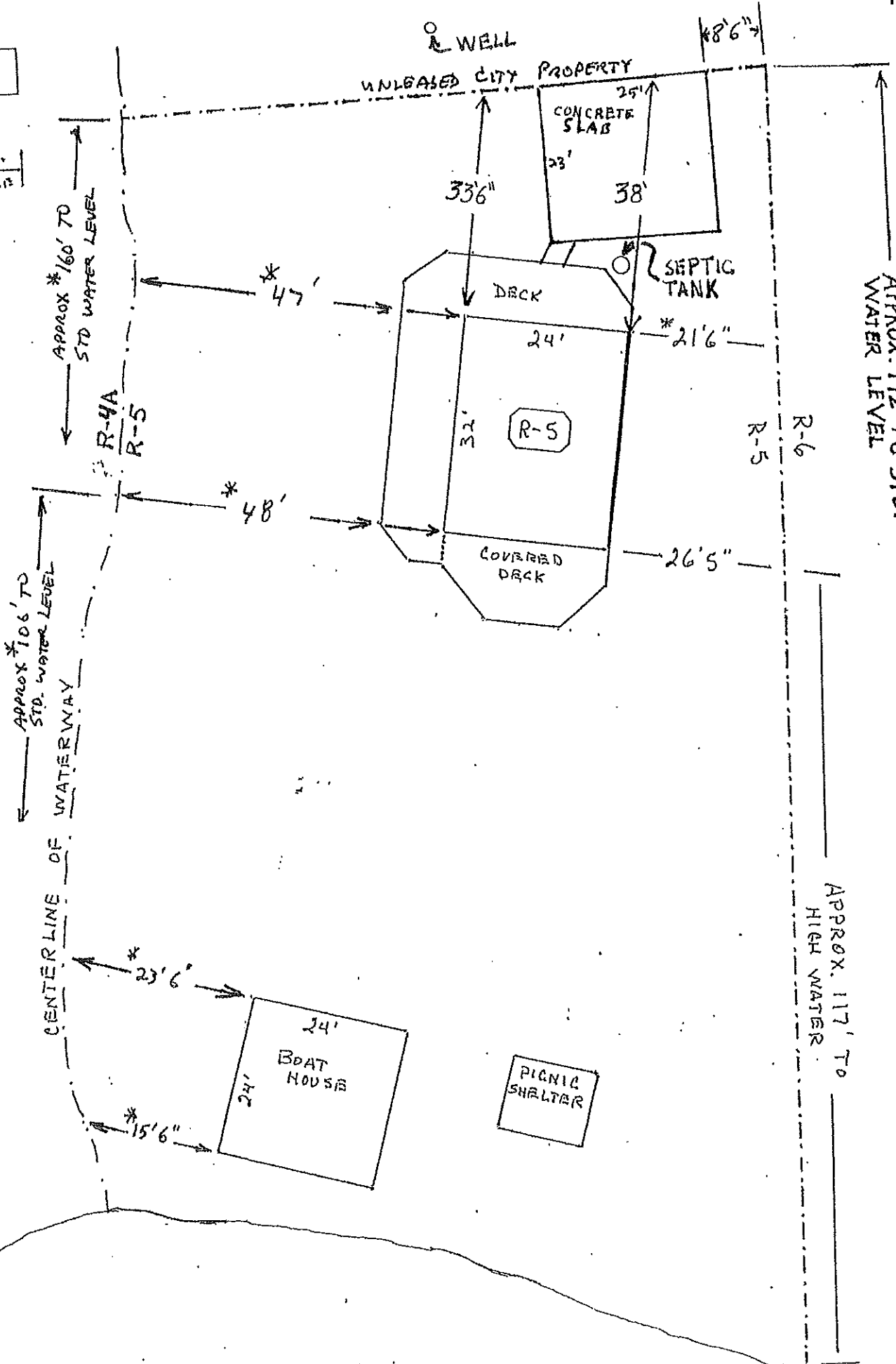
Comments: Holding Tank

Sincerely,

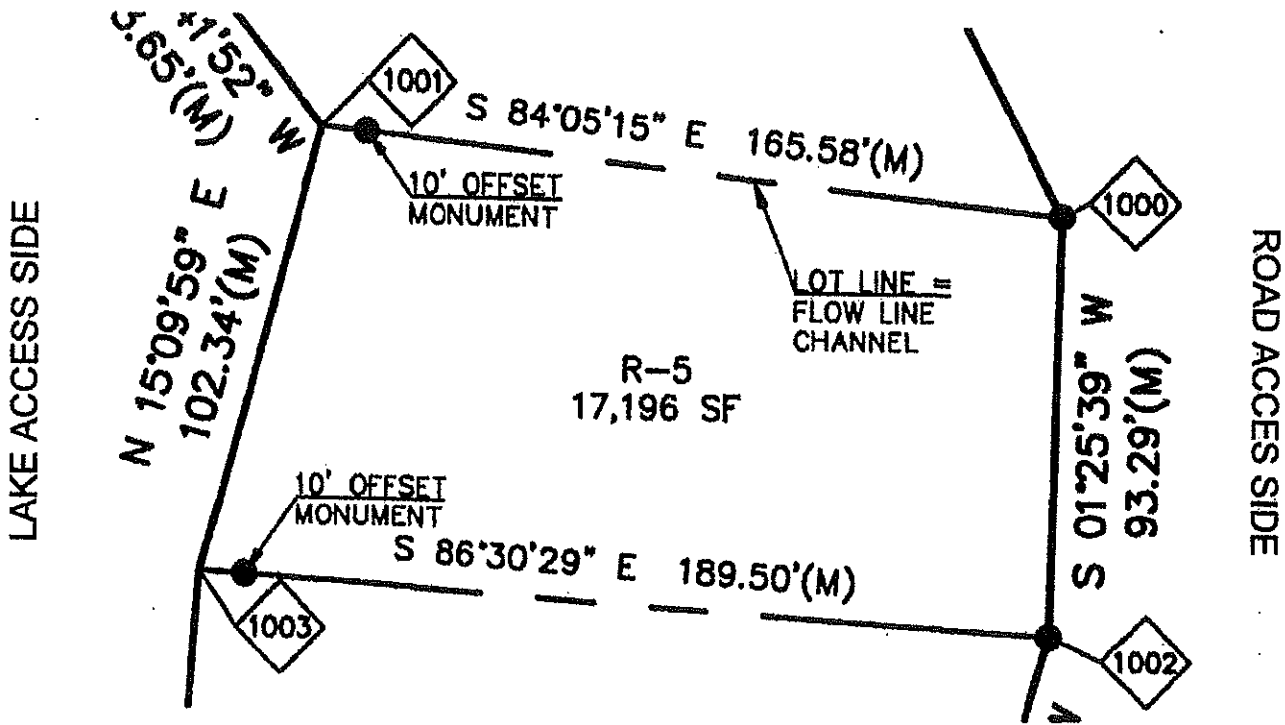
James Masters  
City Inspector

R-5

1 IN. = 20 FT.  
DO NOT SCALE DRAWING



\* APPROXIMATE BECAUSE OF SHRUBS  
AND TERRAIN



BOUNDARY CORNER COORDINATES					
◇	NORTHING	EASTING		LATITUDE	LONGITUDE
983	127703.2325	1726321.5346		N38.67486506	W96.54991670
984	127626.8232	1726373.9859		N38.67465299	W96.54973729
985	127621.1119	1726346.7307		N38.67463851	W96.54983306
986	127587.7744	1726187.8613		N38.67455397	W96.55039131
987	127677.3418	1726139.5861		N38.67480198	W96.55055535
988	127526.3988	1726372.7615		N38.67437734	W96.54974721
989	127524.0350	1726194.9429		N38.67437867	W96.55037008
990	127430.3869	1726361.3133		N38.67411426	W96.54979269
991	127440.0397	1726200.8169		N38.67414781	W96.55035422
992	127346.2732	1726349.8104		N38.67388384	W96.54983769
993	127264.2425	1726221.3947		N38.67366428	W96.55029201
994	127354.5954	1726362.1260		N38.67390615	W96.54979410
995	127280.9689	1726433.9402		N38.67370086	W96.54954673
996	127201.9267	1726306.8256		N38.67348945	W96.54999632
997	127327.7243	1726509.2730		N38.67382591	W96.54928029
998	127269.2681	1726558.3228		N38.67366327	W96.54911179
999	127186.9346	1726428.0668		N38.67344296	W96.54957257
+ 1000	127112.3970	1726638.8105		N38.67322906	W96.54883872
+ 1001	127129.4531	1726474.1143		N38.67328313	W96.54941454
+ 1002	127019.1361	1726636.4864		N38.67297313	W96.54885210
+ 1003	127030.6780	1726447.3401		N38.67301313	W96.54951384
1004	126931.1664	1726611.2610		N38.67273273	W96.54894537
1005	126892.7803	1726437.0235		N38.67263501	W96.54955771
1006	126934.3245	1726624.8141		N38.67274080	W96.54889773
1007	126903.2862	1726639.6300		N38.67265494	W96.54884759
1008	126803.4787	1726461.0996		N38.67238879	W96.54947840
1009	126947.2225	1726718.0695		N38.67277211	W96.54857043
STATE PLANE COORDINATES (UNADJUSTED) KANSAS NORTH ZONE 1501, NAD 1983, US SURVEY FEET				LATITUDE & LONGITUDE DECIMAL DEGREES	



Superior Systems, LLC.  
P.O. Box 192, Council Grove, KS. 66846  
Office:(620)767-7768  
Mobile: (785) 466-6671  
