STATE OF KANSAS



Corporation Commission 1500 SW Arrowhead Road Topeka, KS 66604-4027

January 10, 2019



PHONE: 785-271-3100 Fax: 785-271-3354 http://kec.ks.gov/

GOVERNOR JEFF COLVER, M.D. Shari Feist Albrecht, Chair | Jay Scott Emler, Commissioner | Dwight D. Keen, Commissioner

NOTICE OF PENALTY ASSESSMENT

19-TRAM-254-PEN

Robert Phillips, Managing Member Wichita Tree LLC 2346 E 45th St N Wichita, KS 67219

This is a notice of a penalty assessment against Wichita Tree LLC (Wichita Tree) for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on December 11, 2018, by Kansas Corporation Commission Special Investigator Gary Goeller. Penalties are assessed in accordance with the FY 2019 Uniform Penalty Assessment Matrix, approved by the Commission on August 7, 2018. For a full description of the penalty(s) and terms and obligations please refer to the Order attached to this notice.

IF YOU ACCEPT THE PENALTY: Wichita Tree has been assessed a \$400 penalty. You have thirty (30) days from the date of service of the Penalty Order to pay the penalty. Please remit payment of \$400, through your personal account with the Kansas Corporation Commission's KTRAN system located at https://puc.kcc.ks.gov/ktran/. If you have not received a letter from the Transportation Division assigning you a PIN, please contact that Division at 785-271-3145. You must have an account through KTRAN to pay the penalty owed.

The attached Order requires a representative of Wichita Tree to attend a Commission-sponsored safety seminar within ninety (90) days from the date of the Order and to provide the undersigned Litigation Counsel with written proof of attendance. A schedule of dates and locations for safety seminars can be found at the Commission's website <u>http://www.kcc.state.ks.us/trans/safety_meetings.htm</u>. The Order also requires your company to submit to one follow-up safety compliance review within 18 months from the date of the Order. Transportation Staff will contact your company at a later date to determine an appropriate time for this review.

IF YOU CONTEST THE PENALTY ORDER: You have the right to request a hearing. A request for hearing must be made in writing, setting forth the specific grounds upon which relief is sought. Wichita Tree must file, within fifteen (15) days from the date of service of this Order, the request for hearing with the Commission's electronic filing system found at https://puc.kcc.ks.gov/e-filing/e-express/, and mail a copy of the request for hearing to the undersigned at the above address. If you do not have access to the internet, you can mail an original and seven copies of the request to the Secretary to the Commission at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and mail a copy to the undersigned Litigation Counsel. K.A.R. 82-1-215; K.S.A. 2018 Supp. 77-542.

IF YOU FAIL TO ACT: Failure to pay the penalty of \$400 within thirty (30) days from the date of service of the Penalty Order or failure to comply with the terms of the Order, or in the alternative, failure to provide a timely written request for a hearing, will result in the Order becoming final and may result in additional sanctions of suspension and/or revocation of your motor carrier operating authority.

Respectfully,

Ahsan A. Latif Litigation Counsel (785) 271-3118

THE STATE CORPORATION COMMISSION **OF THE STATE OF KANSAS**

Before Commissioners:	Shari Feist Albrecht, Chair Jay Scott Emler Dwight D. Keen
In the Matter of the Invest Tree LLC, of Wichita,	

Violation of the Motor Carrier Safety Statutes,) Rules and Regulations and the Commission's) Docket No. 19-TRAM-254-PEN Authority to Impose Penalties, Sanctions and/or the Revocation of Motor Carrier Authority.

PENALTY ORDER

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The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

I. JURISDICTION

1. Pursuant to K.S.A. 2018 Supp. 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-

1,114b and 66-1,115, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in K.S.A. 2018 Supp. 66-1,108, doing business or procuring business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.

