DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS

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Kaw Valley Business Park

This Declaration is made as of this $\frac{19^{+}}{4}$ day of April, 1996, by P.D.O. Investors, L.L.C., hereinafter referred to as "Declarant," as follows:

WITNESSETH:

It is the intent of the Declarant that the Kaw Valley Business Park, hereinafter referred to as the Park, become a park of the highest quality for business, industrial and governmental uses. The goal of the Declarant is to establish a park-like setting for business, industrial and governmental activity that will insure a pleasant working environment for employees through the use and requirement of on-site landscaping and screening, and the restriction of choice of colors and building materials and placement of parking, loading and storage areas.

The presence of improvements and parking areas shall be de-emphasized through their placement and screening. Each building shall have a pleasing appearance. All improvements must be compatible with existing improvements in the Park.

ARTICLE I GENERAL PURPOSE & DEFINITIONS

- 1.01 Kaw Valley Business Park is subjected to the protective conditions, covenants, restrictions, reservations and easements hereby declared, to promote safety to life, health and property in the area; to insure proper use and prompt, appropriate development and improvement of each Site; to protect the owners of Sites against incompatible use of surrounding Sites; to assure to each Owner the reasonable use of the Owner's property; to guard against the erection thereon of structures built of improper or unsuitable materials; to insure adequate and reasonable development of the property; to encourage the erection of attractive improvements thereon, with appropriate locations thereof on Sites; to prevent haphazard and inharmonious improvement of Sites; to secure and maintain proper set-backs from streets; and in general to provide adequately for a high type and quality of improvement on the property.
- 1.02 The following terms shall, except where the context otherwise requires, have the following meanings:
 - a. "Common Properties" shall mean those areas held for the benefit of all the Owners that are shown on any recorded plat or document in Douglas County, Kansas, comprising a portion of the Park which are identified thereon by easement or right of way.
 - b. "Declarant" shall mean P.D.O. Investors, L.L.C.

c. "Owner" shall mean any individual or entity (other than Declarant) holding title to any part of the Park as shown in the real estate records of Douglas County, Kansas, and any person designated by such Owner to act in the manner provided herein.

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- d. "Park" shall mean all of the real estate and improvements now or hereafter made subject to this Declaration.
- e. "Plan of Development" shall mean a written plan prepared by a prospective Owner to show the type and extent of the improvements which are to be undertaken by the prospective Owner on the proposed Site and shall show the schedule for the completion of such improvements, the nature of the business to be conducted thereon, and an estimate of the number of jobs to result from such business.
- f. "Restrictions" shall mean the covenants and conditions upon and subject to which the Park shall be improved, held, leased, sold or conveyed, as hereinafter set forth.
- g. "Sign" shall mean any writing, pictorial representation, emblem, symbol or trademark, flag or any other figure of similar character, which is used to announce, direct attention to, or advertise, and is visible from outside a Building. Signs of duly constituted governmental bodies shall not be deemed to be a Sign within the meaning set forth above.
- h. "Site" shall mean a portion of the Park on which a building has been or could be constructed within the terms of this Declaration. If a group of buildings is constructed upon a contiguous portion of the Park according to an integrated plan approved by the Trustees, then the portion of the Park utilized for such development may be designated a Site for purposes of these Restrictions.
- i. "Trustees" shall mean those persons appointed and elected as members of the Board of Trustees as hereinafter provided.

ARTICLE II BOARD OF TRUSTEES

- 2.01 There hereby is established a Board of Trustees, for all purposes set forth in these Restrictions, which shall consist of three members appointed by the Declarant.
- 2.02 So long as less then 40 acres of real property in the Park are owned by the Owners, two (2) members of the Board of Trustees shall be appointed by Declarant and the third shall be appointed by a vote of the Owners. Each Owner shall be entitled to vote in the proportion which that Owner's property in the Park bears to the total property in the Park held by all Owners. So long as more than 40 acres but less than 70 acres are owned by the Owners, one

(1) member shall be appointed by Declarant and two (2) members shall be elected by the Owners. When 70 or more acres are owned by the Owners, all three (3) members shall be elected by the Owners.