Fax: (620)767-7767  
superiorsystemscg@gmail.com

**To:**

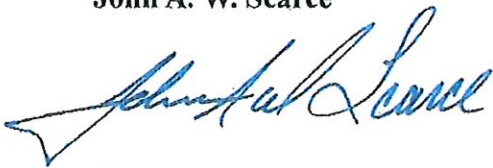
**The Mayor & Members of the Council Grove City Council,**

**I, John Scarce doing business on behalf of Superior Systems, LLC. am requesting from the governing body, a fuel price adjustment increase in refuse collection rates of 0.50 cents per month, per billed residential customer until such time as fuel rates decrease.**

**I appreciate the opportunity to come before the council and look forward to answering any questions you may have.**

Sincerely,

**John A. W. Scarce**



**President, Superior Systems, LLC.**



CITY OF COUNCIL GROVE · 205 UNION STREET · PO BOX 313  
COUNCIL GROVE, KS 66846 · 620-767-5417 · COUNCILGROVE.COM

CGAC/CGRD Employee Appointment 2022

Name	Position	Wage
Steve Taylor	General Maintenance	\$12.00

**FLOODPLAIN MANAGEMENT ORDINANCE**  
**Pursuant to 44 CFR § 60.3 (c),**  
**K.S.A. 12-766, and K.A.R. 5-44-1 through 5-44-7**

**ORDINANCE No.** \_\_\_\_\_

**ARTICLE 1            STATUTORY AUTHORIZATION, FINDINGS OF FACT, AND PURPOSES**

**SECTION A. STATUTORY AUTHORIZATION**

*1. Approval of Draft Ordinance by Kansas Chief Engineer Prior to Adoption*

The following floodplain management regulations, as written, were approved in draft form by the Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture on May 12, 2022

*2. Kansas Statutory Authorization*

The Legislature of the State of Kansas has in K.S.A. 12-741 *et seq.*, and specifically in K.S.A. 12-766, delegated the responsibility to local governmental units to adopt floodplain management regulations designed to protect the health, safety, and general welfare of the public. Therefore, the Mayor and City Council of the City of Council Grove, Kansas, ordains as follows:

**SECTION B. FINDINGS OF FACT**

*1. Flood Losses Resulting from Periodic Inundation*

The special flood hazard areas of City of Council Grove, Kansas, are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base; all of which adversely affect the public health, safety and general welfare.