2. Pursuant to K.S.A. 2018 Supp. 66-1,129a, 66-1,130 and 66-1,142b, the Commission may suspend operations, revoke or amend certificates, and initiate sanctions or fines against every motor carrier and every person who violates any provision of Kansas law in regard to the regulation of such motor carriers and persons, or who fails to obey any order, decision or regulation of the Commission.

3. The Commission has the authority, pursuant to K.A.R. 82-1-237, to investigate an entity under the Commission's jurisdiction and issue an order on the Commission's own motion when the Commission believes the entity is in violation of the law or any order of the Commission.

II. BACKGROUND

4. Wichita Tree LLC (Wichita Tree) operates USDOT number 3134849.

5. Courtney Klug attended a Commission-sponsored Motor Carrier Education and Safety Instructional Meeting on September 10, 2018, on behalf of Wichita Tree.

6. Wichita Tree is a private motor carrier which primarily hauls logs, poles, beams and lumber.

III. STATEMENT OF FACTS

7. Pursuant to the jurisdiction and authority cited above, on December 11, 2018, Commission Staff (Staff) Special Investigator Gary Goeller conducted a safety compliance review of the operations of Wichita Tree. A copy of the safety compliance review is included in this Penalty Order as Attachment "A" and is hereby incorporated by reference. As a result of this investigation, the special investigator identified two (2) violation(s) of the Motor Carrier Safety Regulations.

> a. On November 20, 2018, Wichita Tree required or permitted its driver, Osborn J. Holland, to operate a CDL-required commercial motor vehicle, a 2004 Ford, VIN ending in 609080, GVWR 26,000 lbs., pulling a 2017 Vermeer Chipper, VIN ending in 1025249, GVWR 57,000 lbs., in

intrastate commerce in and around the area of Wichita, Kansas. This trip is evidenced by Driver/Vehicle Examination Report Number KSHP04232473, dated November 20, 2018, a copy of which is attached hereto as Attachment "B" and is hereby incorporated by reference. At the time of this transportation, Wichita Tree failed to place a copy of the driver's motor vehicle record (MVR) in the driver qualification file within 30 days of employment. This carrier was cited for the same violation during an educational compliance review conducted in September 2018. Wichita Tree's failure to obtain MVRs on its drivers within 30 days of employment and maintain the MVRs in the driver qualification files pursuant to 49 C.F.R. 391.51 is a violation of 49 C.F.R. 391.23(a)(1) and (b), adopted by K.A.R. 82-4-3g, and authorized by K.S.A. 2018 Supp. 66-1,129. Staff recommends an enhanced fine of \$200.

b. During the transportation described in paragraph a., above, Wichita Tree failed to maintain the proper documents in driver Osborn J. Holland's driver qualification filed. This carrier was cited for the same violation during an educational compliance review conducted in September 2018. Wichita Tree's failure to maintain a road test certificate issued to the driver pursuant to 49 C.F.R. 391.3(e) in the driver's qualification file, or a copy of the license or certificate which the motor carrier accepted as equivalent to the driver's road test pursuant to 49 C.F.R. 391.51(b)(3), adopted by K.A.R. 82-4-3g, and

authorized by K.S.A. 2018 Supp. 66-1,129. Staff recommends an enhanced fine of \$200.

IV. STAFF'S RECOMMENDATIONS

8. Based upon the available facts, Staff recommends the Commission finds Wichita Tree committed two (2) violation(s) of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

9. Additionally, Staff recommends a civil penalty of \$400 for two (2) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.

10. Staff further recommends that a representative from Wichita Tree be required to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order, and provide Litigation Counsel with written proof of attendance. A schedule of the dates and locations for safety seminars can be found on the Commission's website at http://kcc.ks.gov/trans/safety_meetings.htm.

11. Finally, Staff recommends that Wichita Tree submit to one follow-up safety compliance review within eighteen (18) months from the date of this Order. Transportation Staff will contact the motor carrier at a later date to determine an appropriate time for this review.

V. CONCLUSIONS OF LAW

12. The Commission finds it has jurisdiction over Wichita Tree because it is a motor carrier as defined in K.S.A. 2018 Supp. 66-1,108.