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- 2.03 In all elections for members of the Trustees, each Owner shall have one (1) vote for each acre owned, and fraction of an acre owned in excess of one-half (½) acre, by it for each position available. No cumulative voting and no fractional votes shall be permitted.
- 2.04 The term of office of the members of the Trustees shall be for two (2) years and shall run from January 1st through December 31st of the second year or until their successors are elected or appointed.
- 2.05 Two (2) members of the Trustees shall constitute a quorum, and actions shall be by majority vote of those members in attendance at any meeting at which there is a quorum present. The Trustees may also take action without a meeting by unanimous consent of all members.
- 2.06 The Trustees shall provide for the enforcement of the Restrictions herein set forth, shall establish policies and procedures for the review and approval of plans and the like required by these Restrictions, shall have the right to provide for any improvements or maintenance of improvements, or services, which they may deem necessary or desirable, shall have the power as provided hereinafter to levy assessments, shall set dates for the election of Trustees when such elections are appropriate, and shall otherwise establish such procedures and policies necessary or deemed desirable to provide for the general welfare of the Park, in accordance with the spirit and letter of the Restrictions. The Trustees may act through such agents and representatives as the Board of Trustees may, from time to time, authorize.
- 2.07 Decisions of the Trustees shall be conclusive and binding on all interested parties.
- 2.08 Declarant, in its sole discretion, may at any time relinquish its power of appointment of members of the Trustees to any entity succeeding to substantially all the assets of Declarant, or to an Owners Association. Relinquishment shall be made in a written document which refers to this Declaration, and shall be recorded with the Register of Deeds of Douglas County, Kansas.
- 2.09 Neither Declarant, the Trustees, or their representatives, successors or assigns, shall be liable in damages for any errors or omissions in plans or specifications submitted for approval or for the adequacy or sufficiency thereof, or any reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval process; and every person agrees, by acquiring title thereto or an interest therein, or by assuming possession thereof, that such Owner or tenant will not bring any action or suit against Declarant, Trustees, or their representatives, to recover any such damages.

2.10 The Trustees may, at any time, and from time to time, create and terminate an Association or Associations to be composed of Owners or their tenants or both in the Park. The Association may be incorporated or unincorporated, have such duration, articles and bylaws, duties, powers and responsibilities as the Trustees shall determine and assign to it, including, but not limited to, the powers and duties of the Trustees set forth in this Declaration.

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ARTICLE III BUILDING AND SITE PLAN APPROVAL

- 3.01 No building, structure or improvement of any kind shall be commenced, installed, erected, placed, assembled, altered, moved onto or permitted to remain on any Site, nor shall any use be commenced on any Site, unless and until the design approval process has been completed in accordance with this Article and the ordinance of the City of Lawrence.
- 3.02 Trustees shall review each Owner's design documents (as described in Paragraph 3.04) and final construction documents (as described in Paragraph 3.07) for site planning, landscaping, building material use, color, and general building design character. The Trustee shall not approve any design or construction documents unless such documents are, in the sole judgment of the Trustees, consistent with the intent of these Restrictions. This approval is for general appearance and aesthetics only and is in no manner a review for compliance with any other regulatory authority requirements.
- 3.03 Owners shall meet with the Trustees in pre-design and pre-submission conferences to insure understanding of these Restrictions. Trustees shall meet with Owners within fourteen (14) days of the date of request.
- 3.04 Prior to any application for a building permit for a Site, the Owner shall make a preliminary submission to the Trustees at which time the Owner shall submit to the Trustees a description of the proposed use and three (3) full sets of design documents showing at least the following:
 - a. Location of structures, easements, streets and set-back lines.
 - b. Location of signs, lighting, walks, parking and loading areas, drives, fencing, outside storage areas, screening and landscaping features.
 - c. Architectural building elevation drawings of each building face.
 - d. Building material, location and color information.
 - e. Site coverage data and calculations.