*2. General Causes of the Flood Losses*

These flood losses are caused by (1) the cumulative effect of development in any delineated floodplain causing increases in flood heights and velocities; and (2) the occupancy of flood hazard areas by uses vulnerable to floods, hazardous to others, inadequately elevated, or otherwise unprotected from flood damages.

*3. Methods Used To Analyze Flood Hazards*

The Flood Insurance Study (FIS) that is the basis of this ordinance uses a standard engineering method of analyzing flood hazards, which consist of a series of interrelated steps.

- a. Selection of a base flood that is based upon engineering calculations, which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The base flood selected for this ordinance is representative of large floods, which are characteristic of what can be expected to occur on the particular streams subject to this ordinance. The base flood is the flood that is estimated to have a one percent chance of being equaled or exceeded in any one year as delineated on the Federal Insurance Administrator's FIS, and illustrative materials dated July 19, 2022, as amended, and any future revisions thereto.
- b. Calculation of water surface profiles that are based on a standard hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the regulatory flood.

### SECTION C. STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote the public health, safety, and general welfare of the public; to minimize those losses described in Article 1, Section B(1); to establish or maintain the community's eligibility for participation in the National Flood Insurance Program (NFIP) as defined in 44 Code of Federal Regulations (CFR) § 59.22(a)(3); and to meet the requirements of 44 CFR § 60.3(c) and K.A.R. 5-44-4 by applying the provisions of this ordinance to:

1. Restrict or prohibit uses that are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities;
2. Require uses vulnerable to floods, including public facilities that serve such uses, be provided with flood protection at the time of initial construction; and
3. Protect individuals from buying lands that are unsuited for the intended development purposes due to the flood hazard.

## ARTICLE 2 GENERAL PROVISIONS

### SECTION A. LANDS TO WHICH ORDINANCE APPLIES

This ordinance shall apply to all lands within the jurisdiction of the City of Council Grove in Morris County, Kansas identified as numbered and unnumbered A Zones, AE, AO, and AH Zones on the Flood Insurance Rate Map (FIRM) panels referenced on the associated FIRM Index dated July 19, 2022, as amended, and any future revisions thereto. In all areas covered by this ordinance, no development shall be permitted except through the issuance of a floodplain development permit, granted by the Mayor and City Council or its duly designated representative under such safeguards and restrictions as the Mayor and City Council or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community, and as specifically noted in Article 4.

### SECTION B. COMPLIANCE

No development located within the special flood hazard areas of this community shall be located, extended, converted, or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.

#### SECTION C. ABROGATION AND GREATER RESTRICTIONS

It is not intended by this ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

#### SECTION D. INTERPRETATION

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, shall be liberally construed in favor of the governing body, and shall not be deemed a limitation or repeal of any other powers granted by Kansas statutes.

#### SECTION E. WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside the floodplain or land uses permitted within such areas will be free from flooding or flood damage. This ordinance shall not create a liability on the part of City of Council Grove, any officer or employee thereof, for any flood damages that may result from reliance on this ordinance, or any administrative decision lawfully made there under.

#### SECTION F. SEVERABILITY

If any section; clause; provision; or portion of this ordinance is adjudged unconstitutional or invalid by a court of appropriate jurisdiction, the remainder of this ordinance shall not be affected thereby.

### ARTICLE 3 ADMINISTRATION

#### SECTION A. FLOODPLAIN DEVELOPMENT PERMIT

A floodplain development permit shall be required for all proposed construction or other development, including the placement of manufactured or mobile homes, in the areas described in Article 2, Section A. No person, firm, corporation, or unit of government shall initiate any development or substantial-improvement or cause the same to be done without first obtaining a separate floodplain development permit for each structure or other development.

#### SECTION B. DESIGNATION OF FLOODPLAIN ADMINISTRATOR

The City Administrator/City Inspector: Office of City Hall is hereby appointed to administer and implement the provisions of this ordinance.

## SECTION C. DUTIES AND RESPONSIBILITIES OF FLOODPLAIN ADMINISTRATOR

Duties of the Floodplain Administrator shall include, but not be limited to:

1. Review of all applications for floodplain development permits to assure that sites are reasonably safe from flooding and that the floodplain development permit requirements of this ordinance have been satisfied;
2. Review of all applications for floodplain development permits for proposed development to assure that all necessary permits have been obtained from Federal, State, or local governmental agencies from which prior approval is required by Federal, State, or local law;
3. Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding;
4. Issue floodplain development permits for all approved applications;
5. Notify adjacent communities and the Division of Water Resources, Kansas Department of Agriculture, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA);
6. Assure that the flood-carrying capacity is not diminished and shall be maintained within the altered or relocated portion of any watercourse; and
7. Verify and maintain a record of the actual elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures;
8. Verify and maintain a record of the actual elevation (in relation to mean sea level) that the new or substantially improved non-residential structures have been floodproofed;
9. When floodproofing techniques are utilized for a particular non-residential structure, the floodplain administrator shall require certification from a registered professional engineer or architect.

## SECTION D. APPLICATION FOR FLOODPLAIN DEVELOPMENT PERMIT

To obtain a floodplain development permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every floodplain development permit application shall:

1. Describe the land on which the proposed work is to be done by lot, block and tract, house and street address, or similar description that will readily identify and specifically locate the proposed structure or work;
2. Identify and describe the work to be covered by the floodplain development permit;
3. Indicate the use or occupancy for which the proposed work is intended;

4. Indicate the assessed value of the structure and the fair market value of the improvement;
5. Identify the existing base flood elevation and the elevation of the proposed development;
6. Give such other information as reasonably may be required by the floodplain administrator;
7. Be accompanied by plans and specifications for proposed construction; and
8. Be signed by the permittee or his authorized agent who may be required to submit evidence to indicate such authority.