13. The Commission finds Wichita Tree committed two (2) violation(s) of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety

Regulations (FMCSRs), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

THE COMMISSION THEREFORE ORDERS THAT:

A. Wichita Tree LLC, of Wichita, KS is hereby assessed a \$400 civil penalty for two
(2) violation(s) of Kansas law governing the regulation of motor carriers, the Kansas
Administrative Regulations and provisions of the Federal Motor Carrier Safety Regulations, as
adopted by the Kansas Administrative Regulations.

B. Wichita Tree is hereby ordered to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order, and is to provide Litigation Counsel with written proof of attendance.

C. Wichita Tree is ordered to submit to one follow-up safety compliance review within eighteen (18) months from the date of this Order. Transportation Staff will contact the carrier to set up the appointment.

D. Pursuant to K.S.A. 2018 Supp. 77-537 and K.S.A. 77-542, any party may request a hearing on the above issue(s) by submitting a written request setting forth the specific grounds upon which relief is sought. The request may be electronically filed with the Commission's electronic filing system at https://puc.kcc.ks.gov/e-filing/e-express/, within fifteen (15) days from the date of service of this Order, and a copy of the request mailed to the Litigation Division. If you do not have access to the internet, you can mail an original and seven copies of the request to the Secretary to the Commission, at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and mail a copy of the request to Litigation Counsel. A hearing will be scheduled only upon written request. Failure to timely request a hearing will result in a waiver of Wichita Tree's right to a hearing, and this Penalty Order will become a Final Order assessing a \$400 civil penalty against

Wichita Tree, and ordering a representative from Wichita Tree to attend a Commissionsponsored safety seminar within ninety (90) days from the date of this Order and provide Litigation Counsel with written proof of attendance, and to submit to a safety compliance review within 18 months from the date of this Order.

E. If a request for hearing is filed, attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. For civil penalties exceeding \$500, a corporation shall appear before the Commission by its attorney, unless waived by the Commission for good cause shown and a determination that such waiver is in the public interest. K.S.A. 77-515(c); K.A.R. 82-1-228(d)(2); K.A.R. 82-1-202(a). For civil penalties less than \$500, a corporation may appear by a duly authorized representative of the corporation. K.S.A. 2018 Supp. 66-1,142b(e) and amendments thereto.

F. If you do not request a hearing, the payment of the civil penalty of \$400 is due in thirty (30) days from the date of service of this Order. Payment of \$400 must be made through your personal account with the Kansas Corporation Commission's KTRAN system located at <u>https://puc.kcc.ks.gov/ktran/</u>. You must have an account through KTRAN to pay the penalty.

G. Failure to pay the \$400 civil penalty within thirty (30) days from the date of service of this Penalty Order, *see* K.S.A. 66-1,105, and/or failure to comply with the provisions of this Order, may result in suspension of Wichita Tree's motor carrier operating authority without further notice. Additionally, the Commission may impose further sanctions to include, but not limited to, the issuance and enforcement of revocation of authority and/or cease and desist orders, and any other remedies available to the Commission by law, without further notice.

H. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders, as necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

01/10/2019 Dated: _____

Lynn M. Ref

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Lynn M. Retz Secretary to the Commission

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ATTACHMENT "A"