- f. Parking data and calculations.
- 3.05 Trustees shall have the right to disapprove any design documents because they fail to comply with any requirement of the Restrictions or because they fail to include any information which is required by the Restrictions or which reasonably may have been requested by Trustees.
- 3.06 In any case where Trustees shall disapprove any design documents submitted or shall approve the same only as modified or upon specific conditions, notice of such disapproval or qualified approval shall be accompanied by a statement of the reasons therefor. Trustees, if requested, shall make reasonable efforts to advise the applicant in the preparation of acceptable design.
- 3.07 The Owner shall submit to the Trustees one (1) full set of final construction documents to insure conformity to approval given to design documents. Trustees shall have the power and duty to withhold approval of final construction documents not in conformance with approved design documents. Final construction documents in conformance with approved design documents shall be promptly approved.
- 3.08 In the event Trustees fail to approve, disapprove or request any additions or supplemental information relating to design documents or final construction documents within thirty (30) days after such information has been submitted, such design documents or final construction documents shall be deemed to have been approved.
- 3.09 Any Owner violating this Article shall be liable for all costs incurred in remedying such violations, including, but not limited to, attorney's fees and court costs.
- 3.10 Declarant shall have the right, at its sole option and discretion and without regard to any existing construction or development, to alter, vary or waive any of the provisions set forth in the Restrictions with respect to future design; and no owner or tenant of a Site shall have any claim or cause of action against Declarant or Trustees by reason of granting of such alteration, variance or waiver.

ARTICLE IV PERFORMANCE STANDARDS

4.01 No noxious or offensive activity shall be carried on, nor shall anything be done which may cause the emission of objectionable odors or the emission of fumes, gases, glare, smoke, dust, noise, radiation, liquid or waste particulate injurious to buildings or property, or to products manufactured or stored upon premises, or which may interfere with the reasonable use of property subject to these Restrictions. Owners must meet all Federal, State and Local standards regarding emissions and discharges and the storage, transportation and disposal of hazardous and non-hazardous materials.

- 4.02 No heavy presses, forges or other machinery which shall vibrate, jar or shake adjacent land or buildings shall be used except during construction.
- 4.03 No oil drilling, oil development, mining or quarrying operations of any kind and no oil wells, gas wells, tanks, tunnels, mineral excavations or shafts shall be permitted within the Park without the approval of the Trustees.

ARTICLE V BUILDING AND SETBACK LINES

- 5.01 Structures such as flagpoles, light standards, meter pits, fire hose houses, etc., may be permitted between property lines and building lines upon approval of the Trustees.
- 5.02 Except as provided above, the area between property lines and building lines shall be used for landscaped areas, drives and walks in accordance with other provisions of this Declaration.
- 5.03 Buildings shall front on a street from which access is gained. Where a building faces more than one public right of way, a building shall be considered to have two (2) fronts.

ARTICLE VI BUILDING MATERIALS, HEIGHT & COVERAGE

- 6.01 Buildings erected in the Park shall be constructed with brick, glass, stone, concrete masonry, tilt up or precast concrete panels, pre-engineered metal panels with a thickness or no less than twenty six (26) gauge and an enduring finish, or their equivalent, as determined by the Trustees. All construction shall be of non-combustible materials. Earth tones and pastel colors shall predominate building color schemes.
- 6.02 No building shall exceed thirty-five feet (35') in height, except that buildings may exceed the height restriction up to a maximum of seventy-five feet (75') provided that front, side and rear setbacks be increased by one foot for each additional two feet in building height.
- 6.03 No more than forty percent (40%) of the area of any Site may be covered with buildings or other structures.

ARTICLE VII PARKING, ACCESS DRIVES AND OFF-STREET LOADING DOCKS AND AREAS

7.01 No parking of heavy, trucks, trailers or similar vehicles shall be permitted on any public or private streets in the Park, and it will be the responsibility of each Owner to provide

sufficient parking and loading facilities on its Site at least to the minimum standards set forth in the zoning ordinance of the City of Lawrence.

7.02 Loading docks or areas may be erected fronting on any public street with permission of the Trustees. Any dock or area so permitted shall be screened by landscaping or berms so as to minimize view from public streets and adjacent Sites.