## ARTICLE 4 PROVISIONS FOR FLOOD HAZARD REDUCTION

### SECTION A. GENERAL STANDARDS

1. No permit for floodplain development shall be granted for new construction, substantial-improvements, and other improvements, including the placement of manufactured or mobile homes, within any numbered or unnumbered A zones, AE, AO, and AH zones, unless the conditions of this section are satisfied.
2. All areas identified as unnumbered A zones on the FIRM are subject to inundation of the one percent annual chance or 100-year flood; however, the base flood elevation is not provided. Development within unnumbered A zones is subject to all provisions of this ordinance. If Flood Insurance Study data is not available, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources.
3. Until a floodway is designated, no new construction, substantial improvements, or other development, including fill, shall be permitted within any unnumbered or numbered A zones, or AE zones on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
4. All new construction, subdivision proposals, substantial-improvements, prefabricated structures, placement of manufactured or mobile homes, and other developments shall require:
  - a. Design or adequate anchorage to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
  - b. Construction with materials resistant to flood damage;
  - c. Utilization of methods and practices that minimize flood damages;
  - d. All electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

- e. New or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination; and
- f. Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, located within special flood hazard areas are required to assure that:
  - (1) All such proposals are consistent with the need to minimize flood damage;
  - (2) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;
  - (3) Adequate drainage is provided so as to reduce exposure to flood hazards; and
  - (4) All proposals for development, including proposals for manufactured home parks and subdivisions, of greater than five (5) acres or fifty (50) lots, whichever is lesser, include within such proposals base flood elevation data.

#### 5. *Storage, Material, and Equipment*

- a. Storage of material or equipment may be allowed if not subject to major damage by floods, if firmly anchored to prevent flotation, or if readily removable from the area within the time available after a flood warning.

#### 6. *Nonconforming Use*

A structure, or the use of a structure or premises that was lawful before the passage or amendment of the ordinance, but which is not in conformity with the provisions of this ordinance, may be continued subject to the following conditions:

- a. If such structure, use, or utility service has been or is discontinued for 1 consecutive month, any future use of the building shall conform to this ordinance.
- b. If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than fifty (50) percent of the pre-damaged market value of the structure. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, safety codes, regulations or the cost of any alteration of a structure listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination.

#### 7. *Agricultural Structures*

Structures used solely for agricultural purposes in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, including the raising of livestock, may be



constructed at-grade and wet-floodproofed provided there is no human habitation or occupancy of the structure; the structure is of single-wall design; there is no permanent retail, wholesale, or manufacturing use included in the structure; the structure meets the following floodplain management requirements; and a floodplain development permit has been issued.

Any permit granted for an agricultural structure shall be decided individually based on a case by case analysis of the building's unique circumstances.

In order to minimize flood damages during the 100-year flood and the threat to public health and safety, the following conditions shall be included for any permit issued for agricultural structures that are constructed at-grade and wet-floodproofed:

- a. All proposed agricultural structures shall demonstrate that no other alternate location outside of the special flood hazard area exists for the agricultural structure. Residential structures, such as farm houses, cannot be considered agricultural structures.
- b. Use of the structures must be limited to agricultural purposes in any special flood hazard area only as identified on the community's Flood Insurance Rate Map (FIRM).
- c. For any new or substantially damaged agricultural structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials in accordance with Article 4, Section A (4)(b) of this ordinance.
- d. The agricultural structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structures in accordance with Article 4, Section A (4)(a) of this ordinance. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.
- e. Any mechanical, electrical, or other utility equipment must be located (1) one foot above the base flood elevation or floodproofed so that they are contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with Article 4, Section A (4)(d) of this ordinance. The elevation shall be certified by a licensed land surveyor or professional engineer.
- f. The agricultural structures must meet all National Flood Insurance Program (NFIP) opening requirements. The NFIP requires that enclosure or foundation walls, subject to the one percent annual chance flood event, also referred to as the 100-year flood, contain openings that will permit the automatic entry and exit of flood waters in accordance with Article 4, Section B (1)(c) of this ordinance.
- g. The agricultural structures must comply with the floodplain management floodway encroachment provisions of Article 4, Section E(2) of this ordinance. No permits may be issued for agricultural structures within any designated floodway, if any increase in flood levels would result during the one percent annual chance flood event, also referred to as the 100-year flood.
- h. Major equipment, machinery, or other contents must be protected from any flood damage.

- i. No disaster relief assistance under any program administered by any Federal agency shall be paid for any repair or restoration costs of the agricultural structures.
- j. Wet-floodproofing construction techniques must be reviewed and approved by the community. The community may request approval by a registered professional engineer or architect prior to the issuance of any floodplain development permit for construction. Cost for any required professional certification to be paid by the developer.

#### 8. *Accessory Structures*

Structures used solely for parking and limited storage purposes, not attached to any other structure on the site, of limited investment value, and not larger than 600 square feet, may be constructed at-grade and wet-floodproofed provided there is no human habitation or occupancy of the structure; the structure is of single-wall design; the accessory structure meets the following floodplain management requirements; and a floodplain development permit has been issued. Wet-floodproofing is only allowed for small low cost structures.

Any permit granted for an accessory structure shall be decided individually based on a case-by-case analysis of the building's unique circumstances. Permits shall meet the following conditions.

In order to minimize flood damages during the one percent annual chance flood event, also referred to as the 100-year flood and the threat to public health and safety, the following conditions shall be required for any permit issued for accessory structures that are constructed at-grade and wet-floodproofed:

- a. Use of the accessory structures must be solely for parking and limited storage purposes in any special flood hazard area as identified on the community's Flood Insurance Rate Map (FIRM).
- b. For any new or substantially damaged accessory structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials in accordance with Article 4, Section A (4)(b) of this ordinance.
- c. The accessory structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structure in accordance with Article 4, Section A (4)(a) of this ordinance. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.
- d. Any mechanical, electrical, or other utility equipment must be located above the base flood elevation or floodproofed so that they are contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions in accordance with Article 4, Section A (4)(d) of this ordinance.
- e. The accessory structures must meet all NFIP opening requirements. The NFIP requires that enclosure or foundation walls, subject to the one percent annual chance flood event, also referred to as the 100-year flood, contain openings that will permit the automatic entry and exit of flood waters in accordance with Article 4, Section B (1)(c) of this ordinance.