US DOT #	Legal: WICHI	TA TREE LLC		
3134849		A):WICHTA TREE SERV	ICE	
MC/MX #:		Federal Tax	ID: EIN)	
Review Type: Complia	ance Review (CR)			
Scope: Principa	I Office	Location of Review/Au	dit: Company facility in the U.	S. Territory: F
Operation Types Int	erstate intrastate			
Carrier: H	M HM	Business: Corporation		
Shipper: N/	A N/A	Gross Revenue:	for year end	ling: 12/31/2018
Cargo Tank:	N/A			
Company Physical A	ddress:			
WICHITA, KS 67219-	3142			
Contact Name:	Robert Phillips			
Phone numbers: (1)			Fax	
E-Mail Address:				
Company Mailing Ad	dress:			
WICHITA, KS 67219-	3142			
Carrier Classification	and the states	1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1	· · · · · · · · · · · · · · · · · · ·	e e e e e e e e e e e e e e e e e e e
Private Property				
Cargo Classification				
Logs, Poles, Bean	-			
Hazardous Materials	and a second	hlan Duill		
9 Miscellaneous I				and the states
Equipment		m Leased Trip Leased	and the second	ed Term Leased Trip Leased
Truck	3	0 0	Trailer	3 0 0
Power units used in the	U.S.:3			
Percentage of time use	d in the U.S.:100	. ,		
Does carrier transpo		antities of HM? No		
Is an HM Permit requ	uired?	N/A		
Driver Information				
	Inter Intra	Average trip leased d	rivers/month: 0	
< 100 Miles:	3		Total Drivers: 4	
>= 100 Miles:	1		CDL Drivers: 2	

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WICHTA TREE SERVICE (WICHITA TREE LLC dba)

U.S. DOT #: 3134849

Review Date:

12/11/2018

Part A

QUESTIONS regarding this report or the Federal Motor Carrier Safety or Hazardous Materials rules may be addressed to the Office of Motor Carriers at:

This report will be used to assess your safety compliance.

Person(s) Interviewed Name: Robert Phillips

Name:

Title: Owner Title: Office Manager





WICHTA TREE SERVICE (WICHITA TREE LLC dba)

12/11/2018

Part B Violations

1 STATE	Primary: 391.23(b)	D	iscovered	Checked	Drivers/ In Violation	
(a)(1) of this se	2018	ponse to the inquis cation file within 30	2 y or inquirie) days of the	s to each State date the drive	e required by er's employme	paragraph
Carrier failed to complete mvr and have on file within 30 days of employment. Operated a 2004 Ford KS VIN#609080 , KS tag#, gvwr 26000 and a 2017 Veemer Chipper KS VIN#						
2 STATE	Primary: 391.51(b)(3) CFR Equivalent: 391.51(b)(3)	D	iscovered 2	Checked	Drivers/ In Violation 2	Vehicles Checked 4
as equivalent. Example Driver Osborn J Holland Trip date 11.20.2018 Hire date 9.28.2018 Carrier failed to complete written road test on non CDL holder in operation with over 26,000 gcvwr cmv's. Operated a 2004 Ford KS VIN# Example 609080, KS tag# gvwr 26000 and a 2017 Veemer Chipper KS VIN# 1025349, KS tag # gvwr 5700 on a trip in Wichita, KS.						
	Rating Information: es Operated 2,500	Nu	mber of Ve	OOS Vehic hicle Inspecte		
Recordable Accidents 0 OOS Vehicle (MCMIS): 0 Recordable Accidents/Million Miles 0.00 Number of Vehicles Inspected (MCMIS): 0						
Your proposed	safety rating is :	Rating Fa	ctors	A	cute Critica	1
		Factor Factor		S	0 0	
SATISFACTORY		Factor Factor Factor	3: 4:	S S S S	0 0 0 0 0 0))]
	s must be taken for one violations (to finite	Factor	6:	S		

Corrective actions must be taken for any violations (deficiencies) identified on Part B of this report.





Part B Requirements and/or Recommendations

1. For all Investigations:

Understand Why Compliance Saves Time and Money: Compliance with FMCSRs will not only save lives, but also saves your business time and money. Tracking how much your business spends on non-compliance activities can help you understand the many benefits of compliance to your business and why safety is good business.

Document and Follow Through on Action Plans: Document and follow through on action plans to ensure the actions you are taking are creating improvement in safety management and compliance.