ARTICLE VIII FENCING, OUTSIDE STORAGE, EXTERIOR LIGHTING, UTILITIES & EQUIPMENT

- 8.01 Outside storage shall be allowed only in side or rear yards. Storage areas shall be properly surfaced and screened from view of any street or lot by fencing and landscaping in a manner approved by the Trustees.
- 8.02 The Owner of each Site shall submit to the Trustees an exterior lighting plan (which plan shall include poles and fixtures). Outside wiring for exterior lighting shall be installed underground.
- 8.03 Utility connections and installations of wires and conduits to buildings shall be made underground from the nearest available power source. No transformers, electric, gas or other meter of any type or other apparatus shall be located on any pole but the same shall be placed on or below the surface of the land, and where placed on the surface of the land shall be adequately screened and fenced, subject to approval of the Trustees.
- 8.04 Facilities for storage of waste and rubbish shall be maintained within a screened area in closed metal containers of a type approved by the City of Lawrence and in locations generally away from the street as approved by the Trustees.
- 8.05 The above-ground bulk storage of any liquids or materials on the outside of buildings shall be permitted only in locations approved by the Trustees. Underground bulk storage of liquids or materials is permitted; provided that all Federal, State and Local standards applicable to such storage are complied with.
- 8.06 Except for air-conditioning equipment, air handling equipment and transformers, exterior mechanical and electrical equipment (including, but not limited to pump houses, communication towers, vents, fans, ducts, switchgear, and cooling towers), whether mounted on the roof or walls of any building or on the ground, shall be screened so that the predominant design lines of the building or structure continue without visual distraction or interruption. If ground-mounted, such equipment shall not be located in any front yard.
- 8.07 Air-conditioning equipment, air handling equipment and transformers installed in any Site shall be of a color to blend with the predominant colors of the building on or near which

they are installed, and shall be properly screened. The height of the required screening shall be at least equal to the height of the equipment to be screened.

ARTICLE IX LANDSCAPING

- 9.01 Landscaping shall be an effective combination of trees, grass, ground cover and shrubbery. Landscaping shall be designed so as to permit reasonable access to public and private utility lines and easements situated on or adjacent to an Owner's Site, for installation and repair. Proposed landscaping shall be subject to approval of the Trustees. Landscaping shall be installed within ninety (90) days of occupancy or completion of the building, whichever occurs first.
- 9.02 Unimproved areas may be used for agriculture, or seeded and mowed.

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- 9.03 Landscaping shall be installed and maintained by the Owner within those portions of a lot not improved by buildings, parking areas and the like, including the side and rear setback areas not used for parking, drives or buildings.
- 9.04 Parking areas on the Site shall be landscaped in such a manner as to interrupt or screen subject areas from view of the streets. If 20,000 square feet or more of contiguous parking area is constructed on a Site, then there shall be landscaping area equal to not less than five percent (5%) of the parking area so situated within the parking area as to soften the appearance of a contiguous paved parking area.

ARTICLE X SIGNS

- 10.01 During the period of development and prior to the completion of the primary building on each Site, the Site shall have only one temporary construction sign, not to exceed eight feet (8') by twelve feet (12'). The sign shall be mounted no more than twelve inches (12") off the ground.
- 10.02 After completion of the primary building on each Site, the availability for sale or lease of all or any part of the primary building shall be advertised by only one (1) temporary marketing sign not to exceed four feet (4') high and eight feet (8') wide.
- 10.03 Declarant's right to erect temporary signs for marketing and sales shall be unrestricted as to type, format, location and duration.
- 10.04 Wall signs are permitted for each establishment on a wall which faces or fronts an adjoining and abutting public right-of-way. Where a building faces more than one public right-of-way, two walls may be used for signs. The maximum area for wall signs shall be limited to

ten percent (10%) of the wall to which it is attached or one hundred and fifty (150) square feet, whichever is less. For each one hundred (100) foot increment the wall is set back from the public right-of-way, the maximum area may be increased by fifty percent (50%), provided that no sign shall exceed four hundred and fifty (450) square feet. No sign shall extend above the roof line of any building.

- 10.05 Each Site shall be allowed one (1) standard free standing monument sign (design to be provided by Declarant). No sign shall exceed sixty (60) square feet in size.
- 10.06 Sign illumination shall be by a concealed source and back-lighting shall be contained within the area of the sign. Wiring and appurtenant electrical equipment shall be installed underground or within the sign.
- 10.07 In addition to the monument sign (10.05), multi-tenant buildings may have individual tenant identification signs. The maximum size of tenant identification signs shall be no further than two feet (2') above and/or next to the entry door of the tenant's space. No sign shall be higher than ten feet (10') above the ground immediately adjacent to the sign.
- 10.08 Signs described in 10.04, 10.05, and 10.07 shall be constructed of permanent material and shall be consistent with the general architectural design of the buildings. Said signs shall consist only of the company name and/or logo.
- 10.09 Each Site shall have informational and directional signs designating parking and offstreet loading areas, entrances and exits or similar information as required. Said signs shall not exceed two (2) square feet in size.