- f. The accessory structures must comply with the floodplain management floodway encroachment provisions of Article 4, Section E (2) of this ordinance. No permits may be issued for accessory structures within any designated floodway, if any increase in flood levels would result during the 100-year flood.
- g. Equipment, machinery, or other contents must be protected from any flood damage.
- h. No disaster relief assistance under any program administered by any Federal agency shall be paid for any repair or restoration costs of the accessory structures.
- i. Wet-floodproofing construction techniques must be reviewed and approved by the community. The community may request approval by a registered professional engineer or architect prior to the issuance of any floodplain development permit for construction. Cost for any required professional certification to be paid by the developer.

#### 9. *Critical Facilities*

- a. All new or substantially improved critical nonresidential facilities including, but not limited, to governmental buildings, police stations, fire stations, hospitals, orphanages, penal institutions, communication centers, water and sewer pumping stations, water and sewer treatment facilities, transportation maintenance facilities, places of public assembly, emergency aviation facilities, and schools shall be elevated at least one (1) foot above the .2 percent annual chance flood event, also referred to as the 500-year flood level or together with attendant utility and sanitary facilities, be floodproofed so that below a minimum of one (1) foot above the 500-year flood level the structure is water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall verify that the standards of this subsection are satisfied. Such certification shall be provided to the floodplain administrator as set forth in Article 3, Section C(7)(8)(9).
- b. All critical facilities shall have access routes that are above the elevation of the 500-year flood.
- c. No critical facilities shall be constructed in any designated floodway.

#### 10. *Hazardous Materials*

All hazardous material storage and handling sites shall be located out of the special flood hazard area.

#### 11. *Cumulative Improvement*

A structure may be improved (remodeled or enlarged) without conforming to current requirements for elevation so long as the cumulative value of all work done within the last five (5) calendar years does not exceed fifty (50) percent of the structure's current market value. If the cumulative value of the improvement exceeds fifty (50) percent of the structure's current

market value, the structure must be brought into compliance with Article 4, Section B (1) which requires elevation of residential structures to one (1) foot above the base flood elevation or the elevation/floodproofing of non-residential structures to one (1) foot above the base flood elevation.

## SECTION B. SPECIFIC STANDARDS

1. In all areas identified as numbered and unnumbered A zones, AE, and AH Zones, where base flood elevation data have been provided, as set forth in Article 4, Section A(2), the following provisions are required:

- a. *Residential Construction*

New construction or substantial improvement of any residential structures, including manufactured or mobile homes, shall have the lowest floor, including basement, elevated a minimum of one (1) foot above base flood elevation. Mechanical and HVAC equipment servicing the building must be elevated or flood protected to same level as the lowest floor. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.

- b. *Non-Residential Construction*

New construction or substantial-improvement of any commercial, industrial, or other non-residential structures, including manufactured or mobile homes, shall have the lowest floor, including basement, elevated a minimum of one (1) foot above the base flood elevation or, together with attendant utility and sanitary facilities, be floodproofed so that below one foot above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Mechanical and HVAC equipment servicing the building must be elevated or flood protected to same level as the lowest floor. A registered professional engineer or architect shall verify that the standards of this subsection are satisfied. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer. Such certification shall be provided to the floodplain administrator as set forth in Article 3, Section C(7)(8)(9).

- c. *Enclosures Below Lowest Floor*

Require, for all new construction and substantial-improvements, that fully enclosed areas below lowest floor used solely for parking of vehicles, building access, or storage in an area other than a basement and that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

- (1) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided; and
- (2) The bottom of all opening shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

#### SECTION C. MANUFACTURED or MOBILE HOMES

1. All manufactured or mobile homes to be placed within all unnumbered and numbered A zones, AE, and AH zones, on the community's FIRM shall be required to be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured or mobile homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
2. Require manufactured or mobile homes that are placed or substantially improved within unnumbered or numbered A zones, AE, and AH zones, on the community's FIRM on sites:
  - a. Outside of a manufactured home park or subdivision;
  - b. In a new manufactured home park or subdivision;
  - c. In an expansion to an existing manufactured home park or subdivision; or
  - d. In an existing manufactured home park or subdivision on which a manufactured or mobile home has incurred substantial-damage as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated a minimum of one (1) foot above the base flood elevation and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. Mechanical and HVAC equipment servicing the building must be elevated or flood protected to same level as the lowest floor. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.
3. Require that manufactured or mobile homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within all unnumbered and numbered A zones, AE and AH zones, on the community's FIRM, that are not subject to the provisions of Article 4, Section C(2) of this ordinance, be elevated so that:
  - a. The lowest floor of the manufactured or mobile home is a minimum of one (1) foot above the base flood level. Mechanical and HVAC equipment servicing the building must be elevated or flood protected to same level as the lowest floor. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.

## SECTION D. AREAS OF SHALLOW FLOODING (AO and AH zones)

Located within the areas of special flood hazard as described in Article 2, Section A are areas designated as AO zones. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions apply:

### 1. AO Zones

- a. All new construction and substantial-improvements of residential structures, including manufactured or mobile homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two (2) feet if no depth number is specified).
- b. All new construction and substantial-improvements of any commercial, industrial, or other non-residential structures, including manufactured or mobile homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community FIRM (at least two (2) feet if no depth number is specified) or together with attendant utilities and sanitary facilities be completely floodproofed to that so that the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- c. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

### 2. AH Zones

- a. The specific standards for all areas of special flood hazard where base flood elevation has been provided shall be required as set forth in Article 4, Section B.
- b. Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

## SECTION E. FLOODWAY *(as determined from data available from other sources)*

If a community determines there are areas of special flood hazard that may be defined as floodway, through the use of base flood elevation and floodway data available from a Federal, State, or other source, including data developed pursuant to Article 4, Section A (4)(f)(4), and determines this data is suitable as criteria for requiring that new construction, substantial improvements, or other development in Zone A, the community must meet the following standards:

- 1) Adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood without increasing the water surface elevation of that flood more than one (1) foot at any point.
- 2) Prohibit encroachments, including fill, new construction, substantial-improvements, and other development within the adopted regulatory floodway unless it has been

demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

#### SECTION F. RECREATIONAL VEHICLES

Require that recreational vehicles placed on sites within all unnumbered and numbered A Zones, AE, AH, and AO Zones on the community's FIRM either:

1. Be on the site for fewer than 180 consecutive days, *or*
2. Be fully licensed and ready for highway use\*; *or*
3. Meet the permitting, elevation, and anchoring requirements for manufactured homes of this ordinance.