NOTICE: A pattern and/or repeated violations of the same or related acute or critical regulations (violations of the same Part in Title 49, Code of Federal Regulations) will cause the maximum penalties allowed by law to be assessed under Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). A pattern of violations means two or more violations of acute and/or critical regulations in three or more Parts of Title 49, Code of Federal Regulations discovered during any eligible investigation. Repeated violations means violation(s) of an acute regulation of the same Part of Title 49, Code of Federal Regulations discovered in an investigation after one or more closed enforcement actions within a six year period and/or violation(s) of a critical regulation in the same Part of Title 49, Code of Federal Regulations discovered in an investigation after two or more closed enforcement actions within a six year period.

NOTICE: 49 CFR Part 391.23 requires prospective employers to, at a minimum, investigate a driver's employment information, crash record, and alcohol and controlled substances history from all employers the driver worked for within the previous 3 years.

The Pre-Employment Screening Program (PSP) is a screening tool that assists motor carriers in investigating crash history and roadside safety performance of prospective drivers. The PSP allows motor carriers to purchase 5 years of crash data and 3 years of roadside inspection data from the Federal Motor Carrier Safety Administration's (FMCSA) Motor Carrier Management Information System (MCMIS). Records are available 24 hours a day via Web request. Motor carriers should visit the following website for more information:

http://www.psp.fmcsa.dot.gov/Pages/default.aspx

All motor carriers and truck drivers are needed to fight against terrorism and hijacking. You could be a target. Protect yourself, your trucks, your cargo, and your facilities. Discuss with your employees/drivers the "Security Measures for Truck Drivers and Companies" which were provided and reviewed with motor carrier official. Motor carriers should visit the following website for more information:

http://www.fmcsa.dot.gov/documents/Hljacking-Brochure.pdf

FMCSA recently announced planned improvements to the Carrier Safety Measurement System (SMS) which was implemented in December 2010 as part of the Agency's broader Compliance, Safety, Accountability (CSA) initiative. A preview of these improvements is currently available to motor carriers. The system changes are scheduled to be available to the public in July 2012. There will be additional opportunity for public comment on the changes after the preview period ends in July 2012. The improvements to SMS are based on ongoing analysis and feedback from enforcement personnel, the motor carrier industry, and other stakeholders. The changes more effectively identify and prioritize high-risk and other unsafe motor carriers for enforcement interventions designed to reduce commercial motor vehicle crashes and hazardous materials incidents. Motor carrier's currently have the ability to preview how the improvements impact their individual safety data in SMS. These improvements include; (1) Changes to the SMS methodology that identify higher risk carriers while addressing industry biases; (2) better applications of SMS results for Agency interventions by more accurately identifying safety sensitive carriers (i.e., carriers transporting people and carriers hauling hazardous materials (HM)), so that such firms can be selected for CSA interventions at more stringent levels; and, (3) more specific fact-based displays of SMS results on the SMS Web site. The data preview may be found at http://csa.fmcsa.dot.gov/. During the data preview period, the Agency requests comments on the impacts of the changes.

This letter should be submitted as soon as possible.

For all Investigations that did not result in a Cooperative Safety Plan:

The KCC requires that you prepare a corrective action letter, addressing the measures taken to correct the violations identified within this report. Submit this letter within 30 days outlining the carrier's updated changes to their policies and procedures regarding all listed violations. Explain in detail how, as a carrier representative, you will rectify these deficiencies and prevent their reoccurrence going forward. Include any supporting documentation and evidence as indicated in the recommendations above, (example: vehicle inspections performed, proof of drug and alcohol testing in place, etc.) necessary to prove that corrective action has been taken. Mail or email the letter





Part B Requirements and/or Recommendations

along with copies of your supporting evidence to: Kansas Corporation Commission Attn: Gary Davenport 1500 SW Arrowhead Rd Topeka, KS 66604-4027 g.davenport@kcc.ks.gov

FAILING TO SEND IN CORRECTIVE ACTION LETTER CAN RESULT IN PENALTIES.