ARTICLE XI MISCELLANEOUS

- 11.01 Each Owner of any part or parcel of a Site, or of any right, title or interest therein, covenants and agrees with Declarant, its successors and assigns (1) to use and develop the Site only in accordance with the restrictions herein set forth; and (2) to refrain from using or developing the Site in any way inconsistent with or prohibited by the provisions of this Declaration, which provisions shall constitute binding conditions of each successive grant of all portions of the Site hereafter transferred or conveyed, as fully as though set forth verbatim in the deed or other instrument of conveyance or transfer.
- 11.02 Declarant and any member of the Trustees may from time to time at any reasonable hour, upon reasonable advance notice to the Owner or occupant, enter and inspect any portion of the Site to ascertain compliance with this Declaration.

11.03 The failure of Declarant or Trustees to enforce any covenant or restriction herein contained shall in no event be deemed to be a waiver of the right to do so thereafter, nor of the right to enforce any other restrictions herein imposed upon the Park.

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- 11.04 Except with respect to land owned by Declarant, no Site may be divided, subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership without the written permission of the Trustees.
- 11.05 Declarant shall have the right to render other land that is adjoining or adjacent to the Park or to any street adjacent to the Park or to any other property then subject to the Restrictions, subject to, governed by and within the purview of the Restrictions in all respects by executing and recording a document containing: a description of the land to be added; a statement that Declarant is the owner in fee simple of such land, or in lieu thereof, a statement that all other persons, firms or corporations having an interest in such land have joined in such supplement; a statement of additional or modified restrictions or burdens to which such land shall be subjected, if any. Following the execution, delivery and recording of such supplement, but subject to its terms, such land shall in all respects be fully subject to the Restrictions and all rights, privileges, obligations, duties, liabilities, responsibilities, burdens and restrictions contained herein, including but not limited to the obligation for payment of assessments, as though such land had originally been included in and subject to these Restrictions.
- 11.06 Declarant shall have the right to remove land that is then subject to the Restrictions from the effect, jurisdiction and imposition of the Restrictions in all respects in which event such land shall be free and clear of the Restrictions by executing and recording a document containing: the description of the land to be removed; a statement that Declarant is the owner in fee simple of such land, or in lieu thereof, a statement that all other persons, firms or corporations having an interest in such land have joined in such supplement. Following the execution, delivery and recording of such supplement, but subject to its terms, such land shall in all respects be fully free and clear of the Restrictions and all rights, privileges, obligations, duties, liabilities, responsibilities, burdens and restrictions contained herein, as though such land had originally be excluded from and not subject to these Restrictions.
- 11.07 No provision herein shall be deemed to require, either expressly or impliedly, Declarant to improve, construct and/or develop all or any portion of the Park in any manner whatsoever, except to the extent of restrictions set forth in the Declaration; and any land withdrawn from the provisions of this Declaration pursuant to the provisions of Section 12.06 may be improved, developed or used by Declarant, or any subsequent Owner thereof, in any manner whatsoever.
- 11.08 Invalidation of any part of the Restrictions by judgment or court order shall in no way affect any of the other provisions, all of which shall remain in full force.

- 11.09 Any discrepancy, conflict or ambiguity which may be found herein shall be resolved and determined by Declarant and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, such resolution and determination shall be final.
- 11.10 The organizational numbers and letters appearing in the Restrictions are inserted only as a matter of convenience and neither in any way define, limit, construe or describe the scope or intent of the Restrictions nor in any way modify or affect the Restrictions.
- 11.11 The failure of Declarant, the Trustees, or the Association to take action to enforce the provisions hereof or to enjoin their violation shall in no event be deemed a waiver of its right to subsequently do so, nor shall it be deemed a waiver of any subsequent default or of the continuation of any existing default.
- 11.12 These Restrictions shall run with the land and shall be binding upon and shall inure to the benefit of all parties claiming under or through Declarant or any Owner; provided, however, that at any time the Owners of more than fifty percent (50%) of the acreage in the Park, and Declarant may, by written declaration signed and acknowledged by them and recorded, alter, amend, modify or terminate these Restrictions.
- 11.13 Each Owner shall commence or cause to be commenced the construction of a building upon the Owner's property in accordance with the Owner's Plan of Development as approved by the Trustees as provided herein. Declarant or Trustees may grant written extensions of time within which construction of improvements may commence.