\*A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions.

#### SECTION G. CONDITIONS FOR APPROVING TEMPORARY STRUCTURES

Any permit granted for a temporary structure shall be decided individually based on a case by case analysis of the building's unique circumstances.

1. A temporary structure may be considered for location within the one percent annual chance flood event, also referred to as the 100-year floodplain only when all of the following criteria are met:
  - a. Use of the temporary structure is unique to the land to be developed and cannot be located outside of the floodplain nor meet the NFIP design standards;
  - b. Denial of the temporary floodplain development permit will create an undue hardship on the property owner;
  - c. Community has adopted up-to-date NFIP and building regulations to direct placement and removal of the temporary structure; and,
  - d. Community has sufficient staff to monitor the placement, use, and removal of the temporary structure throughout the duration of the permit.
2. Once all of the above conditions are met, an application for a temporary floodplain development permit must be made to the Mayor and City Council. The Mayor and City Council shall consider all applications for temporary floodplain development permits for a temporary structure based on the following criteria:
  - a. The placement of any temporary structure within the special flood hazard areas as shown on the community's adopted FEMA/NFIP map shall require an approved temporary

floodplain development permit. The temporary floodplain development permit shall be valid for a period not to exceed 180 days.

- b. Temporary floodplain development permit applications, for a temporary structure to be located in special flood hazard areas, shall conform to the standard public hearing process prior to any community action on the permit request.
- c. An emergency plan for the removal of the temporary structure that includes specific removal criteria and time frames from the agency or firm responsible for providing the manpower, equipment, and the relocation and disconnection of all utilities shall be required as part of the temporary floodplain development permit application for the placement of any temporary structure.
- d. On or before the expiration of the end of the 180-day permit period, the temporary structure shall be removed from the site. All utilities, including water, sewer, communication, and electrical services shall be disconnected.
- e. To ensure the continuous mobility of the temporary structure for the duration of the permit, the temporary structure shall retain its wheels and tires, licenses, and towing appurtenance on the structures at all times.
- f. Under emergency flooding conditions, the temporary structure shall be removed immediately or as directed by the community and as specified in the emergency removal plan.
- g. Location of any temporary structure within the regulatory floodway requires the provision of a "no-rise" certificate by a registered professional engineer.
- h. Violation of or non-compliance with any of the stated conditions of the temporary floodplain development permit during the term thereof, shall make the permit subject to revocation by resolution of the governing body of the community. Issuance of permit revocation notice shall be made to the landowner, the occupant of the land, and to the general public.
- i. Any deviation from the approved site plan shall be deemed a violation of the temporary floodplain development permit approval and the uses allowed shall automatically be revoked. The subsequent use of the land shall be as it was prior to the permit approval. In event of any violation, all permitted special uses shall be deemed a violation of this ordinance and shall be illegal, non-conforming uses and shall be summarily removed and abated.
- j. If the temporary structure is to be returned to its previously occupied site, the process for issuing a temporary floodplain development permit must be repeated in full. Any subsequent permit shall be valid for 180 days only.

## ARTICLE 5 FLOODPLAIN MANAGEMENT VARIANCE PROCEDURES



#### SECTION A. ESTABLISHMENT OF APPEAL BOARD

The Board of Planning and Zoning shall act as the Appeal Board as established by The City of Council Grove and shall hear and decide appeals and requests for variances from the floodplain management requirements of this ordinance.

#### SECTION B. RESPONSIBILITY OF APPEAL BOARD

Where an application for a floodplain development permit is denied by the Floodplain Administrator, the applicant may apply for such floodplain development permit directly to the Appeal Board, as defined in Article 5, Section A.

The Appeal Board shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.

#### SECTION C. FURTHER APPEALS

Any person aggrieved by the decision of the Appeal Board or any taxpayer may appeal such decision to the District Court as provided in K.S.A. 12-759 and 12-760.

#### SECTION D. FLOODPLAIN MANAGEMENT VARIANCE CRITERIA

In passing upon such applications for variances, the Appeal Board shall consider all technical data and evaluations, all relevant factors, standards specified in other sections of this ordinance, and the following criteria:

1. Danger to life and property due to flood damage;
2. Danger that materials may be swept onto other lands to the injury of others;
3. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. Importance of the services provided by the proposed facility to the community;
5. Necessity to the facility of a waterfront location, where applicable;
6. Availability of alternative locations, not subject to flood damage, for the proposed use;
7. Compatibility of the proposed use with existing and anticipated development;
8. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. Safety of access to the property in times of flood for ordinary and emergency vehicles;

10. Expected heights, velocity, duration, rate of rise and sediment transport of the flood waters, if applicable, expected at the site; and,
11. Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems; streets; and bridges.

#### SECTION E. CONDITIONS FOR APPROVING FLOODPLAIN MANAGEMENT VARIANCES

1. Generally, variances may be issued for new construction and substantial-improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood elevation, providing items two (2) through six (6) below have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
2. Variances may be issued for the reconstruction, repair, or restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination, provide the proposed activity will not preclude the structure's continued historic designation and the variance is the minimum necessary to preserve the historic character and design of the structure.
3. Variances shall not be issued within any designated floodway if any significant increase in flood discharge or base flood elevation would result.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. Variances shall only be issued upon: (a) showing of good and sufficient cause, (b) determination that failure to grant the variance would result in exceptional hardship to the applicant, and (c) determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
6. A community shall notify the applicant in writing over the signature of a community official that: (a) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (b) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this ordinance.
7. A community shall maintain a record of all variance actions, including justification for their issuance.
8. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of items 1 through 5 of this section are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