- 2. Copies of the regulations, forms, interpretations, and manuals are available from a variety of sources. Check the FMCSA website for a current list of suppliers. www.fmcsa.dot.gov/safety-security/eta/index.htm
- 3. Conduct periodic internal reviews of your driver qualification, hours of service control, maintenance, accident analysis/reporting, training, and other safety systems to ensure continued compliance with the FMCSR.
- 4. Obtain a copy of each driver's driving record and review it annually.
- 5. I understand that monetary penalties will be assessed as a result of violations found in this compliance reveiw. The penalty schedule can be found at this website: http://kcc.ks.gov/transportation/safety-information

Carrier representative

Date

6. I acknowledge that these requirements/violations and/or recommendations have been discussed with me and my questions have been answered. I understand that failure to satisfactorily remedy the above-listed requirements, and/or failure to comply with Kansas Motor Carrier Safety Statutes and Regulations could result in the suspension of Wichita Tree LLC's vehicles operating authority and/or the impoundment of Wichita Tree LLC's vehicles.

Signed Date

ATTACHMENT "B"

DRIVER/VEHICLE EXAMINATION REPORT

Kansas Highway Patrol MOTOR CARRIER SAFETY 700 SW Jackson, Ste 704 Topeka, KS 66603 Phone: (785)296-7189 Fax:	Report Number: KSHP04232473 Inspection Date: 11/20/2018 Start: 8:29 AM CT End: 9:00 AM CT Inspection Level: I - Full HM Inspection Type: None				
	Phone#: Fax#:	Driver: HOLL License#: Date of Bin CoDriver: License#: Date of Birth	AND, OSBORN	J State: State:	
Location: SEDGWICK COUN Highway: 3700 N HYDRAUL County:		Milepost: S Origin: WICHITA,KS Destination: WICHIT		i ill of Lading: N/A argo: TOOLS/CHIPPER	<u> </u>
VEHICLE IDENTIFICATIONUnitTypeMakeYearState1TRFORD 2004KS2STVERN 2017KS	Plate Equipment 2	609	<u>GVWR</u> <u>CVS</u> 080 26000 080 57000	6 <u>A # Issued # O0</u>	<u>DS Sticker</u>
Right N/A N/A N	3 N/A N/A LEC				
VIOLATIONS Section Type Unit QOS 392 2DL F D N	S <u>Citation # VerifyCi</u> N	ash Violations Discovered N Miscellaneous Drivers	License Violation		
391.41A F D N	N	N No medical certificate	n driver's possession		
392 2DL F D N		N Miscellaneous Drivers		•	
396 3A1 F 1 N 396 17C F 2 N	N N	 N Inspection, repair and N Operating a CMV with 	-		
			·····		······
HazMat: No HM transported			Placard:	Cargo Tank:	
Special Checks: No data for					
* NOTE TO MECHANIC The unders Signature Of Repairer X	signed certifies that all n	hechanical defects listed on Facility:	this report HAVE BEE Date	N CORRECTED at the time of	signature
**** DRIVER THIS FORM IS REQU this sheet must be corrected or ackn THIS FORM WITHIN 15 DAYS to the Signature Of Motor Carrier X	nowledged PRIOR TO R the Motor Carrier Division	E-DISPATCH and then cert of the KANSAS HIGHWAY	fied by a responsible	carrier official who must sign b ass listed at the top of this form	

Report Prepared By:Badge #:M. Mullen0423

Copy Received By: OSBORN HOLLAND

<u>X</u>

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<u>____</u>

CERTIFICATE OF SERVICE

19-TRAM-254-PEN

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

first class mail/hand delivered on _____01/11/2019

AHSAN LATIF, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604 Fax: 785-271-3354 a.latif@kcc.ks.gov ROBERT PHILLIPS, MANAGING MEMBER WICHITA TREE LLC 2346 E 45TH ST WICHITA, KS 67219-3142 robert@wichita-treeservice.com

/S/ DeeAnn Shupe DeeAnn Shupe