ARTICLE XII KAW VALLEY BUSINESS PARK DESCRIBED

12.01 The real estate and improvements thereon consisting of Kaw Valley Business Park that are the subject of this Declaration is that contained in the legal description attached hereto and labeled "Kaw Valley Business Park Legal Description."

IN WITNESS WHEREOF the undersigned, as the Declarant hereunder, has executed this Declaration as of the date hereinabove stated.

P.D.O. INVESTORS, 3

KAW VALLEY BUSINESS PARK LEGAL DESCRIPTION

A tract of land in the Northeast Quarter of Section 9, Township 13 South, Range 20 East of the Sixth Principal Meridian, described as follows:

Beginning at the Southwest corner of said Quarter Section; thence North 01 degree 30 minutes 23 seconds West, along the West line of said Quarter Section, 1449.99 feet to the centerline of Township Road No. 57, now known as Road 1360 North; thence South 80 degrees 47 minutes 35 seconds East, along said centerline, 2745.47 feet to the East line of said Quarter Section; thence South 01 degree 33 minutes 06 seconds East, 960.26 feet along said East line to the Southeast corner of said Quarter Section; thence South 88 degrees 55 minutes 55 seconds West, along the South line of said Quarter Section, 2698.45 feet to the Point of Beginning. The above contains 74.640 acres, more or less, all in Douglas County, Kansas.

DECLARATION OF AMENDMENT TO CHANGE NAME

Kaw Valley Business Park

to be known as

FRANKLIN BUSINESS PARK

This Declaration of Amendment to Change Name is made this 20 day of October, 1997, by P.D.O. Investors, L.L.C., hereinafter referred to as "Declarant,":

- 1. Deciarant is the owner of more than fifty percent (50%) of the acreage in the Park, and has the authority, pursuant to Article XI, paragraph 11.12 of the Restrictive Covenants for the Park, to alter, amend, or modify the Restrictive Covenants by written declaration signed and acknowledged by Declarant and recorded.
- 2. Declarant hereby changes the name of the Park from "Kaw Valley Business Park" to "Franklin Business Park", effective immediately.
- 3. The real estate and improvements thereon constituting the "Kaw Valley Business Park", which shall hereafter be known as the "Franklin Business Park", is that real estate contained in the legal description attached hereto and labeled: Legal Description Franklin Business Park.

IN WITNESS WHEREOF the undersigned, as owner of more than fifty percent (50%) of the acreage in the Park, and as the Declarant hereunder, has executed this Declaration Of Amendment to Change Name as of the date hereinabove stated.

P.D.O. INVESTORS, L.L.

Stanban E Glass

SUBSCRIBED AND SWORN TO before me, a notary public, this 20 day of October, 1997.

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Notary Public - State of Kansas

My Appt. Expires 6/25/2000

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LEGAL DESCRIPTION

FRANKLIN BUSINESS PARK

formerly known as Kaw Valley Business Park

A tract of land in the Northeast Quarter of Section 9, Township 13 South, Range 20 East of the Sixth Principal Meridian, described as follows:

Beginning at the Southwest corner of said Quarter Section; thence North 01 degree 30 minutes 23 seconds West, along the West line of said Quarter Section, 1449.99 feet to the centerline of Township Road No. 57, now known as Road 1360 North; thence South 80 degrees 47 minutes 35 seconds East, along said centerline, 2745.47 feet to the East line of said Quarter Section; thence South 01 degree 33 minutes 06 seconds East, 960.26 feet along said East line to the Southeast corner of said Quarter Section; thence South 88 degrees 55 minutes 55 seconds West, along the South line of said Quarter Section, 2698.45 feet to the Point of Beginning. The above contains 74.640 acres, more or less, all in Douglas County, Kansas.

 State of Kansas, Douglas County, SS.
Filed and Entered in Vol. 591
Page 429- at 3:15 o'clock P M
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By Deputy

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