## ARTICLE 6 VIOLATIONS

1. The floodplain administrator may make reasonable entry upon any lands and waters in the City of Council Grove for the purpose of making an investigation, inspection or survey to verify compliance with these regulations. The floodplain administrator shall provide notice of entry by mail, electronic mail, phone call, or personal delivery to the owner, owner's agent, lessee, or lessee's agent whose lands will be entered. If none of these persons can be found, the floodplain administrator shall affix a copy of the notice to one or more conspicuous places on the property a minimum of five (5) days prior to entry.
2. A structure or other development without a floodplain development permit or other evidence of compliance is presumed to be in violation until such documentation is provided.
3. The floodplain administrator shall provide written notice of a violation of this ordinance to the owner, the owner's agent, lessee, or lessee's agent by personal service or by certified mail, return receipt requested. The written notice shall include instructions and a deadline to request a hearing before the appeals board, and if no hearing is requested, a deadline by which the violation must be corrected.
4. Violation of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with granting of variances) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues, shall be considered a separate offense. Nothing herein contained shall prevent the City of Council Grove or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.
5. Notwithstanding any criminal prosecutions or in lieu of any criminal prosecutions, if the owner, occupant or agent in charge of the property has neither alleviated the conditions causing the alleged violation nor requested a hearing within the period specified, the public officer or an authorized assistant shall abate or remove the conditions causing the violation.
6. If the public officer or an authorized assistant abates or removes the nuisance pursuant to this section, notice shall be provided to the owner, the owner's agent, lessee, or lessee's agent by certified mail, return receipt requested, of the total cost of the abatement or removal incurred. The notice shall also state that the payment is due within 30 days following receipt of the notice. The cost of providing notice, including any postage, required by this section may also be recovered.
7. The notice shall also state that if the cost of the removal or abatement is not paid within the 30-day period, the cost of the abatement or removal shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments and charged against the lot or parcel of land on which the nuisance was located and the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest has been paid in full. (K.S.A. 12-1617f).

## ARTICLE 7 AMENDMENTS

The regulations, restrictions, and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed, or appealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties of interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in a newspaper of general circulation in the City of Council Grove At least twenty (20) days shall elapse between the date of this publication and the public hearing. A copy of such amendments will be provided to the FEMA Region VII office. The regulations of this ordinance are in compliance with the NFIP regulations.

## ARTICLE 8 DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the same meaning they have in common usage and to give this ordinance its most reasonable application.

"100-year Flood" *see "base flood."*

"Accessory Structure" means the same as "*appurtenant structure.*"

"Actuarial Rates" *see "risk premium rates."*

"Administrator" means the Federal Insurance Administrator.

"Agency" means the Federal Emergency Management Agency (FEMA).

"Agricultural Commodities" means agricultural products and livestock.

"Agricultural Structure" means any structure used exclusively in connection with the production, harvesting, storage, drying, or raising of agricultural commodities.

"Appeal" means a request for review of the Floodplain Administrator's interpretation of any provision of this ordinance or a request for a variance.

"Appurtenant Structure" means a structure that is on the same parcel of property as the principle structure to be insured and the use of which is incidental to the use of the principal structure.

"Area of Shallow Flooding" means a designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"Area of Special Flood Hazard" is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

**"Base Flood"** means the flood having a one percent chance of being equaled or exceeded in any given year.

**"Base Flood Elevation"** means the elevation of the surface of the water during a one percent annual chance flood event.

**"Basement"** means any area of the structure having its floor subgrade (below ground level) on all sides.

**"Building"** *see "structure."*

**"Chief Engineer"** means the chief engineer of the division of water resources, Kansas Department Of Agriculture.

**"Chief Executive Officer" or "Chief Elected Official"** means the official of the community who is charged with the authority to implement and administer laws, ordinances, and regulations for that community.

**"Community"** means any State or area or political subdivision thereof, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

**"Development"** means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, levees, levee systems, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

**"Elevated Building"** means for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

**"Eligible Community" or "Participating Community"** means a community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program (NFIP).

**"Existing Construction"** means for the purposes of determining rates, structures for which the *"start of construction"* commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. *"existing construction"* may also be referred to as *"existing structures."*

**"Existing Manufactured Home Park or Subdivision"** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

**"Expansion to an Existing Manufactured Home Park or Subdivision"** means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**"Flood" or "Flooding"** means a general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of inland waters; (2) the unusual and rapid accumulation

or runoff of surface waters from any source; and (3) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined above in item (1).

**"Flood Elevation Determination"** means a determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

**"Flood Elevation Study"** means an examination, evaluation and determination of flood hazards.

**"Flood Hazard Map"** means the document adopted by the governing body showing the limits of: (1) the floodplain; (2) the floodway; (3) streets; (4) stream channel; and (5) other geographic features.

**"Flood Insurance Rate Map (FIRM)"** means an official map of a community, on which the Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

**"Flood Insurance Study (FIS)"** means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

**"Floodplain" or "Flood-prone Area"** means any land area susceptible to being inundated by water from any source (*see "flooding"*).

**"Floodplain Management"** means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

**"Floodplain Management Regulations"** means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain and grading ordinances) and other applications of police power. The term describes such state or local regulations, in any combination thereof, that provide standards for the purpose of flood damage prevention and reduction.

**"Floodproofing"** means any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, or structures and their contents.

**"Floodway" or "Regulatory Floodway"** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

**"Freeboard"** means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. *"Freeboard"* tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as bridge openings and the hydrological effect of urbanization of the watershed.

**"Functionally Dependent Use"** means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities and facilities that are necessary for the loading and unloading of cargo or passengers, but does not include long-term storage or related manufacturing facilities.

**"Highest Adjacent Grade"** means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**"Historic Structure"** means any structure that is (a) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either (1) by an approved state program as determined by the Secretary of the Interior or (2) directly by the Secretary of the Interior in states without approved programs.

**"Lowest Floor"** means the lowest floor of the lowest enclosed area, including basement. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor, **provided** that such enclosure is not built so as to render the structure in violation of the applicable floodproofing design requirements of this ordinance.

**"Manufactured Home"** means a structure, transportable in one or more sections, that is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term *"manufactured home"* does include mobile homes manufactured prior to 1976 but **does not include** a *"recreational vehicle."*

**"Manufactured Home Park or Subdivision"** means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**"Map"** means the Flood Hazard Boundary Map (FHBM), Flood Insurance Rate Map (FIRM), or the Flood Boundary and Floodway Map (FBFM) for a community issued by the Federal Emergency Management Agency (FEMA).

**"Market Value" or "Fair Market Value"** means an estimate of what is fair, economic, just and equitable value under normal local market conditions.

**"Mean Sea Level"** means, for purposes of the National Flood Insurance Program (NFIP), the National American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map (FIRM) are referenced.

**"New Construction"** means, for the purposes of determining insurance rates, structures for which the *"start of construction"* commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *"new construction"* means structures for which the *"start of*

*construction*" commenced on or after the effective date of the floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

**"New Manufactured Home Park or Subdivision"** means a manufactured home park or subdivision for which the construction of facilities for servicing the lot on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the community.

**"(NFIP)"** means the National Flood Insurance Program (NFIP).

**"Numbered A Zone"** means a special flood hazard area where the Flood Insurance Rate Map shows the Base Flood Elevation.

**"One percent annual chance flood"** *see "base flood."*

**"Participating Community"** also known as an *"eligible community,"* means a community in which the Administrator has authorized the sale of flood insurance.

**"Permit"** means a signed document from a designated community official authorizing development in a floodplain, including all necessary supporting documentation such as: (1) the site plan; (2) an elevation certificate; and (3) any other necessary or applicable approvals or authorizations from local, state or federal authorities.

**"Person"** includes any individual or group of individuals, corporation, partnership, association, or any other entity, including Federal, State, and local governments and agencies.

**"Principally Above Ground"** means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

**"Reasonably Safe From Flooding"** means base flood waters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

**"Recreational Vehicle"** means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projections; (c) designed to be self-propelled or permanently able to be towed by a light-duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**"Remedy A Violation"** means to bring the structure or other development into compliance with Federal, State, or local floodplain management regulations; or, if this is not possible, to reduce the impacts of its noncompliance.

**"Risk Premium Rates"** means those rates established by the Administrator pursuant to individual community studies and investigations, which are undertaken to provide flood insurance in accordance with Section 1307 of the National Flood Disaster Protection Act of 1973 and the accepted actuarial principles. *"Risk premium rates"* include provisions for operating costs and allowances.

**"Special Flood Hazard Area"** *see "area of special flood hazard."*



**"Special Hazard Area"** means an area having special flood hazards and shown on an FHBM, FIRM or FBFM as zones (unnumbered or numbered) A, AO, AE, or AH.

**"Start of Construction"** includes substantial-improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvements were within 180 days of the permit date. The *actual start* means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, the installation of streets and/or walkways, excavation for a basement, footings, piers, foundations, the erection of temporary forms, nor installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial-improvement, the *actual start of construction* means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**"State Coordinating Agency"** means the Division of Water Resources, Kansas Department of Agriculture, or other office designated by the governor of the state or by state statute at the request of the Administrator to assist in the implementation of the National Flood Insurance Program (NFIP) in that state.

**"Structure"** means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. *"Structure"* for insurance purposes, means a walled and roofed building, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

**"Substantial-Damage"** means damage of any origin sustained by a structure whereby the cost of restoring the structure to pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**"Substantial-Improvement"** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before *"start of construction"* of the improvement. This term includes structures, which have incurred *"substantial-damage,"* regardless of the actual repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a *"historic structure,"* provided that the alteration will not preclude the structure's continued designation as a *"historic structure."*

**"Temporary Structure"** means a structure permitted in a district for a period not to exceed 180 days and is required to be removed upon the expiration of the permit period. Temporary structures may include recreational vehicles, temporary construction offices, or temporary business facilities used until

permanent facilities can be constructed, **but at no time shall it include manufactured homes used as residences.**

**"Unnumbered A Zone"** means a special flood hazard area shown on either a flood hazard boundary map or flood insurance rate map where the base flood elevation is not determined.

**"Variance"** means a grant of relief by the community from the terms of a floodplain management regulation. Flood insurance requirements remain in place for any varied use or structure and cannot be varied by the community.

**"Violation"** means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this ordinance is presumed to be in violation until such time as that documentation is provided.

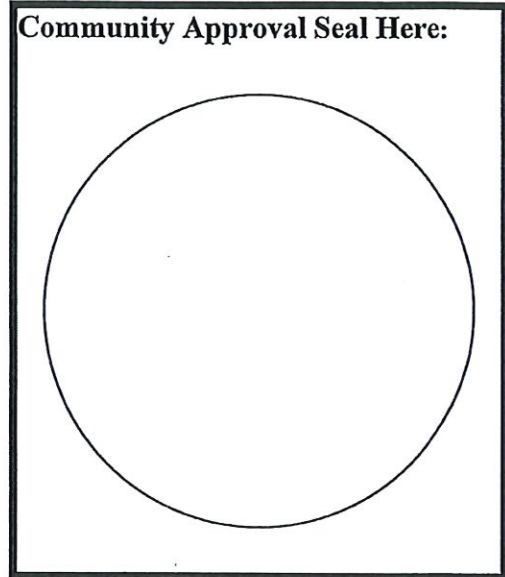
**"Water Surface Elevation"** means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplains of riverine areas.

**ARTICLE 9 CERTIFICATE OF ADOPTION**

This Floodplain Management Ordinance for the community of Council Grove, Kansas.

PASSED AND ADOPTED by the Governing Body of Council Grove, Kansas.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.



**APPROVED:**

\_\_\_\_\_  
Signature of Chief Executive Officer/Chief Elected Official Date

\_\_\_\_\_  
Chief Executive Officer/Chief Elected Official Name (Typed/printed) Title

**ATTEST:**

\_\_\_\_\_  
Signature of Recording Clerk Date

\_\_\_\_\_  
Recording Clerk Name (Typed/printed) Title

Published in official news publication *or* on website \_\_\_\_\_ (name of Publication or website address).